Comptroller of the Currency
Administrator of National Banks

Quarterly Journal

QJ

vol. 23 no. 2

june 2004

Quarterly Journal

Office of the Comptroller of the Currency
Administrator of National Banks

John D. Hawke, Jr.
Comptroller of the Currency

Volume 23, Number 2

June 2004
(First Quarter Data)

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June 2004

Comptroller — John D. Hawke, Jr.

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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 officers, 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.

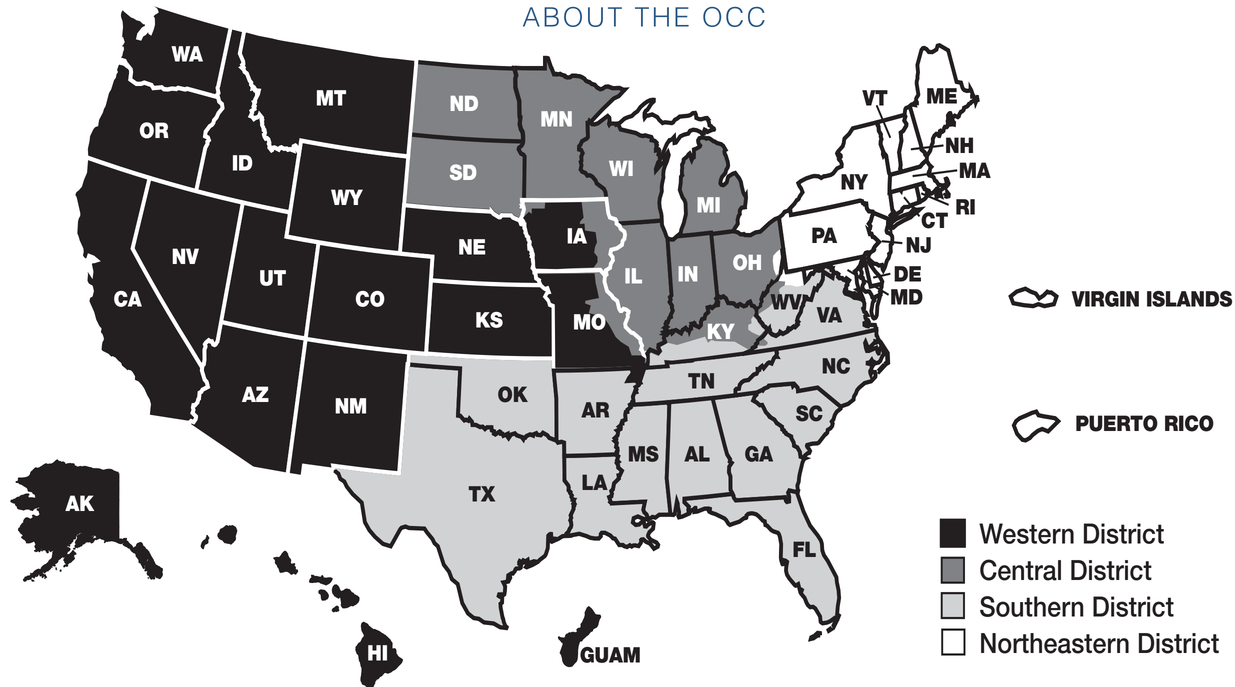
The Comptroller

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 confirmed 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 in the supervision 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, MS 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.



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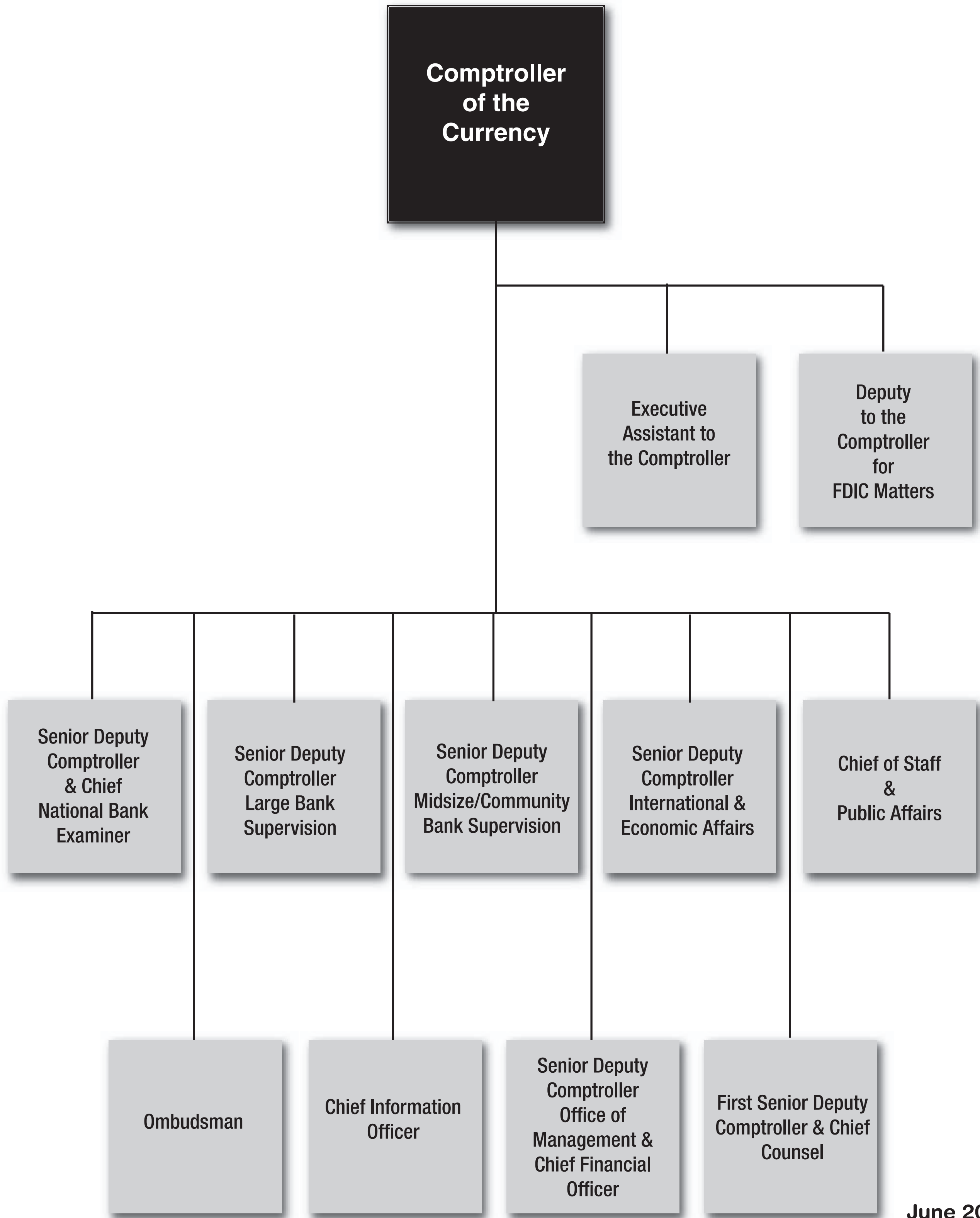

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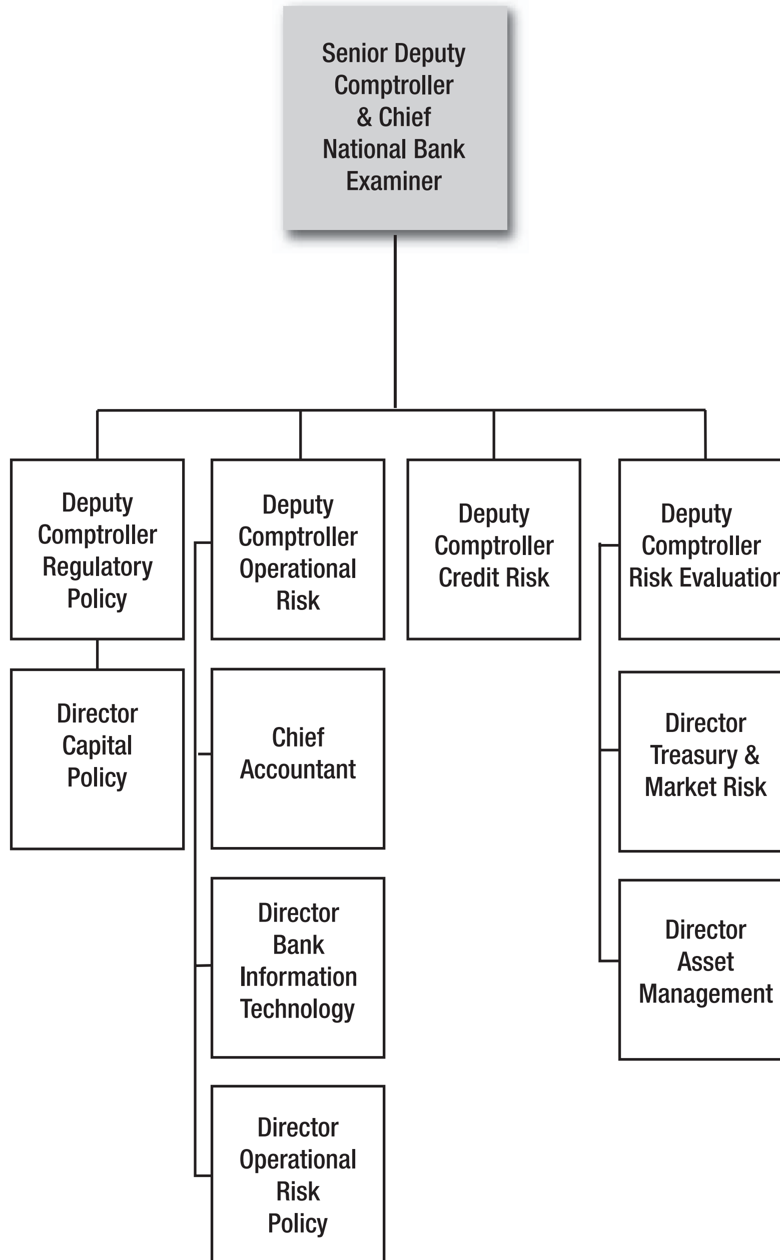

