Comptroller of the Currency
Administrator of National Banks

QJ Quarterly Journal

Volume Twenty–Two • Number 4

The Value of the National Bank Charter

Office of the Comptroller of the Currency

December 2003

Comptroller — John D. Hawke, Jr.

Executive Committee

First Senior Deputy Comptroller and Chief Counsel	Julie L. Williams
Chief of Staff	Mark A. Nishan
Senior Deputy Comptroller and Chief National Bank Examiner	Emory Wayne Rushton
Senior Deputy Comptroller for Large Bank Supervision	Douglas W. Roeder
Senior Deputy Comptroller for Mid-Size/Community Bank Supervision	Timothy W. Long
Chief Information Officer	Jackquelyn E. Fletcher
Senior Deputy Comptroller for International and Economic Affairs	Jeffrey A. Brown
Senior Deputy Comptroller for Management and Chief Financial Officer	Thomas R. Bloom
Ombudsman	Samuel P. Golden

Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller, who is appointed by the President, with the advice and consent of the Senate, for a five-year term.

The OCC regulates national banks by its power to:

- Examine the banks;
- Approve or deny applications for new charters, branches, capital, or other changes in corporate or banking structure;
- Take supervisory actions against banks that do not conform to laws and regulations or that otherwise engage in unsound banking practices, including removal of offiers, negotiation of agreements to change existing banking practices, and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into four geographical districts, with each headed by a deputy comptroller.

The OCC is funded through assessments on the assets of national banks, and federal branches and agencies. Under the International Banking Act of 1978, the OCC regulates federal branches and agencies of foreign banks in the United States.

The Comptroller

Comptroller John D. Hawke, Jr. has held office as the 28th Comptroller of the Currency since December 8, 1998, after being appointed by President Clinton during a congressional recess. He was confimed subsequently by the U.S. Senate for a five-year term starting on October 13, 1999. Prior to his appointment Mr . Hawke served for 3½ years as Under Secretary of the Treasury for Domestic Finance. He oversaw development of policy and legislation on financial institutions, debt management, and capital markets; served as chairman of the Advanced Counterfeit Deterrence Steering Committee; and was a member of the board of the Securities Investor Protection Corporation. Before joining Treasury, he was a senior partner at the Washington, D.C., law firm of Arnold & Porter, which he joined as an associate in 1962. In 1975 he left to serve as general counsel to the Board of Governors of the Federal Reserve System, returning in 1978. At Arnold & Porter he headed the financial institutions practice. From 1987 to 1995 he was chairman of the firm.

Mr. Hawke has written extensively on the regulation of financial institutions, including Commentaries on Banking Regulation, published in 1985. From 1970 to 1987 he taught courses on federal regulation of banking at Georgetown University Law Center. He has also taught courses on bank acquisitions and serves as chairman of the Board of Advisors of the Morin Center for Banking Law Studies. In 1987 Mr. Hawke served on a committee of inquiry appointed by the Chicago Mercantile Exchange to study the role of futures markets in the October 1987 stock market crash. He was a founding member of the Shadow Financial Regulatory Committee and served on it until joining Treasury.

Mr. Hawke was graduated from Yale University in 1954 with a B.A. in English. From 1955 to 1957 he served on active duty with the U.S. Air Force. After graduating in 1960 from Columbia University School of Law, where he was editor-in-chief of the Columbia Law Review, Mr. Hawke clerked for Judge E. Barrett Prettyman on the U.S. Court of Appeals for the District of Columbia Circuit. From 1961 to 1962 he was counsel to the Select Subcommittee on Education, U.S. House of Representatives.

The *Quarterly Journal* is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and congressional testimony, material released in the interpretive letters series, statistical data, and other information of interest to the administration of national banks. We welcome your comments and suggestions. Please send to Rebecca Miller, Senior Writer-Editor, by fax to (202) 874-5263 or by e-mail to quarterlyjournal@occ.treas.gov. Subscriptions to the new electronic *Quarterly Journal Library* CD-ROM are available for $50 a year by writing to Publications—QJ, Comptroller of the Currency, Attn: Accounts Receivable, M.S. 4-8, 250 E St., SW, Washington, DC 20219. The *Quarterly Journal* continues to be available on the Web at http://www.occ.treas.gov/qj/qj.htm.

Quarterly Journal

Office of the Comptroller of the Currency
Administrator of National Banks

John D. Hawke, Jr.
Comptroller of the Currency

Volume 22, Number 4

December 2003
(Third Quarter Data)

Last volume in print.
See order form at end of the journal for
the new *Quarterly Journal Library* CD-ROM,
starting with volume 23.

Contents

Condition and Performance of Commercial Banks

Summary

Bank income rose once again in the third quarter of 2003. At national banks, all major income categories remained at or near record levels, as did both return on assets and return on equity. As in the first half of 2003, however, lower provisioning was the biggest contributor to the increase in net income.

Loan growth continued, particularly in residential real estate, offsetting slack demand in the commercial and industrial sector. Net interest margins continued to slide, offsetting robust growth in assets and bringing growth in net interest income to a halt. Credit quality continued to improve at large banks. As in recent quarters, the risks for banks continue to be unemployment and high debt burdens in the consumer sector, plus continued weakness in manufacturing and some services.

Key Trends

Net income continued to rise in the third quarter. Return on equity reached 16.34 percent for the year to date, just short of the all-time record for a year. Return on assets also remained near record levels at national banks. National banks again led state banks in both return on equity and return on assets. At national banks, net interest income was flat, as a sixth straight quarter of declining net interest margins more than offset healthy growth in total assets. As the table demonstrates, growth for most income categories slowed considerably between 2002Q3 and 2003Q3.

Realized gains on securities fell, as the early-summer rise in interest rates cut the value of banks' bond portfolios. Noninterest income continued to move up, partially offsetting the slowdown in net interest income. Key noninterest income sources included fee income from continued strength in mortgages and refinancing, and the rise in market-sensitive income from renewed volume in securities markets.

Table 1—Higher noninterest income, lower provisioning lift net income

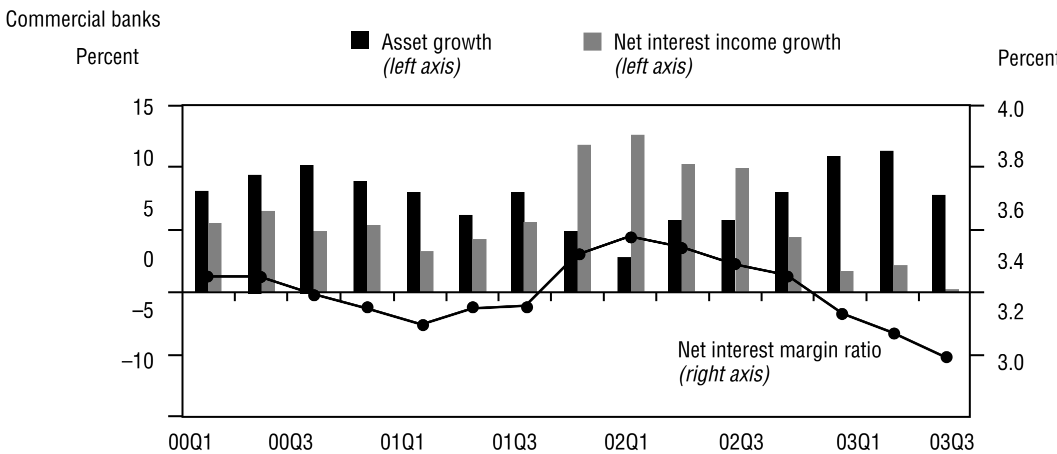
National banks

	Major income components (Change, $ millions)			
	2001Q3—02Q3	% Change	2002Q3—03Q3	% Change
Revenues				
Net interest income	3,987	12.7%	–56	—0.2%
Realized gains, securities	616	105.2%	–973	–81.0%
Noninterest income	3,675	15.1%	2,198	7.8%
Expenses				
Provisioning	–313	–3.9%	–2,758	–34.9%
Noninterest expense	725	2.2%	2,685	8.0%
Net income	5,619	57.4%	714	4.6%

Source: Integrated Banking Information System (OCC)

A decrease in provisions again accounted for the largest contribution to the change in net income, as credit quality at large banks continued to improve, particularly for commercial and industrial (C&I) loans. Noninterest expense rose, especially at large banks, where many have added staff and branches to take advantage of the surge in mortgage lending.

Figure 1—Weakness in net interest margin means that strong loan growth is needed to support net interest income



Source: Integrated Banking Information System (OCC)
Note: Growth calculated from the year-ago quarter.

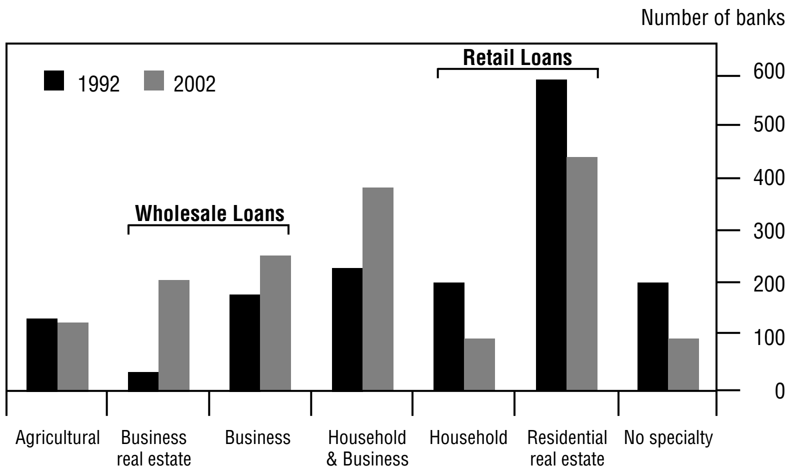
Net interest margins (NIMs) continued to decline at both small and large banks, with small-bank NIMs falling to a 15-year low. Small banks, with their greater reliance on retail funding, have seen steady erosion in their net interest margins over the last decade, though the fall in short-term rates that began in January 2001 briefly interrupted the slide. At larger banks, which rely more on wholesale funding, NIMs spiked sharply upward, when the Federal Reserve dramatically lowered short-term rates in 2001, and have since drifted slightly below their long-term average.

From 2001Q4 to 2002Q4, steady loan growth combined with high NIMs to push annual growth in net interest income in the commercial banking system above 10 percent (year over year) in every quarter. Growth was even faster at national banks during that time, averaging over 15 percent. More recently, however, the steady fall in NIMs has cut into growth in net interest income, despite brisk loan growth. In the third quarter of 2003, for the first time in three years, net interest income (measured year-over-year) failed to rise.

Most analysts believe that banks will have trouble sustaining the fast pace of loan growth seen recently. Higher interest rates have cut into growth in mortgage refinancing. High vacancy rates and sharp rent declines have discouraged commercial developers and reduced growth in commercial real estate lending. Overcapacity in many industries dampens enthusiasm for expansion and reduces demand for C&I loans. And soft labor markets are slowing the growth of consumer loans.

Figure 2—Community banks shift to wholesale lending

National community banks (for banks present in both years)



Sources: Peer Group Models and Integrated Banking Information System (OCC)

Larger banks have been moving into retail lending for about a decade, as small banks have expanded their share of business lending. Figure 2 indicates how areas of specialization have changed over the last decade. As larger banks have come to dominate retail lending (including home mortgages and consumer loans) the number of community banks specializing in this line of business has fallen. In response, many more community banks now specialize in business lending, which includes commercial and industrial (C&I), commercial real estate, construction loans, and multifamily residential loans.

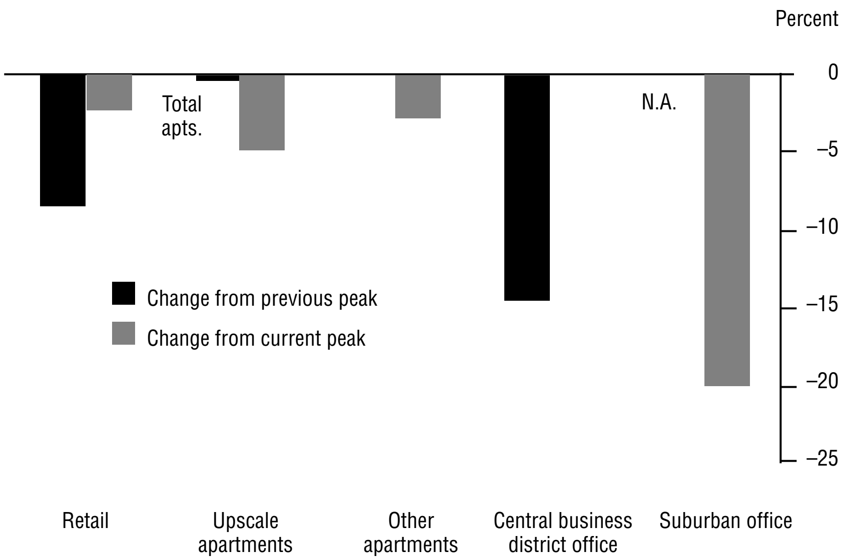
Some smaller banks have been supplementing income by expanding loan sales. Around 5 percent of community banks are particularly active in this area, deriving at least 10 percent of net operating revenue from loan sales. This small group accounts for only 5 percent of national community banks, but about 42 percent of the growth in community bank net income over the last year.

Credit quality continued to improve at large banks, particularly in the C&I sector, where the noncurrent ratio improved for the fifth quarter in a row. At community banks, credit quality was essentially stable, with a modest improvement in C&I offset by a modest deterioration in credit card banks, although most of this deterioration was confined to just a few banks.

Credit quality has so far held up well for commercial real estate, despite weakness in market fundamentals like vacancy rates, rents, and net operating income. Figure 3 indicates changes in average rents for the major commercial building types. For each building type, the first bar shows the peak-to-trough percentage decline during the early 1990s; the second bar shows the decline from the peak to the present during the current cycle. For apartments and central business district offices, the recent decline in rents has been even sharper than during the earlier slowdown. For industrial buildings, including warehouses, rents have fallen about in parallel with the last cycle.

Figure 3—Slack in business sector and drop in apartment demand depresses commercial rents

Change in average rent since peaks



Source: National Real Estate Index
Note: Previous peaks in average rents occurred from 1989Q2 to 1991Q2, and the current peaks occurred in 2000Q4 except for apartments, which peaked in 2001Q3.

Key indicators, FDIC-insured national banks
Annual 1999—2002, year-to-date through September 30, 2003, third quarter 2002, and third quarter 2003

(Dollar figures in millions)

	1999	2000	2001	2002	Preliminary 2003YTD	2002Q3	Preliminary 2003Q3
Number of institutions reporting	2,365	2,231	2,138	2,077	2,031	2,092	2,031
Total employees (FTEs)	983,212	948,665	966,545	993,469	994,413	989,831	994,413
Selected income data ($)							
Net income	$42,572	$38,906	$44,183	$56,623	$46,722	$15,415	$16,129
Net interest income	114,371	115,673	125,366	141,378	106,226	35,393	35,337
Provision for loan losses	15,536	20,536	28,921	32,613	17,959	7,899	5,140
Noninterest income	93,103	96,751	100,091	109,766	85,960	28,097	30,296
Noninterest expense	126,122	128,975	131,715	136,838	106,973	33,728	36,413
Net operating income	42,396	40,157	42,954	54,476	44,867	14,634	15,959
Cash dividends declared	30,016	32,327	27,783	41,757	31,765	9,352	11,997
Net charge-offs	14,180	17,227	25,107	31,381	19,601	7,557	6,171
Selected condition data ($)							
Total assets	3,271,237	3,414,392	3,634,882	3,907,972	4,202,114	3,846,105	4,202,114
Total loans and leases	2,125,360	2,224,132	2,269,248	2,445,529	2,563,094	2,392,265	2,563,094
Reserve for losses	37,663	39,992	45,537	48,338	47,377	47,659	47,377
Securities	537,321	502,302	575,937	653,125	702,581	641,127	702,581
Other real estate owned	1,572	1,553	1,794	2,072	2,106	1,961	2,106
Noncurrent loans and leases	20,815	27,151	34,574	38,162	33,929	38,352	33,929
Total deposits	2,154,231	2,250,402	2,384,414	2,565,771	2,728,515	2,490,057	2,728,515
Domestic deposits	1,776,084	1,827,064	2,001,253	2,168,877	2,295,687	2,114,020	2,295,687
Equity capital	277,965	293,736	340,668	371,584	386,006	366,794	386,006
Off-balance-sheet derivatives	12,077,568	15,502,911	20,549,785	25,953,473	30,444,468	25,129,592	30,444,468
Performance ratios (annualized %)							
Return on equity	15.56	13.69	13.84	15.83	16.34	17.06	16.71
Return on assets	1.35	1.18	1.25	1.50	1.52	1.62	1.53
Net interest income to assets	3.63	3.50	3.56	3.76	3.45	3.73	3.36
Loss provision to assets	0.49	0.62	0.82	0.87	0.58	0.83	0.49
Net operating income to assets	1.34	1.21	1.22	1.45	1.46	1.54	1.52
Noninterest income to assets	2.95	2.92	2.84	2.92	2.80	2.96	2.88
Noninterest expense to assets	4.00	3.90	3.74	3.63	3.48	3.56	3.46
Loss provision to loans and leases	0.76	0.95	1.28	1.38	0.95	1.34	0.81
Net charge-offs to loans and leases	0.70	0.80	1.11	1.33	1.04	1.28	0.97
Loss provision to net charge-offs	109.56	119.21	115.19	103.93	91.62	104.52	83.30
Performance ratios (%)							
Percent of institutions unprofitable	7.10	6.95	7.48	6.93	5.61	6.55	6.89
Percent of institutions with earnings gains	62.11	66.61	56.83	71.26	54.36	70.60	49.29
Nonint. income to net operating revenue	44.87	45.55	44.39	43.71	44.73	44.25	46.16
Nonint. expense to net operating revenue	60.79	60.72	58.42	54.49	55.66	53.12	55.48
Condition ratios (%)							
Nonperforming assets to assets	0.70	0.86	1.02	1.06	0.88	1.07	0.88
Noncurrent loans to loans	0.98	1.22	1.52	1.56	1.32	1.60	1.32
Loss reserve to noncurrent loans	180.94	147.30	131.71	126.67	139.63	124.27	139.63
Loss reserve to loans	1.77	1.80	2.01	1.98	1.85	1.99	1.85
Equity capital to assets	8.50	8.60	9.37	9.51	9.19	9.54	9.19
Leverage ratio	7.49	7.49	7.81	7.88	7.81	7.98	7.81
Risk-based capital ratio	11.70	11.84	12.61	12.68	13.01	12.87	13.01
Net loans and leases to assets	63.82	63.97	61.18	61.34	59.87	60.96	59.87
Securities to assets	16.43	14.71	15.84	16.71	16.72	16.67	16.72
Appreciation in securities (% of par)	-2.45	-0.01	0.48	2.12	1.24	2.20	1.24
Residential mortgage assets to assets	20.60	19.60	22.54	24.72	25.17	24.10	25.17
Total deposits to assets	65.85	65.91	65.60	65.65	64.93	64.74	64.93
Core deposits to assets	47.01	45.61	48.08	48.75	48.04	48.04	48.04
Volatile liabilities to assets	34.81	35.18	31.24	30.31	30.63	30.23	30.63

Loan performance, FDIC-insured national banks
Annual 1999—2002, year-to-date through September 30, 2003, third quarter 2002, and third quarter 2003
(Dollar figures in millions)

	1999	2000	2001	2002	Preliminary 2003YTD	2002Q3	Preliminary 2003Q3
Percent of loans past due 30-89 days							
Total loans and leases	1.16	1.25	1.38	1.14	0.95	1.14	0.95
Loans secured by real estate (RE)	1.22	1.42	1.42	1.07	0.85	1.07	0.85
1-4 family residential mortgages	1.61	1.95	1.80	1.45	1.12	1.38	1.12
Home equity lines	0.77	1.07	0.98	0.62	0.47	0.65	0.47
Multifamily residential mortgages	0.69	0.59	0.75	0.40	0.48	0.37	0.48
Commercial RE loans	0.70	0.72	0.86	0.58	0.48	0.63	0.48
Construction RE loans	1.07	1.12	1.28	0.91	0.75	1.14	0.75
Commercial and industrial loans	0.71	0.71	0.95	0.76	0.67	0.84	0.67
Loans to individuals	2.36	2.40	2.39	2.16	1.88	2.13	1.88
Credit cards	2.53	2.50	2.52	2.57	2.20	2.56	2.20
Installment loans and other plans	2.24	2.31	2.65	2.08	1.88	2.05	1.88
All other loans and leases	0.49	0.56	0.82	0.54	0.45	0.56	0.45
Percent of loans noncurrent							
Total loans and leases	0.98	1.22	1.52	1.56	1.32	1.60	1.32
Loans secured by real estate (RE)	0.87	0.93	1.05	0.97	0.84	1.02	0.84
1-4 family residential mortgages	0.91	1.06	1.05	1.02	0.83	1.09	0.83
Home equity lines	0.32	0.41	0.42	0.33	0.26	0.33	0.26
Multifamily residential mortgages	0.43	0.55	0.49	0.44	0.45	0.49	0.45
Commercial RE loans	0.84	0.77	1.03	1.05	1.02	1.04	1.02
Construction RE loans	0.63	0.82	1.15	1.03	0.86	1.15	0.86
Commercial and industrial loans	1.11	1.66	2.44	3.00	2.67	3.05	2.67
Loans to individuals	1.52	1.46	1.58	1.61	1.55	1.52	1.55
Credit cards	2.00	1.90	2.05	2.16	1.88	2.03	1.88
Installment loans and other plans	1.16	1.06	1.41	1.30	1.50	1.25	1.50
All other loans and leases	0.40	0.86	1.18	1.10	0.80	1.14	0.80
Percent of loans charged-off, net							
Total loans and leases	0.70	0.80	1.11	1.33	1.04	1.28	0.97
Loans secured by real estate (RE)	0.10	0.12	0.26	0.19	0.16	0.18	0.16
1-4 family residential mortgages	0.14	0.14	0.32	0.17	0.14	0.18	0.15
Home equity lines	0.19	0.23	0.35	0.23	0.20	0.20	0.16
Multifamily residential mortgages	0.02	0.03	0.04	0.11	0.04	0.12	0.05
Commercial RE loans	0.03	0.07	0.18	0.17	0.15	0.13	0.20
Construction RE loans	0.03	0.05	0.15	0.19	0.14	0.24	0.14
Commercial and industrial loans	0.54	0.87	1.50	1.80	1.38	1.85	1.18
Loans to individuals	2.65	2.84	3.13	4.02	3.31	3.72	3.21
Credit cards	4.52	4.43	5.06	6.58	5.50	5.83	5.41
Installment loans and other plans	1.27	1.54	1.66	1.91	1.71	1.96	1.68
All other loans and leases	0.31	0.31	0.58	0.83	0.50	0.58	0.56
Loans outstanding ($)							
Total loans and leases	$2,125,360	$2,224,132	$2,269,248	$2,445,529	$2,563,094	$2,392,265	$2,563,094
Loans secured by real estate (RE)	853,138	892,138	976,135	1,139,541	1,267,315	1,077,204	1,267,315
1-4 family residential mortgages	433,804	443,000	472,716	573,968	642,106	526,626	642,106
Home equity lines	67,267	82,672	102,094	140,998	174,997	132,841	174,997
Multifamily residential mortgages	26,561	28,026	30,075	33,968	35,919	32,219	35,919
Commercial RE loans	214,145	221,267	236,484	253,423	265,560	248,646	265,560
Construction RE loans	71,578	76,899	91,484	95,403	102,385	95,817	102,385
Farmland loans	11,957	12,350	12,615	13,225	13,534	13,208	13,534
RE loans from foreign offices	27,825	27,923	30,668	28,556	32,813	27,848	32,813
Commercial and industrial loans	622,004	646,988	597,212	545,972	506,713	557,714	506,713
Loans to individuals	348,706	370,394	389,947	450,604	461,823	440,523	461,823
Credit cards*	147,275	176,425	166,628	209,971	187,602	203,445	187,602
Other revolving credit plans	na	na	29,258	33,243	32,629	33,169	32,629
Installment loans	201,431	193,969	194,061	207,390	241,592	203,909	241,592
All other loans and leases	303,406	316,177	307,897	311,861	329,113	319,451	329,113
Less: Unearned income	1,893	1,565	1,943	2,449	1,869	2,628	1,869

Key indicators, FDIC-insured national banks by asset size
Third quarter 2002 and third quarter 2003

(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3
Number of institutions reporting	966	875	954	984	128	124	44	48
Total employees (FTEs)	22,514	20,597	93,113	93,785	104,119	94,238	770,085	785,793
Selected income data ($)								
Net income	$152	$125	$835	$854	$2,107	$1,205	$12,322	$13,945
Net interest income	512	451	2,523	2,534	3,629	3,155	28,729	29,196
Provision for loan losses	36	33	217	247	568	356	7,077	4,505
Noninterest income	220	214	1,167	1,690	3,816	2,382	22,894	26,010
Noninterest expense	497	468	2,346	2,837	3,684	3,336	27,202	29,773
Net operating income	145	123	811	834	2,035	1,198	11,642	13,805
Cash dividends declared	68	60	368	446	1,098	953	7,818	10,537
Net charge-offs	24	23	153	257	632	317	6,749	5,574
Selected condition data ($)								
Total assets	51,372	47,587	255,228	271,784	395,867	373,037	3,143,637	3,509,705
Total loans and leases	30,525	28,003	159,618	168,947	237,876	226,922	1,964,247	2,139,221
Reserve for losses	428	411	2,269	2,507	4,119	3,324	40,842	41,134
Securities	12,691	12,134	63,250	68,855	90,064	83,996	475,122	537,595
Other real estate owned	76	82	262	301	226	234	1,396	1,489
Noncurrent loans and leases	367	370	1,605	1,671	2,312	2,048	34,069	29,840
Total deposits	42,996	39,824	206,846	219,456	262,409	244,023	1,977,805	2,225,212
Domestic deposits	42,982	39,814	206,423	219,046	260,050	241,444	1,604,566	1,795,383
Equity capital	6,068	5,489	26,028	27,403	42,610	40,575	292,088	312,540
Off-balance-sheet derivatives	21	14	1,668	2,350	30,055	19,317	25,414,182	30,805,128
Performance ratios (annualized %)								
Return on equity	10.16	9.11	13.07	12.50	19.95	11.90	17.14	17.83
Return on assets	1.20	1.06	1.33	1.26	2.17	1.30	1.59	1.59
Net interest income to assets	4.03	3.81	4.01	3.75	3.73	3.39	3.70	3.32
Loss provision to assets	0.29	0.28	0.35	0.36	0.58	0.38	0.91	0.51
Net operating income to assets	1.15	1.04	1.29	1.23	2.09	1.29	1.50	1.57
Noninterest income to assets	1.74	1.80	1.86	2.50	3.92	2.56	2.95	2.96
Noninterest expense to assets	3.92	3.96	3.73	4.20	3.79	3.59	3.51	3.39
Loss provision to loans and leases	0.48	0.48	0.55	0.59	0.95	0.64	1.46	0.85
Net charge-offs to loans and leases	0.32	0.33	0.39	0.61	1.06	0.57	1.40	1.05
Loss provision to net charge-offs	152.04	143.75	142.15	96.10	89.91	112.38	104.86	80.81
Performance ratios (%)								
Percent of institutions unprofitable	10.56	11.20	3.35	3.46	1.56	6.45	2.27	0.00
Percent of institutions with earnings gains	63.66	46.74	76.42	51.02	79.69	50.81	70.45	56.25
Nonint. income to net operating revenue	30.09	32.13	31.63	40.01	51.25	43.01	44.35	47.11
Nonint. expense to net operating revenue	67.92	70.42	63.56	67.16	49.48	60.24	52.69	53.93
Condition ratios (%)								
Nonperforming assets to assets	0.89	0.96	0.74	0.73	0.65	0.61	1.16	0.92
Noncurrent loans to loans	1.20	1.32	1.01	0.99	0.97	0.90	1.73	1.39
Loss reserve to noncurrent loans	116.69	111.19	141.40	150.01	178.18	162.31	119.88	137.85
Loss reserve to loans	1.40	1.47	1.42	1.48	1.73	1.46	2.08	1.92
Equity capital to assets	11.81	11.53	10.20	10.08	10.76	10.88	9.29	8.91
Leverage ratio	11.34	11.17	9.43	9.38	9.56	9.28	7.60	7.48
Risk-based capital ratio	18.58	18.52	14.92	15.01	15.93	15.92	12.34	12.55
Net loans and leases to assets	58.59	57.98	61.65	61.24	59.05	59.94	61.18	59.78
Securities to assets	24.70	25.50	24.78	25.33	22.75	22.52	15.11	15.32
Appreciation in securities (% of par)	2.62	1.16	2.82	1.24	2.46	1.83	2.06	1.15
Residential mortgage assets to assets	22.23	20.95	24.73	23.50	25.40	27.76	23.91	25.08
Total deposits to assets	83.70	83.69	81.04	80.75	66.29	65.42	62.91	63.40
Core deposits to assets	70.59	71.46	68.05	67.98	56.59	56.15	44.97	45.31
Volatile liabilities to assets	14.89	14.25	17.18	17.36	23.73	22.83	32.36	32.71