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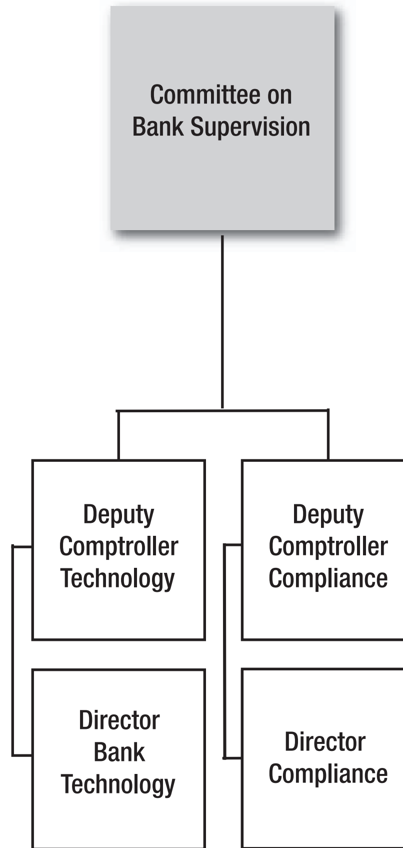
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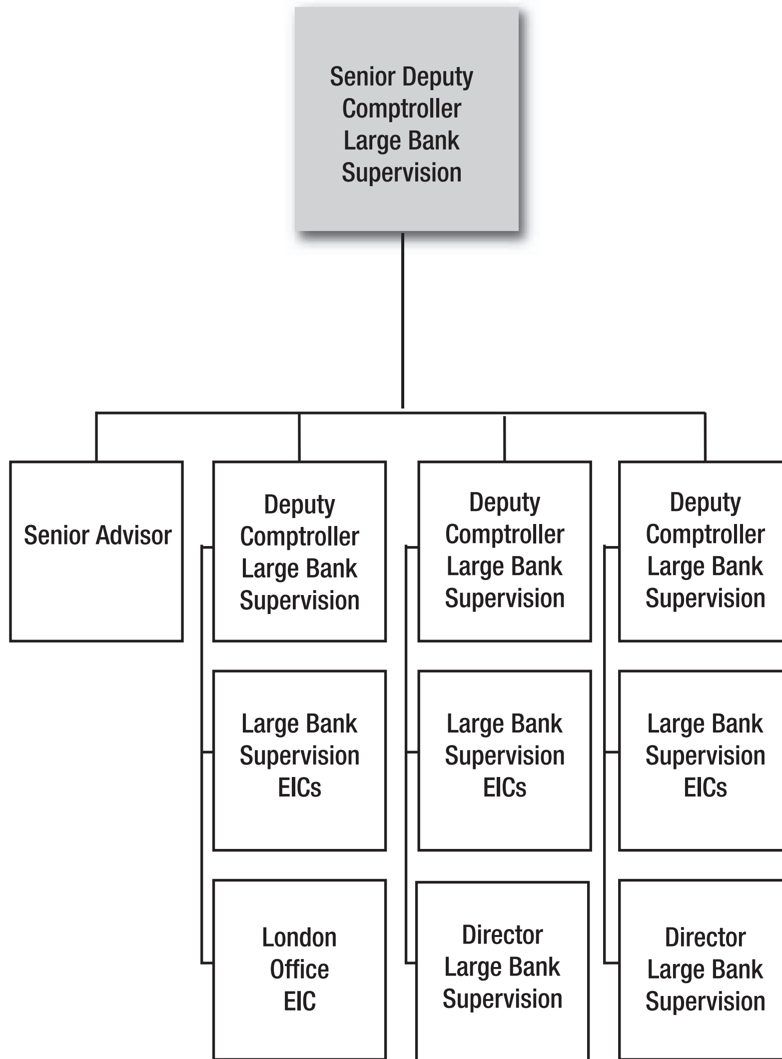
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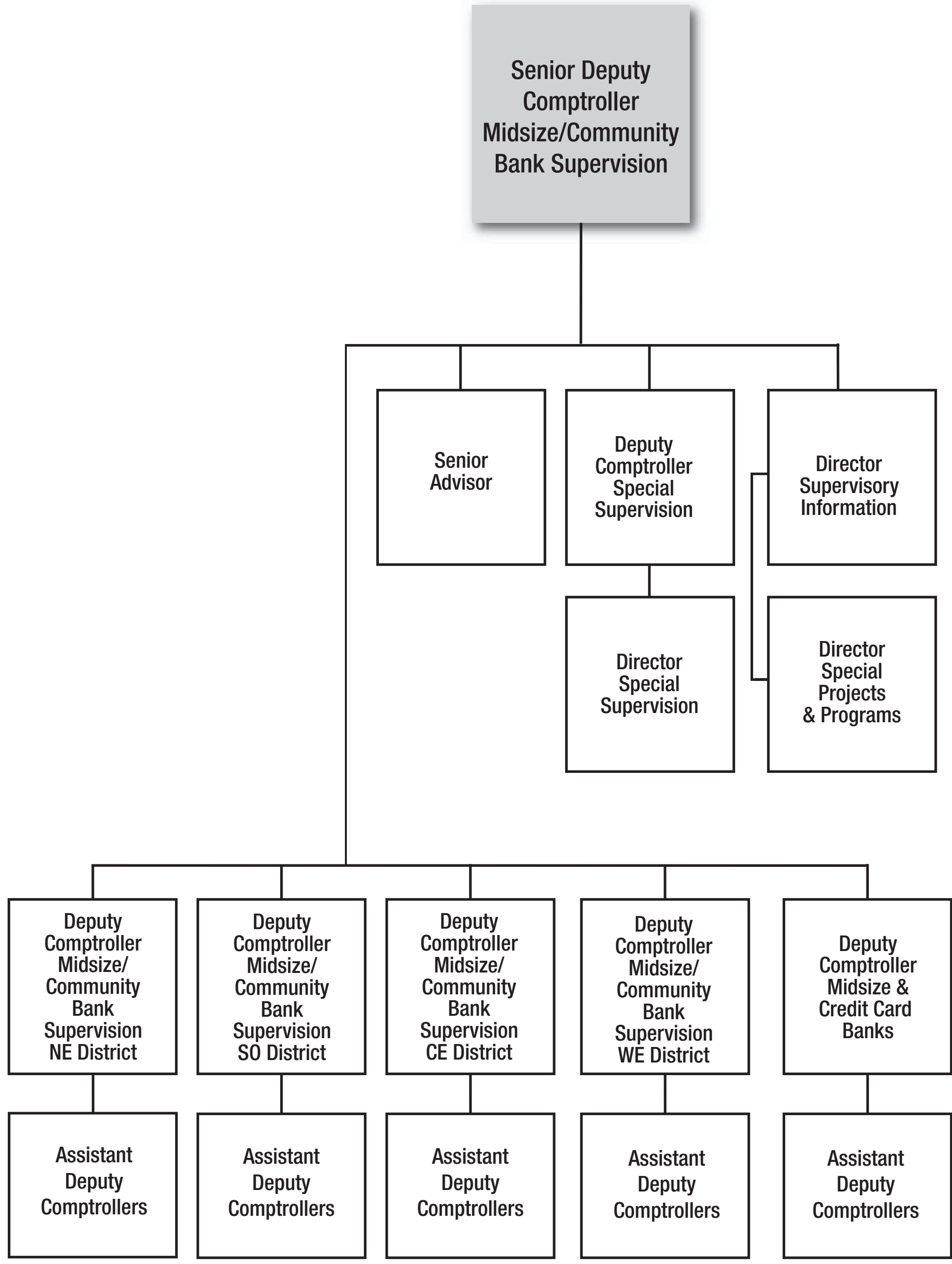
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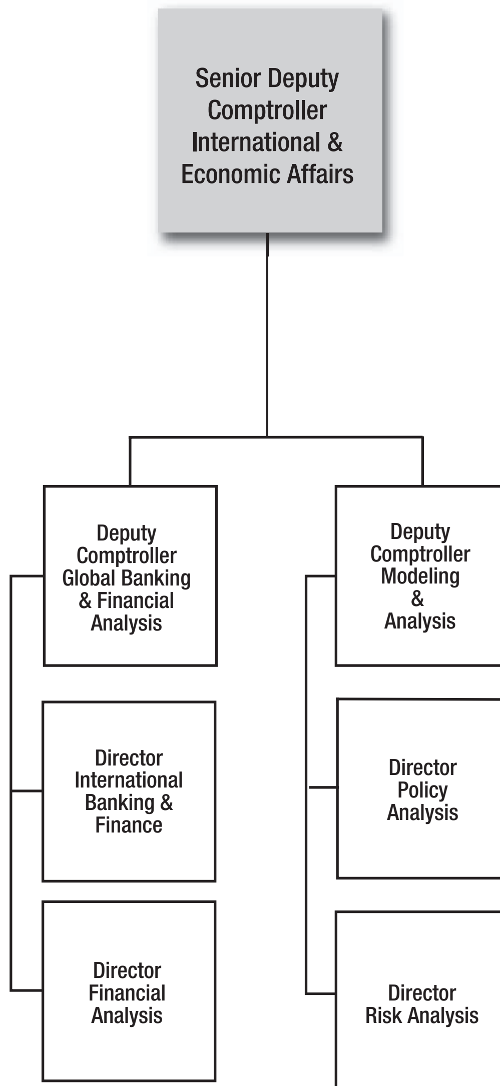
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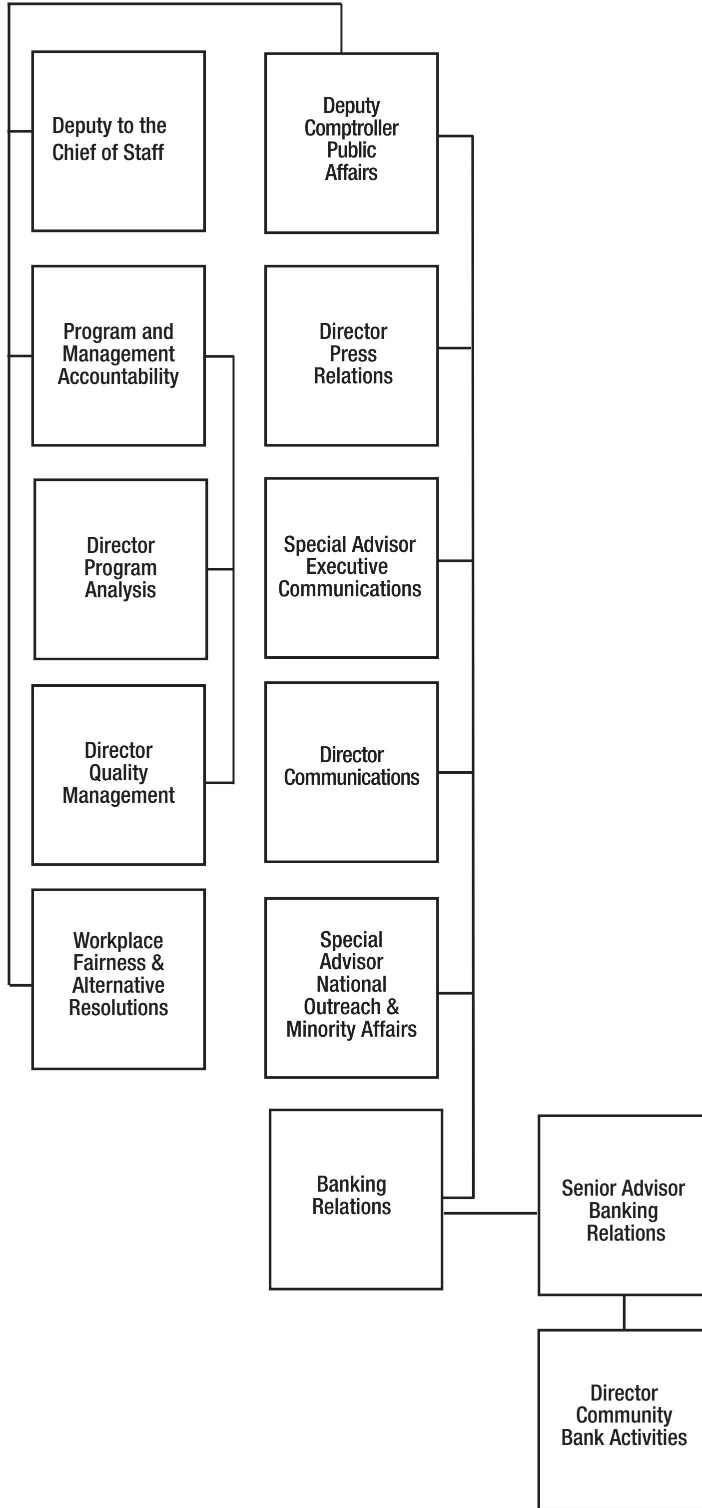
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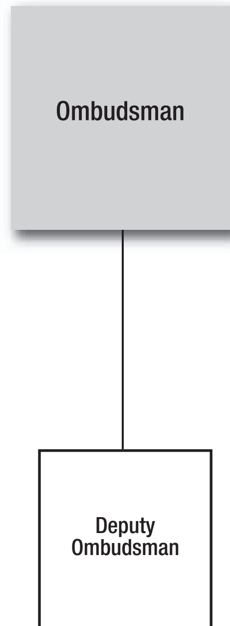
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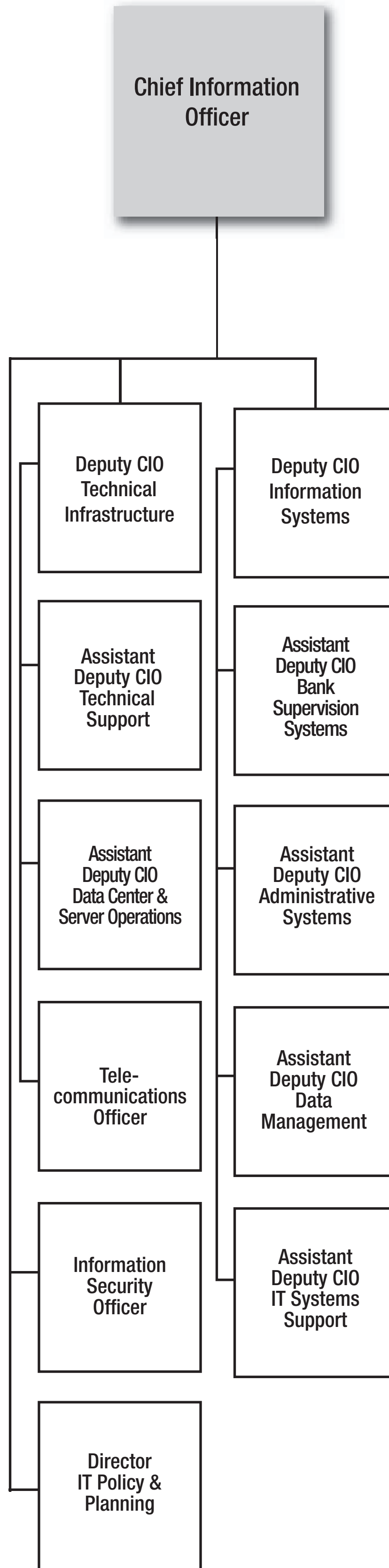

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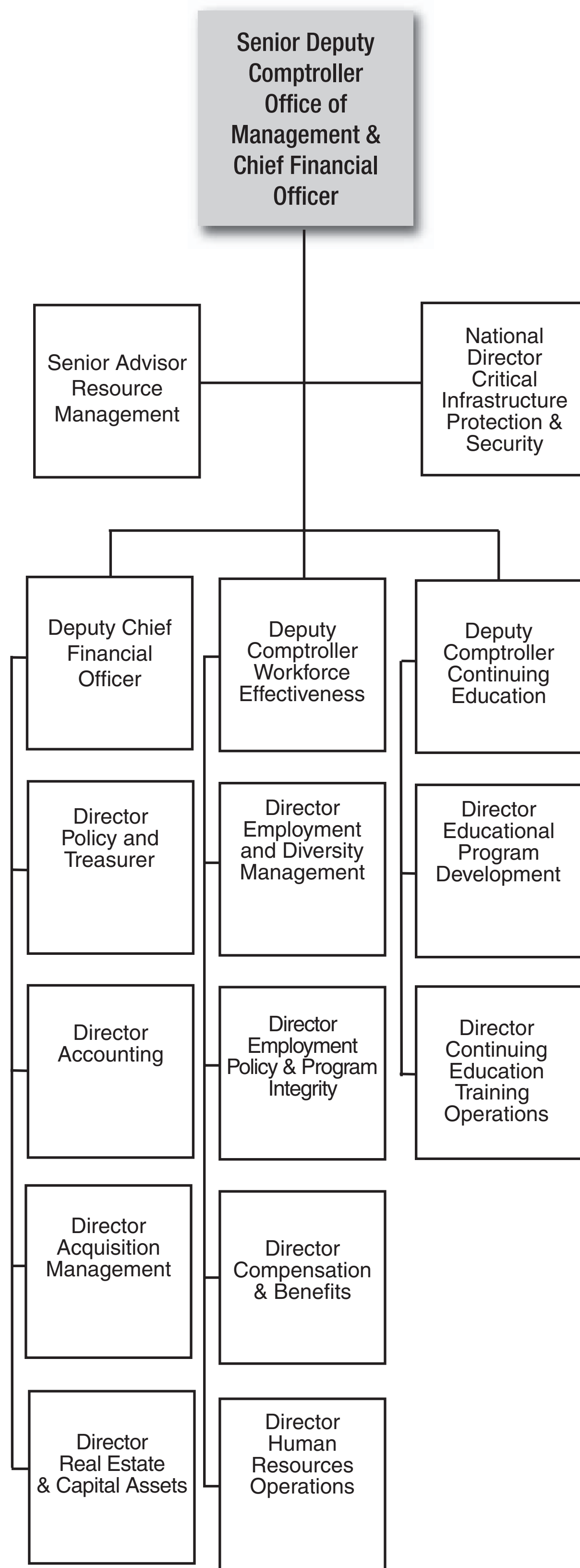
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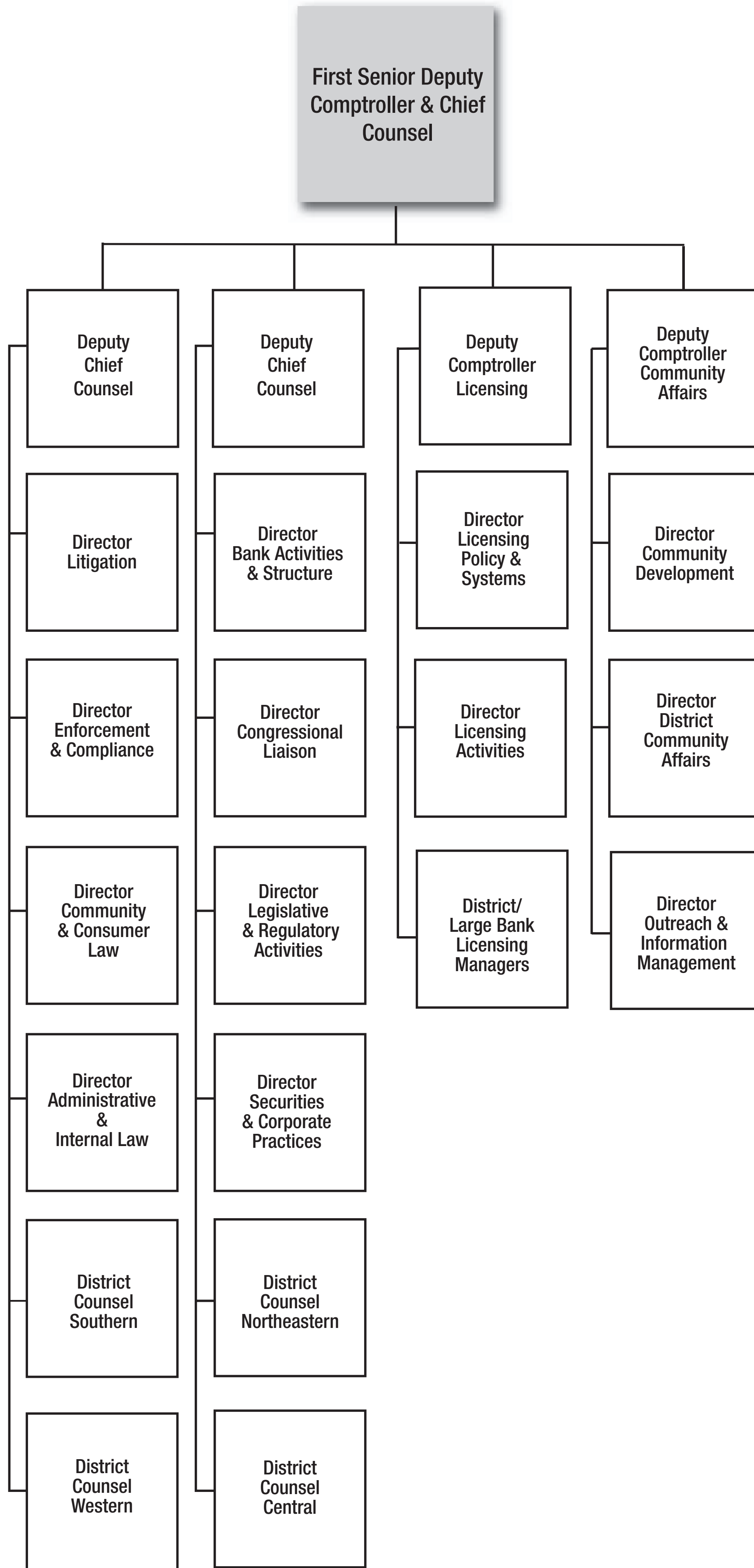
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(revised August 2004)

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Quarterly Journal

Condition and Performance of Commercial Banks

Condition and Performance of Commercial Banks

Summary

After setting records in most major income categories for the year 2003, banks posted further gains in both net interest and noninterest income in the first quarter of 2004. Net interest income was the largest contributor to growth in net income, with substantial contributions from noninterest income and reductions in provisioning.

Deposit growth continued at rates well above historical averages, with much of the increase adding to securities holdings at larger banks, particularly long-term mortgage-backed securities. Credit quality continued to improve, particularly for commercial and industrial loans at larger banks, which allowed banks to again reduce provisions.

For the next several quarters, banks face the challenges of continuing to expand loan volume in an environment in which both business and consumer lending are likely to be constrained.

Key Trends

Both return on equity (ROE) and return on assets (ROA) at national banks approached all-time records for the first quarter, as national banks continued to outperform state banks in both categories. Net interest income, the largest component of net income growth, rose by $3.2 billion year-over-year, with noninterest income up $1.5 billion, and a reduction in provisioning adding another $1.3 billion to net income growth (see Table 1).

Table 1—Interest income picks up: continued gains from lower provisioning

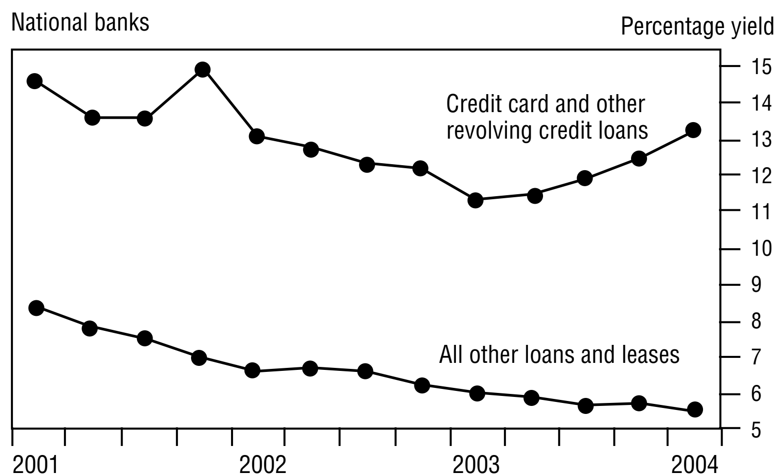
National banks

	Major income components (Change, $ millions)			
	2002Q1-03Q1	% Change	2003Q1-04Q1	% Change
Revenues				
Net interest income	95	0.3%	3,225	9.2%
Realized gains/losses, securities	793	n.m.	2	0.1%
Noninterest income	1,285	4.9%	1,457	5.3%
Expenses				
Provisioning	–1,722	–20.9%	–1,266	–19.5%
Noninterest expense	1,604	4.9%	3,880	11.3%
Net income	1,767	13.1%	1,447	9.5%

Source: Integrated Banking Information System (OCC)
n.m.—not meaningful

Steady growth in assets drove gains in net interest income, with asset growth largely the result of continued increases in deposits. For larger banks (over $1 billion in assets), deposits increased at over 10 percent annually over the last four quarters, more than twice the 20-year average. Deposit growth was about 7 percent at smaller banks, measured year-over-year, still well above historical averages.

Figure 1—Higher yields on credit card loans contribute to net interest income gains; other yields decline



Source: Integrated Banking Information System (OCC)
Quarterly data through 2004Q1.

With demand down for commercial and industrial (C&I) loans, larger banks have used the increase in deposits to increase their holdings of securities. At larger banks, securities now represent a record 19 percent of assets.

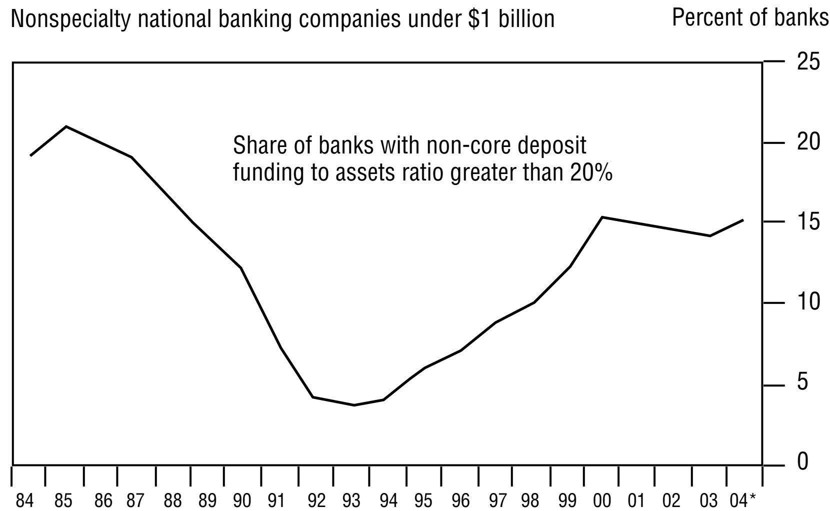
Yields on loans have risen only for banks specializing in credit cards. In contrast, yields on all other loans have fallen over the last four quarters. Diverging trends in yields meant that credit card specialty banks accounted for 42 percent of the increase in net interest income during the first quarter.

Noninterest income grew by 5.3 percent year-over-year, in line with growth rates reported over the last several quarters. Banks reported increases in all major categories of noninterest income except for realized gains and losses on securities, as the rise in long-term interest rates during the quarter depressed bond prices. Noninterest expense rose by 11.3 percent year-over-year, about double the rate of increase in the recent past.

Credit quality continued to improve in the first quarter for both large and small banks across most loan types. C&I loans at large banks showed the most striking gains, as the noncurrent ratio fell from over 3 percent to under 2 percent year-over-year. Improving credit quality allowed banks to

again reduce provisions. But with provisions falling in five of the last six quarters, it appears that banks have little room left for further reductions.

Figure 2—Group of banks continues to rely on non-core funding



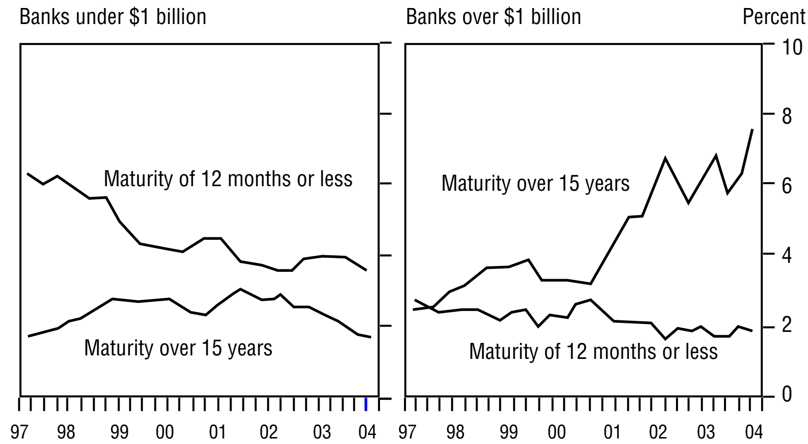
Source: Integrated Banking Information System (OCC)
*2004 data as of March 31, 2004. All other data as of year-end.

Despite the rapid growth in deposits, one group of banks continues to rely on nondeposit funding. About 15 percent of smaller (under $1 billion in assets) nonspecialty banks hold at least 20 percent of their assets in non-core funding. As Figure 2 shows, this share has tripled since 1994. Banks specializing in commercial real estate make up a disproportionate share of the group relying on non-core deposits. Loans from the Federal Home Loan Banks now account for 16 percent of all non-core funding.

On the asset side, the share of securities has increased, particularly longer-maturity issues held by larger banks. For larger banks (over $1 billion in assets), over the last four years the percentage of assets consisting of bonds with maturities over 15 years more than doubled, from 3.3 percent 7.6 percent, with mortgage-backed securities making up the largest component, nearly 7 percent. Over the same four-year period, smaller banks have scaled back their holdings of long-term securities, from 2.7 percent to 1.7 percent.

Figure 3—Small banks reducing tenure of securities; large banks moving longer

National nonspecialty banks, asset share of securities holdings



Source: Integrated Banking Information System (OCC)
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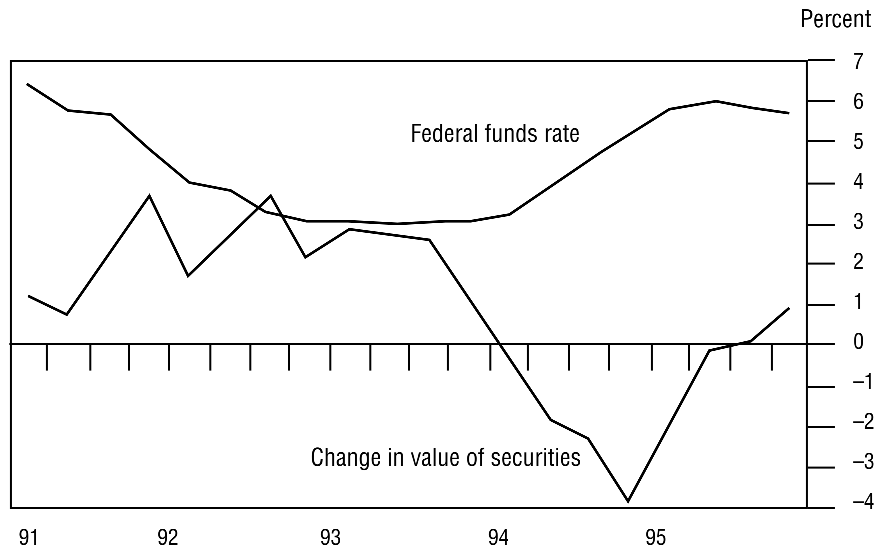
With interest rates expected to rise again, attention has turned to the likely consequences for bank income. When the Federal Reserve Board raised interest rates by 300 basis points in 1994, bond prices dropped and banks took a loss on their securities portfolios; this followed three years of steady gains, as interest rates fell or held steady. More than offsetting the losses in 1994 was a healthy increase in net interest income, driven by increasing loan volume, for both business and consumer lending. As interest rates began to rise in early 1994, commercial and industrial (C&I) lending had already been rising for 2 quarters, and banks were able to extend the expansion of business lending. Moreover, consumer credit was also expanding briskly, and continued to accelerate even in the face of rapidly rising short-term interest rates. This increased lending volume more than offset losses on securities holdings.