Loan performance, FDIC-insured national banks by asset size
Third quarter 2002 and third quarter 2003
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3
Percent of loans past due 30-89 days								
Total loans and leases	1.37	1.44	1.07	0.95	1.18	0.87	1.14	0.95
Loans secured by real estate (RE)	1.21	1.20	0.89	0.78	0.92	0.73	1.11	0.86
1-4 family residential mortgages	1.55	1.55	1.16	1.14	1.32	1.05	1.41	1.12
Home equity lines	0.61	0.56	0.53	0.43	0.60	0.37	0.66	0.48
Multifamily residential mortgages	0.49	0.67	0.52	0.62	0.45	0.73	0.32	0.40
Commercial RE loans	1.03	0.97	0.70	0.54	0.51	0.45	0.63	0.45
Construction RE loans	0.96	1.21	0.93	0.76	1.06	0.61	1.19	0.77
Commercial and industrial loans	1.63	1.44	1.23	1.15	1.37	1.00	0.76	0.60
Loans to individuals	2.31	2.33	2.02	1.95	1.91	1.52	2.16	1.90
Credit cards	2.36	2.10	3.77	3.58	2.04	2.01	2.59	2.18
Installment loans and other plans	2.34	2.37	1.78	1.68	1.98	1.45	2.08	1.95
All other loans and leases	0.82	1.79	0.65	0.58	0.72	0.39	0.55	0.44
Percent of loans noncurrent								
Total loans and leases	1.20	1.32	1.01	0.99	0.97	0.90	1.73	1.39
Loans secured by real estate (RE)	1.07	1.13	0.85	0.85	0.86	0.81	1.07	0.83
1-4 family residential mortgages	0.80	1.06	0.76	0.78	0.94	0.89	1.14	0.82
Home equity lines	0.34	0.24	0.25	0.17	0.39	0.30	0.33	0.27
Multifamily residential mortgages	1.20	0.80	0.49	0.60	0.38	0.32	0.49	0.45
Commercial RE loans	1.13	1.24	0.99	0.94	0.87	0.84	1.10	1.08
Construction RE loans	1.32	0.89	0.85	0.90	0.87	0.75	1.26	0.87
Commercial and industrial loans	1.90	2.28	1.62	1.45	1.41	1.32	3.30	2.88
Loans to individuals	0.79	0.86	0.98	0.94	1.06	0.93	1.61	1.63
Credit cards	1.79	1.51	3.65	3.16	1.54	1.90	2.05	1.86
Installment loans and other plans	0.76	0.85	0.55	0.52	0.82	0.71	1.40	1.68
All other loans and leases	1.34	1.45	0.99	1.38	0.53	0.56	1.19	0.79
Percent of loans charged-off, net								
Total loans and leases	0.32	0.33	0.39	0.61	1.06	0.57	1.40	1.05
Loans secured by real estate (RE)	0.05	0.06	0.06	0.08	0.20	0.17	0.19	0.17
1-4 family residential mortgages	0.07	0.07	0.07	0.09	0.33	0.23	0.17	0.14
Home equity lines	0.02	0.04	0.03	0.05	0.12	0.09	0.21	0.17
Multifamily residential mortgages	0.01	0.05	0.02	0.09	0.42	-0.05	0.08	0.06
Commercial RE loans	0.07	0.05	0.07	0.08	0.07	0.21	0.16	0.24
Construction RE loans	0.00	0.07	0.07	0.04	0.11	0.02	0.30	0.18
Commercial and industrial loans	0.71	0.89	0.67	0.64	1.08	0.85	2.00	1.25
Loans to individuals	1.06	0.94	1.70	3.91	3.61	1.96	3.87	3.30
Credit cards	5.03	3.85	6.57	18.59	7.59	5.83	5.62	5.17
Installment loans and other plans	0.89	0.82	0.92	0.83	0.86	0.94	2.23	1.84
All other loans and leases	0.29	0.34	0.57	0.62	0.33	0.25	0.61	0.58
Loans outstanding ($)								
Total loans and leases	$30,525	$28,003	$159,618	$168,947	$237,876	$226,922	$1,964,247	$2,139,221
Loans secured by real estate (RE)	18,091	16,969	104,445	114,026	123,887	133,390	830,781	1,002,929
1-4 family residential mortgages	7,852	6,947	39,654	38,918	51,160	57,723	427,960	538,518
Home equity lines	490	499	5,063	6,347	9,712	9,423	117,577	158,728
Multifamily residential mortgages	442	427	3,933	4,463	4,181	4,706	23,663	26,323
Commercial RE loans	5,481	5,284	40,032	45,460	41,214	43,342	161,919	171,474
Construction RE loans	1,658	1,742	11,060	13,568	15,401	16,006	67,697	71,070
Farmland loans	2,168	2,069	4,703	5,268	1,713	1,727	4,624	4,469
RE loans from foreign offices	0	0	1	3	506	463	27,342	32,348
Commercial and industrial loans	4,952	4,499	27,242	27,371	46,480	41,804	479,039	433,038
Loans to individuals	3,853	3,315	18,168	17,777	45,331	32,954	373,172	407,776
Credit cards	167	129	2,550	2,911	17,261	6,823	183,467	177,739
Other revolving credit plans	61	46	360	366	2,172	1,055	30,576	31,162
Installment loans	3,625	3,140	15,258	14,500	25,897	25,076	159,130	198,876
All other loans and leases	3,671	3,250	9,957	9,964	22,266	18,858	283,558	297,041
Less: Unearned income	42	30	194	190	88	84	2,304	1,564

Key indicators, FDIC-insured national banks by region
Third quarter 2003
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	226	234	402	421	584	164	2,031
Total employees (FTEs)	294,700	220,810	215,416	58,319	97,693	107,475	994,413
Selected income data ($)							
Net income	$4,607	$4,123	$3,205	$1,296	$901	$1,997	$16,129
Net interest income	9,630	7,743	7,981	2,617	2,557	4,809	35,337
Provision for loan losses	2,210	221	1,212	388	187	922	5,140
Noninterest income	10,519	6,040	5,329	2,490	2,179	3,739	30,296
Noninterest expense	11,147	7,625	7,222	2,771	3,150	4,498	36,413
Net operating income	4,457	3,945	3,303	1,296	960	1,998	15,959
Cash dividends declared	1,835	3,645	3,898	426	903	1,290	11,997
Net charge-offs	2,857	546	1,280	495	182	810	6,171
Selected condition data ($)							
Total assets	1,131,356	1,088,037	1,003,198	232,742	291,960	454,822	4,202,114
Total loans and leases	630,263	614,484	650,986	164,328	177,399	325,634	2,563,094
Reserve for losses	16,279	8,680	11,771	3,220	2,528	4,898	47,377
Securities	206,478	169,653	187,866	29,921	62,145	46,517	702,581
Other real estate owned	196	519	753	115	337	186	2,106
Noncurrent loans and leases	13,195	5,805	9,147	1,542	1,763	2,477	33,929
Total deposits	759,724	707,928	617,300	137,415	225,644	280,504	2,728,515
Domestic deposits	474,402	648,883	556,853	131,957	224,068	259,524	2,295,687
Equity capital	110,322	91,454	84,059	26,464	28,227	45,480	386,006
Off-balance-sheet derivatives	11,470,997	16,156,196	1,983,183	5,462	54,418	774,212	30,444,468
Performance ratios (annualized %)							
Return on equity	16.90	17.87	15.13	19.79	12.71	17.58	16.71
Return on assets	1.63	1.51	1.26	2.25	1.22	1.82	1.53
Net interest income to assets	3.41	2.83	3.14	4.54	3.47	4.39	3.36
Loss provision to assets	0.78	0.08	0.48	0.67	0.25	0.84	0.49
Net operating income to assets	1.58	1.44	1.30	2.25	1.30	1.82	1.52
Noninterest income to assets	3.72	2.21	2.10	4.32	2.95	3.41	2.88
Noninterest expense to assets	3.95	2.79	2.84	4.81	4.27	4.10	3.46
Loss provision to loans and leases	1.39	0.15	0.74	0.97	0.42	1.17	0.81
Net charge-offs to loans and leases	1.79	0.36	0.79	1.24	0.41	1.03	0.97
Loss provision to net charge-offs	77.36	40.49	94.73	78.41	102.62	113.72	83.30
Performance ratios (%)							
Percent of institutions unprofitable	7.08	9.40	5.47	5.70	6.51	10.98	6.89
Percent of institutions with earnings gains	50.88	56.84	47.76	45.61	46.40	59.76	49.29
Nonint. income to net operating revenue	52.21	43.82	40.04	48.76	46.01	43.74	46.16
Nonint. expense to net operating revenue	55.32	55.32	54.26	54.26	66.51	52.63	55.48
Condition ratios (%)							
Nonperforming assets to assets	1.24	0.58	1.02	0.71	0.72	0.59	0.88
Noncurrent loans to loans	2.09	0.94	1.41	0.94	0.99	0.76	1.32
Loss reserve to noncurrent loans	123.37	149.53	128.69	208.83	143.37	197.77	139.63
Loss reserve to loans	2.58	1.41	1.81	1.96	1.42	1.50	1.85
Equity capital to assets	9.75	8.41	8.38	11.37	9.67	10.00	9.19
Leverage ratio	8.65	6.84	7.15	10.43	7.95	8.08	7.81
Risk-based capital ratio	13.69	11.73	12.46	16.41	13.54	13.62	13.01
Net loans and leases to assets	54.27	55.68	63.72	69.22	59.90	70.52	59.87
Securities to assets	18.25	15.59	18.73	12.86	21.29	10.23	16.72
Appreciation in securities (% of par)	1.13	1.35	1.06	1.72	1.11	1.94	1.24
Residential mortgage assets to assets	14.49	31.54	28.35	21.56	27.24	30.01	25.17
Total deposits to assets	67.15	65.06	61.53	59.04	77.29	61.67	64.93
Core deposits to assets	35.68	54.16	50.51	52.39	64.78	45.69	48.04
Volatile liabilities to assets	42.37	23.64	27.76	21.99	20.83	35.21	30.63

Loan performance, FDIC-insured national banks by region
Third quarter 2003
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30-89 days							
Total loans and leases	1.06	0.65	1.12	1.06	1.01	0.88	0.95
Loans secured by real estate (RE)	0.69	0.70	1.22	0.59	0.94	0.68	0.85
1-4 family residential mortgages	0.80	0.96	1.80	0.66	1.20	0.81	1.12
Home equity lines	0.40	0.52	0.54	0.34	0.53	0.37	0.47
Multifamily residential mortgages	0.33	0.12	0.73	0.73	0.62	0.30	0.48
Commercial RE loans	0.37	0.24	0.71	0.45	0.72	0.34	0.48
Construction RE loans	0.37	0.23	1.02	0.74	0.76	1.36	0.75
Commercial and industrial loans	0.61	0.36	0.86	1.07	0.97	0.65	0.67
Loans to individuals	2.08	1.46	1.70	2.22	1.70	1.71	1.88
Credit cards	2.23	1.46	2.28	2.53	2.27	1.90	2.20
Installment loans and other plans	2.46	1.54	1.69	1.66	1.73	1.56	1.88
All other loans and leases	0.47	0.22	0.58	0.42	0.58	0.65	0.45
Percent of loans noncurrent							
Total loans and leases	2.09	0.94	1.41	0.94	0.99	0.76	1.32
Loans secured by real estate (RE)	1.09	0.53	1.33	0.52	0.91	0.38	0.84
1-4 family residential mortgages	1.04	0.45	1.75	0.32	0.91	0.24	0.83
Home equity lines	0.20	0.16	0.39	0.39	0.36	0.17	0.26
Multifamily residential mortgages	0.41	0.24	0.58	0.21	0.55	0.52	0.45
Commercial RE loans	1.02	0.89	1.39	0.79	0.83	0.83	1.02
Construction RE loans	0.87	0.80	1.10	0.85	0.68	0.57	0.86
Commercial and industrial loans	3.54	2.78	2.49	1.23	1.34	1.75	2.67
Loans to individuals	2.40	0.51	0.72	1.68	0.71	1.24	1.55
Credit cards	1.96	0.98	1.73	2.06	1.63	1.65	1.88
Installment loans and other plans	3.63	0.53	0.54	0.92	0.70	0.41	1.50
All other loans and leases	1.14	0.50	0.73	0.60	1.29	0.64	0.80
Percent of loans charged-off, net							
Total loans and leases	1.79	0.36	0.79	1.24	0.41	1.03	0.97
Loans secured by real estate (RE)	0.11	0.08	0.36	0.06	0.15	0.06	0.16
1-4 family residential mortgages	0.08	0.07	0.37	0.06	0.18	0.03	0.15
Home equity lines	0.06	0.08	0.31	0.14	0.26	0.03	0.16
Multifamily residential mortgages	0.10	0.04	0.06	0.02	-0.02	0.00	0.05
Commercial RE loans	0.03	0.05	0.50	0.06	0.13	0.18	0.20
Construction RE loans	-0.03	0.22	0.19	0.05	0.09	0.00	0.14
Commercial and industrial loans	1.54	0.95	1.18	0.75	0.85	1.08	1.18
Loans to individuals	4.10	0.96	2.22	3.81	1.04	4.10	3.21
Credit cards	5.32	3.10	5.78	5.24	4.16	5.69	5.41
Installment loans and other plans	2.80	0.94	1.44	0.57	0.91	0.96	1.68
All other loans and leases	0.89	0.33	0.44	0.21	0.61	0.50	0.56
Loans outstanding ($)							
Total loans and leases	$630,263	$614,484	$650,986	$164,328	$177,399	$325,634	$2,563,094
Loans secured by real estate (RE)	185,045	366,998	339,035	68,426	113,794	194,017	1,267,315
1-4 family residential mortgages	77,468	219,676	156,570	38,735	41,851	107,807	642,106
Home equity lines	33,166	38,092	56,806	4,839	11,984	30,110	174,997
Multifamily residential mortgages	4,089	8,555	14,071	1,795	2,833	4,576	35,919
Commercial RE loans	36,421	68,169	73,917	14,977	34,461	37,615	265,560
Construction RE loans	7,496	26,600	33,479	4,766	17,216	12,827	102,385
Farmland loans	531	1,912	3,724	3,314	2,973	1,080	13,534
RE loans from foreign offices	25,874	3,993	469	0	2,476	1	32,813
Commercial and industrial loans	153,758	114,373	134,731	24,140	34,666	45,045	506,713
Loans to individuals	190,868	56,708	86,633	42,856	18,941	65,816	461,823
Credit cards	97,187	443	15,384	28,879	791	44,918	187,602
Other revolving credit plans	20,140	2,962	4,824	539	641	3,521	32,629
Installment loans	73,541	53,303	66,424	13,438	17,509	17,377	241,592
All other loans and leases	102,023	76,522	90,670	28,926	10,120	20,851	329,113
Less: Unearned income	1,430	118	82	21	123	95	1,869

Key indicators, FDIC-insured commercial banks
Annual 1999—2002, year-to-date through September 30, 2003, third quarter 2002, and third quarter 2003

(Dollar figures in millions)

	1999	2000	2001	2002	Preliminary 2003YTD	2002Q3	Preliminary 2003Q3
Number of institutions reporting	8,580	8,316	8,079	7,887	7,812	7,931	7,812
Total employees (FTEs)	1,657,628	1,670,874	1,701,717	1,745,507	1,753,248	1,735,274	1,753,248
Selected income data ($)							
Net income	$71,524	$70,794	$73,840	$89,873	$76,113	$23,332	$25,813
Net interest income	191,956	203,584	214,673	236,663	178,529	59,606	59,699
Provision for loan losses	21,803	30,026	43,337	48,196	26,346	12,705	7,637
Noninterest income	144,906	154,249	158,206	172,665	138,139	43,739	47,811
Noninterest expense	204,523	216,834	223,234	233,619	182,357	58,212	61,920
Net operating income	71,290	72,383	71,013	85,568	72,517	21,704	25,472
Cash dividends declared	52,082	53,854	54,206	67,523	54,784	15,385	17,279
Net charge-offs	20,368	24,771	36,474	44,538	27,932	11,393	8,848
Selected condition data ($)							
Total assets	5,735,135	6,245,567	6,552,244	7,076,943	7,474,311	6,933,589	7,474,311
Total loans and leases	3,489,092	3,815,498	3,884,335	4,156,416	4,351,315	4,067,691	4,351,315
Reserve for losses	58,746	64,120	72,273	77,000	76,341	75,519	76,341
Securities	1,046,536	1,078,988	1,171,925	1,334,243	1,392,538	1,292,364	1,392,538
Other real estate owned	2,796	2,912	3,565	4,162	4,376	3,955	4,376
Noncurrent loans and leases	32,999	42,930	54,891	60,546	54,102	61,187	54,102
Total deposits	3,831,062	4,179,572	4,377,562	4,689,839	4,916,581	4,541,199	4,916,581
Domestic deposits	3,175,473	3,472,905	3,748,057	4,031,802	4,224,399	3,928,211	4,224,399
Equity capital	479,686	530,358	593,701	647,605	681,414	639,082	681,414
Off-balance-sheet derivatives	34,819,179	40,570,263	45,326,156	56,078,940	67,113,481	53,188,340	67,113,481
Performance ratios (annualized %)							
Return on equity	15.30	13.98	13.10	14.49	15.23	14.84	15.20
Return on assets	1.31	1.18	1.15	1.33	1.39	1.37	1.38
Net interest income to assets	3.50	3.40	3.35	3.50	3.26	3.49	3.19
Loss provision to assets	0.40	0.50	0.68	0.71	0.48	0.74	0.41
Net operating income to assets	1.30	1.21	1.11	1.27	1.32	1.27	1.36
Noninterest income to assets	2.65	2.58	2.47	2.56	2.52	2.56	2.56
Noninterest expense to assets	3.73	3.62	3.48	3.46	3.33	3.41	3.31
Loss provision to loans and leases	0.66	0.82	1.12	1.21	0.83	1.27	0.71
Net charge-offs to loans and leases	0.61	0.67	0.95	1.12	0.88	1.14	0.82
Loss provision to net charge-offs	107.04	121.14	118.82	108.21	94.32	111.51	86.31
Performance ratios (%)							
Percent of institutions unprofitable	7.52	7.35	8.12	6.62	5.41	6.22	6.34
Percent of institutions with earnings gains	62.82	67.32	56.29	72.74	57.62	72.10	51.42
Nonint. income to net operating revenue	43.02	43.11	42.43	42.18	43.62	42.32	44.47
Nonint. expense to net operating revenue	60.71	60.60	59.87	57.07	57.59	56.33	57.59
Condition ratios (%)							
Nonperforming assets to assets	0.63	0.74	0.92	0.94	0.80	0.97	0.80
Noncurrent loans to loans	0.95	1.13	1.41	1.46	1.24	1.50	1.24
Loss reserve to noncurrent loans	178.02	149.36	131.67	127.17	141.11	123.42	141.11
Loss reserve to loans	1.68	1.68	1.86	1.85	1.75	1.86	1.75
Equity capital to assets	8.36	8.49	9.06	9.15	9.12	9.22	9.12
Leverage ratio	7.79	7.69	7.78	7.83	7.86	7.99	7.86
Risk-based capital ratio	12.15	12.12	12.71	12.77	13.01	12.95	13.01
Net loans and leases to assets	59.81	60.06	58.18	57.64	57.20	57.58	57.20
Securities to assets	18.25	17.28	17.89	18.85	18.63	18.64	18.63
Appreciation in securities (% of par)	-2.31	0.20	0.82	2.22	1.14	2.43	1.14
Residential mortgage assets to assets	20.78	20.19	21.63	23.29	23.90	22.73	23.90
Total deposits to assets	66.80	66.92	66.81	66.27	65.78	65.50	65.78
Core deposits to assets	46.96	46.39	48.73	48.68	48.37	48.23	48.37
Volatile liabilities to assets	34.94	34.97	31.45	31.41	31.27	31.27	31.27

Loan performance, FDIC-insured commercial banks
Annual 1999—2002, year-to-date through September 30, 2003, third quarter 2002, and third quarter 2003

(Dollar figures in millions)

	1999	2000	2001	2002	Preliminary 2003YTD	2002Q3	Preliminary 2003Q3
Percent of loans past due 30-89 days							
Total loans and leases	1.14	1.25	1.37	1.17	0.95	1.14	0.95
Loans secured by real estate (RE)	1.09	1.26	1.31	1.08	0.85	1.03	0.85
1-4 family residential mortgages	1.43	1.72	1.67	1.48	1.13	1.35	1.13
Home equity lines	0.75	0.98	0.91	0.59	0.47	0.60	0.47
Multifamily residential mortgages	0.57	0.55	0.69	0.45	0.43	0.40	0.43
Commercial RE loans	0.69	0.74	0.90	0.68	0.58	0.70	0.58
Construction RE loans	0.98	1.06	1.21	0.89	0.76	1.03	0.76
Commercial and industrial loans	0.79	0.83	1.01	0.89	0.75	0.91	0.75
Loans to individuals	2.33	2.47	2.46	2.22	1.88	2.19	1.88
Credit cards	2.59	2.66	2.70	2.72	2.34	2.76	2.34
Installment loans and other plans	2.18	2.34	2.55	2.09	1.77	2.02	1.77
All other loans and leases	0.54	0.64	0.83	0.58	0.46	0.56	0.46
Percent of loans noncurrent							
Total loans and leases	0.95	1.13	1.41	1.46	1.24	1.50	1.24
Loans secured by real estate (RE)	0.79	0.81	0.96	0.89	0.81	0.93	0.81
1-4 family residential mortgages	0.82	0.90	0.96	0.93	0.80	0.97	0.80
Home equity lines	0.33	0.37	0.39	0.31	0.26	0.30	0.26
Multifamily residential mortgages	0.41	0.44	0.43	0.37	0.40	0.39	0.40
Commercial RE loans	0.77	0.72	0.96	0.95	0.95	0.96	0.95
Construction RE loans	0.67	0.76	1.06	0.98	0.83	1.09	0.83
Commercial and industrial loans	1.18	1.66	2.41	2.92	2.57	3.01	2.57
Loans to individuals	1.42	1.41	1.48	1.51	1.35	1.45	1.35
Credit cards	2.06	2.01	2.12	2.24	1.97	2.14	1.97
Installment loans and other plans	1.04	0.98	1.21	1.14	1.10	1.11	1.10
All other loans and leases	0.39	0.70	0.97	1.01	0.72	1.03	0.72
Percent of loans charged-off, net							
Total loans and leases	0.61	0.67	0.95	1.12	0.88	1.14	0.82
Loans secured by real estate (RE)	0.08	0.09	0.19	0.15	0.13	0.15	0.13
1-4 family residential mortgages	0.11	0.11	0.22	0.14	0.13	0.15	0.12
Home equity lines	0.15	0.18	0.27	0.19	0.17	0.16	0.14
Multifamily residential mortgages	0.02	0.03	0.04	0.08	0.03	0.07	0.03
Commercial RE loans	0.03	0.05	0.14	0.15	0.13	0.11	0.16
Construction RE loans	0.04	0.05	0.14	0.17	0.12	0.22	0.12
Commercial and industrial loans	0.58	0.81	1.43	1.76	1.30	2.05	1.19
Loans to individuals	2.32	2.43	2.73	3.34	2.96	3.15	2.83
Credit cards	4.46	4.39	5.12	6.38	5.67	5.83	5.43
Installment loans and other plans	1.04	1.18	1.29	1.46	1.38	1.48	1.37
All other loans and leases	0.34	0.30	0.54	0.77	0.44	0.52	0.45
Loans outstanding ($)							
Total loans and leases	$3,489,092	$3,815,498	$3,884,335	$4,156,416	$4,351,315	$4,067,691	$4,351,315
Loans secured by real estate (RE)	1,510,339	1,673,324	1,800,269	2,068,441	2,272,876	1,970,761	2,272,876
1-4 family residential mortgages	737,107	790,028	810,815	946,013	1,041,542	880,829	1,041,542
Home equity lines	102,339	127,694	154,156	214,664	260,785	201,845	260,785
Multifamily residential mortgages	53,168	60,406	64,131	71,934	78,586	68,803	78,586
Commercial RE loans	417,633	466,453	505,878	555,976	588,550	541,762	588,550
Construction RE loans	135,632	162,613	193,061	207,508	224,610	205,871	224,610
Farmland loans	31,902	34,096	35,533	38,065	40,250	37,836	40,250
RE loans from foreign offices	32,558	32,033	36,695	34,280	38,553	33,815	38,553
Commercial and industrial loans	969,257	1,051,992	981,059	911,856	878,743	920,989	878,743
Loans to individuals	558,496	606,695	629,412	703,758	699,648	688,105	699,648
Credit cards*	212,147	249,425	232,448	275,957	247,544	267,605	247,544
Other revolving credit plans	na	na	34,202	38,209	37,252	38,130	37,252
Installment loans	346,349	357,269	362,762	389,592	414,853	382,371	414,853
All other loans and leases	454,674	486,400	476,717	475,761	502,892	491,469	502,892
Less: Unearned income	3,673	2,912	3,122	3,400	2,845	3,634	2,845

*Prior to March 2001, credit cards included "Other revolving credit plans."

Key indicators, FDIC-insured commercial banks by asset size
Third quarter 2002 and third quarter 2003
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3
Number of institutions reporting	4,283	3,985	3,249	3,404	319	339	80	84
Total employees (FTEs)	86,182	79,024	298,079	301,214	244,282	240,846	1,106,731	1,132,164
Selected income data ($)								
Net income	$604	$518	$2,781	$2,835	$3,773	$3,338	$16,174	$19,121
Net interest income	2,168	1,951	8,606	8,624	8,506	8,208	40,326	40,915
Provision for loan losses	166	141	818	727	1,353	905	10,367	5,863
Noninterest income	563	542	3,074	3,781	6,336	5,503	33,766	37,985
Noninterest expense	1,813	1,705	7,100	7,839	7,930	7,815	41,368	44,561
Net operating income	579	506	2,702	2,782	3,609	3,290	14,814	18,894
Cash dividends declared	238	233	1,137	1,382	3,434	1,846	10,576	13,818
Net charge-offs	111	102	570	630	1,284	833	9,429	7,283
Selected condition data ($)								
Total assets	216,753	204,149	855,516	907,811	916,980	946,471	4,944,340	5,415,881
Total loans and leases	134,033	124,542	557,807	589,790	554,746	572,803	2,821,105	3,064,179
Reserve for losses	1,941	1,857	8,166	8,798	9,931	9,359	55,481	56,327
Securities	51,777	49,760	195,026	210,583	226,661	234,440	818,900	897,754
Other real estate owned	325	340	1,068	1,248	587	667	1,975	2,121
Noncurrent loans and leases	1,574	1,525	5,666	5,685	6,106	5,699	47,841	41,193
Total deposits	182,222	171,664	695,589	737,770	630,950	636,530	3,032,438	3,370,617
Domestic deposits	182,208	171,654	693,717	736,385	621,208	627,369	2,431,079	2,688,992
Equity capital	24,439	22,972	84,921	89,753	94,684	102,011	435,037	466,678
Off-balance-sheet derivatives	54	92	5,991	7,363	84,441	72,140	53,607,190	67,686,361
Performance ratios (annualized %)								
Return on equity	10.05	9.03	13.37	12.72	16.18	13.26	15.10	16.39
Return on assets	1.13	1.02	1.32	1.26	1.67	1.42	1.33	1.41
Net interest income to assets	4.06	3.85	4.09	3.83	3.77	3.49	3.31	3.01
Loss provision to assets	0.31	0.28	0.39	0.32	0.60	0.38	0.85	0.43
Net operating income to assets	1.08	1.00	1.29	1.23	1.60	1.40	1.22	1.39
Noninterest income to assets	1.05	1.07	1.46	1.68	2.81	2.34	2.77	2.80
Noninterest expense to assets	3.39	3.36	3.38	3.48	3.51	3.32	3.40	3.28
Loss provision to loans and leases	0.50	0.46	0.60	0.50	0.98	0.64	1.49	0.77
Net charge-offs to loans and leases	0.34	0.33	0.42	0.43	0.93	0.59	1.36	0.96
Loss provision to net charge-offs	150.14	138.86	143.62	115.37	105.38	108.62	109.95	80.51
Performance ratios (%)								
Percent of institutions unprofitable	9.11	9.74	2.71	2.76	3.45	3.54	5.00	1.19
Percent of institutions with earnings gains	67.48	46.60	77.75	56.02	77.12	59.88	70.00	59.52
Nonint. income to net operating revenue	20.62	21.73	26.32	30.48	42.69	40.14	45.57	48.14
Nonint. expense to net operating revenue	66.39	68.38	60.78	63.19	53.43	57.00	55.83	56.48
Condition ratios (%)								
Nonperforming assets to assets	0.89	0.92	0.79	0.77	0.74	0.68	1.05	0.82
Noncurrent loans to loans	1.17	1.22	1.02	0.96	1.10	0.99	1.70	1.34
Loss reserve to noncurrent loans	123.32	121.77	144.12	154.76	162.63	164.24	115.97	136.74
Loss reserve to loans	1.45	1.49	1.46	1.49	1.79	1.63	1.97	1.84
Equity capital to assets	11.28	11.25	9.93	9.89	10.33	10.78	8.80	8.62
Leverage ratio	10.82	10.91	9.30	9.30	9.18	9.30	7.41	7.25
Risk-based capital ratio	17.17	17.50	14.21	14.32	14.67	15.00	12.30	12.34
Net loans and leases to assets	60.94	60.10	64.25	64.00	59.41	59.53	55.94	55.54
Securities to assets	23.89	24.37	22.80	23.20	24.72	24.77	16.56	16.58
Appreciation in securities (% of par)	2.68	1.23	2.77	1.24	2.35	1.28	2.36	1.07
Residential mortgage assets to assets	21.81	20.72	23.90	22.44	25.89	26.86	21.98	23.75
Total deposits to assets	84.07	84.09	81.31	81.27	68.81	67.25	61.33	62.24
Core deposits to assets	70.99	71.56	67.67	68.05	56.06	55.68	42.42	42.93
Volatile liabilities to assets	14.84	14.27	17.63	17.35	25.10	24.70	35.49	35.39