Figure 4—Value of bank securities fell in 1994



Source: Integrated Banking Information System (OCC); Federal Reserve Board/Haver Analytics.
Quarterly data. Change in value of securities as percent of par.

In 2004, however, banks face a more daunting environment. C&I lending growth has not yet resumed. Flush with liquidity, many firms that decide to expand will be able to meet their investment needs from internally generated funds; others will go to the bond markets, leaving reduced opportunities for banks. Consumer lending also faces major hurdles if it is to continue to expand. Consumer spending never slacked off during the recent recession, so there is little potential for a rebound in consumer spending; record auto sales over the last three years will cut into future sales. Slow growth in employment, far less than at comparable times in earlier recoveries, adds uncertainty and reduces consumer spending. Sustained higher oil prices would drain household income and reduce consumer spending. Finally, consumers carry far more debt now than they did a decade ago. A rise in interest rates would increase the cost of carrying this debt and squeeze consumer spending.

Key indicators, FDIC-insured national banks
Annual 2000--2003, year-to-date through March 31, 2004, first quarter 2003, and first quarter 2004
(Dollar figures in millions)

	2000	2001	2002	2003	Preliminary 2004YTD	2003Q1	Preliminary 2004Q1
Number of institutions reporting	2,230	2,138	2,077	1,999	1,969	2,065	1,969
Total employees (FTEs)	948,549	966,545	993,469	1,000,493	1,069,677	991,873	1,069,677
Selected income data ($)							
Net income	$38,907	$44,183	$56,473	$62,958	$16,683	$15,236	$16,683
Net interest income	115,673	125,366	141,377	143,162	38,345	35,123	38,345
Provision for loan losses	20,536	28,921	32,613	24,009	5,237	6,503	5,237
Noninterest income	96,749	100,094	109,531	116,050	28,906	27,446	28,906
Noninterest expense	128,973	131,718	136,840	144,904	38,248	34,366	38,248
Net operating income	40,158	42,954	54,330	60,588	15,925	14,488	15,925
Cash dividends declared	32,327	27,783	41,757	45,047	6,999	10,023	6,999
Net charge-offs	17,227	25,107	31,381	26,973	6,038	6,841	6,038
Selected condition data ($)							
Total assets	3,414,384	3,635,066	3,908,025	4,292,299	4,436,042	4,001,896	4,436,042
Total loans and leases	2,224,132	2,269,248	2,445,291	2,630,613	2,664,252	2,464,931	2,664,252
Reserve for losses	39,992	45,537	48,338	48,624	47,726	48,371	47,726
Securities	502,299	576,550	653,702	753,639	855,122	689,963	855,122
Other real estate owned	1,553	1,799	2,075	1,941	1,891	2,078	1,891
Noncurrent loans and leases	27,151	34,261	38,166	34,872	31,271	36,843	31,271
Total deposits	2,250,402	2,384,414	2,565,771	2,786,714	2,891,990	2,635,913	2,891,990
Domestic deposits	1,827,064	2,001,243	2,168,876	2,322,009	2,382,362	2,231,393	2,382,362
Equity capital	293,729	340,668	371,435	390,510	403,308	376,336	403,308
Off-balance-sheet derivatives	15,502,911	20,549,785	25,953,473	31,554,693	34,043,863	28,802,631	34,043,863
Performance ratios (annualized %)							
Return on equity	13.69	13.84	15.79	16.46	16.81	16.30	16.81
Return on assets	1.18	1.25	1.50	1.53	1.53	1.54	1.53
Net interest income to assets	3.50	3.56	3.76	3.47	3.51	3.55	3.51
Loss provision to assets	0.62	0.82	0.87	0.58	0.48	0.66	0.48
Net operating income to assets	1.21	1.22	1.44	1.47	1.46	1.47	1.46
Noninterest income to assets	2.92	2.84	2.91	2.81	2.65	2.78	2.65
Noninterest expense to assets	3.90	3.74	3.63	3.51	3.50	3.48	3.50
Loss provision to loans and leases	0.95	1.28	1.38	0.95	0.79	1.06	0.79
Net charge-offs to loans and leases	0.80	1.11	1.33	1.07	0.91	1.11	0.91
Loss provision to net charge-offs	119.21	115.19	103.93	89.01	86.73	95.06	86.73
Performance ratios (%)							
Percent of institutions unprofitable	6.91	7.48	6.93	5.40	5.33	5.96	5.33
Percent of institutions with earnings gains	66.64	56.83	71.21	56.08	57.03	57.14	56.63
Nonint. income to net operating revenue	45.55	44.40	43.65	44.77	42.98	43.87	42.98
Nonint. expense to net operating revenue	60.72	58.42	54.54	55.90	56.87	54.93	56.87
Condition ratios (%)							
Nonperforming assets to assets	0.86	1.01	1.06	0.89	0.77	1.00	0.77
Noncurrent loans to loans	1.22	1.51	1.56	1.33	1.17	1.49	1.17
Loss reserve to noncurrent loans	147.30	132.91	126.65	139.44	152.62	131.29	152.62
Loss reserve to loans	1.80	2.01	1.98	1.85	1.79	1.96	1.79
Equity capital to assets	8.60	9.37	9.50	9.10	9.09	9.40	9.09
Leverage ratio	7.49	7.81	7.88	7.70	7.64	7.89	7.64
Risk-based capital ratio	11.84	12.60	12.66	12.65	12.65	12.84	12.65
Net loans and leases to assets	63.97	61.17	61.33	60.15	58.98	60.39	58.98
Securities to assets	14.71	15.86	16.73	17.56	19.28	17.24	19.28
Appreciation in securities (% of par)	-0.01	0.47	2.12	0.88	1.71	1.97	1.71
Residential mortgage assets to assets	19.60	22.55	24.72	24.44	25.80	25.08	25.80
Total deposits to assets	65.91	65.59	65.65	64.92	65.19	65.87	65.19
Core deposits to assets	45.61	48.08	48.75	48.03	47.81	48.90	47.81
Volatile liabilities to assets	35.18	31.23	30.31	30.57	31.04	29.73	31.04

Loan performance, FDIC-insured national banks

Annual 2000--2003, year-to-date through March 31, 2004, first quarter 2003, and first quarter 2004

(Dollar figures in millions)

	2000	2001	2002	2003	Preliminary 2004YTD	2003Q1	Preliminary 2004Q1
Percent of loans past due 30-89 days							
Total loans and leases	1.25	1.38	1.14	1.02	0.88	1.04	0.88
Loans secured by real estate (RE)	1.42	1.42	1.07	0.91	0.79	1.02	0.79
1-4 family residential mortgages	1.95	1.84	1.45	1.30	1.06	1.30	1.06
Home equity loans	1.07	0.79	0.61	0.45	0.36	0.52	0.36
Multifamily residential mortgages	0.59	0.82	0.42	0.54	0.33	0.57	0.33
Commercial RE loans	0.72	0.85	0.58	0.47	0.52	0.64	0.52
Construction RE loans	1.12	1.28	0.91	0.66	0.73	1.09	0.73
Commercial and industrial loans	0.71	0.94	0.76	0.63	0.57	0.75	0.57
Loans to individuals	2.40	2.38	2.15	2.08	1.77	1.82	1.77
Credit cards	2.50	2.52	2.57	2.48	2.14	2.14	2.14
Installment loans and other plans	2.31	2.62	2.07	1.95	1.65	1.81	1.65
All other loans and leases	0.56	0.84	0.55	0.34	0.35	0.56	0.35
Percent of loans noncurrent							
Total loans and leases	1.22	1.51	1.56	1.33	1.17	1.49	1.17
Loans secured by real estate (RE)	0.93	1.05	0.97	0.95	0.87	0.98	0.87
1-4 family residential mortgages	1.06	1.06	1.02	1.14	1.06	0.99	1.06
Home equity loans	0.41	0.38	0.32	0.24	0.22	0.31	0.22
Multifamily residential mortgages	0.55	0.54	0.48	0.45	0.38	0.45	0.38
Commercial RE loans	0.77	1.02	1.05	0.97	0.88	1.16	0.88
Construction RE loans	0.82	1.15	1.03	0.71	0.63	0.98	0.63
Commercial and industrial loans	1.66	2.44	3.00	2.19	1.85	2.91	1.85
Loans to individuals	1.46	1.49	1.60	1.78	1.72	1.50	1.72
Credit cards	1.90	2.05	2.16	2.24	2.14	1.96	2.14
Installment loans and other plans	1.06	1.24	1.30	1.55	1.54	1.31	1.54
All other loans and leases	0.86	1.19	1.11	0.74	0.54	1.00	0.54
Percent of loans charged-off, net							
Total loans and leases	0.80	1.11	1.33	1.07	0.91	1.11	0.91
Loans secured by real estate (RE)	0.12	0.26	0.19	0.21	0.11	0.15	0.11
1-4 family residential mortgages	0.14	0.32	0.17	0.24	0.14	0.16	0.14
Home equity loans	0.23	0.35	0.23	0.23	0.15	0.22	0.15
Multifamily residential mortgages	0.03	0.04	0.11	0.03	0.01	0.03	0.01
Commercial RE loans	0.07	0.16	0.17	0.13	0.04	0.09	0.04
Construction RE loans	0.05	0.15	0.19	0.14	0.05	0.13	0.05
Commercial and industrial loans	0.87	1.50	1.80	1.35	0.71	1.50	0.71
Loans to individuals	2.84	3.13	4.02	3.45	3.56	3.56	3.56
Credit cards	4.43	5.06	6.58	5.48	5.80	5.53	5.80
Installment loans and other plans	1.54	1.66	1.91	1.81	1.62	1.91	1.62
All other loans and leases	0.94	1.75	2.49	1.75	0.18	0.55	0.18
Loans outstanding ($)							
Total loans and leases	$2,224,132	$2,269,248	$2,445,291	$2,630,613	$2,664,252	$2,464,931	$2,664,252
Loans secured by real estate (RE)	892,138	976,094	1,139,263	1,254,981	1,297,962	1,160,870	1,297,962
1-4 family residential mortgages	443,000	472,680	573,669	605,101	614,963	578,187	614,963
Home equity loans	82,672	102,131	141,058	192,703	212,657	151,598	212,657
Multifamily residential mortgages	28,026	30,075	33,968	35,652	35,480	34,618	35,480
Commercial RE loans	221,267	236,489	253,427	269,936	277,314	257,898	277,314
Construction RE loans	76,899	91,437	95,361	104,218	109,130	96,492	109,130
Farmland loans	12,350	12,615	13,225	13,614	13,949	13,314	13,949
RE loans from foreign offices	27,923	30,668	28,556	33,758	34,469	28,763	34,469
Commercial and industrial loans	646,988	597,301	546,050	500,004	502,959	539,333	502,959
Loans to individuals	370,394	389,947	450,604	527,991	509,682	434,846	509,682
Credit cards*	176,425	166,628	209,971	250,893	230,622	191,983	230,622
Other revolving credit plans	.	29,258	33,243	32,930	31,370	32,686	31,370
Installment loans	193,969	194,060	207,390	244,168	247,689	210,177	247,689
All other loans and leases	316,177	307,851	311,822	349,521	355,489	332,421	355,489
Less: Unearned income	1,565	1,944	2,449	1,884	1,840	2,540	1,840