Loan performance, FDIC-insured commercial banks by asset size
Third quarter 2002 and third quarter 2003
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3	2002Q3	2003Q3
Percent of loans past due 30-89 days								
Total loans and leases	1.46	1.41	1.13	0.99	1.17	0.93	1.13	0.93
Loans secured by real estate (RE)	1.31	1.23	0.94	0.85	0.89	0.72	1.08	0.86
1-4 family residential mortgages	1.69	1.73	1.29	1.24	1.13	0.97	1.39	1.11
Home equity lines	0.67	0.63	0.53	0.47	0.54	0.43	0.62	0.47
Multifamily residential mortgages	0.65	0.66	0.55	0.53	0.40	0.49	0.34	0.35
Commercial RE loans	1.03	0.94	0.72	0.64	0.74	0.59	0.64	0.49
Construction RE loans	1.31	1.11	0.96	0.82	1.00	0.66	1.06	0.75
Commercial and industrial loans	1.76	1.62	1.32	1.20	1.39	1.01	0.75	0.61
Loans to individuals	2.46	2.51	2.29	2.01	2.02	1.94	2.20	1.84
Credit cards	2.54	2.42	4.80	4.41	2.73	2.95	2.70	2.23
Installment loans and other plans	2.50	2.55	2.01	1.76	1.78	1.67	2.04	1.76
All other loans and leases	0.82	0.97	0.74	0.56	0.77	0.48	0.51	0.43
Percent of loans noncurrent								
Total loans and leases	1.17	1.22	1.02	0.96	1.10	0.99	1.70	1.34
Loans secured by real estate (RE)	1.03	1.07	0.88	0.84	0.87	0.87	0.96	0.77
1-4 family residential mortgages	0.90	1.05	0.78	0.82	0.90	0.94	1.03	0.77
Home equity lines	0.30	0.28	0.26	0.25	0.31	0.30	0.31	0.26
Multifamily residential mortgages	0.76	0.68	0.45	0.49	0.25	0.36	0.40	0.36
Commercial RE loans	1.14	1.15	0.95	0.89	0.90	0.94	0.97	0.98
Construction RE loans	1.09	0.97	1.09	0.91	1.13	0.87	1.07	0.77
Commercial and industrial loans	1.75	1.92	1.54	1.41	1.91	1.57	3.43	2.93
Loans to individuals	0.98	1.00	0.98	0.90	1.01	0.88	1.59	1.47
Credit cards	1.36	1.47	3.58	3.15	1.84	1.97	2.14	1.94
Installment loans and other plans	0.98	1.00	0.64	0.63	0.64	0.54	1.30	1.29
All other loans and leases	1.27	1.27	1.19	1.27	0.84	0.77	1.03	0.65
Percent of loans charged-off, net								
Total loans and leases	0.34	0.33	0.42	0.43	0.93	0.59	1.36	0.96
Loans secured by real estate (RE)	0.08	0.09	0.09	0.09	0.18	0.14	0.16	0.14
1-4 family residential mortgages	0.08	0.11	0.08	0.10	0.20	0.13	0.15	0.12
Home equity lines	0.04	0.15	0.05	0.06	0.12	0.14	0.18	0.15
Multifamily residential mortgages	0.05	0.17	0.02	0.04	0.17	-0.01	0.05	0.04
Commercial RE loans	0.12	0.07	0.08	0.08	0.12	0.20	0.13	0.19
Construction RE loans	0.09	0.16	0.18	0.10	0.31	0.08	0.22	0.15
Commercial and industrial loans	0.76	0.73	0.92	0.78	1.34	0.87	2.35	1.31
Loans to individuals	1.00	0.93	1.67	2.45	3.19	2.22	3.37	3.00
Credit cards	4.03	3.33	7.48	13.66	7.35	5.48	5.56	5.20
Installment loans and other plans	0.92	0.88	0.90	0.94	1.02	0.99	1.70	1.52
All other loans and leases	0.31	0.43	0.54	0.43	0.43	0.34	0.53	0.46
Loans outstanding ($)								
Total loans and leases	$134,033	$124,542	$557,807	$589,790	$554,746	$572,803	$2,821,105	$3,064,179
Loans secured by real estate (RE)	79,685	75,912	378,284	411,011	315,139	351,498	1,197,653	1,434,455
1-4 family residential mortgages	33,930	30,645	132,331	129,283	114,807	128,661	599,760	752,953
Home equity lines	2,334	2,366	18,510	21,989	22,700	25,789	158,302	210,641
Multifamily residential mortgages	1,811	1,774	13,221	15,939	13,597	16,156	40,175	44,717
Commercial RE loans	23,909	23,310	150,082	168,666	116,687	127,852	251,084	268,722
Construction RE loans	7,420	7,630	47,901	56,860	42,427	47,297	108,123	112,823
Farmland loans	10,281	10,188	16,206	18,232	4,018	4,728	7,333	7,102
RE loans from foreign offices	0	0	33	42	905	1,014	32,877	37,497
Commercial and industrial loans	22,421	20,253	94,763	96,916	110,411	106,083	693,395	655,490
Loans to individuals	15,848	13,631	55,774	52,273	91,078	78,446	525,405	555,298
Credit cards	421	279	6,735	5,965	29,818	19,277	230,631	222,022
Other revolving credit plans	258	201	1,605	1,640	3,562	2,140	32,706	33,271
Installment loans	15,169	13,151	47,435	44,667	57,699	57,028	262,068	300,006
All other loans and leases	16,203	14,840	29,568	30,171	38,619	37,261	407,080	420,620
Less: Unearned income	123	94	582	582	501	484	2,427	1,684

Key indicators, FDIC-insured commercial banks by region
Third quarter 2003
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	621	1,075	1,663	2,029	1,741	683	7,812
Total employees (FTEs)	531,893	411,220	343,635	112,891	177,094	176,515	1,753,248
Selected income data ($)							
Net income	$7,846	$6,179	$4,806	$1,867	$1,579	$3,536	$25,813
Net interest income	16,993	13,340	12,092	4,260	4,580	8,435	59,699
Provision for loan losses	2,927	857	1,689	538	327	1,299	7,637
Noninterest income	18,452	10,238	7,691	2,941	2,837	5,652	47,811
Noninterest expense	21,083	13,838	11,000	3,975	4,836	7,188	61,920
Net operating income	7,573	5,974	4,889	1,860	1,600	3,576	25,472
Cash dividends declared	3,482	5,148	4,792	627	1,213	2,018	17,279
Net charge-offs	3,925	1,143	1,636	630	294	1,220	8,848
Selected condition data ($)							
Total assets	2,521,481	1,730,356	1,515,098	400,356	500,957	806,064	7,474,311
Total loans and leases	1,191,141	1,048,260	978,714	277,922	302,787	552,490	4,351,315
Reserve for losses	26,229	14,945	16,760	5,198	4,326	8,883	76,341
Securities	481,643	298,439	300,625	66,101	119,200	126,530	1,392,538
Other real estate owned	507	1,111	1,203	352	733	470	4,376
Noncurrent loans and leases	21,491	9,401	13,082	2,670	3,065	4,394	54,102
Total deposits	1,563,901	1,151,103	990,826	272,109	397,125	541,516	4,916,581
Domestic deposits	1,063,963	1,071,521	910,226	266,652	395,524	516,514	4,224,399
Equity capital	220,973	152,866	129,484	43,874	48,735	85,481	681,414
Off-balance-sheet derivatives	47,778,305	16,310,627	2,095,785	8,962	55,815	863,988	67,113,481
Performance ratios (annualized %)							
Return on equity	14.31	16.19	14.77	17.16	12.95	16.64	15.20
Return on assets	1.24	1.42	1.26	1.88	1.26	1.80	1.38
Net interest income to assets	2.69	3.08	3.16	4.29	3.65	4.29	3.19
Loss provision to assets	0.46	0.20	0.44	0.54	0.26	0.66	0.41
Net operating income to assets	1.20	1.38	1.28	1.87	1.27	1.82	1.36
Noninterest income to assets	2.92	2.36	2.01	2.96	2.26	2.88	2.56
Noninterest expense to assets	3.33	3.19	2.88	4.00	3.85	3.66	3.31
Loss provision to loans and leases	0.98	0.33	0.69	0.79	0.43	0.96	0.71
Net charge-offs to loans and leases	1.32	0.44	0.67	0.93	0.39	0.90	0.82
Loss provision to net charge-offs	74.58	74.96	103.28	85.35	111.06	106.45	86.31
Performance ratios (%)							
Percent of institutions unprofitable	8.37	9.58	4.87	3.99	6.32	9.96	6.34
Percent of institutions with earnings gains	56.68	56.19	50.93	47.26	47.85	61.79	51.42
Nonint. income to net operating revenue	52.06	43.42	38.88	40.85	38.25	40.12	44.47
Nonint. expense to net operating revenue	59.48	58.69	55.60	55.20	65.21	51.03	57.59
Condition ratios (%)							
Nonperforming assets to assets	0.91	0.61	0.96	0.76	0.76	0.61	0.80
Noncurrent loans to loans	1.80	0.90	1.34	0.96	1.01	0.80	1.24
Loss reserve to noncurrent loans	122.05	158.98	128.12	194.73	141.12	202.15	141.11
Loss reserve to loans	2.20	1.43	1.71	1.87	1.43	1.61	1.75
Equity capital to assets	8.76	8.83	8.55	10.96	9.73	10.60	9.12
Leverage ratio	7.54	7.38	7.59	10.06	8.46	8.94	7.86
Risk-based capital ratio	13.06	12.02	12.51	15.40	14.13	14.21	13.01
Net loans and leases to assets	46.20	59.72	63.49	68.12	59.58	67.44	57.20
Securities to assets	19.10	17.25	19.84	16.51	23.79	15.70	18.63
Appreciation in securities (% of par)	0.83	1.56	1.02	1.52	1.17	1.38	1.14
Residential mortgage assets to assets	18.32	29.25	26.47	20.20	26.58	25.21	23.90
Total deposits to assets	62.02	66.52	65.40	67.97	79.27	67.18	65.78
Core deposits to assets	34.44	54.63	53.32	59.78	65.72	52.78	48.37
Volatile liabilities to assets	44.17	23.57	26.57	18.78	20.12	29.41	31.27

Loan performance, FDIC-insured commercial banks by region
Third quarter 2003
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30-89 days							
Total loans and leases	1.00	0.77	1.06	1.08	1.07	0.84	0.95
Loans secured by real estate (RE)	0.84	0.73	1.11	0.74	0.97	0.63	0.85
1-4 family residential mortgages	1.02	1.01	1.61	0.89	1.33	0.81	1.13
Home equity lines	0.43	0.46	0.52	0.52	0.55	0.38	0.47
Multifamily residential mortgages	0.21	0.25	0.76	0.60	0.66	0.20	0.43
Commercial RE loans	0.56	0.44	0.76	0.63	0.72	0.40	0.58
Construction RE loans	0.65	0.52	0.99	0.72	0.78	0.97	0.76
Commercial and industrial loans	0.63	0.57	0.86	1.17	1.05	0.83	0.75
Loans to individuals	2.01	1.77	1.69	2.34	1.90	1.62	1.88
Credit cards	2.38	2.93	2.28	2.80	2.18	1.85	2.34
Installment loans and other plans	2.00	1.61	1.68	1.73	1.94	1.45	1.77
All other loans and leases	0.43	0.24	0.62	0.49	0.65	0.53	0.46
Percent of loans noncurrent							
Total loans and leases	1.80	0.90	1.34	0.96	1.01	0.80	1.24
Loans secured by real estate (RE)	0.86	0.59	1.25	0.66	0.92	0.47	0.81
1-4 family residential mortgages	0.78	0.55	1.57	0.49	0.93	0.29	0.80
Home equity lines	0.20	0.19	0.38	0.38	0.35	0.18	0.26
Multifamily residential mortgages	0.22	0.24	0.65	0.39	0.51	0.34	0.40
Commercial RE loans	0.93	0.82	1.34	0.80	0.93	0.70	0.95
Construction RE loans	0.88	0.68	1.18	0.77	0.67	0.73	0.83
Commercial and industrial loans	3.81	2.20	2.26	1.32	1.35	1.68	2.57
Loans to individuals	2.01	0.81	0.66	1.61	0.75	1.02	1.35
Credit cards	2.17	1.98	1.73	2.16	1.51	1.55	1.97
Installment loans and other plans	2.19	0.60	0.51	0.85	0.74	0.30	1.10
All other loans and leases	0.76	0.46	0.71	0.77	1.45	0.76	0.72
Percent of loans charged-off, net							
Total loans and leases	1.32	0.44	0.67	0.93	0.39	0.90	0.82
Loans secured by real estate (RE)	0.07	0.09	0.28	0.07	0.13	0.07	0.13
1-4 family residential mortgages	0.05	0.08	0.30	0.06	0.14	0.03	0.12
Home equity lines	0.04	0.12	0.27	0.17	0.24	0.04	0.14
Multifamily residential mortgages	0.03	0.05	0.05	0.01	0.00	-0.01	0.03
Commercial RE loans	0.04	0.10	0.34	0.06	0.13	0.16	0.16
Construction RE loans	0.13	0.11	0.19	0.16	0.10	0.04	0.12
Commercial and industrial loans	1.56	0.88	1.13	0.71	0.78	1.31	1.19
Loans to individuals	3.59	1.63	1.87	3.65	1.10	3.35	2.83
Credit cards	5.68	4.68	5.68	5.60	4.09	5.05	5.43
Installment loans and other plans	1.98	0.97	1.23	0.63	0.97	1.02	1.37
All other loans and leases	0.54	0.35	0.41	0.28	0.69	0.37	0.45
Loans outstanding ($)							
Total loans and leases	$1,191,141	$1,048,260	$978,714	$277,922	$302,787	$552,490	$4,351,315
Loans secured by real estate (RE)	445,147	641,709	528,472	137,484	197,597	322,468	2,272,876
1-4 family residential mortgages	226,077	317,823	222,347	60,139	71,136	144,021	1,041,542
Home equity lines	53,265	68,977	78,890	7,539	14,134	37,980	260,785
Multifamily residential mortgages	16,828	16,734	22,594	4,006	5,427	12,997	78,586
Commercial RE loans	94,869	155,677	138,916	39,592	66,769	92,727	588,550
Construction RE loans	21,630	73,181	55,530	13,560	30,269	30,440	224,610
Farmland loans	1,502	5,323	9,677	12,649	7,387	3,712	40,250
RE loans from foreign offices	30,976	3,993	517	0	2,476	591	38,553
Commercial and industrial loans	278,744	189,921	215,758	44,257	55,301	94,762	878,743
Loans to individuals	277,308	118,916	114,804	53,140	32,982	102,498	699,648
Credit cards	118,198	20,027	16,281	31,215	1,394	60,429	247,544
Other revolving credit plans	21,471	4,424	5,340	683	856	4,477	37,252
Installment loans	137,639	94,465	93,183	21,242	30,732	37,592	414,853
All other loans and leases	191,556	98,069	119,836	43,093	17,153	33,186	502,892
Less: Unearned income	1,614	355	157	51	245	423	2,845

Glossary

Data Sources

Data are from the Federal Financial Institutions Examination Council (FFIEC) Reports of Condition and Income (call reports) submitted by all FDIC-insured, national-chartered and state-chartered commercial banks and trust companies in the United States and its territories. Uninsured banks, savings banks, savings associations, and U.S. branches and agencies of foreign banks are excluded from these tables. All data are collected and presented based on the location of each reporting institution's main office. Reported data may include assets and liabilities located outside of the reporting institution's home state.

The data are stored on and retrieved from the OCC's Integrated Banking Information System (IBIS), which is obtained from the FDIC's Research Information System (RIS) database.

Computation Methodology

For performance ratios constructed by dividing an income statement (flow) item by a balance sheet (stock) item, the income item for the period was annualized (multiplied by the number of periods in a year) and divided by the average balance sheet item for the period (beginning-of-period amount plus end-of-period amount plus any interim periods, divided by the total number of periods). For "pooling-of-interest" mergers, prior period(s) balance sheet items of "acquired" institution(s) are included in balance sheet averages because the year-to-date income reported by the "acquirer" includes the year-to-date results of "acquired" institutions. No adjustments are made for "purchase accounting" mergers because the year-to-date income reported by the "acquirer" does not include the prior-to-merger results of "acquired" institutions.

Definitions

Commercial real estate loans—loans secured by nonfarm nonresidential properties.

Construction real estate loans—includes loans for all property types under construction, as well as loans for land acquisition and development.

Core deposits—the sum of transaction deposits plus savings deposits plus small time deposits (under $100,000).

IBIS—the OCC's Integrated Banking Information System.

Leverage ratio—Tier 1 capital divided by adjusted tangible total assets.

Loans to individuals—includes outstanding credit card balances and other secured and unsecured installment loans.

Net charge-offs to loan and lease reserve—total loans and leases charged off (removed from balance sheet because of uncollectibility), less amounts recovered on loans and leases previously charged off.

Net loans and leases to assets—total loans and leases net of the reserve for losses.

Net operating income—income excluding discretionary transactions such as gains (or losses) on the sale of investment securities and extraordinary items. Income taxes subtracted from operating income have been adjusted to exclude the portion applicable to securities gains (or losses).

Net operating revenue—the sum of net interest income plus noninterest income.

Noncurrent loans and leases—the sum of loans and leases 90 days or more past due plus loans and leases in nonaccrual status.

Nonperforming assets—the sum of noncurrent loans and leases plus noncurrent debt securities and other assets plus other real estate owned.

Number of institutions reporting—the number of institutions that actually filed a financial report.

Off-balance-sheet derivatives—the notional value of futures and forwards, swaps, and options contracts; beginning March 31, 1995, new reporting detail permits the exclusion of spot foreign exchange contracts. For March 31, 1984 through December 31, 1985, only foreign exchange futures and forwards contracts were reported; beginning March 31, 1986, interest rate swaps contracts were reported; beginning March 31, 1990, banks began to report interest rate and other futures and forwards contracts, foreign exchange and other swaps contracts, and all types of option contracts.

Other real estate owned—primarily foreclosed property. Direct and indirect investments in real estate ventures are excluded. The amount is reflected net of valuation allowances.

Percent of institutions unprofitable—the percent of institutions with negative net income for the respective period.

Percent of institutions with earnings gains—the percent of institutions that increased their net income (or decreased their losses) compared to the same period a year earlier.

Reserve for losses—the sum of the allowance for loan and lease losses plus the allocated transfer risk reserve.

Residential mortgage assets—the sum of 1- to 4-family residential mortgages plus mortgage-backed securities.

Return on assets (ROA)—net income (including gains or losses on securities and extraordinary items) as a percentage of average total assets.

Return on equity (ROE)—net income (including gains or losses on securities and extraordinary items) as a percentage of average total equity capital.

Risk-based capital ratio—total capital divided by risk weighted assets.

Risk-weighted assets—assets adjusted for risk-based capital definitions which include on-balance-sheet as well as off-balance-sheet items multiplied by risk weights that range from zero to 100 percent.

Securities—excludes securities held in trading accounts. Effective March 31, 1994 with the full implementation of Financial Accounting Standard (FAS) 115, securities classified by banks as "held-to-maturity" are reported at their amortized cost, and securities classified a "available-for-sale" are reported at their current fair (market) values.

Securities gains (losses)—net pre-tax realized gains (losses) on held-to-maturity and available-for-sale securities.

Total capital—the sum of Tier 1 and Tier 2 capital. Tier 1 capital consists of common equity capital plus noncumulative perpetual preferred stock plus minority interest in consolidated subsidiaries less goodwill and other ineligible intangible assets. Tier 2 capital consists of subordinated debt plus intermediate-term preferred stock plus cumulative long-term preferred stock plus a portion of a bank's allowance for loan and lease losses. The amount of eligible intangibles (including mortgage servicing rights) included in Tier 1 capital and the amount of the allowance included in Tier 2 capital are limited in accordance with supervisory capital regulations.

Volatile liabilities—the sum of large-denomination time deposits plus foreign-office deposits plus federal funds purchased plus securities sold under agreements to repurchase plus other borrowings. Beginning March 31, 1994, new reporting detail permits the exclusion of other borrowed money with original maturity of more than one year; previously, all other borrowed money was included. Also beginning March 31, 1994, the newly reported "trading liabilities less revaluation losses on assets held in trading accounts" is included.

Recent Licensing Decisions

Change in Bank Control

On September 2, 2003, the OCC issued a statement concerning the OCC's disapproval of the Change in Bank Control notice by CompuCredit Corporation to acquire control of Axsys National Bank, Sioux Falls, South Dakota. This acquisition by a subprime credit card lender contained several adverse factors leading to its disapproval. The OCC concluded that the financial condition of the acquiring party was such as it might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank; the competence and/or experience of the acquiring party indicated that it would not be in the interests of the depositors of the bank, or in the interest of the public, to permit the party to control the bank, and the proposed acquisition could result in an adverse effect on the FDIC's Bank Insurance Fund. [Corporate Decision No. 2003-11]

Federal Branches

On July 17, 2003, the OCC granted conditional approval to a proposal by CITIC Ka Wah Bank Ltd, Hong Kong, to establish a de novo uninsured federal branch in New York, New York, and acquire and established an uninsured limited federal branch in Alhambra, California, all owned by China International Trust and Investment Corporation. Approval was granted subject to conditions involving consent to jurisdiction, access to information, and a requirement to provide notice to OCC for any significant deviation or change in the branches business plans. [Conditional Approval No. 600]

Mergers

On August 8, 2003, the OCC conditionally approved the purchase and assumption of credit card accounts of Granite National Bank, Bowling Green, Ohio, by World Financial Network National Bank, Gahanna, Ohio. The application was conditioned upon the bank entering into an operating agreement with the OCC, on terms and conditions acceptable to the OCC. The agreement requires the bank to maintain minimum levels of capital and liquidity to support its continuing safe operation. Also, as part of the application, Granite committed to enter into voluntary liquidation immediately upon consummation of the transaction. [Conditional Approval No. 602]

On September 5, 2003, the OCC conditionally approved the merger of Eagle National Bank, Upper Darby, Pennsylvania, with and into an interim bank, Eagle Interim Bank, National Association, Upper Darby, Pennsylvania, to facilitate the acquisition of Eagle by Pebblespring Holding Company, Berwyn, Pennsylvania. Eagle was operating under a Consent Order dated December 18, 2001. The Consent Order ceased to be applicable upon consummation of this merger. Accordingly, the approval was conditioned upon multiple requirements to support the safe operation of the bank, consistent with the requirements that had been imposed by the prior Consent Order. [Conditional Approval No. 604]

Significant Deviation to Operating Plan

On August 7, 2003, the OCC New England Field Office conditionally approved a request by FBR National Bank & Trust, Bethesda, Maryland, to divest certain assets and deposit liabilities and to operate as a limited purpose insured national trust bank. This change represented a material deviation from the bank's operating plan as submitted to the OCC in connection with the bank's conversion to national charter in March 2001. The conditions of approval supported the continued safe operation of the bank by requiring a minimum capital level, a capital and liquidity maintenance agreement between the bank and its parent, retention of federal deposit insurance, and a comprehensive business plan. [Conditional Approval No. 603]

Appeals Process

Appeal Summary 1—Certain Safety and Soundness Conclusions and Stay of Two Supervisory Directives

Background

A bank formally appealed certain conclusions contained in the most recent Report of Examination and asked for a stay of two supervisory directives. Specifically, the bank appealed the classification of certain loans, the adequacy of the allowance for loan and lease losses (ALLL), the adequacy of the bank's loan review process, and the composite rating, as well as, the component ratings of capital, management, and liquidity. Additionally, the appeal requested a stay of the revised capital plan directive and the directive to amend the most recent call report submission during the appeals process.

At the most recent examination, the supervisory office (SO) identified additional loan classifications and charge-offs as a result of poor credit underwriting and insufficient collateral values. The additional loan classifications and charge-offs required a substantial provision to the ALLL that severely affected earnings, liquidity, and capital. The SO further concluded that supervision by the board of directors and bank management was deficient because of vacancies in senior management positions, unproven new management, and previously identified weaknesses that remained unresolved. The SO also determined that the external loan review process was inadequate and lacked independence.

The appeal states that the bank disagreed with 56 percent of the loans classified by the SO and the corresponding reserve requirement. If the loan classification and reserve allocation were adjusted on those loans, the ALLL provision would be significantly reduced and capital and liquidity would be less strained. The appeal further stated that the ALLL, as calculated by the bank, was fully funded and adequate without any additional provision. Therefore, management did not agree with the methodology used by the examiners to calculate the adequacy of the ALLL. The appeal also reiterated the bank's position that the credentials of its external review firm are solid.

Discussion

Loan Classifications

For each of the loan classifications disputed by the bank, the ombudsman's office reviewed file documentation, line sheets, OCC write-ups, appeal comments, and loan review comments and held loan discussion. Our review found two loans criticized by the SO as "special mention" that could have been passed, however, there was no disagreement with loans classified as substandard, doubtful, or loss.

Allowance for Loan and Lease Losses (ALLL)

The ombudsman's office performed an in-depth review of the methodology used by both the bank and the SO to calculate the ALLL balance. Through our review of individual credits and loan discussion, however, we noted that the bank's specific allocations were not always consistent with the level of identified risk. The supervisory office approach included several methodologies and adjustments to industry averages that considered the weaknesses in loan underwriting, the uncertainty of lien positions, and the questionable collateral values identified by both the bank and the SO. This approach was consistent with the guidance in the *Comptroller's Handbook* booklet, "Allowance for Loan and Lease Losses" (June 1996).

Consideration was also given to how the bank's ALLL ratios compared to other 4- and 5-rated banks under $150 million in total assets. This bank had the highest level of classified assets among this peer group and the lowest coverage of ALLL to net losses. Additionally, it also had the lowest level of recoveries.

Loan Review Process

The ombudsman's office assessed the adequacy of the external loan review process by reviewing the services provided by the external loan review firm as well as the interaction with senior management of the bank. In addition to loan review, the external loan review firm provided a number of services to the bank including strategic planning, raising capital, and hiring of senior management. During our loan discussion with the bank, as well as in our face-to-face meeting, the external loan review firm actively participated in the defense of loan classifications and ALLL allocations. There is an appearance of a conflict of interest when the company that is assisting the bank in the solicitation of new capital is also responsible for identifying credit impairments and charge-offs that significantly affect the level of capital that the bank is attempting to raise. In addition, the external loan review, which was performed simultaneously with the SO exam, did not recognize a significant number of downgrades.

Composite and Component Ratings

Capital. Given that the loan classifications and the ALLL recommended balance were determined to be reasonable, the ombudsman concluded that the rating for capital was appropriate. There was a critical deficiency in the level of capital to absorb the high level of risk within the bank.

Management. At the time of the examination, the current management team was unproven, particularly given the significantly troubled condition of the bank. The most senior member of management had been in place less than six months, the presidency office was vacant, and new loan officers were hired during the examination. Notwithstanding the qualifications and experience of these individuals, the ombudsman concluded that the rating for management was appropriate.

Liquidity. The liquidity component was not reviewed as part of the most recent target examination. Therefore, the ombudsman did not opine on the rating that was carried forward from the previous full-scope examination.

Conclusion

The ombudsman granted the stay of the two supervisory directives during the appeals process. Accordingly, after conducting a review of the circumstances and facts present at the time in question, the ombudsman opined as follows:

- *Loan classifications*—The ombudsman found substantial integrity in the loan classifications assigned by the SO;
- *Adequacy of the ALLL*—The approach used by the SO to determine the adequacy of the ALLL was consistent with the guidance in the *Comptroller's Handbook* booklet, "Allowance for Loan and Lease Losses";
- *Loan review process*—The ombudsman concurred with the examination finding that the external loan review process was ineffective and lacked independence;
- *Component ratings*—The ratings assigned to management, capital, and earnings were upheld.
- *Composite rating*—Given the above conclusions, the ombudsman concurred with the examination findings that the bank exhibited an extremely unsafe and unsound condition. The volume and severity of problems, as well as the urgency to inject new capital jeopardized the viability of the bank. Therefore, the ombudsman concluded that the assigned composite rating was appropriate.

In addition to the findings above, the stays granted during the appeal process were lifted. The bank was directed to contact its SO to establish appropriate action and time frames.

Speeches and Congressional Testimony—July 1 to September 30, 2003

Page

Of the Comptroller of the Currency

Remarks by John D. Hawke, Jr., Comptroller of the Currency, before the Federalist Society, on predatory lending and federalism, Washington, D.C., July 24, 2003

For more than two decades, the Federalist Society has been aiding in the analysis and understanding of complex policy issues. This morning's sessions brought together a particularly distinguished group of experts to discuss the problem of predatory lending and federalism. I'd like to express my gratitude to Jerry Loeser for the opportunity to address this important subject from my vantage point as the supervisor of the national banking system.

I should point out that the perspective of the Comptroller's Office embraces many others, including some that you've already heard this morning. It includes the interests of the national banking system itself. But it also embraces the interests of the communities and consumers the system serves, as well as the larger interests of the national economy that system was created to support.

For 140 years, the OCC has been an instrument of federal authority in an arena that, throughout that period, has been the subject of particularly vigorous controversy with the states. That's because the stakes in the financial arena—political as well as economic—are enormous. It's sometimes forgotten that the 1819 Supreme Court decision in *McCulloch vs. Maryland*, a great test case of our fledgling federalism, was at heart a banking case — the first of many federal court decisions in which efforts by a state to assert control over a federally created banking institution have been overturned. Today, the OCC continues to occupy a position at the leading edge of this historic confrontation between state and federal authority.

It should also be remembered, of course, that if the Congress that created the national banking system had had its way, federal dominance in banking would today be an accomplished fact and state banking would be a long faded memory. In the *McCulloch* decision, Chief Justice Marshall had memorably written that "the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations" of any agency created by lawful exercise of federal authority—in that case, the federally chartered Second Bank of the United States.

Specifically, the state of Maryland sought to tax the Second Bank, an effort that the Court firmly rejected, declaring that "the power to tax involves the power to destroy." And destruction was exactly what Congress had in mind 46 years later when—disappointed with the volume of conversions from state charter to the new national charter—it passed the 1865 "death tax" on the notes of state banks.

As we know, state banks lived on by reverting to deposit banking. And as a result of their tenacity and adaptability, the dual banking system survived, eventually attaining a level of theological importance comparable to the family farm.

Today, the relationship between state and federal banking authorities can perhaps best be described as one of constructive competition. To be sure, Congress has asserted far reaching control over state banks, primarily using the jurisdictional nexus of federal deposit insurance to subject state banks to a broad range of federal regulation relating not only to safety and soundness, but consumer protection, among other areas.

But while Congress has ample authority to assert jurisdiction over state banks, the states' ability to affect the business of national banks is severely limited. It is a Constitutional principle as old and as hallowed as the Constitution itself, deriving from the Supremacy Clause, that creations of federal authority such as national banks are subject to state law only to a limited extent. State-imposed restrictions may not diminish their powers, but nondiscriminatory state laws in areas such as contracts and torts—laws that facilitate rather than obstruct their ability to do business—*are* applicable**.**

So the Supreme Court has repeatedly declared over the past 140 years. Yet scarcely a month passes that the Court's previous rulings on the subject are not the subject of confrontation, as state lawmakers and enforcement authorities continue to attempt to push the boundary back by asserting the right to subject the business of national banks to state restrictions and to subject national banks to the enforcement programs of state agencies.

The OCC will, of course, continue to defend the right of national banks to be free from state efforts to regulate their business, even though our consistent record of success in court—not to mention some very explicit statutory language assigning OCC exclusive visitorial authority over national banks—doesn't seem to prevent this issue from arising again and again.

Perhaps the most interesting of the current challenges to the immunity of the national charter from state regulation centers on the subject of today's conference. Enough has probably been said in this context about the Georgia Fair Lending Act (GFLA) to dispense with a detailed discussion of its particulars. But for those who will be reading these remarks instead of listening to them, let me provide a brief summary of the Georgia law.

The GFLA imposes severe restrictions on so-called "high-cost" mortgage loans, requiring lenders who offer them to comply with a range of substantive and procedural requirements. The practices proscribed under the Georgia law include the financing of credit insurance, debt cancellation or suspension coverage, limitations on late fees and payoff statement fees, pre-payment penalties, negative amortization, increases in interest rates after default, and balloon payments. Certain categories of loans are restricted as to the number of times they could be refinanced and the circumstances under which a refinancing could occur.

Among the GFLA's most controversial provisions is that relating to rights of action for damages against the purchasers and assignees—as well as the originators—of the mortgages covered by the law. This provision threatened to do such harm to the secondary market for covered real estate loans that the Georgia legislature amended the law to modify the standard and narrow the kinds of loans to which the law would apply.

Since the law was passed and amended, much of the focus has been on whether or not federally chartered financial institutions would be subject to it. Shortly after the GFLA was enacted, the Office of Thrift Supervision determined summarily that it was inapplicable to federal savings institutions and their operating subsidiaries. In response to a petition from a national bank for a ruling on whether the GFLA would be preempted, the OCC, as required by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, gave public notice of the bank's petition and asked for comment. Some 75 comments—representing a wide range of interested parties—were received, and we expect our final decision to be released in the very near future.

There is a danger, however, that legal disputation over the preemption of state anti-predatory lending laws may distract us from the more important question: How do we best deal with the problem of predatory lending in our communities while avoiding the creation of impediments to the availability of *nonpredatory* subprime credit?

There's no question that predatory lending exists—and my definition of predatory lending is the aggressive marketing of credit to people who simply cannot afford it. Unscrupulous originators—almost always entities that are not banks or owned by banks—market such credit not based on the borrower's ability to handle it, but on the basis of the borrower's equity—a home. It's no surprise that such loans frequently result in foreclosures.

But the responses of many states and localities, while well-intentioned and aimed at driving financial predators out of business, may have the unintended effect of also making nonpredatory subprime credit harder to come by for those who may most need and deserve it. In Chicago, a municipal law that applied to banks, among others, had the perverse effect of driving more subprime mortgage lending into the nonbank sector, which is precisely where predatory practices are most prevalent. A Philadelphia law that was intended to target predatory lenders apparently persuaded some legitimate subprime lenders to withdraw from that market before the law had even gone into effect—and before the state itself enacted a law that prohibited the Philadelphia law from *taking* effect.

The North Carolina law has been especially well studied, and the results of those studies are revealing. Based on the OCC's analysis, among the mainstream group of subprime borrowers—

those with FICO scores between 580 and 660—mortgage loan originations dropped a stunning 30 percent in the 18 months after the North Carolina law was passed.[1] For the sake of comparison, the same kinds of loans in neighboring states without similar laws fell a scant 3 percent in the same period.

It's no mystery why so many fewer subprime loans are being made—or will be made—in jurisdictions subject to anti-predatory statutes. Studies point to increased compliance costs, especially for banks operating in multiple jurisdictions, increased underwriting expenses, and legal liability issues that have persuaded subprime lenders to curtail that business or take it to places where no such laws exist. And there has been a reduced willingness on the part of securitizers and aggregators to buy loans originated in covered jurisdictions.

In Georgia, New York, and New Jersey, for example, where particularly stringent anti-predatory laws are in effect, both Fannie Mae and Freddie Mac have drastically reduced or even eliminated altogether their purchase of so-called "high cost" and other real estate loans. And the private investor secondary mortgage market in those states has been hard hit, particularly for subprime mortgages, because of actions taken by the rating agencies in reaction to those states' predatory lending laws. *Moody's*, *Standard and Poor's*, and *Fitch* ratings have all adopted policies that make it difficult, if not impossible, to pool loans originating in Georgia, New York, or New Jersey unless the issuer provides costly credit enhancements and/or certifications that the pool contains no proscribed loans.

This outcome is particularly regrettable because it's unnecessary. We know that it's possible to deal effectively with predatory lending *without* putting impediments in the way of those who provide access to legitimate subprime credit. It's an unnecessary consequence because the approach that's been followed is an across-the-board, one-size-fits-all approach that applies to the good as well as the wrongdoers.

We believe a far more effective approach would be to focus on the abusive practitioners, bringing to bear our formidable enforcement powers where we find abusive practices—after clearly articulating our expectations.

[1] *July 30 Clarification:* The statistics concerning a decline in loan originations for North Carolina borrowers with FICO scores in the 580–660 range mentioned in the Comptroller's speech was based on data presented in tables contained in a study by Quercia, Stegman, and Davis. The OCC has since learned, from discussions with the authors, and the OCC's own continuing analysis of material presented in the paper, that the database from which the tables were derived is more complex and involves variables and uncertainties not apparent from the tables themselves. Based on the OCC's current understanding of the data, it now believes that its initial conclusion regarding a specific percentage decline in originations could not be derived properly from the study's tables and, therefore, was mistaken.

The basic point the Comptroller was making continues to be valid, namely that there is a danger that broad-based laws, however well intentioned, may have an unintended adverse impact on the availability of nonpredatory subprime credit. This view is supported by other studies that provide evidence that subprime lending has declined in states and localities following adoption of predatory lending legislation.

That's exactly the approach we have taken. The OCC has put out the most comprehensive guidance produced by any of the federal banking agencies—and, I suspect, by *any* banking regulator—describing the kinds of abusive or predatory practices that will cause us to take action, making clear what our powers are, and urging all our banks to adopt policies to assure they do not get involved in such practices. In the past, we haven't hesitated to use our enforcement authority to combat unsafe, unsound, unfair, or deceptive practices. Indeed, OCC enforcement actions have resulted in restitution totaling hundreds of millions of dollars to consumers. And, we have served notice that we will continue to do so in the area of predatory lending.

Our guidance makes clear that we expect national banks not only to adopt, but to adhere to policies and procedures designed to prevent predatory lending practices in both direct lending and in transactions involving brokered and purchased loans. We emphasize that it is the bank's responsibility to set standards that address—and avoid—the central characteristics of predatory lending. Each national bank must make the kind of basic underwriting decision we would expect in the case of any loan—namely, that the borrower has the capacity to service and repay the loan without resort to the collateral securing the loan. The guidance also requires national banks to perform adequate due diligence prior to entering into any relationships with loan brokers, third party originators, and the issuers of mortgage-backed securities, to ensure that the bank doesn't do business with companies that fail to employ appropriate safeguards against predatory lending.

It's also essential to recognize that while regulated banks have generally been brought within the scope of these laws, banks are *not* where the real problem exists. A joint Treasury Department-HUD report issued in 2000 found that predatory practices are *least* prevalent among institutions operating under federal oversight. "The subprime mortgage and finance companies that dominate mortgage lending in many low-income and minority communities, while subject to the same consumer protection law, are not subject to as much federal oversight as their prime market counterparts," the report notes. "The absence of such accountability may create an environment where predatory practices flourish because they are unlikely to be detected." In comments submitted in connection with an OTS rulemaking concerning preemption of state lending standards, 46 state attorneys general echoed this view that predatory lending was largely confined to mortgage brokers and finance companies.

A coalition of state attorneys general repeated the same position more recently in a brief filed earlier this year in connection with a challenge to that OTS rulemaking. "Based on consumer complaints received," the AGs stated to a federal court, "as well as investigations and enforcement actions undertaken by attorneys general, predatory lending abuses are largely confined to the subprime mortgage lending market and to nondepository institutions. Almost all of the leading subprime lenders are mortgage companies and finance companies, not banks or direct bank subsidiaries."

From this perspective, then, I think it can be understood why we believe that national bank preemption of the Georgia Fair Lending Act should not be viewed with alarm. The interests of those this law intends to protect are effectively protected—at least as far as national banks are concerned—through our supervisory process. Our approach not only protects consumers where abusive practices are found, it also avoids the over-broad and unintended adverse effects of those one-size-fits-all laws—effects that, as we've seen, can be almost as harmful as the problem those laws were designed to address.

Preemption is a doctrine with almost 200 years of history and constitutional precedent behind it. The OCC didn't invent it; we apply it. In preemption situations, the only relevant issue is whether the state law would impair or interfere with the national bank's exercise of powers granted to it under federal law. If such an impact is found to exist, federal law must prevail—just as it has prevailed for two centuries.

Remarks by John D. Hawke, Jr., Comptroller of the Currency, before Women in Housing and Finance, on preemption and the dual banking system, Washington, D.C., September 9, 2003

I'm delighted to appear before this distinguished group once again. This is my third outing with Women in Housing and Finance as Comptroller of the Currency. In my past visits with you I have spoken about the dual banking system and preemption. And, just so you won't think I am losing my focus, I want to speak today about—preemption and the dual banking system.

In my last talk, about a year and a half ago, I detailed the historical roots of preemption, reminding that this is a doctrine that has its origins in the Supremacy Clause of the Constitution and the landmark 1819 Supreme Court decision in *McCulloch* v. *Maryland*. The principle that the states cannot constitutionally restrict the powers of entities created under federal law has been a bedrock precept of federalism for more than 180 years. It has had special importance for the national banking system—a system that was created by Congress to advance the *national* interest in a uniform and nationwide system of federally chartered financial institutions.

The federal courts have consistently applied this principle over the years, and a wide variety of state laws have been held constitutionally inapplicable to national banks. Indeed, so clearly established is this principle that when we recently issued an order preempting the Georgia anti-predatory lending law, the Georgia attorney general declined the opportunity to take us to court. The state AG informed the state banking commissioner, after conducting a thorough review of the precedents, that "state regulation of national banks has been severely limited by federal law" and "so long as the OCC's legal conclusions are related to the banking activities of national banks [its] decision will be difficult to challenge successfully." The AG was absolutely correct in this judgment. In fact, the last time an OCC position on preemption was rejected by a federal court was the Court of Appeals decision in the *Barnett* case—which, of course, was reversed by the Supreme Court of the United States and subsequently reaffirmed by Congress in the Gramm–Leach–Bliley Act.

Against this background, the recent clamor we have been hearing about OCC actions on national bank preemption is really quite surprising—surprising not only because of its utter disregard of history and precedent, but because of its unusually intemperate tone. For example, one state attorney general has attacked the OCC for sticking "a dagger in the heart of federalism." Another, with a proclivity for making headlines, has charged us with "unrelenting efforts . . . to undermine the states' ability to protect their citizens." A consumer advocate has accused the OCC of being "out of control"—a particularly startling charge in light of the stream of recent federal court decisions upholding our positions. And even my good friends at the Conference of State Bank Supervisors have accused us of hatching a dark conspiracy to create "a whole new financial regulatory structure without any democratic debate or process."

It's easy to dismiss these extravagant and meritless statements as a kind of constituent posturing. But the simple fact is that OCC has been doing nothing new. We are *not* engaged in a campaign to obliterate federalism or to create a new financial regulatory structure, and we have just as much interest in the protection of consumers as any state AG. Far from being "out of control," we are fully subject to judicial review, and those unhappy with our decisions seem to have no hesitation in taking us to court—where our record of success has been overwhelming. We have simply been applying long settled—and constantly reinforced—principles of federalism, and we have been doing so with great regard for the interests of consumers.

What *is* truly surprising—and worthy of serious note—is that it has been the *states* that have persistently ignored the mandates of federalism. Notwithstanding the fact that "state regulation of national banks has been severely limited by federal law," as the Georgia AG forthrightly recognized, we see state after state passing laws intended to limit the powers and regulate the business of national banks. These include such laws as those that would regulate the fees that national banks may charge, the services they must provide, the attributes of various kinds of loans they make, their ability to act as fiduciaries, and even their right to do business in the state. We routinely prevail when these laws are challenged on preemption grounds.

We also see efforts by state attorneys general to assert enforcement authority directly against national banks—notwithstanding two very clear federal statutes vesting in the OCC exclusive visitorial powers with respect to national banks. When we met with a group of state AGs earlier this year to discuss their ambitions in this regard, they asserted that because of their nationwide networking ability they could be more effective than the OCC in bringing national banks to heel—a proposition with which, as you might expect, we vigorously disagreed.

In truth, the attack on the "heart of federalism" is coming from the states, not from us.

I think it is fair to ask what is going on at the state level. Why are the states now becoming so aggressive in seeking to assert authority over federally chartered institutions? Why are they now trying to undermine the distinctions between state and national banks that go to the heart of the dual banking system?

One obvious answer is that there is enormous political appeal in doing so. For example, no one likes to pay a fee for the use of an ATM, so a law prohibiting banks from charging fees for the use of their ATMs by individuals who are not their customers is undoubtedly going to be very popular—never mind that the predictable result of such laws is likely to be that banks will shut off access to their ATMs by noncustomers. And what better pose for a crusading enforcer aspiring to greater glory than to be seen as a basher of big banks.

Of course, it is not that state legislatures or AGs are unaware of the underlying principles or precedents. Many of the state laws that purport to apply to national banks are drafted with express "preemption parity" provisions that operate to make the law inapplicable to state banks if it is preempted for national banks. The Georgia anti-predatory lending law had such a provision, as have others, such as the ATM surcharge laws that were the subject of earlier litigation. The inclusion of these provisions reflects a clear awareness by these legislatures that, by extending coverage to federally chartered institutions, preemption is likely; that they are walking on thin legal ice. But by this means state lawmakers can effectively cover all the bases: they satisfy consumer interests by passing broadly applicable, politically popular laws, while regarding the interests of local state chartered banks by automatically rendering the law inapplicable to them if it should be held inapplicable to national banks.

One would wish for a better-informed understanding of the law on the part of state AGs. Yet the law on visitorial powers could not be clearer. Since the earliest days of the national banking system federal law has provided that no national bank shall be subject to any visitorial powers except as authorized by federal law, vested in the courts of justice or directed by Congress—and Congress has never vested such powers in state law enforcement officials. Indeed, in the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994, Congress explicitly addressed the question of the applicability of host state consumer protection laws to branches of national banks that are established interstate—laws regarding community reinvestment, consumer protection, fair lending, and interstate branching. It said that such state laws apply to such national banks branches in the state *except* when they are preempted by federal law, and it further provided that the enforcement against a national bank of any such state law that was *not* preempted was the exclusive domain of the OCC. Current efforts to enforce such state laws against national banks simply fly in the face of Riegle–Neal.

Of course, the OCC shares a common interest with state law enforcement authorities in the protection of customers of national banks, and we would hope that cooperation, rather than competition, would characterize our relationships. To this end we have adopted special procedures at the OCC to handle referrals of consumer complaints from state AGs and state banking departments. I have personally sent letters to the state AGs describing the new processes we have put in place in order to work cooperatively *with* them. I have also invited the state AGs to enter into a cooperative arrangement with the OCC that would be embodied in a memorandum of understanding setting up a framework for addressing consumer protection issues relating to national banks. I regret to say that, to date, we have had no response to our invitation, only rhetoric. If the interest of consumers *were* paramount, as they should be, one might expect that a proposal such as the one we have made would be embraced rather than ignored.

I should also point out that, at least in the area of predatory lending, which is where most of the current controversy seems to focus, the state AGs themselves have recognized that federally regulated banks are not the problem. In an *amicus* brief filed recently in connection with litigation over an OTS preemption regulation, 22 state AGs (including the two I quoted earlier) stated unequivocally that, based on their investigations and enforcement actions, "predatory lending abuses are largely confined to the subprime mortgage lending market and to nondepository institutions," and "not banks or direct bank subsidiaries."

In an earlier letter to the OTS, 46 state AGs stated: "In the experience of the state attorneys general, predatory lending is perpetrated primarily by nondepository lenders and mortgage brokers," which "unlike depository institutions, are subject to little regulation by . . . federal agencies."

In light of these statements, the charge that OCC preemption actions constitute an "unrelenting effort" to undermine state consumer protections has to be seen for what it is—inflated and hollow rhetoric.

Despite the hyperbole about undermining state consumer protections, any fair examination of the record should make clear that the OCC can and will move vigorously to remedy abuses. We have a world-class, best-in-the-business Customer Assistance Group that last year helped to process more than 79,000 cases. We have taken significant enforcement actions to require restitution to consumers who have been injured by abusive practices. We have defeated the strategy of payday lenders to use national banks as a cover for evading state consumer protection laws. And we have issued the most comprehensive supervisory guidance ever issued by any federal banking agency—and, I suspect, any state agency—defining and describing predatory lending, warning banks about the supervisory consequences of engaging in such abusive practices, and stating that, if we find predatory practices in a national bank, it will reflect adversely on their CRA ratings—something no one else has ever done.

To be fair to CSBS, I suspect their recent remarks were addressed not so much to preemption generally—the principles with which CSBS has long been familiar—but more to our position that national bank preemption extends to operating subsidiaries of national banks. It was more than two years ago that the OCC codified our position on this issue in a rule, and since that time we have had two federal court decisions sustaining our position. Since operating subsidiaries have long been recognized as the corporate equivalent of divisions of the bank itself, and since they can perform only activities eligible for the bank itself to perform, it is exceedingly difficult to see what the rationale is for treating them differently from the bank for preemption purposes, and our regulation simply reflects this principle. While we may have a difference of view on this issue, I think it is rather excessive to charge that we are engaged in an effort to create "a whole new financial regulatory structure without any democratic debate or process."

This rising chorus of complaints from the states, and the increasingly aggressive posture of state legislatures and enforcement authorities with regard to national banks, gives me another cause for concern, because I believe they may mask serious underlying problems in the dual banking system. Indeed, these problems could prevent the dual system from functioning in the future in the essential role it has played in our economy over the past 140 years.

The driving dynamic of dualism, of course, is freedom of choice. Implicit in choice is the existence of meaningful differences. In times past, there have been significant differences between the national and state charters—differences reflecting supervisory philosophy, supervisory responsiveness, examination quality, and the scope of permissible activities. But today, truly meaningful differences are increasingly difficult to find, and the *states* are largely responsible for this.

Consider the question of permissible powers and activities. State supervisors pride themselves on being laboratories of innovation. And, indeed, many staples of banking practice, from checking and NOW accounts to mortgage loans, were first introduced by state-chartered institutions. But where has the innovation been in recent years? Indeed, I think the most significant of the *recent* innovations coming out of state banking departments has been the continuing effort to afford state banks the same opportunities as national banks. For example, 47 of the 50 states have passed some form of "wild card" law, automatically authorizing for state banks many of the powers and activities permitted for national banks.

This same motivation—emulation rather than innovation—has been present in the interstate branching context, where state supervisors have worked creatively to try to secure for state banks some of the natural advantages that accrue to national banks. Recognizing that national banks would likely be able to operate under a single set of rules when branching interstate, state authorities obtained federal "parity" legislation providing that host state laws would apply to local branches of out-of-state state banks only to the same extent they would apply to an out-of-state national bank.

And recognizing that state banks branching interstate might be faced with the need to deal with multiple state regulators, while national banks answered only to the OCC, state supervisors adopted a protocol under which they agreed that the home-state supervisor would have the basic responsibility for supervising the interstate branches of their banks. These were creative steps that addressed the need to maintain competitive equity, but they did not reflect the spirit of innovation of which state supervisors were so proud. In the face of some recent indications that CSBS's interstate protocol might be feeling some internal stresses, as some individual states have taken different views of their own interests, it is striking that state supervisors are now seeking robust *federal* legislation that would define the respective powers and responsibilities of home- and host-state supervisors with respect to the supervision of state banks branching interstate. What are we to say about federalism and the dual banking system in a world of "wild cards" and parity laws, a world in which state authorities have to resort to *federal* laws to sort out their respective *state* jurisdiction?

More to the point, what do the state systems offer in the way of real charter choice to financial institutions in a world in which the objective seems to be to blur any charter distinctions that hold any competitive significance? What happened to state systems as "laboratories of innovation?"

Earlier this summer, a CSBS witness stated, in Congressional testimony supporting continuing preemption of state laws under the Fair Credit Reporting Act (it seems federal preemption is not *always* bad), that "state bank supervisors are strong advocates for a system that allows the states to serve as laboratories for innovation and change, not only in bank powers, but also in the area of consumer protections." But where has innovation in consumer protection been in Georgia and those other states that have adopted parity preemption provisions, scuttling laws applicable to state banks that happen to be preempted for national banks? These laws *could* have been left in place for state banks, and an appeal might have been made to local consumers that customers of state banks had different, arguably *better* protections than those of national banks, thus providing a competitive advantage to state banks. Rather than bucking almost two centuries of federal law curtailing the authority of the states to limit the powers of federally chartered institutions, why are the states not addressing their attention to their *own* institutions?

The answer is clear, of course: the overwhelming value for state banks and their supervisors is competitive parity, not competitive distinction, and they want to blunt any competitive advantage that national banks may have. They are willing to be "innovative" when it gives *them* competitive advantages, but not when it subjects them to burdens that they can't impose on their national bank competitors.

Yet, another reason the dual banking system is under stress is because the states are under stress themselves. After a decade of budget surpluses, the states started running deficits in 2001, and further deterioration took place in 2002 and 2003. Some truly breathtaking shortfalls have been announced for the current budget cycle: California, $38 billion, with headline-making political implications; New York, $12 billion; Texas, $10 billion. One governor has called the current situation the "toughest times for states since World War II."

These developments not only make me wonder why state officials have ignored our offers to work with them to address consumer complaints and alleged abuses, but they also have serious implications for state bank supervision. In 2002, Maryland declared a moratorium on *de novo* charter applications, since lifted, because it didn't have the staff to process them—or sufficient numbers of examiners to oversee the banks that would be organized if those applications were approved. We are told that examiners in the Florida State Banking Department have seen their pay frozen for two years in a row, and that they're facing the possibility of a third. In Illinois, the governor's proposed FY 2004 budget called for a 100 percent increase in state bank assessments, and a reduction in bank examiner positions. Those modest hardships seem to have been averted for now, but it took a full-scale mobilization of state bankers to do it.

State bank supervision is also particularly vulnerable to structural changes in the industry. Over the past decade, the number of banks in the U.S. has dropped by roughly a third. With that trend has come increased asset concentration—and growing dependence on a dwindling number of assessment-paying institutions.

In fully half the states, a single bank now accounts for 25 percent or more of the asset base on which the state bank supervisor imposes the assessments needed to fund its office. In New York, one state bank accounts for nearly two-thirds of the assets under state supervision. In Georgia, one bank accounts for 70 percent of assets. In Rhode Island, it's 76 percent.

Needless to say, the loss of a large bank in such a highly concentrated state could have a crippling effect on a state supervisor's ability to provide quality supervision.

These perceptions are reinforced when state supervisors actively proselytize for charters.

We have a growing collection of soliciting materials used by state supervisors in recent years in their direct merchandising efforts aimed at inducing national banks to convert to state charter, and these efforts seem to get bolder by the minute. Notably absent from these materials is evidence of the vaunted "innovation" that state supervisors are so fond of extolling. Rather, the pitches are generally based on two arguments: One, we are more "accessible;" and two, we are cheaper.

I suppose we all have our own ideas about just what is intended to be conveyed by the "accessibility" pitch. Whatever may be intended, however, it is likely that some will read "more accessible" to mean "more compliant," and, if that is so, one must ask whether such promotion is consistent with the interests of systemic safety and soundness—let alone what kinds of banks and bank managers are likely to be attracted by this pitch.

As far as state supervision being "cheaper," I'm sure you have all heard me declaim about fee disparity, and I will not go into that subject again. Suffice it to say, state supervision is cheaper because the Federal Reserve and the FDIC subsidize the cost of state bank supervision to the tune of about $1 billion a year, while national banks pay the full cost of their supervision. In the final analysis, it is this subsidy, rather than "innovative" supervision, that is the defining characteristic of the state system.

But like any subsidy, there is a danger that this one can become an addiction, with state banking systems becoming dependent on it.

There are those who believe that absent this subsidy, in a world in which all banks bore the full costs of their supervision, there would be little reason to maintain a state charter, and, consequently, state banks would convert to national charter in droves. I don't share this view. While we have not seen a great deal of innovation in recent years, state banking is not so moribund that it needs a federal "fix" to stay alive. I think that the overwhelming number of banks make their charter choice based on qualitative considerations other than the costs of supervision. In my view, that explains why some 1900 community banks under $1 billion in size—those banks likely to be most sensitive to such cost factors—hold on to their national charters and value OCC supervision.

But if I am wrong—if eliminating fee disparity *would* encourage a wave of conversions—then we should all be concerned about it, and we should be exploring means to breathe new vitality into the state system, rather than keeping the system on federal life support. Obliterating distinctions that are the essence of the dual banking system, however, is not the solution.

One might conclude from my remarks today that I see prospects for the dual banking system itself to be somewhat uncertain. Yet, it would be profoundly premature—as well as ahistorical—to suggest that its days are numbered. The dual banking system has confounded legions of doomsayers over the years. Its resilience is legendary. I believe it's possible to restore real qualitative value to state banking. I believe it's possible to make state supervisors a more dynamic presence in the supervision of their own institutions. I believe it's possible to revive real innovation in financial services. And I believe it's possible to restore real supervisory competition—based not on cost or subtle suggestions of leniency, but on competence, professionalism, and the kind of competition that benefits consumers and promotes safety and soundness. A system that seeks to obliterate differences rather than encourage the competitive benefits that come from innovation and real distinctions between service providers; a system that trumpets the value of duality while attacking the basic distinctions that lie at the heart of duality; a system that has developed a dependency on a shot in the arm from the federal government that dulls rather than promotes competition, is a system that has unfortunately lost touch with its roots, and with the true genius of our dual banking system.

Remarks by John D. Hawke, Jr., Comptroller of the Currency, before the American Bankers Association, on abusive practices and regulation, Waikoloa, Hawaii, September 22, 2003

It's not news to anyone in this room that the banking industry is under attack—once again. State and local legislatures around the country have enacted, or are considering, new laws to regulate various aspects of the business; state law enforcement officials are making dramatic headlines announcing large-dollar settlements; federal regulators are issuing regulations and guidance; consumer activists are leveling broadside barrages; and committees of the Congress are holding hearings and conducting investigations aimed at determining whether new federal laws are needed to curb abusive practices.

So "what's new?" some of you might ask. Banks have always been a favorite target. It's really just a measure of how important the industry is. And, after all, you've learned to live with the burdens of regulation.

Others have a different view. They shake their heads in dismay at the two dozen or more compliance laws passed in the last 30 years—laws that have imposed tremendous burdens on the industry. How many times have you heard a banker friend say that the business "is just not fun any more"? How many times have you cringed just a little bit, or felt you had to apologize, when someone has asked you what your profession is? Believe me: having been a lawyer for over 43 years, I know the feeling.

What's gone wrong? Bankers have traditionally been leading members of the community, and the banking business—a business that, after all, was built on the trust and confidence of customers—was once considered a model of good conduct and rectitude. When I was a new young lawyer the practice of "banking law" largely meant drafting loan agreements and forms. Today, "bank regulatory law" is a major practice area, with law firms competing actively to hire lawyers who know how to guide clients through the shoals of regulations intended to protect consumers by constraining banker misconduct. What has brought this about? Why have banks become everyone's favorite whipping boy? More to the point, what can we do about it?

As one looks back over this period during which the burdens of regulation have become so heavy, there are two circumstances that emerge as common to almost all of the legislative and enforcement activity we have seen: First, they are virtually always responsive to real abuses. Congress generally does not sit around dreaming up ideas for new laws to address hypothetical or speculative problems. On the contrary, it is generally quite unusual for Congress to move quickly on regulatory legislation—the Gramm-Leach-Bliley privacy provisions being a major exception. Most often, they respond only when there is evidence of some persistent abuse in the marketplace over a long period of time.

The second common element is that the abuses that cause legislation are almost always the actions of a very few players, and not pervasive practices in the industry. History could not be more clear: a few bad actors will generally be the cause of burdensome laws that are brought to bear on the activities of the entire industry.

So when we ask what can be done about it, a very natural follow-up question is why has the industry itself failed so profoundly to address the conditions that have given rise to so much regulation? Can't it do better?

Nearly 25 years ago, I wrote an article entitled, "Deregulation and Self-Regulation: Illusion or Reality." It was a time of real pessimism about prospects for thoroughgoing bank deregulation, a pessimism that I generally shared. But if there *was* hope for a new day in banking, I wrote, it seemed to me to hinge on the industry itself doing a better job of addressing its own shortcomings. It also seemed evident to me that the industry's failure to address demonstrated abuses had been responsible for the succession of tough consumer protection laws of the previous decade, such as the Truth-in-Lending and Equal Credit Opportunity acts. But it wasn't too late, I argued, for the industry to take a historic new path toward self-regulation, with all the benefits such a reversal could bring. While I thought it was unrealistic to expect that self-regulation would persuade Congress to repeal existing regulatory laws, I suggested that a good-faith effort by the industry might demonstrate that future regulatory legislation was unnecessary.

There is no question that we have made progress in dismantling some of the more archaic remnants of an earlier regulatory era. Deposit interest rate controls were largely discarded over two decades ago, and we are on the verge of having the prohibition against paying interest-on-demand deposits phased out. But it often seems that for every step or two we take toward regulatory emancipation, we take at least one step back. Banking today continues to operate under multiple layers of regulation that, while undoubtedly providing some protections to consumers, can be extremely burdensome and costly—indeed suffocating—to small banks.

When I addressed the ABA convention last year, I spoke to you about the dramatic changes that were taking place in the country's legal framework for corporate governance. The centerpiece of that change was the Sarbanes–Oxley Act—perhaps the most important piece of corporate reform legislation in our lifetimes. It is significant in the present context, however, that this landmark legislation responded to a relatively small number of highly publicized cases of corporate abuse, virtually none of which directly implicated financial institutions. Indeed, some of its provisions pertaining to the relationship between corporations and their directors duplicated safeguards already in place for financial institutions.

That's not to say that the banking industry hasn't benefited tremendously—and won't continue to benefit well into the future—from the general improvement in public confidence wrought by Sarbanes–Oxley—improvements resulting from greater transparency in corporate balance sheets, more honest and accurate accounting, compensation reforms, and the rest. But along with those benefits come burdens, and the burdens have fallen just as heavily on an industry like banking.

But if banks were only incidentally in the zone of corporate reform legislation, the banking industry *has* been at the center of other key public policy issues—issues such as financial privacy and identity theft, predatory lending, and credit card account management practices. Together, they represent a challenge that may profoundly shape the industry's future. The industry's response to that challenge could go far in determining whether there will be new regulatory mandates in each of those areas, as well as how costly and burdensome those mandates will be. And that, in turn, will have a role in shaping the industry's ability to meet the competition of the financial marketplace and to continue on in service to our nation's economy.

Let's take a look at the issues of privacy and identity theft. The industry's commitment to safeguarding customer confidentiality has long been an article of faith. A 1961 court case declared that:

"It is inconceivable that a bank would at any time consider itself at liberty to disclose the intimate details of its depositors' accounts. Inviolate secrecy is one of the inherent and fundamental precepts of the relationship of the bank and its customers or depositors."

But what was inconceivable in 1961 was hardly unthinkable a few decades later. And those privacy precepts, once inherent and fundamental, came under increasing pressure from technology—which made customer information increasingly available for sale and analysis—and from the competition to diversify, which made consumer information an increasingly precious commodity to an industry that has always been information-based.