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

Key indicators, FDIC-insured national banks by asset size
First quarter 2003 and first quarter 2004
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1
Number of institutions reporting	918	824	976	984	125	116	46	45
Total employees (FTEs)	21,442	19,373	93,728	134,285	94,139	84,665	782,564	831,354
Selected income data ($)								
Net income	$129	$118	$828	$878	$1,183	$1,262	$13,096	$14,424
Net interest income	467	425	2,462	2,519	3,228	3,055	28,965	32,346
Provision for loan losses	26	20	191	149	420	311	5,866	4,757
Noninterest income	185	183	1,308	1,368	2,312	2,192	23,641	25,163
Noninterest expense	465	446	2,482	2,565	3,384	3,071	28,035	32,166
Net operating income	122	113	795	851	1,155	1,235	12,415	13,726
Cash dividends declared	53	72	588	345	1,034	970	8,348	5,612
Net charge-offs	17	14	130	137	331	261	6,363	5,627
Selected condition data ($)								
Total assets	49,494	45,283	264,440	273,512	377,905	346,243	3,310,058	3,771,004
Total loans and leases	28,901	26,378	163,143	171,920	229,740	213,978	2,043,147	2,251,977
Reserve for losses	411	384	2,392	2,424	3,450	3,161	42,119	41,757
Securities	12,238	11,737	66,446	68,939	81,848	86,442	529,431	688,003
Other real estate owned	83	73	293	284	229	202	1,473	1,332
Noncurrent loans and leases	375	317	1,672	1,530	2,280	1,797	32,516	27,629
Total deposits	41,682	37,779	214,167	220,321	245,626	229,984	2,134,439	2,403,905
Domestic deposits	41,670	37,766	214,058	220,177	242,821	227,250	1,732,843	1,897,170
Equity capital	5,727	5,425	26,784	28,126	40,652	37,829	303,173	331,929
Off-balance-sheet derivatives	48	22	4,606	3,024	19,116	22,011	29,062,853	34,433,303
Performance ratios (annualized %)								
Return on equity	9.08	8.82	12.44	12.72	11.85	13.39	17.37	17.69
Return on assets	1.05	1.05	1.27	1.30	1.27	1.47	1.60	1.56
Net interest income to assets	3.81	3.77	3.76	3.72	3.47	3.55	3.54	3.49
Loss provision to assets	0.21	0.18	0.29	0.22	0.45	0.36	0.72	0.51
Net operating income to assets	1.00	1.00	1.21	1.26	1.24	1.44	1.52	1.48
Noninterest income to assets	1.51	1.62	2.00	2.02	2.49	2.55	2.89	2.72
Noninterest expense to assets	3.79	3.95	3.79	3.78	3.64	3.57	3.43	3.47
Loss provision to loans and leases	0.36	0.31	0.47	0.35	0.75	0.59	1.15	0.85
Net charge-offs to loans and leases	0.24	0.21	0.32	0.32	0.59	0.50	1.25	1.00
Loss provision to net charge-offs	150.87	144.33	146.66	109.33	126.75	119.16	92.20	84.54
Performance ratios (%)								
Percent of institutions unprofitable	9.69	9.95	2.97	1.93	2.40	2.59	4.35	2.22
Percent of institutions with earnings gains	53.59	51.33	59.94	59.76	59.20	63.79	63.04	66.67
Nonint. income to net operating revenue	28.39	30.08	34.69	35.19	41.73	41.78	44.94	43.76
Nonint. expense to net operating revenue	71.34	73.24	65.84	65.98	61.08	58.53	53.29	55.93
Condition ratios (%)								
Nonperforming assets to assets	0.96	0.88	0.75	0.66	0.67	0.58	1.06	0.79
Noncurrent loans to loans	1.30	1.20	1.02	0.89	0.99	0.84	1.59	1.23
Loss reserve to noncurrent loans	109.62	121.29	143.03	158.49	151.30	175.94	129.53	151.14
Loss reserve to loans	1.42	1.46	1.47	1.41	1.50	1.48	2.06	1.85
Equity capital to assets	11.57	11.98	10.13	10.28	10.76	10.93	9.16	8.80
Leverage ratio	11.14	11.52	9.43	9.41	9.24	9.31	7.56	7.31
Risk-based capital ratio	18.43	19.20	14.99	14.79	15.62	15.26	12.37	12.24
Net loans and leases to assets	57.56	57.40	60.79	61.97	59.88	60.89	60.45	58.61
Securities to assets	24.73	25.92	25.13	25.21	21.66	24.97	15.99	18.24
Appreciation in securities (% of par)	2.15	1.58	2.22	1.80	2.43	2.01	1.86	1.67
Residential mortgage assets to assets	21.61	20.95	24.49	23.38	27.53	27.30	24.90	25.90
Total deposits to assets	84.22	83.43	80.99	80.55	65.00	66.42	64.48	63.75
Core deposits to assets	71.52	70.96	68.13	67.70	55.44	56.39	46.28	45.31
Volatile liabilities to assets	14.35	14.39	17.10	17.47	22.19	23.43	31.83	32.93

Loan performance, FDIC-insured national banks by asset size
First quarter 2003 and first quarter 2004
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1
Percent of loans past due 30-89 days								
Total loans and leases	1.61	1.45	1.22	0.97	1.04	0.83	1.02	0.87
Loans secured by real estate (RE)	1.45	1.31	1.08	0.84	0.90	0.73	1.02	0.78
1-4 family residential mortgages	1.81	1.62	1.43	1.17	1.26	0.97	1.28	1.05
Home equity loans	0.51	0.56	0.45	0.42	0.38	0.27	0.53	0.36
Multifamily residential mortgages	0.62	0.79	0.51	0.42	0.33	0.55	0.63	0.27
Commercial RE loans	1.08	1.19	0.84	0.68	0.58	0.61	0.59	0.44
Construction RE loans	1.43	1.12	1.13	0.73	0.86	0.72	1.12	0.72
Commercial and industrial loans	1.63	1.59	1.33	1.07	1.09	0.97	0.68	0.49
Loans to individuals	2.39	2.20	1.85	1.73	1.77	1.38	1.82	1.79
Credit cards	2.25	1.74	2.95	3.13	2.52	2.23	2.11	2.13
Installment loans and other plans	2.43	2.25	1.68	1.49	1.62	1.07	1.84	1.70
All other loans and leases	1.55	1.23	1.28	0.86	0.66	0.28	0.52	0.33
Percent of loans noncurrent								
Total loans and leases	1.30	1.20	1.02	0.89	0.99	0.84	1.59	1.23
Loans secured by real estate (RE)	1.16	1.03	0.87	0.80	0.88	0.75	1.00	0.89
1-4 family residential mortgages	0.99	0.93	0.76	0.72	0.87	0.89	1.03	1.10
Home equity loans	0.39	0.27	0.19	0.19	0.29	0.20	0.31	0.22
Multifamily residential mortgages	0.83	0.65	0.37	0.46	0.48	0.47	0.45	0.34
Commercial RE loans	1.24	1.21	1.05	0.92	1.01	0.80	1.23	0.89
Construction RE loans	1.31	0.82	0.77	0.77	0.93	0.54	1.02	0.62
Commercial and industrial loans	1.99	1.96	1.59	1.26	1.49	1.14	3.13	1.96
Loans to individuals	0.83	0.90	0.93	0.90	1.05	0.95	1.57	1.80
Credit cards	1.73	1.91	3.23	3.01	2.15	2.39	1.93	2.11
Installment loans and other plans	0.81	0.87	0.50	0.49	0.76	0.36	1.47	1.72
All other loans and leases	1.50	1.33	1.36	0.89	0.58	0.57	1.01	0.52
Percent of loans charged-off, net								
Total loans and leases	0.24	0.21	0.32	0.32	0.59	0.50	1.25	1.00
Loans secured by real estate (RE)	0.04	0.05	0.06	0.05	0.08	0.07	0.17	0.13
1-4 family residential mortgages	0.07	0.04	0.07	0.06	0.14	0.15	0.17	0.15
Home equity loans	-0.07	0.08	0.04	0.03	0.08	0.05	0.24	0.16
Multifamily residential mortgages	0.03	0.00	0.01	0.01	0.05	-0.13	0.04	0.03
Commercial RE loans	0.05	0.02	0.05	0.04	0.03	0.04	0.12	0.05
Construction RE loans	0.07	0.19	0.10	0.05	0.01	0.02	0.16	0.06
Commercial and industrial loans	0.65	0.45	0.45	0.26	0.93	0.59	1.62	0.76
Loans to individuals	0.72	0.82	1.68	2.39	2.20	2.44	3.79	3.69
Credit cards	3.54	3.74	6.68	9.20	5.80	5.41	5.50	5.77
Installment loans and other plans	0.62	0.68	0.71	0.98	1.10	1.14	2.14	1.71
All other loans and leases	0.15	0.13	0.28	0.20	0.39	0.11	0.57	0.19
Loans outstanding ($)								
Total loans and leases	$28,901	$26,378	$163,143	$171,920	$229,740	$213,978	$2,043,147	$2,251,977
Loans secured by real estate (RE)	17,427	16,216	108,418	117,550	133,826	127,562	901,200	1,036,634
1-4 family residential mortgages	7,243	6,596	39,207	38,690	59,969	47,807	471,769	521,869
Home equity loans	484	493	5,629	6,877	10,383	10,131	135,101	195,157
Multifamily residential mortgages	441	422	4,060	4,384	4,905	4,749	25,211	25,925
Commercial RE loans	5,409	5,091	42,548	47,637	41,171	45,128	168,769	179,457
Construction RE loans	1,745	1,659	11,931	14,294	15,278	17,494	67,538	75,683
Farmland loans	2,104	1,955	5,042	5,665	1,671	1,593	4,497	4,736
RE loans from foreign offices	0	0	0	3	448	660	28,314	33,806
Commercial and industrial loans	4,747	4,271	27,333	28,319	42,779	41,557	464,474	428,812
Loans to individuals	3,496	3,058	17,986	16,646	33,976	28,365	379,389	461,613
Credit cards*	121	132	2,903	2,798	7,636	8,446	181,323	219,246
Other revolving credit plans	50	37	346	338	1,023	944	31,267	30,051
Installment loans	3,324	2,890	14,737	13,510	25,316	18,975	166,800	212,315
All other loans and leases	3,268	2,857	9,595	9,584	19,254	16,597	300,304	326,452
Less: Unearned income	37	25	188	179	95	102	2,221	1,533

Key indicators, FDIC-insured national banks by region
First quarter 2004
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	217	231	397	408	562	154	1,969
Total employees (FTEs)	326,770	223,749	252,295	143,236	87,130	36,497	1,069,677
Selected income data ($)							
Net income	$5,024	$3,741	$3,713	$2,117	$843	$1,244	$16,683
Net interest income	11,081	8,337	7,818	5,659	2,265	3,185	38,345
Provision for loan losses	2,321	76	667	1,043	159	972	5,237
Noninterest income	11,339	4,909	5,350	4,276	1,207	1,825	28,906
Noninterest expense	12,758	8,127	7,396	5,682	2,181	2,103	38,248
Net operating income	4,917	3,395	3,497	2,078	798	1,240	15,925
Cash dividends declared	1,893	1,389	1,808	754	485	668	6,999
Net charge-offs	2,876	343	775	1,083	161	800	6,038
Selected condition data ($)							
Total assets	1,214,368	1,191,007	1,033,229	519,325	256,240	221,872	4,436,042
Total loans and leases	673,625	632,418	659,216	383,434	159,702	155,857	2,664,252
Reserve for losses	16,650	7,585	10,498	6,849	2,107	4,037	47,726
Securities	233,240	265,332	206,571	56,627	60,714	32,637	855,122
Other real estate owned	171	363	705	276	315	62	1,891
Noncurrent loans and leases	11,830	4,223	7,300	4,591	1,465	1,863	31,271
Total deposits	814,172	796,528	623,542	341,634	196,001	120,113	2,891,990
Domestic deposits	495,153	697,380	557,489	326,547	194,573	111,220	2,382,362
Equity capital	118,085	94,213	85,541	54,854	24,566	26,049	403,308
Off-balance-sheet derivatives	14,114,250	17,383,743	1,869,661	581,693	53,300	41,216	34,043,863
Performance ratios (annualized %)							
Return on equity	17.34	16.11	17.64	15.70	13.94	19.30	16.81
Return on assets	1.68	1.31	1.44	1.62	1.33	2.25	1.53
Net interest income to assets	3.72	2.92	3.03	4.33	3.57	5.77	3.51
Loss provision to assets	0.78	0.03	0.26	0.80	0.25	1.76	0.48
Net operating income to assets	1.65	1.19	1.35	1.59	1.26	2.24	1.46
Noninterest income to assets	3.80	1.72	2.07	3.27	1.90	3.30	2.65
Noninterest expense to assets	4.28	2.84	2.87	4.35	3.44	3.81	3.50
Loss provision to loans and leases	1.38	0.05	0.40	1.09	0.40	2.50	0.79
Net charge-offs to loans and leases	1.71	0.22	0.47	1.13	0.41	2.06	0.91
Loss provision to net charge-offs	80.69	22.18	86.05	96.28	99.04	121.40	86.73
Performance ratios (%)							
Percent of institutions unprofitable	5.53	7.79	4.03	4.41	4.63	9.74	5.33
Percent of institutions with earnings gains	61.29	63.20	50.63	48.28	60.32	64.29	56.63
Nonint. income to net operating revenue	50.57	37.06	40.63	43.04	34.77	36.43	42.98
Nonint. expense to net operating revenue	56.91	61.35	56.16	57.20	62.80	41.98	56.87
Condition ratios (%)							
Nonperforming assets to assets	1.02	0.41	0.81	0.94	0.70	0.87	0.77
Noncurrent loans to loans	1.76	0.67	1.11	1.20	0.92	1.20	1.17
Loss reserve to noncurrent loans	140.75	179.63	143.81	149.18	143.87	216.65	152.62
Loss reserve to loans	2.47	1.20	1.59	1.79	1.32	2.59	1.79
Equity capital to assets	9.72	7.91	8.28	10.56	9.59	11.74	9.09
Leverage ratio	8.35	6.66	7.18	7.91	8.24	9.88	7.64
Risk-based capital ratio	13.48	11.59	12.44	12.06	12.88	15.44	12.65
Net loans and leases to assets	54.10	52.46	62.79	72.51	61.50	68.43	58.98
Securities to assets	19.21	22.28	19.99	10.90	23.69	14.71	19.28
Appreciation in securities (% of par)	1.28	2.13	1.54	2.97	1.36	1.13	1.71
Residential mortgage assets to assets	14.00	36.55	26.93	28.95	27.07	18.56	25.80
Total deposits to assets	67.04	66.88	60.35	65.78	76.49	54.14	65.19
Core deposits to assets	34.95	53.85	49.08	56.11	62.09	44.05	47.81
Volatile liabilities to assets	42.24	27.73	28.54	19.35	22.65	36.28	31.04