Amid growing consumers' concerns about threats to their privacy, most financial institutions recognized the danger to their longstanding reputation for preserving customers' trust. But a few cases of slippage began coming to light. It was headline-making news when one institution was reported to have sold confidential account information to a telemarketer. That revelation led to thousands of depositor complaints, a multi-million dollar cash settlement, and huge embarrassment. The industry was conflicted. Some recognized the need to develop effective privacy standards, but others put a higher value on the need to use customer information to exploit cross-marketing opportunities. Congressional hearings produced stories of the ease with which pretext callers were able to glean account information from careless bank customer service representatives. Many in the industry seemed to believe that privacy was an issue in which consumers would soon lose interest.

But privacy has lost none of its importance to consumers since Gramm–Leach–Bliley was signed into law—quite the opposite. According to Department of Justice statistics, seven million Americans were victims of identity theft last year, making it the nation's fastest-growing financial crime. Some 30 million Americans have already registered with the Federal Trade Commission's National Do Not Call Registry—and I doubt that many of them have a warmer place in their hearts for telemarketing calls that come from banks than from third parties. And, of course, GLBA enabled states to enact tougher privacy standards in some respects, with California poised to do just that.

Although I see some evidence that bankers are beginning to recognize that privacy is, and will remain, a key competitive factor—that consumers will bank where they feel that their privacy is particularly well protected and stop banking where it's not—progress toward self-regulation and standard-setting in the privacy area since GLBA has not been what one would have hoped for.

Let me give one recent example. The federal banking agencies recently came out with proposed guidance for banks setting out procedures they should follow when they have evidence that confidential customer information has been compromised. This is a tough problem. Should a bank notify its customers in every case where there has been a compromise—perhaps causing undue and unnecessary alarm and concern among customers? Or should it wait to see if the confidential information has been misused—in which case it might be too late to avoid irreparable injury to the customer?

Here was a clear opportunity for leaders in the industry to recognize the need for an industry standard or best practice, and to take the lead in addressing this need. To be sure, even responses generated by the industry itself won't always stave off a governmental response, but it's certainly worth the effort. Let me put it in a different way. Would you rather have strong and responsible guidance from your own industry in dealing with an issue of this sort, or a governmental dictate enforceable through bank examiners and cease-and-desist orders? In the absence of the former, you are now faced with the latter.

Let's turn to the case of predatory lending—another of today's most pressing financial public policy concerns. I define predatory lending to mean the aggressive "pushing out" of credit to borrowers who cannot pass the conventional standard of bank underwriting: does the borrower have the capacity to service and repay the loan without recourse to the collateral?

State after state, and city after city, are adopting or considering laws that would subject *all* mortgage lenders, including commercial banks, to significant regulatory restrictions in the name of stamping out predatory lending. Yet, there is no evidence that federally regulated banks—national or state—are a serious part of the problem. Indeed, no fewer than 46 state attorneys general stated that "predatory lending is perpetrated primarily by nondepository lenders and mortgage brokers," which, "unlike depository institutions, are subject to little regulation by . . . federal agencies." And in an *amicus* brief filed recently in connection with litigation over an OTS preemption regulation, 22 state AGs stated flatly that, based on their investigations and enforcement actions, "predatory lending abuses are largely confined to the subprime mortgage lending market and to nondepository institutions," and "not banks or direct bank subsidiaries."

This is no more than you would expect in an industry in which loan officers have been brought up to ask searching questions about a borrower's capacity to repay before extending credit, an industry that is closely supervised by a variety of federal regulators. The truth is that the real perpetrators of predatory lending are neither subject to conventional bank standards *nor* subject to federal oversight. They are for the most part, as the state AGs have said, unscrupulous and unsupervised mortgage brokers and lenders, whose interest is *not* assuring the borrowers' capacity to repay, but to maximize their fees by capturing the borrowers' built-up equity in their homes.

If this is correct, one must ask why the states and cities continue to include banks within the scope of these laws. Surely, there's a political dimension to it. Kicking banks around has been something of a national pastime since the days of Andrew Jackson. That's why it's critically important not only for banks to make legislators aware of where the problem really lies, but to speak out as an industry in condemning those who are guilty of these abusive practices.

There's another reason for banks to speak out. These laws are hurting their legitimate business, and in the process are throwing up barriers to the availability of good, risk-priced credit to creditworthy borrowers who may not have had access to bank credit in the past. We've seen strong evidence that subprime lending has diminished jurisdictions that have adopted such overbroad anti-predatory lending laws—clearly an unintended consequence of these laws. We've also seen evidence that in such jurisdictions the secondary market for subprime loans may have been adversely affected. Fannie Mae and Freddie Mac have severely conditioned their willingness to purchase loans covered by these laws, and some rating agencies have refused to rate securitizations containing loans covered by such laws—thus posing some very real impediments in the national secondary markets. Indeed, after the OCC preempted the Georgia law, Fitch Ratings reversed its earlier decision to suspend ratings of residential mortgage-backed securities containing "high cost" loans originated in Georgia, specifically citing our preemption decision as a justification for its actions. Because it is now willing to rate those securities, additional liquidity is likely to become available in the Georgia mortgage market, with subprime borrowers as important beneficiaries.

As I've suggested, there's much that the industry can do—that it has not done enough of to date—to dissociate itself clearly and emphatically from predatory lending. It can speak with one voice in denouncing such practices, and focus attention on the *real* bad actors. It can renew and reinforce its commitment to financial literacy, it can provide financial counseling to help those who might otherwise become victimized by predatory practices. It can continue to do its part to identify abuses, to develop best practices, and to communicate the results of that effort to the American people. Banks are clearly not part of the problem. They have to demonstrate that they *are* part of the cure.

Is it possible to identify other areas where actual or potential abuses might give rise to the kind of legislation we have seen in the areas of privacy and predatory lending? Let me suggest a couple—credit card practices and "bounce protection" programs.

The United States has the most successful credit card industry of any country in the world, and I am proud to say that the real leaders in this industry are some of our national banks. The development of credit cards has been of enormous benefit to consumers. But unfortunately not all card issuers have the same kind of commitment to high standards that the best players in the industry have. In fact, no retail banking activity generates more consumer complaints—and where there are persistent and serious complaints, there is a fertile seedbed for legislation.

Consider, overline practices. At one time, if a cardholder exceeded his approved credit line, the charge would be rejected at the point of sale. Today, it is common for the card issuer to honor the charge and assess a penalty on the customer for the overline. It is also common, however, for the issuer not to require prompt payment of the overline amount and not to adjust the minimum monthly payment to take account of the overline. Thus, the overline penalty may continue to accrue month after month. One might ask at what point the creditor who has not required prompt repayment of, and has thus acquiesced in, the overline and has de facto increased the line. And if, as a practical matter, the line has been increased, is it unfair or deceptive for the creditor to continue to impose an overline "penalty?" One might also ask whether customers are being given adequate disclosure in situations such as these. At least one state has attempted to address these issues legislatively, and others may well see this area as an appealing one for future legislation.

Similar questions could be raised about some "secured" credit card programs marketed to people with poor credit histories. A common feature of many such programs is that the available credit is virtually exhausted with front-end fees, charges and "security" deposits, leaving the cardholder with no real credit and a sizable account balance. The absence of complete and meaningful disclosure often heightens the abusive nature of these programs.

The industry's leaders in this field should be speaking out on these issues—if not merely to protect customers from the misconduct of a few, then as a matter of enlightened self interest, to avoid getting themselves tarred with the blame.

"Bounce protection" is another accident waiting to happen. Of course, conventional overdraft protection programs have been part of the banking scene for many years. But today, we see some vendors aggressively marketing new programs to banks under which overdraft protection would be affirmatively promoted as a variety of short-term credit, much like the product offered by so-called payday lenders. These programs take a wide variety of forms, and, done right, can clearly serve a very useful need. But there are also opportunities for abuse, and once again there is a danger that the shoddy practices of a few could result in regulatory burdens for everyone.

In this regard, I want to congratulate your incoming chairman, Ken Fergeson, for his statesmanship in identifying this subject as an issue deserving of comment. One of his earliest actions as chairman-elect was to send a letter to all bank CEOs on the subject of bounce protection, cautioning them about the need to treat customers fairly and to provide them with clear, conspicuous disclosures. First and foremost, Ken wrote, consider "how your program will be seen and judged in your community, in the [regulatory] agencies, and in court. He set out a list of steps a bank considering such a program should take to protect itself and its reputation. If you ignore these considerations, he warned, your program "could become your worst enemy."

The most significant thing about Ken's letter was not its substantive advice, which was clearly sound and wise, but the fact that a distinguished banker, in the process of taking over the helm of the industry's largest trade association, took on a leadership role in speaking out forthrightly and frankly on an emerging issue of importance—recognizing that if the issue were to be left unaddressed, there could be unhappy consequences for the industry. This was a significant event, I submit, because of what it implies as a potential role for this great association.

Industry self-regulation, of the sort I pondered in that article 25 years ago, might be unrealistic to expect. But one does not need to embrace full-blown self-regulation to see that there is an important role for the industry to play here. There is no reason why, with enlightened and forthright leadership, the industry could not serve both itself and its customers very well by taking on a more organized role as a promulgator of standards and promoter of best practices. To do so would be a dramatic demonstration that the responsible members of the industry—far and away the largest number of institutions—really care about standards of good conduct and are willing to speak out themselves, rather than wait for draconian governmental remedies.

So here is my challenge to the ABA and its new leadership: Create, either yourselves or jointly with other industry associations, an industry Committee on Banking Standards and Practices, to be composed of a group of the most respected people in the industry. The mission of the committee would be to study, articulate, and promote the adoption of principles of fair dealing and to assemble and disseminate information about best practices. Just as Ken Fergeson set out in his letter a series of cautions for banks considering bounce protection programs, the Committee on Banking Standards and Practices would serve as a forum for addressing issues of importance to the relationship between banks and their customers and as a means for identifying and collecting information on emerging issues.

The committee need not have mandatory enforcement powers or the ability to impose sanctions. Its effectiveness would depend solely on the logic, common sense, practicality, credibility, and moral force of its statements, and on the recognition of its members as individuals of great experience and impeccable reputation. I suspect each of us could identify half a dozen such individuals quite readily. The overriding objective of the committee would be to demonstrate to the public, to regulatory policymakers, and to legislators that the banking industry *is* concerned about standards of conduct and is willing to address the subject in an institutional way.

I am not so naïve as to think that there wouldn't be problems setting up such a committee, and I'm sure each of you has thought of some as I have been speaking. But that is not a reason not to make the effort. Done right—with integrity, thoughtfulness, evenhandedness, and credibility—the establishment of such a group could have tremendous benefits for both banks and their customers. And, if it *is* done right, it could help stem the tide of regulatory measures that has been swamping the industry.

In the final analysis, of course, no standard setter—indeed, no regulatory or enforcement mechanism—can be a fail-safe against misconduct. In any organization, large or small, there will always be the potential for abuse, and that potential will increase in direct proportion to the pressures that lower-level employees feel to romance customers, to take business away from competitors, and to produce profits at any cost. That is the overriding lesson of recent times, when we have seen even some of our best managed companies embroiled in the kind of controversy that not only tarnishes their reputation but impacts their shareholders' interests because of the conduct of a miscreant few. The ultimate protection for all of our banks, and the people responsible for running them, is to instill in *all* employees a dedication to the highest standards of fairness and ethical dealing; to make clear that no loan, no customer, no profit opportunity, is worth compromising those standards for; and to take swift and decisive corrective action where those standards are violated. For an industry whose very survival depends on preserving the confidence, trust, and good will of its customers, no less is required.

Interpretations—July 1 to September 30, 2003

Interpretive Letters

968–February 12, 2003

12 USC 85

Dear [ ]:

This is in response to your inquiry on behalf of [ ] ("bank") and [ ] ("Co."). In that letter, you request confirmation that after [Co.], currently a holding company affiliate of the bank, becomes an operating subsidiary of the bank, it may rely on 12 USC 85 to impose and export interest charges permitted by North Carolina law on consumer loans that it makes in North Carolina and throughout the United States. For the reasons described below, after it becomes a national bank operating subsidiary, [Co.] may impose and export North Carolina interest charges under the same terms and conditions applicable to the bank.[1]

Both the bank and [Co.] are headquartered in North Carolina. [Co.] makes consumer loans secured by first or subordinate liens on one- to four-family residential real estate.2 The bank, through [Co.], seeks to establish nationwide lending programs with uniform national pricing policies based on the laws of its home state, North Carolina. [Co.] would include in its loan documents a governing law clause disclosing to borrowers that interest, including loan fees considered to be interest under federal law, would be governed by federal and North Carolina law. [Co.] also would comply with all requirements and limitations imposed by section 85 and OCC regulations and interpretations regarding section 85.

Because [Co.] will be a subsidiary of the bank within the meaning of 12 CFR 5.34(e)(2), and will engage solely in activities that are permissible for the bank to engage in directly, [Co.] will qualify as an operating subsidiary of the bank under 12 CFR 5.34. As such, it will be subject to the same terms and conditions that apply to the bank. As stated in the relevant OCC regulations—

[1] Our review of the preemption issues involved in the bank's inquiry is not subject to the notice-and-comment procedures required under certain circumstances by 12 USC 43. That provision requires the OCC to publish in the *Federal Register* notice of any preemption inquiry concerning a state law in the areas of community reinvestment, consumer protection, fair lending, and the establishment of interstate branches. However, notice is not required for requests that raise issues of federal preemption that are essentially identical to those on which we have previously issued an opinion letter or interpretive rule. *Id.* section 43(c)(1)(A). As explained in this letter, the request involves two issues that are resolved by OCC regulations: (1) the ability of a national bank to export interest rates (*see* 12 CFR 7.4001(c)), and (2) the extent to which state law applies to an operating subsidiary of a national bank (*see id.* sections 5.34(e)(3) and 7.4006). This letter simply outlines the relationship between these two well-settled principles of federal banking law.

[2] [Co.] plans to sell the majority of the first lien secured loans to secondary market investors, such as Fannie Mae. The subordinate lien secured loans likely would be transferred to the bank, securitized, or sold to private investors.

> *Examination and supervision*. An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms, and conditions that apply to the conduct of such activities by its parent national bank.[3]

Elsewhere, our regulations specify that "[s]tate laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank."[4] Recent legislation also has recognized the permissibility of national banks engaging in activities through operating subsidiaries. In section 121 of the Gramm–Leach–Bliley Act, Congress expressly acknowledged that national banks may own subsidiaries that engage "solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks."[5] Operating subsidiaries are often described as equivalent to a department or division of their parent bank, and our regulations ensure that operating subsidiaries will be subject to the same federal laws and standards that govern their parent bank, including any state laws and standards that are made applicable to the parent bank by federal law.[6]

One such law is section 85 governing the interest a national bank may charge. Under section 85, a national bank is authorized to establish interest based on the laws of the state in which the bank is located.[7] OCC regulations provide that:

> A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state.[8]

This "most favored lender" lender status permits a national bank to contract with borrowers in any state for interest at the maximum rate permitted by the law of the state in which the national bank is located. Generally, that is the state in which the main office of the national bank is located.[9] Under certain circumstances, national banks with branches in more than one state may be required to impose interest rates permitted by the law of a state in which they have a branch. That would happen in circumstances where three functions—loan approval, communication of loan approval, and disbursal of loan proceeds—all occur in a branch or branches in the same branch

---

[3] 12 CFR 5.34(e)(3).

[4] 12 CFR 7.4006.

[5] Pub. L. No. 106–102, § 121, 113 Stat. at 1378, *codified at* 12 USC 24a(g)(3).

[6] Letter from Charles F. Byrd, assistant director, Legal Advisory Services Division (October 30, 1977), *reprinted in* [1978–1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,051 (national bank operating subsidiaries are in effect incorporated departments of the bank).

[7] 12 USC 85.

[8] 12 CFR 7.4001(b).

[9] *Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp,* 439 U.S. 299 (1978).

state.[10] Absent this set of circumstances, a national bank may impose rates permitted by the state where its main office is located.

Accordingly, pursuant to 12 CFR 5.34(e)(3) and 7.4006, the amount of interest [Co.] may charge is governed by section 85 to the same extent as section 85 is applicable to its parent bank.[11]

I hope the foregoing is helpful in your analysis of your client's lending programs. Please do not hesitate to contact my office at (202) 874-5200; MaryAnn Nash, counsel, in our Law Department, at (202) 874–5090; or Jerome L. Edelstein, senior counsel, in our Law Department at (202) 874–5300, if you have any questions or if you need any additional information.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[10] OCC Interpretive Letter No. 822 (Feb. 17, 1998), *reprinted in* [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–265.

[11] *See Moss* v. *Southtrust Mobile Services, Inc*., No. CV–95–P–1647–W, 1995 U.S. District Court LEXIS 21770 (Northern District of. Alabama, September 22, 1995). In this case, the court concluded, without analysis, that section 85 applied to the operating subsidiary in question pursuant to 12 CFR 5.34 because it was an operating subsidiary of a national bank.

969–April 28, 2003

12 CFR 9.18
12 CFR 9.12

RE: Collective Fund Limited to Funds Awaiting Investment or Distribution

Dear [ ]:

This is in response to your February 5, 2003 letter, and subsequent discussions with Joel Miller, concerning [ ]'s (the "bank's") desire to pool the funds of individual fiduciary accounts and self-deposit[1] them collectively in a 12 CFR 9.18(a)(1) short-term investment fund ("STIF"). The STIF would consist exclusively of funds awaiting investment or distribution and would operate in accordance with all applicable provisions of 12 CFR 9.18. Based on your representations, and for the reasons set forth below, we conclude that the bank may pool the individual fiduciary accounts and self-deposit them in the STIF.

Discussion

The bank currently serves as trustee, executor, administrator, guardian, and in other fiduciary capacities for thousands of its trust customers. As fiduciary, the bank receives and invests fiduciary cash and other assets and makes distributions to beneficiaries.

The bank seeks to pool and self-deposit fiduciary funds awaiting investment or distribution and to manage them collectively through a STIF. The assets of the STIF will consist of short-term CDs of varying maturities, similar to assets of a money market fund, except that a portion (e.g., 10 percent) of the STIF assets may consist of checking or other "transaction" deposits that are needed to meet anticipated liquidity needs. The bank believes collective investment will enable customers to receive higher yields on funds awaiting distribution or investment without materially increasing the administrative burden on the bank. Each trust customer's account will reflect ownership of units in the STIF equivalent to the customer's proportionate share of the STIF net assets.

[1] Any deposits the bank makes of fiduciary funds in the commercial, savings, or other department of the bank are considered "self-deposits." 12 CFR 9.10(b).

Analysis

National banks are generally authorized to pool fiduciary funds and invest them collectively, including investment through STIFs.[2] Investing these fiduciary funds in the bank's own deposits, however, raises conflict of interest issues for the STIF. Twelve CFR 9.18(b)(8) requires a national bank administering a STIF to comply with the conflict of interest requirements of 12 CFR 9.12, which provides as follows—

> (a) *Investments for fiduciary accounts.*
> (1) *In general. Unless authorized by applicable law,* a national bank may not invest funds of a fiduciary account for which a national bank has investment discretion in the stock or obligations of, or in assets acquired from: the bank or any of its directors, officers, or employees; affiliates of the bank or any of their directors, officers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank. (Emphasis by underlining added.)

Applicable law authorizes the bank to invest the STIF in the bank's own deposit obligations. Twelve CFR 9.2(b) defines applicable law to include, "any applicable federal law governing [fiduciary] relationships." Federal law includes Office of the Comptroller of the Currency (OCC) regulations, 12 CFR 9.10(b), which read in part as follows—

> (b) *Self-deposits*—(1) *In general.* A national bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings, or another department of the bank, *unless prohibited by applicable law.* (Emphasis by underlining added.)

Part 9 was restructured and streamlined in 1995. The regulatory history of part 9 clearly shows that national banks have been permitted to self-deposit funds awaiting investment or distribution both before and after part 9 was revised.

---

[2] See 12 CFR 9.18(a)(1) and 9.18(b)(4)(ii)(b). Twelve CFR 9.18(a)(1) states—

> *Where consistent with applicable law,* a national bank may invest assets that it holds as fiduciary in the following collective investment funds:
>
> (1) A fund maintained by the bank, or by one or more affiliated banks, exclusively for the collective investment and reinvestment of money contributed to the fund by the bank, or by one or more affiliated banks, in its capacity as trustee, executor, administrator, guardian, or custodian under a uniform gifts to minors act. [Footnotes omitted, emphasis by underlining added.]

The bank represents that it is consistent with applicable law for it to invest fiduciary assets in collective investment funds in those states in which it does business and plans to so invest fiduciary assets.

Before its revision, part 9 dealt with self-deposits of trust funds in three sections. Twelve CFR 9.18(b)(8)(i) (1993) expressly permitted STIFs to self-deposit funds awaiting investment or distribution; 12 CFR 9.12(a) (1993) prohibited conflicts of interest such as self-deposits of fiduciary funds unless "lawfully authorized by the instrument creating the relationship, or by court order or by local law"; and 12 CFR 9.10(b) (1993) permitted self-deposit of funds awaiting investment or distribution "unless *prohibited* by the instrument creating the trust or by local law." OCC precedents (described below) made it clear that in addition to the specific authorization for STIFs to self-deposit under 12 CFR 9.18(b)(8)(i) (1993), STIFs were subject to the provisions of 12 CFR 9.12 and 12 CFR 9.10(b). *See* Trust Interpretation 218 (May 24, 1989) and Trust Interpretation 258 (April 10, 1991) *infra*.

In 1995 the OCC deleted the express authorization for self-deposits of STIF funds in 12 CFR 9.18(b)(8)(i), and instead inserted a cross reference to 12 CFR 9.12. *See* 61 *Federal Register* 68543, at 68550 (Dec. 30, 1996). Adding the cross-reference to 12 CFR 9.12 effectively preserved the ability of STIFs to self-deposit subject to the same requirement under old part 9 that they comply with 12 CFR 9.12 and 12 CFR 9.10(b).

The OCC issued two letters under old part 9 confirming the ability of STIFs to self-deposit. In Trust Interpretation No. 218 (May 24, 1989), the OCC permitted a bank to self-deposit in a STIF provided that the STIF's investment objective was to, "provide a temporary investment for funds awaiting investment or distribution." The interpretation also included the qualification that, "it must be permissible for all accounts participating in the STIF to maintain funds in deposits of the Bank, *see* 12 C.F.R. § 9.10(b) and 12 C.F.R. § 9.12," demonstrating that the ability of the STIF to self-deposit was subject to those two regulations. Interpretation No. 218 was clarified by Trust Interpretation No. 258 (April 10, 1991) which noted that under 12 CFR 9.12, the exception for self-deposits of trust funds applied only when "lawfully authorized by the instrument creating the relationship, or by court order or by local law." As described above, that standard contained in 12 CFR 9.12 was changed in 1995 to permit self-deposits "if authorized by applicable law."

The bank represents that applicable law in those states in which it does business and plans to self-deposit fiduciary funds does not prohibit such self-deposits. As a result, 12 CFR 9.10(b) provides the applicable authority required by 12 CFR 9.12 for the bank to self-deposit fiduciary funds awaiting investment or distribution or to deposit such funds with affiliates, and this practice is not prohibited by applicable law.

Conclusion

Based on the foregoing, the bank may self-deposit fiduciary assets awaiting investment or distribution collectively in a STIF administered by the bank.

The bank confirms that it will comply with the requirements as to collateral for self-deposits imposed by 12 CFR 9.10 and with all other applicable requirements under part 9.

Lisa Lintecum
Director, Asset Management Division

970—June 25, 2003

12 USC 24(7)

Subject: [Bank, City, State] (NB)

Dear [ ]:

This is in response to your May 23, 2003, letter requesting confirmation that [NB] may lawfully acquire and hold a non-controlling equity interest in a limited purpose state-chartered bank ("bank").

Facts

The bank, now being organized, will be chartered in [State]. The bank will engage only in activities that are permissible for a banker's bank under 12 USC 24(Seventh) and 27(b).[1] However, the bank will not actually meet the qualifications for a banker's bank set forth in section 27(b) since it will not be owned exclusively (except for directors' qualifying shares) by other depository institutions or depository institution holding companies. Although such entities will hold the majority of the bank's shares, approximately 20 percent of the shares will be held by other shareholders. [NB]'s investment in the bank is expected to be between $100,000 and $250,000, or between 1 percent and 2½ percent of its capital. While [NB] may later invest additional amounts, you have represented that [NB]'s investment will at all times be less than 5 percent of the bank's total shares.[2]

The bank will engage in the following activities: (1) taking deposits from depository institutions; (2) buying and selling loan participations; (3) engaging in lending transactions permissible for a banker's bank; and (4) providing correspondent services to depository institutions.

---

[1] 12 USC 27(b)(1) provides that:

> "The Comptroller of the Currency may also issue a certificate of authority to commence the business of banking pursuant to this section to a national banking association which is owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies and is organized to engage exclusively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a 'banker's bank')."

[2] Since [NB]'s investment in the bank will at no time reach 5 percent, this proposal raises no issues under the Bank Holding Company Act, 12 USC 1841 *et seq.*

Discussion

The Office of the Comptroller of the Currency (OCC) has traditionally recognized the authority of national banks to organize and perform any of their lawful activities in a reasonable and convenient manner not prohibited by law.[3] In a number of interpretive letters, the OCC has concluded that national banks are legally permitted to make a non-controlling investment in an enterprise provided four criteria or standards are met. These standards, which have been distilled from our previous decisions in the area of permissible non-controlling investments for national banks and their subsidiaries, are:

> 1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).
>
> 2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.
>
> 3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.
>
> 4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

Based upon the facts presented, [NB]'s proposed acquisition satisfies these four standards.

> 1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized) for a national bank.

The National Bank Act, in relevant part, provides that national banks shall have the power:

> [t]o exercise . . . all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes. . . .

---

[3] *See,* e.g., Interpretive Letter No. 943, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–468 (July 24, 2002); Interpretive Letter No. 890, *reprinted in* [2000–2001 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–409 (May 15, 2000); Interpretive Letter No. 854, *reprinted in* [1998–1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–311 (February 25, 1999); Interpretive Letter No. 692, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (November 1, 1995).

The Supreme Court has held that this powers clause of 12 USC 24(Seventh) is a broad grant of authority to engage in the business of banking, which is not limited to the five enumerated powers. Further, national banks are authorized to engage in an activity if it is incidental to the performance of the enumerated powers in the statute or if it is incidental to the performance of an activity that is part of the business of banking.[4]

All of the bank's proposed activities are permissible for a national bank. Two of the activities—taking deposits and making loans—are among the enumerated powers specifically authorized under 12 USC 24(Seventh).[5] The buying and selling of loan participations is also permissible.[6] Providing correspondent services to other depository institutions is authorized under the OCC Interpretive Ruling 7.5007, 12 CFR 7.5007.[7] The first standard is satisfied.

> 2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

As a matter of corporate law, a minority shareholder in a corporation does not possess a veto power over corporate activities. Therefore, [NB] will lack the ability to restrict the bank's activities to those that are permissible for a national bank. However, the OCC has accepted as satisfaction of this criterion a national bank's ability to divest itself of its investment in any enterprise that engages in an activity that is not permissible for a national bank. *See,* e.g., Interpretive Letter No. 890, *supra,* n. 3. You have represented that nothing in the bank's articles of incorporation or bylaws prohibit or restrict the ability of a shareholder to sell its shares in the bank. Except for short-term limitations prescribed in the securities laws, any national bank that invests in the bank is free to sell its shares if the bank engages in any activity that is not permissible for a national bank. The second standard is satisfied.

---

[4] *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.,* 513 U.S. 215 (1995).

[5] As noted above, the bank will engage in such transactions only with other depository institutions and not with the general public. Its proposed activities are therefore narrower than is permitted under 12 USC 24(Seventh).

[6] *See,* e.g., Interpretive Letter No. 755, *reprinted in* [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-119 (October 3, 1996) ("[N]ational banks long have been able to purchase mortgage-backed securities and engage in loan participations. *See* 12 USC 24(Seventh).")

[7] "It is part of the business of banking for a national bank to offer as a correspondent service to any of its affiliates or to other financial institutions any service it may perform for itself." 12 CFR 7.5007.

3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.

(a) Loss exposure from a legal standpoint.

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability. This is not normally a concern when a national bank invests in a corporation, for it is generally accepted that a corporation is an entity distinct from its shareholders, with its own separate rights and liabilities, provided proper corporate separateness is maintained.[8] That is the case here. The bank will be a *[State]* corporation and the corporate veil will protect [NB] from liability or loss associated with its investment.[9]

(b) Loss exposure from an accounting standpoint.

In assessing a national bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's minority investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. *See,* e.g., Interpretive Letter No. 943, *supra,* n. 3. You have represented that [NB] will account for its ownership interest in the bank according to the cost method of accounting, which will satisfy the OCC's requirements in this regard.

Therefore, for both legal and accounting purposes, the [NB]'s potential loss exposure arising from its investment in the bank should be limited to the amount of its investment. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

A national bank's investment in an enterprise or entity must also satisfy the requirement that the investment have a beneficial connection to the bank's business, *i.e.,* be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. Twelve USC 24(Seventh) gives national banks incidental powers that are "necessary" to carry on the business of banking. "Necessary" has been judicially construed to mean "convenient or useful."[10] OCC precedents on non-controlling investments by national banks

[8] W. Fletcher, *Cyclopedia of the Law of Private Corporations,* vol. 1, § 25 (rev. perm. ed. 1990).

[9] *See,* e.g., *Starfish Condominium Association* v. *Yorkridge Service Corporation, Inc.,* 295 Md. 693, 458 A. 2d 805 (1983).

[10] *Arnold Tours* v. *Camp*, 472 F.2d 427, 432 (1st Circuit, 1972)

have indicated that the investment must be convenient or useful to the bank in conducting *that bank's* business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.[11]

In this instance, [NB]'s ownership interest in the bank will be neither passive nor speculative, and this ownership interest will be convenient and useful for [NB]. The bank will provide deposit and loan services to [NB]. In addition, the bank will provide [NB] with an outlet for the buying and selling of loan participations and will also provide it with bank-related correspondent services permitted under 12 CFR 7.5007, *supra,* n. 7. Accordingly, the fourth standard is satisfied.

Conclusion

Based upon the information and representations you provided, and for the reasons discussed above, it is my opinion that [NB] may make a non-controlling equity investment in the bank, subject to the following conditions:

1) The bank will engage only in activities that are permissible for a national bank;

2) [NB] will divest its interest in the bank in the event that the bank engages in any activity that is inconsistent with condition 1;

3) [NB] will account for its investment in the bank under the equity or cost method of accounting; and

4) The bank will be subject to OCC supervision and examination, pursuant to 12 USC 1867(c).

These conditions are conditions imposed in writing by the OCC in connection with this opinion letter stating that [NB]'s investment in the bank is permissible under 12 USC 24(Seventh). As such, these conditions may be enforced in proceedings under applicable law.

If you have any questions, please contact Sue Auerbach, counsel, Bank Activities and Structure Division, at (202) 874–4662.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[11] *See,* e.g., Interpretive Letter No. 943, *supra,* n. 3; Interpretive Letter No. 875, *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–369 (October 31, 1999); Interpretive Letter No. 890, *supra,* n. 3; Interpretive Letter No. 543, *reprinted in* [1990–1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,255 (February 13, 1991).

971—January 16, 2003

12 USC 24(7)

Reginald S. Evans, Esq.
Chief Counsel
Pennsylvania Department of Banking
333 Market Street, 16th Floor
Harrisburg, PA 17101–2290

Subject: [Operating subsidiary (op. sub.)]

Dear Mr. Evans:

This letter responds to your letter dated September 17, 2002, in which you ask a number of questions concerning the manner in which the Office of the Comptroller of the Currency (OCC) supervises operating subsidiaries of national banks. Many of these questions relate specifically to the OCC's supervision of [op. sub.], an operating subsidiary of [national bank (NB)], [city, state] (the bank). [Op. sub.] is incorporated in [state 2].

The tenor of your questions suggests that Pennsylvania has the authority to supervise the activities of [op. sub.] and, by implication, other operating subsidiaries of national banks. However, federal law and OCC regulations vest the OCC with exclusive "visitorial" powers over national banks and their operating subsidiaries.[1] Those powers include examining national banks, inspecting their books and records, regulating and supervising their activities pursuant to federal banking law, and enforcing compliance with federal or any applicable state law concerning those activities.[2] Federal law thus limits the extent to which any other governmental entity may exercise visitorial powers over national banks and their operating subsidiaries. Our response to your letter is provided to further the state's understanding of the OCC's supervision of national bank subsidiaries, but does not alter the jurisdiction established by federal law.

The OCC has urged state officials to contact the OCC if they have any information regarding allegations of violation of particular state laws by national banks or their subsidiaries.[3] In addition, any consumer complaints concerning any part of the operations of any national bank or operating subsidiary, including the bank and [op. sub.], are referred to the OCC Customer Assistance Group (CAG), which is located in Houston, Texas. The CAG investigates the complaint, with the assistance of other OCC units when appropriate,[4] and recommends appropriate action.

[1] 12 USC 484(a); 12 CFR 7.4006.

[2] Advisory Letter No. 2002–9 (Nov. 25, 2002); 12 CFR 7.4000(a)(2).

[3] Advisory Letter No. 2002–9 at 4.

[4] For example, attorneys in the OCC's law department may provide legal advice if the matter involves questions of law.

The Nature and Scope of OCC Examinations

Many of your questions relate to the OCC's examination policies and procedures. For example, you ask questions concerning the scope of OCC examinations and the laws with which national banks and their operating subsidiaries must comply. The OCC conducts comprehensive examinations of a national bank's business, including its compliance with principles of safe and sound banking and its compliance with applicable laws. In addition, the OCC conducts targeted examinations that may cover one or more elements of a comprehensive examination, such as compliance with specific laws. The OCC has issued substantial guidance, which should provide more detailed answers to your questions. Copies of those materials are enclosed [a list of enclosures provided with original is supplied at the end of this letter].

National banks have express authority to create operating subsidiaries, which may engage in any activity permissible to the parent bank itself.[5] Generally, an operating subsidiary is a corporation or similar entity, in which a national bank owns more than 50 percent of the voting interest, or otherwise maintains a controlling interest.[6] Because the activities of an operating subsidiary are limited to activities in which the parent bank could engage directly, an operating subsidiary is in practice a separately incorporated division or department of the parent bank. Thus, the OCC's standards in examining [op. sub.] are the same standards that apply to OCC examinations of the bank. Consistent with the guidance enclosed with this letter, the OCC's examination of [op. sub.] addresses compliance with applicable laws, such as consumer protection laws, as well as compliance with standards of safe and sound banking.

[Op. sub.] engages in subprime mortgage lending. Because of the safety and soundness and compliance risks posed by these lending programs, the OCC has published additional guidance relating to subprime lending activities. The OCC relies on this guidance in examining [op. sub.] and other subprime lenders and, therefore, applies the same standards to [op. sub.] as it would to any national bank or operating subsidiary engaged in subprime lending activities. Copies of this guidance are enclosed for your reference.

In examining the lending function of a national bank or an operating subsidiary, the OCC typically reviews a sample of loans owned by the institution. This sample generally will include larger loans and loans that the institution has previously identified as problem loans. Through this review, the OCC will determine the quality of the loans (*e.g.*, the likelihood of repayment), the adequacy and completeness of the information concerning the loan and the borrower, and whether the lending function is being carried out in compliance with applicable laws. The OCC evaluates the adequacy of all elements of the institution's business, including earnings, assets, management, liquidity, sensitivity to market risk, and information systems, as well as specialty areas such as any trust operations that may exist. The examination process is intended to provide a high level of

[5] *See* generally 12 CFR 5.34.

[6] 12 CFR 5.34(e)(2).

assurance that each aspect of an institution's business is conducted on a safe and sound basis and in compliance with applicable laws.

[Op. sub.] generally does not retain the loans that it originates, but instead sells them in the secondary market shortly after origination. Based on those activities, the OCC reviews [op. sub.'s] lending function to determine compliance with all applicable laws and principles of safety and soundness.

Applicability of State Law

Some of your questions relate to the applicability of state (and federal) law to operating subsidiaries. For example, you ask whether state consumer protection laws apply to national bank operating subsidiaries. The OCC's regulations provide that state law applies to the operating subsidiary of a national bank "to the same extent that those laws apply to the parent national bank."[7] Questions about the applicability of state laws to national banks may be addressed in a variety of ways. In some cases, our regulations contain express provisions that address the applicability of state law to a national bank.[8] From time to time, the OCC also provides legal opinions that respond to specific requests and express our views about the applicability of particular state laws to national banks.[9] Preemption issues also may be resolved through litigation over the applicability of particular state laws to national banks.[10]

For example, courts have repeatedly recognized the essentially federal character of national banks,[11] and the Supreme Court has held that subjecting national banks' federally authorized activities to state regulation and supervision would conflict with their federally derived powers and with the purposes for which the national banking system was established.[12] In one such decision,

---

[7] 12 CFR 7.4006.

[8] *E.g.*, 12 CFR 7.5002(c) (furnishing products and services by electronic means), 34.4 (real estate lending), and 37.1(c) (debt cancellation contracts).

[9] *E.g.*, 66 Fed. Reg. 28,593 (May 23, 2001) (Michigan statute concerning motor vehicle loans); 65 Fed. Reg. 15,037 (March 20, 2000) (Pennsylvania statute concerning auctions and auctioneers).

[10] *The Bank of America* v. *City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002); *Bank One Utah, N.A.* v. *Guttau*, 109 F.3d 844 (8th Cir. 1999).

[11] *See, e.g., Davis* v. *Elmira Savings Bank*, 161 U.S. 275, 283 (1896) ("[n]ational banks are instrumentalities of the Federal government").

[12] *See Easton* v. *Iowa*, 188 U.S. 220, 229, 231–32 (1903), in which the Supreme Court explained:

> [Federal legislation concerning national banks] has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and numerous as the states. . . . [W]e are unable to perceive that Congress intended to leave the field open for the states to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities.

See also Barnett Bank of Marion County, N.A. v. *Nelson*, 517 U.S. 25, 32 (1996) (the powers of national banks are "grants of authority not normally limited by, but rather ordinarily pre-empting contrary state law").

the Court noted that national banks are "instrumentalities" of the federal government and stated that "any attempt by a State to define [the] duties [of a national bank] or control the conduct of [the] affairs [of the national bank] is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation or impairs the efficiency of the bank to discharge the duties for which it was created."[13]

Essential to the character of national banks and the national banking system is the uniform and consistent regulation of national banks by *federal* standards.[14] To that end, Congress vested in the OCC broad authority to regulate the conduct of national banks except when the authority to issue such regulations has been "expressly and exclusively" given to another federal regulatory agency. 12 USC 93a. State law could be applicable to national banks, however, in limited circumstances when it does not conflict or interfere with the national bank's exercise of its powers. Thus, for instance, one federal court recently noted that states retain some power to regulate national banks in areas such as "contracts, debt collection, acquisition and transfer of property, and taxation, zoning, criminal, and tort law."[15]

You also ask whether a litigant in a lawsuit against [op. sub.] could pierce the corporate veil to recover damages from the bank. This question would be more appropriately discussed in the context of litigation between [op. sub.] and a customer or other third party involving a specific factual situation. In general, though, mere ownership of a subsidiary corporation does not result in liability on the part of the parent for acts of its subsidiary.

OCC Supervision of [Op. Sub.]

The OCC examines national banks and their operating subsidiaries on a regular basis. Federal law requires that the OCC examine national banks, such as the bank, at least once every 12 months.[16] However, the OCC may examine an institution more frequently if warranted by the institution's asset size, condition, or other factors. For example, the largest national banks have on-site examination teams conducting continuous examinations. Thus, while it is impossible to predict the

[13] *First Nat'l Bank of San Jose* v. *California*, 262 U.S. 366, 368, 369 (1923). *See also Bank of America*, 309 F.3d at 561 (state attempts "to control the conduct of national banks are void if they conflict with federal law, frustrate the purposes of the National Bank Act, or impair the efficiency of national banks to discharge their duties").

[14] Such standards may be embodied explicitly in OCC regulations, or in other federal law, including various federal consumer protection laws, such as the Truth in Lending Act, the Truth in Savings Act, the Electronic Fund Transfer Act, the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act, and the Federal Trade Commission Act. *See* 15 USC 1601 *et seq.*; 12 USC 4301 *et seq.;* 15 USC 1693 *et seq.*; 12 USC 2601 *et seq.*; 15 USC 1691 *et seq.*; 15 USC 45. However, whether or not the OCC has specifically addressed a national bank activity in a regulation, all national bank operations must be conducted in a safe and sound manner, in accordance with the OCC's supervisory standards.

[15] *Bank of America*, 309 F.3d at 559.

[16] 12 USC 1820(d)(1). If a bank has less than $250,000,000 in assets and is in good condition, the OCC need only examine it at least once every 18 months. 12 USC 1820(d)(4).

exact timing of OCC examinations of [op. sub.] in the future, it appears very likely that the OCC will continue to conduct an examination of [op. sub.] at least every 12 months, consistent with the federal statutory schedule for examining the bank.

The OCC generally prepares letters transmitting the examination findings to [op. sub.] and the bank. Those letters are the equivalent of examination reports and, therefore, are considered confidential. Examination reports, along with other bank examination information, are exempt from disclosure under the Freedom of Information Act.[17] This information is also subject to a limited privilege from discovery in third-party litigation.[18] These protections reflect the sensitive nature of bank examination information and support the longstanding policy of the OCC not to provide examination reports to third parties. Typically, the OCC will make confidential bank examination information available to state bank regulatory agencies if they demonstrate a specific regulatory need for the examination information (*e.g.*, merger of a national bank into a state bank, where the state bank regulator must approve the transaction), and if the state agency has entered into an appropriate information sharing/confidentiality agreement with the OCC governing use of the information.

I hope the foregoing has been of assistance to you in understanding the nature of the OCC's supervision of [op. sub.]. If you have any questions concerning this letter, please contact Frederick Petrick, Counsel, Litigation Division, at (202) 874–5280, or Mary Ann Nash, Counsel, Legislative and Regulatory Activities Division, at (202) 874–5090.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[17] 5 USC 552(b)(8).

[18] *In re Subpoena Duces Tecum Served Upon the Comptroller of the Currency and the Secretary of the Board of Governors of the Federal Reserve System*, 967 F.2d 630 (D.C. Cir. 1992).

Enclosures

[List of enclosures provided with original letter]

BANK SAFETY AND SOUNDNESS SUPERVISION

***Comptroller's Handbook* booklets:**

"Allowance for Loan and Lease Losses" (June 1996)

"Bank Supervision Process" (April 1996)

"Community Bank Supervision" (August 2001)

"Community Reinvestment Act Examination Procedures" (May 1999)

"Examination Planning and Control" (July 1997)

"Insider Activities" (March 1995)

"Interest Rate Risk" (June 1997)

"Internal and External Audits" (July 2000)

"Internal Control" (January 2001)

"Introduction" (July 1994)

"Liquidity" (February 2001)

"Litigation and Other Legal Matters" (February 2000)

"Loan Portfolio Management" (April 1998)

"Management Information Systems" (May 1995)

"Mortgage Banking" (March 1996)

"Rating Credit Risk" (April 2001)

"Sampling Methodologies" (August 1998)

"FFIEC Information Systems Handbook" (January 1996)

OCC Advisory Letters:

OCC Advisory Letter 1997–8, "Allowance for Loan and Lease Losses"

OCC Advisory Letter 2000–9, "Third-Party Risk"

OCC Advisory Letter 2000–12, "Risk Management of Outsourcing Technology Services" (letter and FFIEC policy statement)

OCC Bulletins:

OCC Bulletin 1997–24, "Credit Scoring Models, Examination Guidance" (bulletin and examination guidance)

OCC Bulletin 1999–38, "Interagency Guidelines for Real Estate Lending Policies" (bulletin and interagency guidance)

OCC Bulletin 2000–20, "Uniform Retail Credit Classification and Account Management Policy" (bulletin and *Federal Register* notice)

OCC Bulletin 2001–47, "Third-Party Relationships—Risk Management Principles"

COMPLIANCE REGULATION AND EXAMINATION

"An Examiner's Guide to Consumer Compliance" [January 1993, out of print]

***Comptroller's Handbook* booklets:**

"Bank Secrecy Act/Anti-Money Laundering" (September 2000)

"Compliance Management System" (August 1996)

"Conflicts of Interest" (June 2000)

"Fair Credit Reporting" (October 1996)

"Fair Lending" (December 2000)

"Flood Disaster Protection" (May 1999)

"Home Mortgage Disclosure" (August 1996)

"Other Consumer Protection Laws and Regulations" (October 1996)

"Real Estate Settlement Procedures" (August 1996)

"Truth in Lending" (December 1996)

ADDITIONAL SUBPRIME LENDING GUIDANCE

OCC Bulletin 1999–10, "Subprime Lending Activities" (bulletin and interagency guidance).

OCC Bulletin 1999–15, "Subprime Lending—Risks and Rewards" (bulletin and subprime examination procedures)

OCC Bulletin 2001–6, "Subprime Lending—Expanded Guidance for Subprime Lending Programs" (bulletin and interagency guidance)

ADDITIONAL CONSUMER PROTECTION GUIDANCE

OCC Advisory Letter 1995–8, "Fair Lending (Credit Scoring—Age Implications)" [was incorporated into *Comptroller's Handbook* booklet, "Fair Lending," dated December 2000, also provided]

OCC Advisory Letter 2000–7, "Abusive Lending Practices"

"Assistance for Customers of National Banks" [brochure, no date]

OCC Bulletin 2000–3, "Consumer Credit Reporting Practices—Federal Financial Institutions Examinations Council Advisory Letter" (bulletin and FFIEC advisory letter)

972–August 12, 2003

12 CFR 4.31

Thomas R. Dyer, Esq.
Wyatt Tarrant & Combs, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee 38120–4367

Subject: *Union Planters Bank, N.A.* v. *Continental Casualty, No. 02–2332–GV (W.D. Tenn.)*

Dear Mr. Dyer:

This acknowledges your telephone calls and your August 8 letter informing us, as required by Office of the Comptroller of the Currency ("OCC") regulations, 12 CFR 4.37(b)(3), that defendants in the above referenced litigation have filed a Motion to use certain confidential and privileged OCC documents stemming from an OCC examination of Union Planters Bank, N.A., Memphis, Tennessee. Your letter indicates that Union Planters inadvertently produced these documents to defendants, and the bank has requested their return. The documents contain the subjective analysis and recommendations of OCC examiners.

For the reasons below, the OCC, as the bank's federal regulator, is concerned about the defendants' Motion and the bank's inadvertent production, and we ask you to convey our concerns to the court.

First, examination reports prepared by OCC examiners on national banks are confidential in that they are expressly exempt from the mandatory disclosure provisions of the Freedom of Information Act by virtue of 5 USC 552(b)(8). These reports are also privileged under the bank examination privilege. As explained in detail in *In Re Subpoena Served Upon the Comptroller of the Currency,* 967 F.2d 630 (D.C. Circuit, 1992), the success of the OCC's regulation of banks is highly dependent on a candid flow of information between the bank and the OCC, and "These conditions simply could not be met as well if communications between the bank and its regulators were not privileged." 967 F.2d at 633–634. *See also In re Bankers Trust Co.,* 61 F.3d 465, 471 (6th Circuit, 1995) ("Thus, the privilege is designed to promote the effective functioning of an agency by allowing the agency and the regulated banks the opportunity to be forthright in all communications"). The bank examination privilege belongs to the OCC, *First Eastern Corp.* v. *Mainwaring,* 21 F.3d 465, 468 (D.C. Circuit, 1994), and the OCC has not waived the privilege in the above referenced litigation.

Second, although the bank is in lawful possession of the OCC examination report and other supervisory communications, the bank is barred by federal law from producing these documents without the OCC's approval. 12 CFR 4.37(b)(1). Bank supervisory materials are "non-public OCC information" and "the property of the Comptroller," and are "loaned to the bank . . . for its confidential use only." 12 CFR 4.32(b)(2). The OCC has not given Union Planters Bank permission to produce this material to others, and the OCC has not authorized any party to this litigation to use these confidential documents.

Third, the defendants have not exhausted their administrative remedies with the OCC. For private litigants like defendants here, the OCC and the other federal bank regulatory agencies (Federal Reserve Board, Federal Deposit Insurance Corporation ("FDIC") and Office of Thrift Supervision ("OTS")) have promulgated regulations allowing a party to apply to the agency for access to non-public information. *See* 12 CFR 4.31 et seq. Here, the proper course of action is for defendants to exhaust their administrative remedies by seeking the OCC's approval under 12 CFR 4.31 to use the documents. To do this, defendants should write the OCC's director of Litigation at the address in 12 CFR 4.34(a) and make the showings required by 12 CFR 4.33 (especially, showings as to relevance, availability of alternative evidence, and need). The OCC will then render a final agency decision that a federal court may review if called upon to do so. Indeed, this procedure is codified in OCC regulations:

> Without OCC approval, no person, national bank or other entity, including one in lawful possession of non-public OCC information under paragraph (b)(2) of this section, may disclose information covered by this subpart in any manner, except: (A) After the requester has sought the information from the OCC pursuant to the procedures set forth in this subpart; and (B) As ordered by a federal court in a judicial proceeding in which the OCC has had the opportunity to appear and oppose discovery.

12 CFR 4.37(b)(1). Since this procedure is available, the federal courts have required private litigants to use it in order to exhaust their administrative remedies.[1]

---

[1] *Raffa* v. *Wachovia Corp*., 242 F.Supp.2d 1223 (U.S. District Court for the Middle District of Florida, 2002) (directing plaintiff shareholders to use OCC's administrative procedures for access to non-public OCC information); *American Save. Bank* v. *PaineWebber*, 210 F.R.D. 721, 722 (U.S. District Court for the District of Hawaii, 2001) (stating with reference to OTS regulations that "Courts, in construing regulations which control the release of official information, have held that such information should not be compelled to be produced in violation of these regulations"); *In Re First Chicago Shareholder Securities Litigation*, Civ. No. 00–C 67 (U.S. District Court for the Northern District of Illinois, November 20, 2001) (denying motion to compel bank to produce OCC examination reports while the OCC considers an administrative request); *U.S.* v. *Amico*, 2003 WL 1145426 (U.S. District Court for the Western District of New York, January 3, 2003) (quashing subpoena for OCC documents and directing defendant to exhaust administrative remedies); *Nat'l Union Fire Ins. Co.* v. *Midland Bancorp, Inc*., 159 F.R.D. 562, 571–72 (U.S. District Court for the District of Kansas, 1994) ("When federal agencies promulgate official regulations, setting forth procedures to obtain information otherwise exempt from disclosure, the party seeking it may obtain it, if at all, only after following those procedures"); *Golden Pacific Bancorp* v. *FDIC,* 1999 U.S. District Court, LEXIS 20303, 1999 WL 1332312 (District of New Jersey, November 10, 1999) (quashing subpoena for OCC employee's testimony for failure to exhaust administrative remedies); *Frick* v. *Austin Bank, N.A*., 1999 U.S. District Court LEXIS 11493 (Eastern District of Texas, June 25, 1999) (directing party to use the OCC's administrative process); *In re Adelbert A. Thompson*, No. 98–11253 (Bankr. D. Vt. Apr. 26, 1999) (denying motion for Rule 2004 examination and directing debtor to submit administrative request for examination report to the OCC).

Two decisions in the case of *Raffa* v. *Wachovia Corp., supra,* which involved a national bank's attempt to retrieve an inadvertently produced OCC examination report, support this result. In the first decision, the court ordered the party in possession of the OCC information to submit an administrative request to the OCC to use the information. 242 F. Supp. 2d 1223, 1225 (U.S. District Court for the Middle District of Florida, 2002). The party did so, the OCC denied the request in a final agency decision, the party sought review in the same court, and the court upheld the OCC's decision. *Raffa* v. *Wachovia Corp.,* 2003 WL 21517778 (U.S. District Court for the Middle District of Florida, May 15, 2003). This is the process envisioned in 12 CFR 4.37(b)(1) and endorsed by the federal courts, and defendants should follow it here.

I appreciate your conveying our concerns to the court. If the court schedules oral argument on the defendants' Motion, please inform me or Ford Barrett, assistant director of our Litigation Division, at (202) 874–5280, so that the OCC may be represented.

Raymond Natter
Deputy Chief Counsel

cc: Joe Dycus, Esq.
Assistant U. S. Attorney

973–August 12, 2003

12 USC 92a
12 CFR 9

John D. Lowery
Riddell Williams P.S.
1001 Fourth Avenue Plaza
Suite 4500
Seattle, Washington 98154–1065

Subject: Fiduciary Powers of U.S. Trust Company, N.A.

Dear Mr. Lowery:

By letter dated July 16, 2003, you have requested, on behalf of U.S. Trust Company, N.A. (the bank), a letter from the Office of the Comptroller of the Currency (OCC) confirming the authority of the bank to serve, in California, as indenture trustee for municipal bonds issued in the state of Washington. This letter replies to the three specific questions you have posed and confirms that the bank has that authority.

Background

The bank is a national bank that has been authorized by the OCC to exercise trust powers. You have informed us that the bank served as indenture trustee for bonds issued in October of 2000 by the Holmes Harbor Sewer District, a municipal water and sewer district organized and existing under the laws of the state of Washington ("HHSD"). Sometime in late 1999 or early 2000, HHSD decided to issue municipal bonds to finance the acquisition of land and construction of utility infrastructure in a utility local improvement district ("ULID") formed by HHSD and located in Everett, Washington, outside HHSD's geographic boundaries.

In connection with the issuance of the bonds, HHSD retained two law firms, one located in California and one in Washington, to act as bond counsel; both bond counsel also acted as special disclosure counsel to HHSD. HHSD also contracted with an underwriter, IBIS Securities (IBIS), for a negotiated underwriting; IBIS retained its own underwriter's counsel. These parties also drafted all disclosure documents for investors.

In mid September 2000 (approximately one month before the HHSD bonds were issued), U.S. Trust was approached by IBIS in California and asked to serve as indenture trustee for the HHSD bonds. U.S. Trust was provided with the opinion letters of two bond counsel stating that the ULID was validly formed, that the bonds were revenue bonds (it is undisputed that the issuer had authority under Washington law to appoint a private trustee if the bonds were revenue bonds), that HHSD had authority to issue the bonds, and that HHSD had authority to execute the indenture. U.S. Trust received these opinions prior to executing the indenture and relied on them in executing the indenture, as is the custom and practice of the industry. HHSD made similar representations in the Certificate of the Issuer executed at closing.

On October 26, 2000 (the date the bonds closed), the bank executed an indenture with HHSD (a customer located in the state of Washington). The indenture authorized the bank to conclusively rely on any certificate, opinion (including bond counsel opinions) or other document believed by it to be genuine and to have been signed or presented by the proper party, and provided that the bank undertook no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the bonds. The indenture also provided that all representations in the indenture were the statements of HHSD.

At all times prior to the bond issuance and while the bank was servicing the HHSD trust account, the bank's trust office was located in San Francisco. The bank did not at that time (and does not currently) maintain a trust office in Washington. The bank responded from its office in San Francisco to a request that the bank serve the customer located in Washington.

The bank asks the OCC to answer three specific questions, which are set forth, together with their answers, in the remainder of this letter.

Analysis

1. Are the bank's fiduciary trust powers and authority to act as trustee governed by federal law or by state law?

The bank's fiduciary powers are governed by federal law and derive from 12 USC 92a and Part 9 of the OCC's regulations. The statutory authority for national banks to exercise fiduciary powers is contained in 12 USC 92a. Section 92a permits national banks to exercise fiduciary powers with OCC approval,[1] and directs that the fiduciary powers available to a national bank are determined by reference to state law. Section 92a(a) provides:

> The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

[1] *See* 12 CFR 5.26, as amended by 66 *Federal Register* 34792, 34797 (July 2, 2001) (licensing requirements for fiduciary powers).

> The grant of statutory authority in section 92a does not limit where a national bank may act in a fiduciary capacity. Accordingly, our regulations expressly provide that a national bank may act in a fiduciary capacity in any state.[2]

In addition, section 92a imposes no limitations on where the bank may market its services, where the bank's fiduciary customers may be located, or where property being administered is located. Once the state in which a national bank is acting in a fiduciary capacity is identified, the fiduciary services may be offered regardless of where the fiduciary customers reside or where property that is being administered is located. Our regulation codifies this conclusion, stating that while acting in a fiduciary capacity in one state, a national bank may market its fiduciary services to customers in other states.[3] In addition, a national bank may act as fiduciary for relationships that include property located in other states.[4]

2. Would California law or Washington law be the applicable state law incorporated into federal law for purposes of determining the fiduciary capacity in which the bank may act under 12 USC 92a for customers located in the state of Washington?

As we have described, a national bank looks to state law to determine which fiduciary capacities are permissible. For this purpose, the relevant law is the law of the state in which the national bank acts, or proposes to act, in a fiduciary capacity.[5]

Part 9 of the OCC's regulations also clarifies that the state in which a bank acts in a fiduciary capacity for any given fiduciary relationship is the state in which the bank performs the core fiduciary activities of accepting fiduciary appointments, executing documents that create the fiduciary relationship, or making decisions regarding the investment or distribution of fiduciary assets.[6] For each fiduciary relationship, a national bank will refer to only one state's laws for purposes of defining the extent of its fiduciary powers pursuant to section 92a.

With respect to its fiduciary relationship with HHSD, the bank acted in a fiduciary capacity in the state of California, since the core fiduciary activities of accepting the fiduciary appointment, ex-

---

[2] 12 CFR 9.7(a). *Id*. For a discussion of the analysis on which section 9.7 is based, see 66 *Federal Register* 34792, 34794–96 (July 2, 2001) (preamble to final rule adopting section 9.7). *See also* OCC Interpretive Letter No. 695 (December 8, 1995) ("IL 695") (analyzing national banks' authority to engage in fiduciary activities in multiple states); OCC Interpretive Letter No. 872 (October 28, 1999) ("IL 872") (concluding that a national bank in Ohio may solicit and conduct a trust business in California and that state laws that purport to prohibit the bank from engaging in these activities were preempted).

[3] *Id.* at section 9.7(b).

[4] *Id.*

[5] *Id*. at section 9.7(d).

[6] *Id*. If, with respect to a particular fiduciary relationship, these core fiduciary activities take place in more than one state, then the state in which the bank acts in a fiduciary capacity will be the state that the bank designates from among those states.

ecuting the documents that created the fiduciary relationship, and making the decisions regarding the investment or distribution of fiduciary assets were all performed there. Based on the foregoing analysis, whenever the bank acts in a fiduciary capacity in California, the bank would look to the laws of that state to determine which fiduciary capacities it may engage in, and may then engage in any of these capacities for customers in other states. The fiduciary capacities permitted under the laws of other states where the bank's customers are located, including Washington state law in this instance, do not affect the fiduciary capacities in which the bank may act when it is acting in a fiduciary capacity in California.

3. Given that a state can regulate its own municipal instrumentalities and political subdivisions, did the bank nonetheless have full fiduciary trust powers and authority to act as trustee for customers located in any state (including, without limitation, Washington) if the bank was authorized by federal law to engage in fiduciary trust activities and assuming that the bank complied with the applicable state law of California as incorporated into federal law granting the bank such fiduciary trust powers and authority?

If the bank may act as an indenture trustee under section 92a, the bank is authorized to act as an indenture trustee on a multistate basis. As expressly provided in our regulation, the laws of any state other than California—including Washington—that purport to limit or establish preconditions on the exercise of that fiduciary power are not applicable to the bank.[7] A state's authority to regulate the instrumentalities of its own government (for example, by state laws restricting the types of trustees, or other fiduciaries, those state government instrumentalities may appoint), is a separate matter, wholly independent of, and not affecting, the fiduciary authorities granted to national banks as a matter of federal law. Thus, the federal authority of a national bank to act as a trustee (or to act in any other permissible fiduciary capacities) is not affected by such statutes.

We note that certain other provisions in section 92a expressly require the application of state law in certain areas affecting a national bank's exercise of fiduciary powers.[8] For instance, a state's laws governing certain operational requirements are made applicable to national banks by sections 92a(f), (g), and (i). Section 92a(c) grants state banking authorities limited access to OCC examination reports relating to national bank trust departments. However, as provided in our

[7] *Id.* at section 9.7(e). *See also* IL 872.

[8] It should be noted that some national banking laws, including section 92a, incorporate elements of state law and make them part of the federal law applicable to national banks. However, the determination of what elements of state law are incorporated is a question of federal law. Once it is determined, other parts of state law—even on the same subject matter—are not incorporated and so are subject to the usual national bank preemption analysis. *Cf. Independent Bankers Ass'n of America* v. *Clarke,* 917 F.2d 1126 (8th Circuit 1990); *Department of Banking & Consumer Finance* v. *Clarke*, 809 F.2d 266 (5th Circuit), *cert. denied*, 483 U.S. 1010 (1987). In these decisions, state laws that applied the state's commercial bank branching laws to national banks were found to conflict with the federal branching authority of the McFadden Act, even though the McFadden Act refers to state law. Similarly, section 92a refers to state law but does not include *all* state law governing fiduciary activities.

regulations,[9] in each case where section 92a applies state law to national banks, it is the law of the state where the national bank is acting in a fiduciary capacity—here, California law.