Loan performance, FDIC-insured national banks by region
First quarter 2004
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30-89 days							
Total loans and leases	1.01	0.56	0.86	1.02	0.97	1.20	0.88
Loans secured by real estate (RE)	0.63	0.64	1.01	0.85	0.93	0.55	0.79
1-4 family residential mortgages	0.67	0.86	1.53	1.24	1.16	0.48	1.06
Home equity loans	0.31	0.36	0.43	0.29	0.38	0.35	0.36
Multifamily residential mortgages	0.13	0.20	0.43	0.19	0.79	0.30	0.33
Commercial RE loans	0.49	0.33	0.72	0.32	0.79	0.51	0.52
Construction RE loans	0.55	0.32	0.91	1.05	0.79	1.05	0.73
Commercial and industrial loans	0.54	0.27	0.67	0.65	0.92	0.99	0.57
Loans to individuals	1.99	1.25	1.32	1.92	1.34	2.04	1.77
Credit cards	2.11	1.45	1.99	2.36	2.02	2.08	2.14
Installment loans and other plans	2.30	1.31	1.26	1.33	1.36	2.13	1.65
All other loans and leases	0.45	0.13	0.33	0.54	1.01	0.35	0.35
Percent of loans noncurrent							
Total loans and leases	1.76	0.67	1.11	1.20	0.92	1.20	1.17
Loans secured by real estate (RE)	0.90	0.44	1.25	1.13	0.87	0.44	0.87
1-4 family residential mortgages	0.76	0.46	1.86	1.63	0.96	0.31	1.06
Home equity loans	0.18	0.13	0.31	0.23	0.21	0.07	0.22
Multifamily residential mortgages	0.21	0.20	0.51	0.48	0.60	0.15	0.38
Commercial RE loans	0.96	0.60	1.23	0.84	0.80	0.68	0.88
Construction RE loans	0.63	0.41	0.79	0.87	0.71	0.23	0.63
Commercial and industrial loans	2.49	1.82	1.68	1.07	1.17	1.53	1.85
Loans to individuals	2.52	0.55	0.61	1.66	0.50	1.87	1.72
Credit cards	2.16	0.99	1.62	2.43	1.86	1.96	2.14
Installment loans and other plans	3.64	0.57	0.42	0.45	0.45	1.58	1.54
All other loans and leases	0.76	0.30	0.41	0.70	1.24	0.81	0.54
Percent of loans charged-off, net							
Total loans and leases	1.71	0.22	0.47	1.13	0.41	2.06	0.91
Loans secured by real estate (RE)	0.11	0.04	0.22	0.07	0.22	0.02	0.11
1-4 family residential mortgages	0.07	0.07	0.31	0.06	0.46	0.01	0.14
Home equity loans	0.08	0.06	0.29	0.11	0.19	0.02	0.15
Multifamily residential mortgages	0.05	0.00	0.03	0.10	-0.22	-0.05	0.01
Commercial RE loans	0.07	-0.04	0.09	0.05	0.10	0.03	0.04
Construction RE loans	0.00	-0.02	0.12	0.10	0.06	0.02	0.05
Commercial and industrial loans	0.99	0.60	0.46	0.70	0.66	0.93	0.71
Loans to individuals	4.35	0.86	1.83	4.64	1.12	4.77	3.56
Credit cards	5.71	3.33	4.48	6.90	5.39	5.33	5.80
Installment loans and other plans	2.69	0.85	1.27	0.73	0.89	1.67	1.62
All other loans and leases	0.22	0.08	0.21	0.20	0.41	0.11	0.18
Loans outstanding ($)							
Total loans and leases	$673,625	$632,418	$659,216	$383,434	$159,702	$155,857	$2,664,252
Loans secured by real estate (RE)	198,185	382,151	328,289	223,961	102,825	62,552	1,297,962
1-4 family residential mortgages	79,333	221,086	138,225	116,992	34,074	25,254	614,963
Home equity loans	40,549	47,175	63,134	48,027	10,489	3,283	212,657
Multifamily residential mortgages	4,113	8,007	13,705	4,273	2,650	2,732	35,480
Commercial RE loans	38,281	71,074	75,687	37,513	31,713	23,046	277,314
Construction RE loans	8,109	29,973	33,145	12,806	17,350	7,747	109,130
Farmland loans	695	1,787	3,767	4,351	2,861	488	13,949
RE loans from foreign offices	27,105	3,049	625	0	3,689	1	34,469
Commercial and industrial loans	153,963	108,456	131,690	50,777	33,965	24,108	502,959
Loans to individuals	213,853	57,694	82,646	78,017	15,401	62,070	509,682
Credit cards	113,975	415	14,427	48,266	743	52,797	230,622
Other revolving credit plans	19,617	2,559	4,698	2,532	562	1,402	31,370
Installment loans	80,261	54,721	63,521	27,219	14,096	7,871	247,689
All other loans and leases	109,010	84,259	116,658	30,699	7,625	7,239	355,489
Less: Unearned income	1,385	142	67	21	113	112	1,840

Key indicators, FDIC-insured commercial banks
Annual 2000--2003, year-to-date through March 31, 2004, first quarter 2003, and first quarter 2004
(Dollar figures in millions)

	2000	2001	2002	2003	Preliminary 2004YTD	2003Q1	Preliminary 2004Q1
Number of institutions reporting	8,315	8,079	7,888	7,770	7,712	7,865	7,712
Total employees (FTEs)	1,670,758	1,701,717	1,745,614	1,759,517	1,851,722	1,750,953	1,851,722
Selected income data ($)							
Net income	$70,795	$73,840	$89,715	$102,546	$27,286	$25,082	$27,286
Net interest income	203,584	214,676	236,657	239,996	62,767	59,386	62,767
Provision for loan losses	30,026	43,337	48,195	34,777	6,977	9,531	6,977
Noninterest income	154,247	158,204	172,407	186,474	47,683	44,679	47,683
Noninterest expense	216,831	223,236	233,604	245,948	64,636	59,260	64,636
Net operating income	72,383	71,012	85,414	98,298	26,236	23,661	26,236
Cash dividends declared	53,854	54,206	67,536	77,835	12,664	15,583	12,664
Net charge-offs	24,771	36,474	44,538	37,889	8,036	9,634	8,036
Selected condition data ($)							
Total assets	6,245,560	6,552,432	7,077,014	7,601,215	7,817,696	7,196,537	7,817,696
Total loans and leases	3,815,498	3,884,336	4,156,179	4,428,840	4,489,208	4,193,609	4,489,208
Reserve for losses	64,120	72,273	76,999	77,123	75,942	77,465	75,942
Securities	1,078,985	1,172,537	1,334,830	1,456,308	1,576,227	1,382,210	1,576,227
Other real estate owned	2,912	3,569	4,165	4,235	4,148	4,312	4,148
Noncurrent loans and leases	42,930	54,578	60,550	52,899	48,608	58,893	48,608
Total deposits	4,179,567	4,377,558	4,689,852	5,029,016	5,180,178	4,778,798	5,180,178
Domestic deposits	3,472,901	3,748,042	4,031,815	4,287,844	4,400,356	4,125,975	4,400,356
Equity capital	530,356	593,705	647,453	692,033	715,248	659,173	715,248
Off-balance-sheet derivatives	40,570,263	45,326,156	56,078,716	71,082,763	76,524,405	61,545,119	76,524,405
Performance ratios (annualized %)							
Return on equity	13.99	13.09	14.47	15.32	15.52	15.36	15.52
Return on assets	1.18	1.15	1.33	1.40	1.42	1.41	1.42
Net interest income to assets	3.40	3.35	3.50	3.27	3.26	3.33	3.26
Loss provision to assets	0.50	0.68	0.71	0.47	0.36	0.53	0.36
Net operating income to assets	1.21	1.11	1.26	1.34	1.36	1.33	1.36
Noninterest income to assets	2.58	2.47	2.55	2.54	2.48	2.50	2.48
Noninterest expense to assets	3.62	3.48	3.46	3.35	3.36	3.32	3.36
Loss provision to loans and leases	0.82	1.12	1.21	0.82	0.63	0.91	0.63
Net charge-offs to loans and leases	0.67	0.95	1.12	0.89	0.72	0.92	0.72
Loss provision to net charge-offs	121.14	118.82	108.21	91.79	86.82	98.93	86.82
Performance ratios (%)							
Percent of institutions unprofitable	7.34	8.12	6.64	5.86	5.20	5.72	5.20
Percent of institutions with earnings gains	67.31	56.28	72.71	59.29	57.42	61.00	56.91
Nonint. income to net operating revenue	43.11	42.43	42.15	43.73	43.17	42.93	43.17
Nonint. expense to net operating revenue	60.60	59.87	57.11	57.67	58.52	56.95	58.52
Condition ratios (%)							
Nonperforming assets to assets	0.74	0.92	0.94	0.77	0.69	0.90	0.69
Noncurrent loans to loans	1.13	1.41	1.46	1.19	1.08	1.40	1.08
Loss reserve to noncurrent loans	149.36	132.42	127.17	145.79	156.23	131.53	156.23
Loss reserve to loans	1.68	1.86	1.85	1.74	1.69	1.85	1.69
Equity capital to assets	8.49	9.06	9.15	9.10	9.15	9.16	9.15
Leverage ratio	7.69	7.78	7.83	7.85	7.87	7.86	7.87
Risk-based capital ratio	12.12	12.70	12.77	12.75	12.75	12.97	12.75
Net loans and leases to assets	60.06	58.18	57.64	57.25	56.45	57.20	56.45
Securities to assets	17.28	17.89	18.86	19.16	20.16	19.21	20.16
Appreciation in securities (% of par)	0.20	0.82	2.22	0.84	1.61	1.97	1.61
Residential mortgage assets to assets	20.19	21.64	23.29	23.28	24.16	23.81	24.16
Total deposits to assets	66.92	66.81	66.27	66.16	66.26	66.40	66.26
Core deposits to assets	46.39	48.72	48.68	48.55	48.39	48.96	48.39
Volatile liabilities to assets	34.97	31.45	31.41	31.02	31.38	30.67	31.38

Loan performance, FDIC-insured commercial banks
Annual 2000--2003, year-to-date through March 31, 2004, first quarter 2003, and first quarter 2004
(Dollar figures in millions)

	2000	2001	2002	2003	Preliminary 2004YTD	2003Q1	Preliminary 2004Q1
Percent of loans past due 30-89 days							
Total loans and leases	1.25	1.37	1.17	1.02	0.88	1.11	0.88
Loans secured by real estate (RE)	1.26	1.31	1.08	0.90	0.78	1.06	0.78
1-4 family residential mortgages	1.72	1.69	1.49	1.29	1.03	1.34	1.03
Home equity loans	0.98	0.79	0.59	0.45	0.35	0.51	0.35
Multifamily residential mortgages	0.55	0.72	0.46	0.48	0.34	0.54	0.34
Commercial RE loans	0.74	0.90	0.68	0.56	0.60	0.79	0.60
Construction RE loans	1.06	1.21	0.89	0.69	0.68	1.10	0.68
Commercial and industrial loans	0.83	1.01	0.89	0.73	0.70	0.88	0.70
Loans to individuals	2.47	2.46	2.22	2.09	1.70	1.93	1.70
Credit cards	2.66	2.70	2.72	2.54	2.14	2.35	2.14
Installment loans and other plans	2.34	2.54	2.08	1.93	1.54	1.85	1.54
All other loans and leases	0.64	0.84	0.58	0.48	0.45	0.63	0.45
Percent of loans noncurrent							
Total loans and leases	1.13	1.41	1.46	1.19	1.08	1.40	1.08
Loans secured by real estate (RE)	0.81	0.96	0.89	0.86	0.79	0.90	0.79
1-4 family residential mortgages	0.90	0.97	0.93	1.00	0.93	0.91	0.93
Home equity loans	0.37	0.37	0.30	0.24	0.22	0.29	0.22
Multifamily residential mortgages	0.44	0.46	0.38	0.39	0.36	0.38	0.36
Commercial RE loans	0.72	0.96	0.94	0.90	0.84	1.02	0.84
Construction RE loans	0.76	1.06	0.98	0.70	0.63	0.95	0.63
Commercial and industrial loans	1.66	2.41	2.92	2.10	1.90	2.80	1.90
Loans to individuals	1.41	1.43	1.51	1.52	1.44	1.42	1.44
Credit cards	2.01	2.12	2.24	2.21	2.09	2.10	2.09
Installment loans and other plans	0.98	1.12	1.14	1.13	1.11	1.12	1.11
All other loans and leases	0.70	0.97	1.01	0.66	0.53	0.97	0.53
Percent of loans charged-off, net							
Total loans and leases	0.67	0.95	1.12	0.89	0.72	0.92	0.72
Loans secured by real estate (RE)	0.09	0.19	0.15	0.16	0.10	0.12	0.10
1-4 family residential mortgages	0.11	0.22	0.14	0.19	0.11	0.13	0.11
Home equity loans	0.18	0.27	0.19	0.20	0.14	0.19	0.14
Multifamily residential mortgages	0.03	0.04	0.08	0.03	0.02	0.03	0.02
Commercial RE loans	0.05	0.13	0.15	0.13	0.06	0.09	0.06
Construction RE loans	0.05	0.14	0.17	0.13	0.05	0.10	0.05
Commercial and industrial loans	0.81	1.43	1.76	1.26	0.68	1.39	0.68
Loans to individuals	2.43	2.73	3.34	3.04	3.03	3.05	3.03
Credit cards	4.39	5.12	6.38	5.57	5.63	5.68	5.63
Installment loans and other plans	1.18	1.29	1.46	1.45	1.30	1.44	1.30
All other loans and leases	0.91	1.61	2.30	1.60	0.19	0.46	0.19
Loans outstanding ($)							
Total loans and leases	$3,815,498	$3,884,336	$4,156,179	$4,428,840	$4,489,208	$4,193,609	$4,489,208
Loans secured by real estate (RE)	1,673,324	1,800,228	2,068,150	2,272,352	2,346,784	2,109,825	2,346,784
1-4 family residential mortgages	790,028	810,766	945,705	993,872	1,013,593	953,085	1,013,593
Home equity loans	127,694	154,193	214,724	284,508	308,864	228,741	308,864
Multifamily residential mortgages	60,406	64,131	71,934	79,907	81,422	73,915	81,422
Commercial RE loans	466,453	505,882	555,990	602,399	617,591	567,868	617,591
Construction RE loans	162,613	193,029	207,452	231,467	242,964	212,861	242,964
Farmland loans	34,096	35,533	38,066	40,696	41,463	38,756	41,463
RE loans from foreign offices	32,033	36,695	34,280	39,503	40,886	34,598	40,886
Commercial and industrial loans	1,051,992	981,130	911,912	870,581	865,102	905,108	865,102
Loans to individuals	606,695	629,412	703,748	770,465	750,162	683,884	750,162
Credit cards*	249,425	232,448	275,957	316,014	292,456	250,400	292,456
Other revolving credit plans	.	34,202	38,209	37,607	36,023	37,546	36,023
Installment loans	357,269	362,762	389,582	416,844	421,684	395,938	421,684
All other loans and leases	486,400	476,689	475,769	518,311	529,943	498,271	529,943
Less: Unearned income	2,912	3,123	3,401	2,869	2,783	3,479	2,783