I trust that the foregoing is responsive to the questions you have asked. Please feel free to contact Andra Shuster, counsel, at (202) 874–4694 should you have further questions.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[9] 12 CFR 9.7(e)(1).

974–July 21, 2003

12 USC 85

Dear [ ]:

This is in response to your inquiry of June 10, 2003 on behalf of [ ] (the bank) and its operating subsidiaries, [OpSub1] and [OpSub2] ("the operating subsidiaries"). In that letter, you request confirmation that the operating subsidiaries may originate mortgage loans and charge and export interest, including fees that constitute interest as defined in 12 CFR 7.4001, as authorized by 12 USC 85 and applicable Indiana law to borrowers residing in all states and without regard to the site of the real property securing the loan. For the reasons described below, the operating subsidiaries may impose and export Indiana interest charges under the same terms and conditions applicable to the bank.

The bank has its main office in [State] and no branches in any other state. The operating subsidiaries are wholly owned by the bank. The operating subsidiaries originate first and subordinate secured mortgage loans in their own names on a nationwide basis secured by real property consisting of one- to four-family residential dwellings. You note that the operating subsidiaries are subject to examination and supervision by the OCC and operate in compliance with requirements and limitations imposed by section 85 and OCC regulations and interpretations regarding section 85. The bank seeks confirmation that it may establish, through the operating subsidiaries, nationwide lending programs with pricing policies consistent with the laws of the parent bank's home state, Indiana.

The operating subsidiaries are authorized operating subsidiaries of the bank, approved by the OCC under 12 CFR 5.34. As such their activities are subject to the same terms and conditions that apply to the bank. As stated in the relevant OCC regulations—

> *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank.[1]

Elsewhere, our regulations specify that "[s]tate laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank."[2] Legislation also recognizes the permissibility of national banks engaging in activities through operating subsidiaries. In the Gramm–Leach–Bliley Act, Congress expressly acknowledged that national banks may own subsidiaries that engage "solely in activities that national banks are permitted to engage in

[1] 12 CFR 5.34(e)(3).

[2] 12 CFR 7.4006.

directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks."[3] Operating subsidiaries are often described as equivalent to a department or division of their parent bank, and our regulations ensure that operating subsidiaries will be subject to the same federal laws and standards that govern their parent bank, including any state laws and standards that are made applicable to the parent bank by federal law.[4]

One such law is section 85 governing the rate of interest a national bank may charge. Under section 85, the rate of interest a national bank is authorized to charge is based on the laws of the state in which the bank is located.[5] OCC regulations provide that:

> A national bank located in a state may charge interest at the maximum rate permitted to any state-chartered or licensed lending institution by the law of that state.[6]

This "most favored lender" lender status permits a national bank to contract with borrowers in any state for interest at the maximum rate permitted by the law of the state in which the national bank is located. Generally, that is the state in which the main office of the national bank is located, and the bank may impose rates of interest without regard to the law of the state where the borrower resides.[7]

Accordingly, pursuant to 12 CFR 5.34(e)(3) and 7.4006, the amount of interest the operating subsidiaries may charge is governed by section 85 to the same extent as section 85 is applicable to its

---

[3] Pub. L. No. 106–102, 121, 113 Stat. at 1378, *codified at* 12 USC 24a(g)(3).

[4] Letter from Charles F. Byrd, assistant director, Legal Advisory Services Division to (October 30, 1977), *reprinted in* [1978–1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,051 (national bank operating subsidiaries are in effect incorporated departments of the bank). *See also Wells Fargo* v. *Boutris,* No. Civ. S–03–0157, 2003 U.S. District Court WL 21277203 at *6 (Eastern District of California, May 9, 2003); (operating subsidiary is "treated as department or division of its parent bank for regulatory purposes"); *National City Bank of Indiana* v. *Burris,* No. Civ. S–03–0655 (Eastern District of California, July 2, 2003) (same).

[5] 12 USC 85.

[6] 12 CFR 7.4001(b).

[7] *Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp,* 439 U.S. 299 (1978). Under certain circumstances, national banks with branches in more than one state may be required to impose interest rates permitted by the law of a state in which they have a branch. That would happen in circumstances where three functions—loan approval, communication of loan approval, and disbursal of loan proceeds—all occur in a branch or branches in the same branch state. OCC Interpretive Letter No. 822 (Feb. 17, 1998), *reprinted in* [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–265. Absent this set of circumstances, a national bank may impose rates permitted by the state where its main office is located. This issue does not arise with respect to the bank because it has no branches outside of Indiana.

parent bank.[8] Thus, the permissible rates of interest authorized for the operating subsidiaries are based on [State] law, as are the bank's.

I hope the foregoing is helpful in your analysis of your client's lending programs. Please do not hesitate to contact my office at (202) 874–5200; MaryAnn Nash, counsel, at (202) 874–5090; Jerome L. Edelstein, senior counsel, at (202) 874–5300; or Coreen Arnold, district counsel, at (312) 360–8805, if you have any questions or if you need any additional information.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

---

[8] *See* OCC Interpretive Letter 954, December 16, 2002, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–479; OCC Interpretive Letter by Julie L. Williams, first senior deputy comptroller and chief counsel, to L. Richard Fischer (February 12, 2003) (both letters determining that an operating subsidiary of national bank could rely on section 85 to the same extent that the parent bank could rely on section 85). This position was first expressed by the OCC in a 1979 letter. *See* OCC Interpretive Letter by John Shockey, chief counsel (May 18, 1979). *See also Moss* v. *Southtrust Mobile Services, Inc*., No. CV–95–P–1647–W, 1995 U.S. District Court LEXIS 21770 (Northern District of Alabama, Sept. 22, 1995) (court concluded, without analysis, that section 85 applied to the subsidiary in question pursuant to 12 CFR 5.34 because it was an operating subsidiary of a national bank).

We also confirm your conclusion that, as to loans secured by first liens on residential property, section 85 provides national banks with an alternative source of interest rate authority from that provided by 12 USC 1735f–7a, which preempts state interest limitations on such loans. Section 1735f–7a, however, does not apply where a state has opted out of this federal preemption and it does not preempt state limits on prepayment fees and late charges. In adopting section 1735f–7a, however, Congress provided that, where that section and section 85 apply to the same loan or mortgage, the loan or mortgage may be made at the highest possible rate. 12 USC 1735f–7a note (Choice of Highest Applicable Interest Rate).

Mergers—July 1 to September 30, 2003

Page

Mergers—July 1 to September 30, 2003

Most transactions in this section do not have accompanying decisions. In those cases, the OCC reviewed the competitive effects of the proposals by using its standard procedures for determining whether the transaction has minimal or no adverse competitive effects. The OCC found the proposals satisfied its criteria for transactions that clearly had no or minimal adverse competitive effects. In addition, the Attorney General either filed no report on the proposed transaction or found that the proposal would not have a significantly adverse effect on competition.

Nonaffiliated mergers (mergers consummated involving two or more nonaffiliated operating banks), from July 1 to September 30, 2003

Title and location (charter number)	Total assets
Mississippi	
Trustmark National Bank, Jackson (010523)	7,145,567,000
and Southern Community Bank, Atlantic, Daytona Beach, Florida	10,759,000
merged on August 22, 2003, under the title of **Trustmark National Bank, Jackson** (010523)	7,156,326,000

Nonaffiliated mergers—thrift (mergers consummated involving affiliated banks), from July 1 to September 30, 2003

Title and location (charter number)	Total assets
California	
Union Bank of California, National Association, San Francisco (021541)	39,603,076,000
and Monterey Bay Bank, Watsonville, California	609,691,000
merged on July 1, 2003, under the title of **Union Bank of California, National Association, San Francisco** (021541)	40,199,981,000
New York	
Community Bank, National Association, Canton (008531)	3,372,677,000
and Ogdensburg Federal Savings And Loan Association, Ogdensburg, New York	28,987,000
merged on September 5, 2003, under the title of **Community Bank, National Association, Canton** (008531)	3,402,555,000

Affiliated mergers (mergers consummated involving affiliated operating banks), from July 1 to September 30, 2003

Title and location (charter number)	Total assets
California	
Pacific Western National Bank, Santa Monica (017423)	1,023,161,000
and Verdugo Banking Company, Glendale, California	179,149,000
merged on August 22, 2003, under the title of **Pacific Western National Bank, Santa Monica** (017423)	1,203,310,000
Nara Bank, National Association, Los Angeles (021669)	1,015,033,000
and Asiana Bank, Sunnyvale, California	43,774,000
merged on August 25, 2003, under the title of **Nara Bank, National Association, Los Angeles** (021669)	1,060,889,000
Connecticut	
U.S. Trust Company, National Association, Greenwich (022413)	1,175,281,000
and U.S. Trust Company of Florida, National Association, Palm Beach, Florida (024414)	229,569,000
merged on August 31, 2003, under the title of **U.S. Trust Company, National Association, Greenwich** (022413)	1,404,850,000
Illinois	
Bank One, National Association, Chicago (000008)	226,331,000,000
and Bank One Gamma Trust Company, National Association, Huntington, West Virginia (024438)	1,000,000
and Bank One Theta Trust Company, National Association, Wheeling, West Virginia (024439)	1,000,000
merged on August 8, 2003, under the title of **Bank One, National Association, Chicago** (000008)	226,331,002,000
Nebraska	
McCook National Bank, McCook (008823)	171,097,000
and Commercial Bank, Stratton, Nebraska	16,491,000
merged on September 8, 2003, under the title of **McCook National Bank, McCook** (008823)	186,053,000
New Jersey	
Valley National Bank, Passaic (015790)	7,956,604,000
and VNB Del, Inc., Wayne, New Jersey	1,000
merged on December 26, 2001, under the title of **Valley National Bank, Passaic** (015790)	7,956,604,000
New York	
Citibank, National Association, New York City (001461)	498,676,000,000
and Citibank (New York State), Pittsford, New York	22,151,000,000
merged on August 30, 2003, under the title of **Citibank, National Association, New York City** (001461)	507,157,000,000
Ohio	
Charter One Bank, National Association, Cleveland (024340)	42,042,160,000
and Advance Bank, Lansing, Illinois	632,181,000
merged on July 11, 2003, under the title of **Charter One Bank, National Association, Cleveland** (024340)	42,702,076,000
Bank One, National Association, Columbus (007621)	56,850,000,000
and Bank One, West Virginia, National Association, Huntington, West Virginia (003106)	2,154,802,000
and Bank One, Wheeling-Steubenville, National Association, Wheeling, West Virginia (013914)	374,002,000
merged on August 8, 2003, under the title of **Bank One, National Association, Columbus** (007621)	59,378,804,000
Pennsylvania	
Mellon Bank, N. A., Pittsburgh (006301)	25,970,208,000
and Mellon Bank (DE) National Association, Greenville, Delaware (017629)	108,626,000
merged on September 15, 2003, under the title of **Mellon Bank, N. A., Pittsburgh** (006301)	26,078,834,000

Affiliated mergers (mergers consummated involving affiliated operating banks), from July 1 to September 30, 2003 (continued)

Title and location (charter number)	Total assets
South Carolina	
South Carolina Bank and Trust, National Association, Orangeburg (013918)	1,001,959,000
and South Carolina Bank and Trust of the Pee Dee, National Association, Florence, South Carolina (023566)	53,028,000
merged on July 11, 2003, under the title of **South Carolina Bank and Trust, National Association, Orangeburg** (013918)	1,054,835,000
South Dakota	
First National Bank, Ft. Pierre (014252)	337,906,000
and Arapahoe Bank and Trust, Englewood, Colorado	164,976,000
merged on September 1, 2003, under the title of **First National Bank, Ft. Pierre** (014252)	502,882,000
Tennessee	
FSGBank, National Association, Chattanooga (024425)	264,381,000
and FSGBank, National Association, Dalton, Georgia (024424)	270,703,000
and FSGBank, National Association, Maynardville, Tennessee (024423)	75,414,000
merged on September 24, 2003, under the title of **FSGBank, National Association, Chattanooga** (024425)	610,498,000
Texas	
Southwest Bank of Texas National Association, Houston (017479)	5,156,400,000
and Maxim Bank, Dickinson, Texas	315,800,000
merged on July 1, 2003, under the title of **Southwest Bank of Texas National Association, Houston** (017479)	5,460,800,000
Inwood National Bank, Dallas (015292)	683,045,000
and Western Bank & Trust, Duncanville, Texas	150,298,000
merged on August 15, 2003, under the title of **Inwood National Bank, Dallas** (015292)	833,811,000

Financial Performance of National Banks

Contents

Assets, liabilities, and capital accounts of national banks
September 30, 2002 and September 30, 2003

(Dollar figures in millions)

	September 30,2002	September 30,2003	Change September 30, 2002—September 30, 2003 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,092	2,031	(61)	(2.92)
Total assets	$3,846,105	$4,202,114	$356,009	9.26
Cash and balances due from depositories	211,297	214,363	3,066	1.45
Noninterest-bearing balances, currency and coin	157,612	149,238	(8,374)	(5.31)
Interest bearing balances	53,684	65,125	11,440	21.31
Securities	641,127	702,581	61,454	9.59
Held-to-maturity securities, amortized cost	25,601	25,681	80	0.31
Available-for-sale securities, fair value	615,526	676,900	61,374	9.97
Federal funds sold and securities purchased	141,574	175,621	34,047	24.05
Net loans and leases	2,344,606	2,515,718	171,112	7.30
Total loans and leases	2,392,265	2,563,094	170,829	7.14
Loans and leases, gross	2,394,893	2,564,963	170,070	7.10
Less: Unearned income	2,628	1,869	(759)	(28.87)
Less: Reserve for losses	47,659	47,377	(282)	(0.59)
Assets held in trading account	161,165	190,976	29,811	18.50
Other real estate owned	1,961	2,106	145	7.39
Intangible assets	86,760	95,478	8,718	10.05
All other assets	257,615	305,272	47,657	18.50
Total liabilities and equity capital	3,846,105	4,202,114	356,009	9.26
Deposits in domestic offices	2,114,020	2,295,687	181,667	8.59
Deposits in foreign offices	376,037	432,828	56,791	15.10
Total deposits	2,490,057	2,728,515	238,458	9.58
Noninterest-bearing deposits	544,673	569,688	25,015	4.59
Interest-bearing deposits	1,945,384	2,158,827	213,443	10.97
Federal funds purchased and securities sold	258,867	281,549	22,682	8.76
Other borrowed money	390,548	439,068	48,520	12.42
Trading liabilities less revaluation losses	26,509	29,839	3,330	12.56
Subordinated notes and debentures	67,581	70,498	2,917	4.32
All other liabilities	245,749	266,638	20,890	8.50
Trading liabilities revaluation losses	84,814	86,353	1,539	1.82
Other	160,935	180,285	19,350	12.02
Total equity capital	366,794	386,006	19,212	5.24
Perpetual preferred stock	2,703	2,650	(54)	(1.98)
Common stock	12,704	12,620	(84)	(0.66)
Surplus	196,756	206,282	9,526	4.84
Retained earnings and other comprehensive income	162,248	165,645	3,397	2.09
Other equity capital components	(36)	(50)	(14)	NM

NM indicates calculated percent change is not meaningful.

Quarterly income and expenses of national banks
Third quarter 2002 and third quarter 2003
(Dollar figures in millions)

	Third quarter 2002	Third quarter 2003	Change Third quarter 2002—third quarter 2003 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,092	2,031	(61)	(2.92)
Net income	$15,415	$16,129	$714	4.63
Net interest income	35,393	35,337	(56)	(0.16)
Total interest income	52,191	47,772	(4,419)	(8.47)
On loans	39,957	37,321	(2,635)	(6.60)
From lease financing receivables	1,762	1,498	(263)	(14.95)
On balances due from depositories	436	297	(139)	(31.90)
On securities	8,079	6,699	(1,380)	(17.08)
From assets held in trading account	949	855	(94)	(9.92)
On federal funds sold and securities repurchased	669	808	139	20.82
Less: Interest expense	16,798	12,435	(4,363)	(25.97)
On deposits	11,258	8,339	(2,919)	(25.93)
Of federal funds purchased and securities sold	1,253	930	(323)	(25.75)
On demand notes and other borrowed money*	3,507	2,431	(1,075)	(30.67)
On subordinated notes and debentures	780	734	(46)	(5.93)
Less: Provision for losses	7,899	5,140	(2,758)	(34.92)
Noninterest income	28,097	30,296	2,198	7.82
From fiduciary activities	2,126	2,187	60	2.84
Service charges on deposits	4,936	5,299	363	7.35
Trading revenue	1,831	1,848	17	0.92
From interest rate exposures	1,083	572	(511)	(47.22)
From foreign exchange exposures	631	1,144	513	81.25
From equity security and index exposures	(9)	111	119	NM
From commodity and other exposures	130	19	(111)	NM
Investment banking brokerage fees	1,044	1,217	173	16.59
Venture capital revenue	(359)	(115)	243	(67.89)
Net servicing fees	1,768	3,419	1,651	93.37
Net securitization income	4,352	4,664	312	7.17
Insurance commissions and fees	523	534	11	2.04
Insurance and reinsurance underwriting income	0	117	117	NM
Income from other insurance activities	0	416	416	NM
Net gains on asset sales	1,937	3,574	1,637	84.47
Sales of loans and leases	1,526	4,012	2,486	162.95
Sales of other real estate owned	(42)	(14)	28	(66.10)
Sales of other assets(excluding securities)	454	(423)	(877)	(193.20)
Other noninterest income	9,938	7,669	(2,269)	(22.83)
Gains/losses on securities	1,201	228	(973)	(81.04)
Less: Noninterest expense	33,728	36,413	2,685	7.96
Salaries and employee benefits	13,946	15,172	1,226	8.79
Of premises and fixed assets	4,056	4,218	162	3.99
Goodwill impairment losses	2	76	75	NM
Amortization expense and impairment losses	1,059	859	(200)	(18.91)
Other noninterest expense	14,666	16,088	1,422	9.70
Less: Taxes on income before extraordinary items	7,611	8,196	585	7.68
Income/loss from extraordinary items, net of income taxes	(38)	19	57	(150.12)
Memoranda:				
Net operating income	14,634	15,959	1,325	9.06
Income before taxes and extraordinary items	23,064	24,306	1,243	5.39
Income net of taxes before extraordinary items	15,453	16,110	658	4.26
Cash dividends declared	9,352	11,997	2,645	28.28
Net charge-offs to loan and lease reserve	7,557	6,171	(1,386)	(18.34)
Charge-offs to loan and lease reserve	8,782	7,584	(1,198)	(13.64)
Less: Recoveries credited to loan and lease reserve	1,225	1,414	188	15.37

* Includes mortgage indebtedness
NM indicates calculated percent change is not meaningful.

Year-to-date income and expenses of national banks
Through September 30, 2002 and through September 30, 2003
(Dollar figures in millions)

	September 30,2002	September 30,2003	Change September 30, 2002—September 30, 2003 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,092	2,031	(61)	(2.92)
Net income	$43,214	$46,722	$3,508	8.12
Net interest income	105,604	106,226	622	0.59
Total interest income	155,770	146,120	(9,650)	(6.20)
On loans	119,528	113,798	(5,730)	(4.79)
From lease financing receivables	5,459	4,721	(738)	(13.53)
On balances due from depositories	1,385	1,152	(233)	(16.81)
On securities	23,606	21,042	(2,564)	(10.86)
From assets held in trading account	2,620	2,481	(139)	(5.32)
On federal funds sold and securities repurchased	2,148	1,996	(153)	(7.12)
Less: Interest expense	50,166	39,894	(10,272)	(20.48)
On deposits	33,671	26,144	(7,527)	(22.35)
Of federal funds purchased and securities sold	3,890	3,128	(762)	(19.58)
On demand notes and other borrowed money*	10,190	8,409	(1,781)	(17.48)
On subordinated notes and debentures	2,416	2,214	(202)	(8.35)
Less: Provision for losses	24,015	17,959	(6,056)	(25.22)
Noninterest income	81,348	85,960	4,612	5.67
From fiduciary activities	6,579	6,518	(62)	(0.93)
Service charges on deposits	14,420	15,368	948	6.57
Trading revenue	5,652	4,793	(859)	(15.19)
From interest rate exposures	2,425	988	(1,438)	(59.28)
From foreign exchange exposures	2,368	3,451	1,083	45.75
From equity security and index exposures	513	436	(77)	(14.98)
From commodity and other exposures	352	(90)	(442)	(125.51)
Investment banking brokerage fees	3,486	3,581	95	2.71
Venture capital revenue	(166)	(58)	108	(64.87)
Net servicing fees	7,307	7,835	528	7.23
Net securitization income	11,530	11,999	469	4.06
Insurance commissions and fees	1,635	1,561	(74)	(4.53)
Insurance and reinsurance underwriting income	0	357	357	NM
Income from other insurance activities	0	1,205	1,205	NM
Net gains on asset sales	3,970	7,263	3,294	82.97
Sales of loans and leases	3,600	7,185	3,585	99.61
Sales of other real estate owned	(27)	(24)	2	(9.14)
Sales of other assets(excluding securities)	397	103	(294)	(74.16)
Other noninterest income	26,934	27,100	166	0.62
Gains/losses on securities	2,091	2,707	615	29.42
Less: Noninterest expense	100,028	106,973	6,945	6.94
Salaries and employee benefits	41,361	45,538	4,177	10.10
Of premises and fixed assets	11,859	12,658	799	6.74
Goodwill impairment losses	7	116	109	1,501.76
Amortization expense and impairment losses	2,969	3,043	74	2.49
Other noninterest expense	43,832	45,618	1,786	4.08
Less: Taxes on income before extraordinary items	21,819	23,248	1,428	6.55
Income/loss from extraordinary items, net of income taxes	34	9	(24)	NM
Memoranda:				
Net operating income	41,771	44,867	3,096	7.41
Income before taxes and extraordinary items	65,000	69,960	4,960	7.63
Income net of taxes before extraordinary items	43,180	46,713	3,532	8.18
Cash dividends declared	30,912	31,765	853	2.76
Net charge-offs to loan and lease reserve	23,694	19,601	(4,093)	(17.27)
Charge-offs to loan and lease reserve	27,509	23,622	(3,887)	(14.13)
Less: Recoveries credited to loan and lease reserve	3,815	4,021	206	5.40

* Includes mortgage indebtedness
NM indicates calculated percent change is not meaningful.

Assets of national banks by asset size
September 30, 2003
(Dollar figures in millions)

		National banks				
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Total assets	$4,202,114	$47,587	$271,784	$373,037	$3,509,705	$7,474,311
Cash and balances due from	214,363	3,106	12,780	21,646	176,831	381,221
Securities	702,581	12,134	68,855	83,996	537,595	1,392,538
Federal funds sold and securities purchased	175,621	2,542	9,786	17,657	145,635	359,686
Net loans and leases	2,515,718	27,592	166,440	223,598	2,098,086	4,274,973
Total loans and leases	2,563,094	28,003	168,947	226,922	2,139,221	4,351,315
Loans and leases, gross	2,564,963	28,034	169,138	227,007	2,140,785	4,354,159
Less: Unearned income	1,869	30	190	84	1,564	2,845
Less: Reserve for losses	47,377	411	2,507	3,324	41,134	76,341
Assets held in trading account	190,976	0	51	247	190,678	412,128
Other real estate owned	2,106	82	301	234	1,489	4,376
Intangible assets	95,478	144	1,934	7,646	85,753	141,383
All other assets	305,272	1,987	11,635	18,012	273,638	508,005
Gross loans and leases by type:						
Loans secured by real estate	1,267,315	16,969	114,026	133,390	1,002,929	2,272,876
1-4 family residential mortgages	642,106	6,947	38,918	57,723	538,518	1,041,542
Home equity lines	174,997	499	6,347	9,423	158,728	260,785
Multifamily residential mortgages	35,919	427	4,463	4,706	26,323	78,586
Commercial RE loans	265,560	5,284	45,460	43,342	171,474	588,550
Construction RE loans	102,385	1,742	13,568	16,006	71,070	224,610
Farmland loans	13,534	2,069	5,268	1,727	4,469	40,250
RE loans from foreign offices	32,813	0	3	463	32,348	38,553
Commercial and industrial loans	506,713	4,499	27,371	41,804	433,038	878,743
Loans to individuals	461,823	3,315	17,777	32,954	407,776	699,648
Credit cards*	187,602	129	2,911	6,823	177,739	247,544
Other revolving credit plans	32,629	46	366	1,055	31,162	37,252
Installment loans	241,592	3,140	14,500	25,076	198,876	414,853
All other loans and leases	329,113	3,250	9,964	18,858	297,041	502,892
Securities by type:						
U.S. Treasury securities	25,365	565	2,241	2,760	19,800	69,515
Mortgage-backed securities	415,652	3,021	24,962	45,847	341,822	744,761
Pass-through securities	303,840	2,368	17,439	28,761	255,272	493,361
Collateralized mortgage obligations	111,812	653	7,523	17,086	86,549	251,401
Other securities	209,480	8,536	41,397	34,716	124,831	482,940
Other U.S. government securities	79,102	5,834	24,464	17,102	31,701	252,277
State and local government securities	50,712	2,088	12,786	7,874	27,963	109,939
Other debt securities	72,872	370	3,146	8,822	60,534	105,016
Equity securities	6,795	243	1,002	917	4,632	15,707
Memoranda:						
Agricultural production loans	18,608	2,735	5,524	2,470	7,879	46,196
Pledged securities	335,800	4,227	31,425	39,309	260,839	698,738
Book value of securities	694,511	12,029	68,202	82,619	531,661	1,378,573
Available-for-sale securities	668,830	10,160	59,169	73,377	526,124	1,276,977
Held-to-maturity securities	25,681	1,870	9,033	9,242	5,536	101,597
Market value of securities	703,127	12,169	69,045	84,131	537,783	1,394,237
Available-for-sale securities	676,900	10,265	59,822	74,754	532,059	1,290,941
Held-to-maturity securities	26,227	1,904	9,222	9,377	5,724	103,296

*Prior to March 2001, also included "Other revolving credit plans."

Past-due and nonaccrual loans and leases of national banks by asset size
September 30, 2003
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Loans and leases past due 30-89 days	$24,295	$404	$1,608	$1,970	$20,313	$41,283
Loans secured by real estate	10,742	204	888	975	8,675	19,264
1- to 4-family residential mortgages	7,174	108	445	604	6,016	11,737
Home equity lines	828	3	28	35	762	1,219
Multifamily residential mortgages	171	3	28	34	106	334
Commercial RE loans	1,268	51	246	193	778	3,389
Construction RE loans	771	21	104	98	548	1,703
Farmland loans	101	18	38	10	35	287
RE loans from foreign offices	429	0	0	0	429	595
Commercial and industrial loans	3,389	65	316	419	2,590	6,585
Loans to individuals	8,678	77	347	502	7,752	13,136
Credit cards	4,126	3	104	137	3,882	5,793
Installment loans and other plans	4,552	75	243	365	3,870	7,344
All other loans and leases	1,486	58	58	74	1,296	2,298
Loans and leases past due 90+ days	8,696	103	380	540	7,674	12,818
Loans secured by real estate	2,744	51	201	170	2,323	4,557
1- to 4-family residential mortgages	2,171	29	95	102	1,944	3,119
Home equity lines	119	0	3	8	107	193
Multifamily residential mortgages	19	0	8	2	9	72
Commercial RE loans	209	9	61	39	100	640
Construction RE loans	84	3	16	16	50	279
Farmland loans	39	9	18	3	8	138
RE loans from foreign offices	104	0	0	0	104	116
Commercial and industrial loans	750	23	70	92	565	1,540
Loans to individuals	4,980	15	81	267	4,616	6,345
Credit cards	3,147	2	45	125	2,976	4,144
Installment loans and other plans	1,832	13	36	143	1,640	2,201
All other loans and leases	222	15	27	10	170	376
Nonaccrual loans and leases	25,139	266	1,292	1,502	22,079	41,131
Loans secured by real estate	7,871	141	768	913	6,049	13,890
1- to 4-family residential mortgages	3,134	44	207	413	2,470	5,245
Home equity lines	343	1	8	21	314	491
Multifamily residential mortgages	143	3	19	13	108	238
Commercial RE loans	2,509	56	367	326	1,760	4,957
Construction RE loans	795	13	106	105	571	1,595
Farmland loans	213	23	61	36	93	482
RE loans from foreign offices	732	0	0	0	732	881
Commercial and industrial loans	12,768	80	326	461	11,901	21,058
Loans to individuals	2,178	14	87	39	2,038	3,111
Credit cards	381	0	47	5	328	730
Installment loans and other plans	1,797	14	39	35	1,709	2,381
All other loans and leases	2,416	32	110	96	2,178	3,225

Liabilities of national banks by asset size
September 30, 2003
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Total liabilities and equity capital	4,202,114	47,587	271,784	373,037	3,509,705	7,474,311
Deposits in domestic offices	2,295,687	39,814	219,046	241,444	1,795,383	4,224,399
Deposits in foreign offices	432,828	11	410	2,579	429,828	692,181
Total deposits	2,728,515	39,824	219,456	244,023	2,225,212	4,916,581
Noninterest bearing	569,688	6,844	35,638	45,364	481,843	968,403
Interest bearing	2,158,827	32,981	183,819	198,659	1,743,369	3,948,178
Federal funds purchased and securities sold	281,549	519	7,567	36,758	236,705	560,227
Other borrowed funds	439,068	1,344	14,243	41,456	382,025	673,346
Trading liabilities less revaluation losses	29,839	0	0	0	29,839	102,171
Subordinated notes and debentures	70,498	6	273	2,988	67,231	97,898
All other liabilities	266,638	405	2,843	7,237	256,154	442,674
Equity capital	386,006	5,489	27,403	40,575	312,540	681,414
Total deposits by depositor:						
Individuals and corporations	2,148,840	24,689	151,142	192,779	1,780,229	3,840,524
U.S., state, and local governments	115,882	3,266	16,953	16,328	79,335	225,454
Depositories in the U.S.	78,290	742	3,150	3,353	71,045	111,905
Foreign banks and governments	83771.091	2	404	1,535	81,831	150,305
Domestic deposits by depositor:						
Individuals and corporations	1832611.719	24,680	151,121	190,656	1,466,155	3,333,992
U.S., state, and local governments	115,882	3,266	16,953	16,328	79,335	225,454
Depositories in the U.S.	35,207	742	3,116	3,334	28,015	60,500
Foreign banks and governments	10,556	2	48	1,102	9,404	16,463
Foreign deposits by depositor:						
Individuals and corporations	316227.907	9	21	2,124	314,074	506,532
Depositories in the U.S.	43083.332	0	34	19	43,031	51,405
Foreign banks and governments	73,216	0	355	433	72,428	133,842
Deposits in domestic offices by type:						
Transaction deposits	362,922	12,536	54,008	36,739	259,639	694,674
Demand deposits	284,126	6,731	30,898	27,687	218,811	511,558
Savings deposits	1,337,325	9,425	75,417	132,169	1,120,314	2,254,585
Money market deposit accounts	989798.406	5,158	43,994	92,234	848,412	1,624,463
Other savings deposits	347526.716	4,268	31,423	39,934	271,901	630,121
Time deposits	595,440	17,853	89,621	72,536	415,430	1,275,141
Small time deposits	318,350	12,044	55,346	40,544	210,416	666,325
Large time deposits	277,090	5,809	34,276	31,992	205,014	608,816

Off-balance-sheet items of national banks by asset size
September 30, 2003
(Dollar figures in millions)

		National banks				
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Unused commitments	$4,130,027	$85,134	$486,365	$424,842	$3,133,686	$5,527,516
Home equity lines	211,465	363	5,602	9,316	196,184	303,698
Credit card lines	2,806,650	81,113	453,515	372,042	1,899,980	3,459,321
Commercial RE, construction and land	87,877	972	9,108	12,550	65,247	179,772
All other unused commitments	1,024,034	2,686	18,140	30,934	972,274	1,584,725
Letters of credit:						
Standby letters of credit	171,467	118	1,665	4,400	165,284	279,418
Financial letters of credit	142,254	74	1,043	3,200	137,937	235,890
Performance letters of credit	29,214	44	622	1,200	27,347	43,528
Commercial letters of credit	16,067	19	465	444	15,139	23,345
Securities lent	163,042	32	74	7,902	155,033	767,576
Spot foreign exchange contracts	382,341	0	1	234	382,106	652,475
Credit derivatives (notional value)						
Reporting bank is the guarantor	150,951	0	15	0	150,936	405,835
Reporting bank is the beneficiary	185,372	0	40	0	185,332	463,166
Derivative contracts (notional value)	30,444,468	14	2,350	19,083	30,423,021	67,113,481
Futures and forward contracts	5,853,629	5	600	1,654	5,851,370	10,859,328
Interest rate contracts	3,617,489	4	597	1,593	3,615,295	6,890,480
Foreign exchange contracts	2,219,641	0	3	61	2,219,577	3,863,885
All other futures and forwards	16,499	0	0	0	16,499	104,963
Option contracts	6,558,150	4	497	5,566	6,552,082	14,179,676
Interest rate contracts	5,575,079	3	461	4,138	5,570,477	11,959,945
Foreign exchange contracts	820,475	0	0	1,421	819,054	1,419,747
All other options	162,596	2	36	7	162,551	799,984
Swaps	17,696,366	5	1,197	11,863	17,683,301	41,205,475
Interest rate contracts	16,903,675	5	1,185	7,862	16,894,623	39,424,141
Foreign exchange contracts	706,060	0	2	3,998	702,060	1,627,151
All other swaps	86,631	0	11	3	86,618	154,183
Memoranda: Derivatives by purpose						
Contracts held for trading	28,051,510	1	29	3,316	28,048,165	63,739,238
Contracts not held for trading	2,056,634	13	2,265	15,767	2,038,588	2,505,242
Memoranda: Derivatives by position						
Held for trading--positive fair value	521,016	0	0	31	520,984	1,235,500
Held for trading--negative fair value	506,673	0	0	4	506,669	1,206,460
Not for trading--positive fair value	25,305	0	19	122	25,163	30,196
Not for trading--negative fair value	21,613	0	24	550	21,039	26,551

Quarterly income and expenses of national banks by asset size
Third quarter 2003
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Net income	$16,129	$125	$854	$1,205	$13,945	$25,813
Net interest income	35,337	451	2,534	3,155	29,196	59,699
Total interest income	47,772	619	3,514	4,258	39,381	82,610
On loans	37,321	498	2,839	3,324	30,661	63,071
From lease financing receivables	1,498	3	19	61	1,416	2,240
On balances due from depositories	297	6	13	23	256	598
On securities	6,699	104	596	729	5,269	12,884
From assets held in trading account	855	0	0	3	852	1,866
On fed. funds sold & securities repurchased	808	7	28	72	701	1,345
Less: Interest expense	12,435	168	980	1,102	10,185	22,911
On deposits	8,339	154	822	691	6,673	15,201
Of federal funds purchased & securities sold	930	1	21	98	810	1,879
On demand notes & other borrowed money*	2,431	13	134	285	2,000	4,771
On subordinated notes and debentures	734	0	3	29	702	1,060
Less: Provision for losses	5,140	33	247	356	4,505	7,637
Noninterest income	30,296	214	1,690	2,382	26,010	47,811
From fiduciary activities	2,187	10	136	388	1,653	5,322
Service charges on deposits	5,299	60	325	382	4,533	8,174
Trading revenue	1,848	0	2	8	1,837	3,004
From interest rate exposures	572	0	2	5	565	1,240
From foreign exchange exposures	1,144	0	0	0	1,144	1,410
From equity security and index exposures	111	0	0	2	109	252
From commodity and other exposures	19	0	0	0	19	78
Investment banking brokerage fees	1,217	1	18	53	1,146	2,472
Venture capital revenue	(115)	0	(0)	(1)	(113)	(106)
Net servicing fees	3,419	52	112	134	3,121	4,119
Net securitization income	4,664	0	78	72	4,513	6,041
Insurance commissions and fees	534	10	25	46	453	882
Insurance and reinsurance underwriting income	117	0	3	2	113	163
Income from other insurance activities	416	9	23	44	341	719
Net gains on asset sales	3,574	9	142	432	2,990	5,324
Sales of loans and leases	4,012	7	140	431	3,434	5,724
Sales of other real estate owned	(14)	2	1	(0)	(17)	(10)
Sales of other assets(excluding securities)	(423)	0	1	2	(426)	(389)
Other noninterest income	7,669	72	852	868	5,877	12,577
Gains/losses on securities	228	3	27	1	197	473
Less: Noninterest expense	36,413	468	2,837	3,336	29,773	61,920
Salaries and employee benefits	15,172	228	1,169	1,372	12,403	26,802
Of premises and fixed assets	4,218	58	302	336	3,522	7,697
Goodwill impairment losses	76	0	0	76	0	77
Amortization expense and impairment losses	859	2	24	116	717	1,063
Other noninterest expense	16,088	180	1,343	1,436	13,130	26,281
Less: Taxes on income before extraord. items	8,196	41	314	645	7,196	12,635
Income/loss from extraord. items, net of taxes	9	(0)	1	4	5	29
Memoranda:						
Net operating income	15,959	123	834	1,198	13,805	25,472
Income before taxes and extraordinary items	24,306	166	1,168	1,846	21,126	38,426
Income net of taxes before extraordinary items	16,110	125	854	1,201	13,930	25,791
Cash dividends declared	11,997	60	446	953	10,537	17,279
Net loan and lease losses	6,171	23	257	317	5,574	8,848
Charge-offs to loan and lease reserve	7,584	30	302	402	6,850	10,921
Less: Recoveries credited to loan & lease resv.	1,414	7	45	85	1,276	2,073

* Includes mortgage indebtedness

Year-to-date income and expenses of national banks by asset size
Through September 30, 2003
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Net income	$46,722	$274	$2,604	$3,605	$40,238	$76,113
Net interest income	106,226	1,334	7,505	9,433	87,953	178,529
Total interest income	146,120	1,872	10,629	12,961	120,658	252,084
On loans	113,798	1,482	8,487	10,058	93,772	190,566
From lease financing receivables	4,721	8	58	189	4,465	6,977
On balances due from depositories	1,152	18	41	73	1,021	2,162
On securities	21,042	332	1,896	2,274	16,541	40,598
From assets held in trading account	2,481	0	2	8	2,471	5,979
On fed. funds sold & securities repurchased	1,996	24	94	242	1,636	3,867
Less: Interest expense	39,894	538	3,124	3,528	32,705	73,555
On deposits	26,144	496	2,647	2,272	20,728	48,615
Of federal funds purchased & securities sold	3,128	5	68	325	2,731	6,374
On demand notes & other borrowed money*	8,409	37	401	851	7,119	15,373
On subordinated notes and debentures	2,214	0	8	80	2,126	3,193
Less: Provision for losses	17,959	103	710	1,119	16,027	26,346
Noninterest income	85,960	687	4,924	6,723	73,625	138,139
From fiduciary activities	6,518	29	397	1,211	4,880	15,494
Service charges on deposits	15,368	173	937	1,102	13,156	23,610
Trading revenue	4,793	0	8	24	4,761	9,331
From interest rate exposures	988	0	7	14	967	3,893
From foreign exchange exposures	3,451	0	0	2	3,450	4,261
From equity security and index exposures	436	0	0	5	431	1,085
From commodity and other exposures	(90)	0	0	0	(90)	16
Investment banking brokerage fees	3,581	3	51	153	3,374	7,139
Venture capital revenue	(58)	(0)	(1)	(2)	(55)	(3)
Net servicing fees	7,835	178	326	325	7,006	9,343
Net securitization income	11,999	9	237	246	11,506	15,841
Insurance commissions and fees	1,561	25	70	141	1,325	2,526
Insurance and reinsurance underwriting income	357	0	8	7	342	489
Income from other insurance activities	1,205	24	63	134	984	2,037
Net gains on asset sales	7,263	27	413	1,021	5,803	12,124
Sales of loans and leases	7,185	21	407	1,013	5,744	11,845
Sales of other real estate owned	(24)	3	6	1	(35)	(14)
Sales of other assets(excluding securities)	103	3	(1)	7	94	292
Other noninterest income	27,100	244	2,486	2,502	21,868	42,735
Gains/losses on securities	2,707	14	113	116	2,465	5,282
Less: Noninterest expense	106,973	1,536	8,244	9,717	87,476	182,357
Salaries and employee benefits	45,538	686	3,446	4,084	37,322	80,860
Of premises and fixed assets	12,658	169	892	1,006	10,591	23,228
Goodwill impairment losses	116	0	0	76	40	120
Amortization expense and impairment losses	3,043	7	74	296	2,667	3,608
Other noninterest expense	45,618	674	3,832	4,256	36,856	74,541
Less: Taxes on income before extraord. items	23,248	122	985	1,834	20,306	37,163
Income/loss from extraord. items, net of taxes	9	(0)	1	4	5	29
Memoranda:						
Net operating income	44,867	263	2,519	3,516	38,568	72,517
Income before taxes and extraordinary items	69,960	397	3,588	5,435	60,540	113,247
Income net of taxes before extraordinary items	46,713	275	2,603	3,601	40,234	76,084
Cash dividends declared	31,765	379	1,409	2,338	27,638	54,784
Net loan and lease losses	19,601	66	588	944	18,003	27,932
Charge-offs to loan and lease reserve	23,622	90	727	1,196	21,610	33,867
Less: Recoveries credited to loan & lease resv.	4,021	23	138	253	3,607	5,935

* Includes mortgage indebtedness

Quarterly net loan and lease losses of national banks by asset size
Third quarter 2003
(Dollar figures in millions)

		National banks				
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Net charge-offs to loan and lease reserve	$6,171	$23	$257	$317	$5,574	$8,848
Loans secured by real estate	505	3	22	58	423	737
1-4 family residential mortgages	231	1	9	32	188	305
Home equity lines	68	0	1	2	65	91
Multifamily residential mortgages	4	0	1	(1)	4	6
Commercial RE loans	134	1	9	23	101	228
Construction RE loans	35	0	1	1	32	69
Farmland loans	4	0	2	0	2	8
RE loans from foreign offices	31	0	0	(0)	31	30
Commercial and industrial loans	1,527	10	44	89	1,384	2,630
Loans to individuals	3,678	8	175	159	3,337	4,916
Credit cards	2,538	1	144	99	2,294	3,387
Installment loans and other plans	1,140	7	31	60	1,043	1,529
All other loans and leases	460	3	15	12	431	566
Charge-offs to loan and lease reserve	7,584	30	302	402	6,850	10,921
Loans secured by real estate	617	3	29	67	518	911
1-4 family residential mortgages	276	2	11	36	227	377
Home equity lines	87	0	1	3	84	116
Multifamily residential mortgages	5	0	1	0	4	10
Commercial RE loans	162	1	11	26	124	277
Construction RE loans	41	0	2	1	38	79
Farmland loans	6	0	2	1	3	13
RE loans from foreign offices	39	0	0	0	39	40
Commercial and industrial loans	1,977	13	57	118	1,789	3,308
Loans to individuals	4,429	10	199	199	4,020	5,980
Credit cards	2,983	1	153	114	2,715	4,000
Installment loans and other plans	1,445	9	45	86	1,306	1,980
All other loans and leases	562	3	18	18	523	722
Recoveries credited to loan and lease reserve	1,414	7	45	85	1,276	2,073
Loans secured by real estate	112	1	6	9	95	174
1-4 family residential mortgages	46	0	2	4	39	71
Home equity lines	20	(0)	0	1	19	25
Multifamily residential mortgages	1	0	0	1	0	4
Commercial RE loans	28	0	3	3	22	50
Construction RE loans	6	0	0	0	6	10
Farmland loans	2	0	1	0	1	4
RE loans from foreign offices	8	0	0	0	8	9
Commercial and industrial loans	450	3	13	29	405	679
Loans to individuals	750	2	24	40	684	1,064
Credit cards	445	0	9	15	421	613
Installment loans and other plans	305	2	15	26	263	451
All other loans and leases	102	1	3	6	92	156

Year-to-date net loan and lease losses of national banks by asset size
Through September 30, 2003
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	National banks: $100 million to $1 billion	National banks: $1 billion to $10 billion	National banks: Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,031	875	984	124	48	7,812
Net charge-offs to loan and lease reserve	19,601	66	588	944	18,003	27,932
Loans secured by real estate	1,428	8	63	117	1,240	2,150
1-4 family residential mortgages	656	4	24	68	559	944
Home equity lines	239	(0)	2	5	232	310
Multifamily residential mortgages	11	0	2	1	9	17
Commercial RE loans	295	3	27	36	230	558
Construction RE loans	108	1	6	8	93	190
Farmland loans	7	(0)	3	(0)	5	17
RE loans from foreign offices	112	0	0	(0)	112	114
Commercial and industrial loans	5,494	27	120	303	5,044	8,758
Loans to individuals	11,449	25	375	483	10,566	15,407
Credit cards	8,017	8	290	302	7,417	10,863
Installment loans and other plans	3,432	17	85	181	3,149	4,544
All other loans and leases	1,229	6	30	40	1,152	1,618
Charge-offs to loan and lease reserve	23,622	90	727	1,196	21,610	33,867
Loans secured by real estate	1,738	11	81	150	1,497	2,620
1-4 family residential mortgages	773	6	31	83	654	1,127
Home equity lines	285	0	2	7	276	369
Multifamily residential mortgages	20	0	2	3	14	29
Commercial RE loans	377	3	34	45	295	695
Construction RE loans	137	1	8	10	118	233
Farmland loans	15	1	4	1	8	32
RE loans from foreign offices	131	0	0	0	131	134
Commercial and industrial loans	6,635	35	158	378	6,064	10,532
Loans to individuals	13,702	36	446	606	12,614	18,625
Credit cards	9,292	10	317	343	8,623	12,667
Installment loans and other plans	4,410	26	129	263	3,991	5,957
All other loans and leases	1,548	9	42	63	1,435	2,091
Recoveries credited to loan and lease reserve	4,021	23	138	253	3,607	5,935
Loans secured by real estate	309	3	17	33	256	470
1-4 family residential mortgages	118	1	7	15	95	183
Home equity lines	46	0	0	2	43	59
Multifamily residential mortgages	8	0	0	3	5	12
Commercial RE loans	82	1	7	9	65	138
Construction RE loans	29	0	1	2	26	44
Farmland loans	7	1	1	2	4	15
RE loans from foreign offices	18	0	0	0	18	20
Commercial and industrial loans	1,140	7	38	75	1,020	1,774
Loans to individuals	2,253	11	71	122	2,049	3,218
Credit cards	1,275	1	27	41	1,206	1,804
Installment loans and other plans	978	10	45	81	842	1,414
All other loans and leases	319	2	11	23	282	473

Number of national banks by state and asset size
September 30, 2003

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
All institutions	2,031	875	984	124	48	7,812
Alabama	21	11	8	1	1	151
Alaska	3	1	0	2	0	6
Arizona	16	5	7	2	2	46
Arkansas	42	11	30	1	0	163
California	79	28	38	10	3	277
Colorado	49	21	25	2	1	170
Connecticut	9	1	7	1	0	26
Delaware	9	0	4	2	3	27
District of Columbia	4	2	2	0	0	4
Florida	68	17	44	7	0	262
Georgia	59	24	33	2	0	320
Hawaii	1	0	1	0	0	7
Idaho	1	0	1	0	0	15
Illinois	171	68	93	7	3	671
Indiana	28	5	15	7	1	149
Iowa	52	27	23	2	0	403
Kansas	99	67	29	3	0	362
Kentucky	49	21	27	1	0	220
Louisiana	15	5	8	1	1	140
Maine	6	1	4	0	1	17
Maryland	11	2	9	0	0	72
Massachusetts	14	3	9	2	0	39
Michigan	26	9	16	0	1	159
Minnesota	120	72	44	2	2	465
Mississippi	20	8	10	2	0	96
Missouri	46	23	19	3	1	344
Montana	15	12	2	1	0	79
Nebraska	71	46	23	2	0	262
Nevada	8	1	3	2	2	34
New Hampshire	5	2	2	0	1	15
New Jersey	22	0	14	7	1	79
New Mexico	15	6	5	4	0	51
New York	55	10	38	6	1	134
North Carolina	6	0	4	0	2	70
North Dakota	14	6	5	3	0	102
Ohio	86	33	39	7	7	193
Oklahoma	89	48	39	1	1	273
Oregon	3	1	1	1	0	35
Pennsylvania	79	19	49	8	3	173
Rhode Island	4	2	0	1	1	8
South Carolina	25	10	13	2	0	75
South Dakota	19	8	8	2	1	91
Tennessee	30	7	20	0	3	188
Texas	324	184	128	11	1	660
Utah	7	2	3	0	2	58
Vermont	8	2	6	0	0	14
Virginia	38	7	28	2	1	130
Washington	13	9	4	0	0	78
West Virginia	17	8	8	1	0	67
Wisconsin	42	13	26	2	1	271
Wyoming	18	7	10	1	0	44
U.S. territories	0	0	0	0	0	17

Total assets of national banks by state and asset size
September 30, 2003
(Dollar figures in millions)

		National banks				
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
All institutions	$4,202,114	$47,587	$271,784	$373,037	$3,509,705	$7,474,311
Alabama	19,901	730	2,004	1,365	15,802	209,673
Alaska	5,944	69	0	5,876	0	7,187
Arizona	52,097	235	3,449	4,088	44,325	55,155
Arkansas	9,098	609	7,477	1,012	0	33,664
California	314,611	1,615	10,875	23,077	279,044	462,205
Colorado	23,874	1,018	6,266	2,489	14,100	46,411
Connecticut	3,335	91	1,876	1,369	0	5,230
Delaware	112,482	0	1,008	3,998	107,476	156,426
District of Columbia	588	164	424	0	0	588
Florida	31,580	1,203	12,181	18,196	0	77,238
Georgia	22,166	1,544	6,699	13,922	0	203,746
Hawaii	412	0	412	0	0	23,957
Idaho	286	0	286	0	0	3,557
Illinois	345,256	3,761	25,069	18,129	298,297	498,865
Indiana	76,781	238	5,939	20,501	50,104	117,582
Iowa	16,460	1,496	6,207	8,757	0	49,517
Kansas	16,724	3,484	8,490	4,750	0	39,891
Kentucky	14,369	1,397	5,400	7,572	0	47,005
Louisiana	26,790	243	1,725	7,302	17,519	46,860
Maine	27,978	22	2,242	0	25,714	30,645
Maryland	2,793	69	2,724	0	0	36,334
Massachusetts	9,663	206	2,148	7,309	0	132,283
Michigan	55,474	398	4,588	0	50,489	175,599
Minnesota	80,749	3,749	9,996	3,723	63,281	107,628
Mississippi	11,369	486	2,365	8,518	0	38,635
Missouri	27,746	1,312	5,114	9,857	11,463	79,438
Montana	2,792	588	585	1,620	0	14,618
Nebraska	17,374	2,108	5,390	9,876	0	33,471
Nevada	33,180	50	1,595	6,101	25,435	50,332
New Hampshire	14,088	70	497	0	13,520	17,096
New Jersey	43,319	0	4,001	27,011	12,306	92,550
New Mexico	11,499	418	1,341	9,740	0	16,987
New York	583,837	665	13,229	15,403	554,540	1,577,711
North Carolina	970,416	0	1,637	0	968,779	1,089,592
North Dakota	12,036	280	1,768	9,988	0	19,171
Ohio	489,402	1,731	11,620	21,454	454,597	591,968
Oklahoma	22,959	2,473	8,397	1,534	10,555	46,165
Oregon	9,785	69	217	9,499	0	19,923
Pennsylvania	136,636	1,220	16,436	19,265	99,715	181,689
Rhode Island	195,142	47	0	6,320	188,775	208,497
South Carolina	7,395	640	2,962	3,793	0	31,453
South Dakota	61,653	266	3,364	13,258	44,765	71,240
Tennessee	87,946	499	7,938	0	79,509	113,042
Texas	98,426	9,749	33,136	31,061	24,480	159,194
Utah	29,315	81	619	0	28,615	135,216
Vermont	1,498	116	1,382	0	0	6,132
Virginia	32,365	299	8,437	7,276	16,353	101,315
Washington	1,908	487	1,421	0	0	25,663
West Virginia	4,215	483	1,738	1,993	0	17,340
Wisconsin	21,915	762	7,124	3,883	10,146	84,080
Wyoming	4,491	351	1,986	2,153	0	7,213
U.S. territories	0	0	0	0	0	77,339

INDEX

A

C

D

F

H

I

K

L

M

N

O

P

Q

R

S

T

Y

Quarterly Journal Library CD-ROM ordering

Future issues of the *Quarterly Journal* will be available by subscription on CD-ROM, as the new *Quarterly Journal Library,* and will continue to be available on the Internet at http://www/occ/treas/gov/qj/qj.htm. The new subscription price, starting with Volume 23, No. 1 (March 2004), is $50 for four quarterly issues on CD-ROM. An individual CD is $15. Each issue of the *Quarterly Journal Library* CD will also be cumulative to date, from Volume 16 to the present.

Quarterly Journal Library (CD-ROM) for Vols. 16–23, inclusive, in 4 CDs, issued quarterly	$50.00
Single copy of the *Quarterly Journal Library* (CD-ROM)	$15.00

TO ORDER, PREPAYMENT IS REQUESTED. Please complete the form below and send it with a check, payable to the *Comptroller of the Currency,* to:

Comptroller of the Currency
ATTN: Accounts Receivable
250 E Street, SW, MS 4-8
Washington, DC 20219

	Price	x	Quantity	=	Amount
Quarterly Journal Library annual subscription	$50.00	x	_______	=	_______
Single copy of *Quarterly Journal Library:* Vol.____, No.____	$15.00	x	_______	=	_______
			Total amount enclosed		_______

Name of firm:____

Attention (person or department):____

Address:____

City/state/zipcode:____

Area code/phone number:____

Taxpayer Identification Number (TIN) (or EIN or SSN):_________________________
This number may be used for the collection and reporting of any delinquent amount arising from doing business with the federal government, per 31 USC 7701.

Please make your check payable to the *Comptroller of the Currency.* Payments by check will be converted into an electronic fund transfer. Please read the following notice on the reverse of this page (also at http://www.occ.treas.gov/NoticePaymentbyCheck.htm) if you are paying by check.

For advice or information about availability, or for an urgent need for a publication, please call OCC Publications Control at (202) 874-4960.

Thank you for your interest in the *Quarterly Journal.* We welcome your comments on how to make this publication more informative for you. We are particularly interested in your comments on the usefulness of the information and its presentation. Please send your comments to Rebecca Miller, Senior Writer-Editor, OCC Publishing Services, by fax at (202) 874-5263 or by e-mail at QuarterlyJournal@occ.treas.gov.

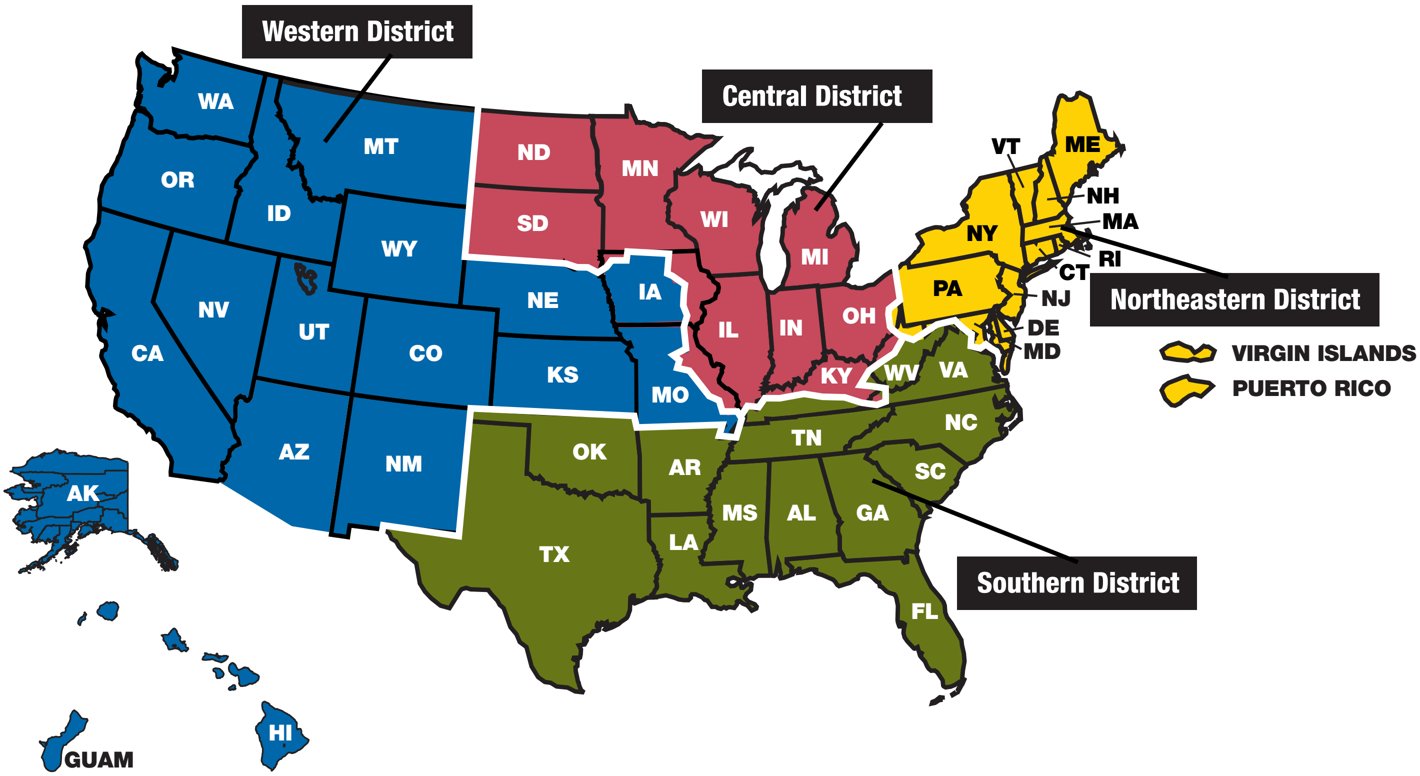
Notice to Customers Making Payment by Check

Authorization to convert your check: If you present a check to make your payment, your check will be converted into an electronic fund transfer. “Electronic fund transfer” is the term used to refer to the process in which a business or government agency electronically instructs your financial institution to transfer funds from your account to its account, rather than processing your paper check. **By presenting your signed check to the OCC, you authorize the agency to copy the check and to use the account information from the check to make an electronic fund transfer from your account for the same amount as the check.** If the electronic fund transfer cannot be processed for technical reasons, you authorize the OCC to process the copy of your check.

Insufficient funds: The electronic fund transfer from your account will usually occur within 24 hours, which is faster than a check is normally processed. Therefore, make sure sufficient funds are available in your checking account when you send your check to the OCC. If the electronic fund transfer cannot be completed because of insufficient funds, the OCC may attempt the transfer two additional times.

Transaction information: The electronic fund transfer from your account will be on the account statement you receive from your financial institution. However, the transfer may be in a different place on your statement than the place where your check entries normally appear. For example, it may appear under **“other withdrawals”** or **“other transactions.”** You will not receive your original check back from your financial institution. For security reasons, the OCC will destroy your original check, but it will keep a copy of the check for record keeping.

Your rights: You should contact your financial institution immediately if you believe that the electronic fund transfer reported on your account statement was not properly authorized or is otherwise incorrect. Consumers have protections under a federal law called the Electronic Fund Transfer Act for an unauthorized or incorrect electronic fund transfer.



Northeastern District

New York District Office
1114 Avenue of the Americas
Suite 3900
New York, NY 10036–7780

(212) 819–9860

Southern District

Dallas District Office
500 North Akard Street
Suite 1600
Dallas, TX 75201

(214) 720–0656

Central District

Chicago District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, IL 60605–1073

(312) 360–8800

Western District

Denver District Office
1225 17th Street
Suite 300
Denver, CO 80202

(720) 475–7600

Headquarters

Washington Office
250 E Street, SW
Washington, DC 20219–0001

(202) 874–5000

Office of the Ombudsman

1301 McKinney Street, Suite 3400
Houston, TX 77010–9000

(713) 336–4350

Customer Assistance Group

1301 McKinney Street, Suite 3450
Houston, TX 77010–9050

(713) 336–4300
Toll-free (800) 613–6743

For more information on the Office of the Comptroller of the Currency, contact:

OCC Public Disclosure Room, Communications Division, Washington, DC 20210–0001
fax: (202) 874–4448; e-mail FOIA-PA@occ.treas.gov
See the Quarterly Journal on the World Wide Web at http://www.occ.treas.gov/qj/qj.htm
Comments or suggestions? e-mail QuarterlyJournal@occ.treas.gov