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

Key indicators, FDIC-insured commercial banks by asset size
First quarter 2003 and first quarter 2004
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1
Number of institutions reporting	4,114	3,831	3,338	3,462	330	335	83	84
Total employees (FTEs)	82,109	75,533	299,559	365,523	243,176	226,135	1,126,109	1,184,531
Selected income data ($)								
Net income	$534	$497	$2,776	$2,883	$3,098	$3,401	$18,674	$20,505
Net interest income	1,976	1,862	8,376	8,673	8,222	8,145	40,811	44,086
Provision for loan losses	115	86	616	529	1,015	753	7,785	5,609
Noninterest income	581	476	3,148	3,263	5,074	4,940	35,876	39,004
Noninterest expense	1,784	1,648	7,206	7,573	7,783	7,440	42,487	47,975
Net operating income	511	481	2,674	2,808	2,995	3,304	17,482	19,643
Cash dividends declared	328	302	1,466	1,383	2,873	1,772	10,916	9,207
Net charge-offs	62	56	421	401	871	676	8,281	6,903
Selected condition data ($)								
Total assets	209,894	197,546	882,541	921,392	940,946	911,515	5,163,155	5,787,243
Total loans and leases	126,735	119,013	569,193	603,802	566,185	569,891	2,931,497	3,196,502
Reserve for losses	1,881	1,770	8,527	8,734	9,500	9,025	57,558	56,414
Securities	50,132	49,365	203,482	212,619	233,230	227,822	895,366	1,086,422
Other real estate owned	335	319	1,222	1,192	640	635	2,114	2,002
Noncurrent loans and leases	1,585	1,340	5,722	5,173	6,144	5,043	45,441	37,052
Total deposits	177,437	166,084	721,160	747,685	638,392	623,983	3,241,808	3,642,426
Domestic deposits	177,425	166,070	719,865	746,492	628,304	614,962	2,600,381	2,872,832
Equity capital	23,453	22,718	86,951	92,421	97,322	99,478	451,448	500,632
Off-balance-sheet derivatives	134	155	8,840	8,109	69,023	68,855	61,932,332	77,146,995
Performance ratios (annualized %)								
Return on equity	9.16	8.86	12.93	12.73	12.94	13.92	16.66	16.66
Return on assets	1.03	1.02	1.27	1.27	1.33	1.51	1.46	1.44
Net interest income to assets	3.80	3.80	3.84	3.81	3.54	3.61	3.18	3.10
Loss provision to assets	0.22	0.18	0.28	0.23	0.44	0.33	0.61	0.39
Net operating income to assets	0.98	0.98	1.23	1.23	1.29	1.46	1.36	1.38
Noninterest income to assets	1.12	0.97	1.44	1.43	2.18	2.19	2.80	2.74
Noninterest expense to assets	3.43	3.37	3.30	3.33	3.35	3.30	3.32	3.37
Loss provision to loans and leases	0.37	0.29	0.44	0.36	0.73	0.54	1.06	0.71
Net charge-offs to loans and leases	0.20	0.19	0.30	0.27	0.62	0.48	1.13	0.87
Loss provision to net charge-offs	185.85	153.36	146.32	132.02	116.52	111.31	94.02	81.26
Performance ratios (%)								
Percent of institutions unprofitable	8.95	8.64	2.22	1.82	1.52	1.19	3.61	3.57
Percent of institutions with earnings gains	55.76	53.69	66.69	59.50	67.58	64.18	66.27	67.86
Nonint. income to net operating revenue	22.71	20.36	27.32	27.33	38.16	37.75	46.78	46.94
Nonint. expense to net operating revenue	69.78	70.51	62.53	63.45	58.54	56.85	55.40	57.74
Condition ratios (%)								
Nonperforming assets to assets	0.93	0.84	0.79	0.69	0.73	0.63	0.95	0.70
Noncurrent loans to loans	1.25	1.13	1.01	0.86	1.09	0.88	1.55	1.16
Loss reserve to noncurrent loans	118.65	132.10	149.01	168.84	154.60	178.95	126.66	152.26
Loss reserve to loans	1.48	1.49	1.50	1.45	1.68	1.58	1.96	1.76
Equity capital to assets	11.17	11.50	9.85	10.03	10.34	10.91	8.74	8.65
Leverage ratio	10.77	11.09	9.26	9.40	9.02	9.45	7.28	7.26
Risk-based capital ratio	17.32	17.86	14.22	14.26	14.52	14.65	12.37	12.10
Net loans and leases to assets	59.48	59.35	63.53	64.58	59.16	61.53	55.66	54.26
Securities to assets	23.88	24.99	23.06	23.08	24.79	24.99	17.34	18.77
Appreciation in securities (% of par)	2.16	1.69	2.18	1.85	2.05	1.66	1.89	1.55
Residential mortgage assets to assets	21.47	20.73	23.36	22.25	27.11	26.32	23.39	24.24
Total deposits to assets	84.54	84.07	81.71	81.15	67.85	68.46	62.79	62.94
Core deposits to assets	71.65	71.52	68.16	67.72	55.25	55.88	43.61	43.34
Volatile liabilities to assets	14.33	14.16	17.25	17.52	24.47	24.78	34.75	35.22

Loan performance, FDIC-insured commercial banks by asset size
First quarter 2003 and first quarter 2004
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1	2003Q1	2004Q1
Percent of loans past due 30-89 days								
Total loans and leases	1.82	1.50	1.28	0.98	1.17	0.88	1.04	0.84
Loans secured by real estate (RE)	1.60	1.33	1.12	0.86	0.98	0.72	1.02	0.74
1-4 family residential mortgages	1.95	1.76	1.54	1.31	1.13	0.91	1.30	0.97
Home equity loans	0.61	0.50	0.55	0.42	0.46	0.35	0.51	0.34
Multifamily residential mortgages	0.73	0.70	0.51	0.48	0.56	0.35	0.53	0.27
Commercial RE loans	1.28	1.08	0.87	0.68	0.89	0.70	0.65	0.47
Construction RE loans	1.34	0.99	1.11	0.64	1.13	0.65	1.07	0.69
Commercial and industrial loans	1.96	1.74	1.44	1.10	1.33	1.05	0.69	0.56
Loans to individuals	2.54	2.26	2.05	1.80	1.90	1.69	1.90	1.68
Credit cards	2.24	1.95	4.29	3.91	2.80	2.41	2.26	2.08
Installment loans and other plans	2.59	2.30	1.82	1.58	1.67	1.43	1.85	1.52
All other loans and leases	2.07	1.38	1.35	0.94	0.80	0.39	0.52	0.40
Percent of loans noncurrent								
Total loans and leases	1.25	1.13	1.01	0.86	1.09	0.88	1.55	1.16
Loans secured by real estate (RE)	1.08	0.99	0.86	0.75	0.89	0.78	0.90	0.79
1-4 family residential mortgages	0.98	0.97	0.80	0.78	0.85	0.86	0.94	0.96
Home equity loans	0.28	0.24	0.24	0.22	0.30	0.24	0.29	0.22
Multifamily residential mortgages	0.86	0.48	0.46	0.55	0.34	0.39	0.34	0.26
Commercial RE loans	1.14	1.12	0.94	0.80	1.00	0.87	1.06	0.82
Construction RE loans	1.18	0.81	0.95	0.68	1.06	0.71	0.89	0.56
Commercial and industrial loans	1.86	1.73	1.51	1.27	1.84	1.33	3.17	2.10
Loans to individuals	0.99	0.95	0.98	0.87	0.98	0.86	1.54	1.56
Credit cards	1.36	1.68	3.81	3.26	2.21	1.88	2.05	2.08
Installment loans and other plans	1.00	0.95	0.64	0.58	0.59	0.42	1.31	1.28
All other loans and leases	1.51	1.18	1.30	0.97	0.89	0.66	0.94	0.47
Percent of loans charged-off, net								
Total loans and leases	0.20	0.19	0.30	0.27	0.62	0.48	1.13	0.87
Loans secured by real estate (RE)	0.04	0.05	0.06	0.05	0.10	0.09	0.15	0.11
1-4 family residential mortgages	0.05	0.07	0.08	0.06	0.11	0.11	0.15	0.13
Home equity loans	0.03	0.06	0.03	0.04	0.14	0.12	0.21	0.15
Multifamily residential mortgages	0.03	0.04	0.03	0.07	0.03	-0.03	0.02	0.02
Commercial RE loans	0.04	0.04	0.06	0.04	0.09	0.09	0.12	0.06
Construction RE loans	0.07	0.12	0.06	0.05	0.11	0.04	0.11	0.05
Commercial and industrial loans	0.41	0.32	0.51	0.41	0.94	0.56	1.62	0.75
Loans to individuals	0.69	0.89	1.61	1.88	2.45	2.53	3.34	3.22
Credit cards	3.32	3.14	8.18	10.45	6.30	5.47	5.56	5.54
Installment loans and other plans	0.62	0.84	0.75	0.76	1.12	1.15	1.64	1.40
All other loans and leases	0.22	0.10	0.32	0.25	0.41	0.20	0.48	0.19
Loans outstanding ($)								
Total loans and leases	$126,735	$119,013	$569,193	$603,802	$566,185	$569,891	$2,931,497	$3,196,502
Loans secured by real estate (RE)	77,026	74,081	392,488	428,514	341,115	361,448	1,299,196	1,482,741
1-4 family residential mortgages	31,972	29,389	130,228	129,830	129,482	119,525	661,403	734,849
Home equity loans	2,316	2,379	20,075	23,883	24,503	27,641	181,847	254,962
Multifamily residential mortgages	1,760	1,715	14,493	16,749	14,952	18,264	42,711	44,694
Commercial RE loans	23,536	23,029	159,000	176,521	122,169	137,453	263,163	280,587
Construction RE loans	7,342	7,604	51,524	62,370	44,659	52,572	109,336	120,419
Farmland loans	10,101	9,964	17,138	19,125	4,287	5,099	7,231	7,274
RE loans from foreign offices	0	0	32	35	1,063	895	33,504	39,955
Commercial and industrial loans	21,358	19,584	96,031	97,914	108,372	105,194	679,347	642,410
Loans to individuals	14,256	12,580	53,241	49,362	80,646	68,546	535,740	619,674
Credit cards*	343	269	6,041	5,682	20,194	21,456	223,822	265,048
Other revolving credit plans	231	163	1,541	1,431	2,439	2,215	33,335	32,215
Installment loans	13,682	12,149	45,659	42,249	58,014	44,876	278,583	322,411
All other loans and leases	14,200	12,849	28,005	28,549	36,525	35,151	419,541	453,394
Less: Unearned income	105	81	573	537	473	449	2,327	1,717

Key indicators, FDIC-insured commercial banks by region
First quarter 2004
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	607	1,075	1,635	2,011	1,718	666	7,712
Total employees (FTEs)	571,427	428,972	378,533	198,366	169,100	105,324	1,851,722
Selected income data ($)							
Net income	$8,752	$6,062	$5,360	$2,722	$1,502	$2,888	$27,286
Net interest income	18,137	14,040	11,954	7,334	4,338	6,963	62,767
Provision for loan losses	2,584	596	959	1,188	272	1,379	6,977
Noninterest income	20,781	9,026	7,508	4,797	1,862	3,709	47,683
Noninterest expense	23,731	14,073	11,080	6,968	3,938	4,846	64,636
Net operating income	8,476	5,679	5,111	2,674	1,441	2,855	26,236
Cash dividends declared	3,818	2,968	2,708	1,087	832	1,251	12,664
Net charge-offs	3,566	824	1,028	1,197	245	1,176	8,036
Selected condition data ($)							
Total assets	2,635,399	1,861,682	1,553,908	693,216	476,265	597,225	7,817,696
Total loans and leases	1,222,233	1,082,511	995,021	500,746	291,071	397,627	4,489,208
Reserve for losses	25,566	13,956	15,544	8,846	3,991	8,040	75,942
Securities	522,080	402,639	323,029	94,873	120,955	112,652	1,576,227
Other real estate owned	477	952	1,229	497	715	279	4,148
Noncurrent loans and leases	18,533	7,257	10,696	5,700	2,725	3,697	48,608
Total deposits	1,656,369	1,261,873	1,006,476	481,151	377,054	397,255	5,180,178
Domestic deposits	1,116,410	1,142,686	916,449	466,064	375,608	383,138	4,400,356
Equity capital	233,797	159,358	132,467	72,985	46,625	70,016	715,248
Off-balance-sheet derivatives	56,188,302	17,562,875	1,992,856	585,138	55,101	140,132	76,524,405
Performance ratios (annualized %)							
Return on equity	15.23	15.49	16.45	15.17	13.11	16.78	15.52
Return on assets	1.35	1.34	1.38	1.57	1.28	1.96	1.42
Net interest income to assets	2.80	3.11	3.09	4.22	3.69	4.72	3.26
Loss provision to assets	0.40	0.13	0.25	0.68	0.23	0.93	0.36
Net operating income to assets	1.31	1.26	1.32	1.54	1.23	1.94	1.36
Noninterest income to assets	3.20	2.00	1.94	2.76	1.58	2.51	2.48
Noninterest expense to assets	3.66	3.12	2.86	4.01	3.35	3.28	3.36
Loss provision to loans and leases	0.85	0.22	0.39	0.95	0.38	1.40	0.63
Net charge-offs to loans and leases	1.17	0.31	0.41	0.96	0.34	1.19	0.72
Loss provision to net charge-offs	72.47	72.24	93.28	99.26	110.70	117.27	86.82
Performance ratios (%)							
Percent of institutions unprofitable	6.92	8.47	3.43	3.28	4.83	9.46	5.20
Percent of institutions with earnings gains	61.94	63.35	49.42	54.50	57.80	65.32	56.91
Nonint. income to net operating revenue	53.40	39.13	38.58	39.54	30.04	34.75	43.17
Nonint. expense to net operating revenue	60.98	61.01	56.93	57.44	63.51	45.40	58.52
Condition ratios (%)							
Nonperforming assets to assets	0.75	0.46	0.79	0.90	0.72	0.67	0.69
Noncurrent loans to loans	1.52	0.67	1.07	1.14	0.94	0.93	1.08
Loss reserve to noncurrent loans	137.95	192.32	145.32	155.20	146.43	217.48	156.23
Loss reserve to loans	2.09	1.29	1.56	1.77	1.37	2.02	1.69
Equity capital to assets	8.87	8.56	8.52	10.53	9.79	11.72	9.15
Leverage ratio	7.61	7.26	7.68	8.35	8.70	10.19	7.87
Risk-based capital ratio	12.84	11.95	12.48	12.56	13.76	15.05	12.75
Net loans and leases to assets	45.41	57.40	63.03	70.96	60.28	65.23	56.45
Securities to assets	19.81	21.63	20.79	13.69	25.40	18.86	20.16
Appreciation in securities (% of par)	1.13	2.24	1.46	2.47	1.59	1.34	1.61
Residential mortgage assets to assets	17.87	32.43	25.63	26.26	26.42	18.03	24.16
Total deposits to assets	62.85	67.78	64.77	69.41	79.17	66.52	66.26
Core deposits to assets	34.47	54.47	52.18	59.51	64.45	55.30	48.39
Volatile liabilities to assets	44.13	25.91	27.23	18.16	20.81	26.82	31.38

Loan performance, FDIC-insured commercial banks by region
First quarter 2004
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30-89 days							
Total loans and leases	0.94	0.68	0.87	1.05	1.06	0.92	0.88
Loans secured by real estate (RE)	0.69	0.66	0.96	0.88	0.98	0.56	0.78
1-4 family residential mortgages	0.73	0.90	1.43	1.25	1.33	0.65	1.03
Home equity loans	0.30	0.36	0.41	0.31	0.39	0.31	0.35
Multifamily residential mortgages	0.12	0.40	0.47	0.26	0.66	0.22	0.34
Commercial RE loans	0.64	0.47	0.75	0.49	0.80	0.49	0.60
Construction RE loans	0.73	0.42	0.83	0.92	0.78	0.78	0.68
Commercial and industrial loans	0.63	0.51	0.76	0.82	1.07	0.91	0.70
Loans to individuals	1.86	1.51	1.29	1.98	1.61	1.69	1.70
Credit cards	2.15	2.30	1.99	2.49	1.87	1.88	2.14
Installment loans and other plans	1.87	1.39	1.24	1.39	1.65	1.38	1.54
All other loans and leases	0.54	0.17	0.38	0.78	1.02	0.44	0.45
Percent of loans noncurrent							
Total loans and leases	1.52	0.67	1.07	1.14	0.94	0.93	1.08
Loans secured by real estate (RE)	0.75	0.49	1.14	1.04	0.87	0.50	0.79
1-4 family residential mortgages	0.69	0.54	1.57	1.50	0.92	0.35	0.93
Home equity loans	0.17	0.16	0.30	0.24	0.23	0.16	0.22
Multifamily residential mortgages	0.15	0.20	0.65	0.49	0.62	0.13	0.36
Commercial RE loans	0.81	0.62	1.21	0.80	0.88	0.62	0.84
Construction RE loans	0.69	0.41	0.88	0.78	0.68	0.56	0.63
Commercial and industrial loans	2.91	1.47	1.61	1.19	1.21	1.48	1.90
Loans to individuals	2.09	0.75	0.56	1.63	0.61	1.36	1.44
Credit cards	2.27	1.51	1.61	2.50	1.62	1.74	2.09
Installment loans and other plans	2.23	0.61	0.42	0.49	0.58	0.57	1.11
All other loans and leases	0.59	0.29	0.42	0.76	1.42	0.86	0.53
Percent of loans charged-off, net							
Total loans and leases	1.17	0.31	0.41	0.96	0.34	1.19	0.72
Loans secured by real estate (RE)	0.06	0.06	0.18	0.07	0.16	0.04	0.10
1-4 family residential mortgages	0.04	0.08	0.26	0.06	0.29	0.01	0.11
Home equity loans	0.05	0.11	0.25	0.12	0.18	0.01	0.14
Multifamily residential mortgages	0.02	0.02	0.05	0.07	-0.09	-0.01	0.02
Commercial RE loans	0.03	0.04	0.09	0.06	0.09	0.06	0.06
Construction RE loans	0.01	0.01	0.09	0.10	0.07	0.03	0.05
Commercial and industrial loans	0.85	0.52	0.52	0.59	0.60	1.10	0.68
Loans to individuals	3.74	1.48	1.55	4.51	1.04	3.60	3.03
Credit cards	5.81	4.51	4.42	7.20	4.64	4.69	5.63
Installment loans and other plans	1.95	0.84	1.09	0.66	0.86	1.18	1.30
All other loans and leases	0.18	0.12	0.23	0.15	0.35	0.30	0.19
Loans outstanding ($)							
Total loans and leases	$1,222,233	$1,082,511	$995,021	$500,746	$291,071	$397,627	$4,489,208
Loans secured by real estate (RE)	461,931	669,648	526,326	297,075	192,436	199,367	2,346,784
1-4 family residential mortgages	223,726	320,269	204,499	138,521	64,381	62,197	1,013,593
Home equity loans	63,893	81,452	87,758	51,181	12,953	11,627	308,864
Multifamily residential mortgages	17,051	16,724	22,971	6,667	5,382	12,628	81,422
Commercial RE loans	99,679	160,814	144,145	64,123	66,552	82,278	617,591
Construction RE loans	22,995	82,168	56,471	22,592	32,069	26,669	242,964
Farmland loans	1,713	5,173	9,811	13,991	7,410	3,364	41,463
RE loans from foreign offices	32,873	3,049	671	0	3,689	604	40,886
Commercial and industrial loans	261,829	185,671	214,015	71,989	55,719	75,880	865,102
Loans to individuals	298,765	120,107	110,553	87,792	29,292	103,653	750,162
Credit cards	133,310	20,702	15,425	50,391	1,326	71,302	292,456
Other revolving credit plans	20,905	3,854	5,416	2,671	777	2,400	36,023
Installment loans	144,550	95,551	89,712	34,730	27,189	29,951	421,684
All other loans and leases	201,287	107,437	144,269	43,942	13,853	19,155	529,943
Less: Unearned income	1,579	352	142	53	229	428	2,783

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

Recent Licensing Decisions

CRA Decisions

On December 3, 2003, the OCC approved the application by PNC Bank, National Association, Pittsburgh, PA, to merge in UnitedTrust Bank, Bridgewater, PA, under the charter and title of the former. The OCC received a letter from one commenter expressing Community Reinvestment Act (CRA) compliance concerns. The OCC's investigation into the concerns disclosed no information that was inconsistent with approval. [CRA Decision No.121]

Charters

On December 11, 2003, the OCC conditionally approved the establishment of Commerce National Bank, Fullerton, CA, as a national bank. The condition was based on the bank receiving a no objection to a significant deviation from the original business plan for the Mortgage Banking Division. [Conditional Approval No. 615]

On January 14, 2004, the OCC disapproved the application to charter Signature Bank of California, National Association, Glendale, CA. The disapproval was based upon the organizers' failure to demonstrate that the proposed bank would have a reasonable chance of success and would be operated in a safe and sound manner. [Corporate Decision No. 2004–4]

On March 2, 2004, the OCC granted preliminary conditional approval to the establishment of Bank of Louisa, National Association, Louisa, VA, as a national bank; granted trust powers; and the acquisition of certain assets and certain liabilities from the Bank of Powhatan, National Association, Powhatan, VA. Standard conditions applicable to a de novo bank were imposed. [Conditional Approval No. 628]

Change in Bank Control

On November 14, 2003, the OCC did not object to the change in bank control notice filed by Bank of America Corporation, Charlotte, NC, with respect to Fleet Bank (RI), National Association, Providence, RI, a credit card bank. The OCC received a letter from one commenter expressing Community Reinvestment Act (CRA) compliance concerns that were beyond the scope of OCC's review under the Change in Bank Control Act. The OCC's investigation into the concerns disclosed no information that was inconsistent with its decision. [Corporate Decision No. 625]

Conversions

On February 5, 2004, the OCC conditionally approved the conversion of Webster Bank, Waterbury, CT, to a national bank charter with the title Webster Bank, National Association, with the retention of branches in Connecticut and certain operating subsidiaries. In addition to standard pre-conversion requirements, approval was based on conditions involving such matters as technology infrastructure plan, credit risk strategy, and significant deviation. [Conditional Approval No. 622]

Domestic Branches

On November 21, 2003, the OCC approved the application by First Consumers National Bank, Beaverton, OR, to relocate its main office to 4800 S. W. Meadows Road, Lake Oswego, OR. [Corporate Decision No. 2004–1]

On February 10, 2004, the OCC approved the application by Empire State Bank, N. A., Newburgh, NY, to establish a branch in New Paltz, Ulster County, NY. The approval included a pre-opening requirement pertaining to an agreement between the bank and the NY State Historic Preservation Office. [Corporate Decision No. 2004–6]

Mergers

On December 16, 2003, the OCC conditionally approved the application by Mission National Bank, San Francisco, CA, to purchase certain assets and assume the liabilities of the Mission Street Branch, San Francisco, CA, of Pan American Bank, FSB, Burlingame, CA. The approval was subject to a condition involving adherence to its capital plan. [Conditional Approval No. 616]

On December 8, 2003, the OCC approved the purchase and assumption of assets and liabilities of the Denmark, South Carolina, branch office of Security Federal Bank, Aiken, SC, by South Carolina Bank and Trust, National Association, Orangeburg, SC, under the charter and title of the latter. As part of its consideration, the OCC reviewed the competitive effects of the proposal and determined that the proposal clearly has no or minimal adverse competitive effects in the relevant geographic market. [Corporate Decision No. 2004–5]

On January 22, 2004, the OCC conditionally approved the merger of First National Bank of Tribune, with and into New Tribune Bank, N.A., both of Tribune, KS, under the title of First National Bank of Tribune. In addition, conditional approval was granted for the resultant bank to purchase certain assets and assume certain liabilities of the Elkhart, KS, branch of Gold Bank, Hennessey, OK. The approvals were based upon a special pre-acquisition capital maintenance requirement of ColoEast Bankshares, Inc., the parent holding company of the resultant bank. [Conditional Approval No. 620]

On March 31, 2004, the OCC approved the application by the Security Trust Company, N.A., to merge into its nonbank affiliate, STC Resolution, Inc., with STC Resolution as the surviving entity. As a result of the merger, the bank will cease to exist as a national bank. The bank was under a Consent Order, which, among other things, required it to cease operations by March 31, 2004. [Corporate Decision No. 2004–7]

Corporate Reorganization

On December 22, 2003, the OCC granted conditional approval to several applications involving the affiliated merger between First National Trust Company, into First National Bank of Pennsylvania, both of Hermitage, PA; the merger of First National Investment Services Company, into First National Bank of Pennsylvania; establishment of (1) First National Trust Company and (2) First National Wealth Management Company; the alteration of the terms of trust preferred stock issued by First National Bank of Pennsylvania; and a non-cash dividend by First National Bank of Pennsylvania. The transactions were necessary to effectuate the plan by the holding company, FNBCorp, to spin off its Florida-based banking and business operations to its shareholders. The conditions involved standard conditions applicable to de novo banks, minimum capital requirements, and execution of an agreement between one of the banks and its parent holding company. [Conditional Approval No. 617]

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Statement required by 12 USC 250: the views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

I. Introduction

Madam Chairwoman, Ranking Member Gutierrez, and members of the Subcommittee, I appreciate the opportunity to discuss the OCC's recent rulemakings pertaining to the applicability of state laws to national banks. I will begin by describing briefly what our new rules do, and, in order to address some confusion that exists, what they do *not* do. Then, I will explain why we took the actions we did and why we acted when we did. Finally, my testimony will address the principal arguments that have been advanced by those who question these regulations.

Madam Chairwoman, the hearings you have convened touch on fundamental characteristics of the national bank charter, fundamental responsibilities of the OCC, and the essential attributes of this country's dual banking system. I welcome the opportunity to explain how our rules further the longstanding purposes of the national banking laws, reinforce and reaffirm the high standards of integrity and fair treatment of customers that we expect of national banks, and preserve the distinct roles of *federal* and state regulators that define our dual banking system.

II. The OCC's Regulations

Earlier this month, the OCC issued two final rules that address the applicability of state law to national banks. The first regulation, which follows the same approach taken by the OTS in its preemption regulations applicable to *federal* savings associations, clarifies the extent to which the operations of national banks are subject to state laws (the preemption rule). The second regulation concerns one aspect of the OCC's exclusive "visitorial powers" with respect to national banks (the visitorial powers rule).

Increasingly in recent years, states—and even cities and counties—have enacted laws that attempt to constrain powers national banks are authorized to exercise under *federal* law. In addition to conflicting with *federal* authorities, these efforts have resulted in greater uncertainty about the standards applicable to national banks' operations and in costly litigation to resolve that uncertainty. One important purpose of our regulations is to provide the clear guidance needed to ensure that national banks operate under uniform, predictable *federal* standards. I next describe each rule in turn.

The Preemption Rule

The preemption rule adds provisions to our regulations expressly addressing the applicability of certain types of state laws to national banks' lending, deposit-taking, and other *federally* authorized activities. With regard to all three categories, the preemption rule states that, except where made applicable by *federal* law, state laws do not apply to national banks if they "obstruct, impair, or condition" the bank's exercise of powers granted under *federal* law. In the lending and deposit-taking areas, the preemption rule then lists certain types of state laws that are preempted by *federal* law and therefore are not applicable to national banks.

For lending, examples of preempted laws include laws that restrict or prescribe the terms of credit, amortization schedules, permissible security property, permissible rates of interest, escrow accounts, disclosure and advertising, and laws that require a state license as a condition of national banks' ability to make loans. For deposit-taking (in addition to laws dealing with disclosure requirements and licensing and registration requirements), the laws listed include laws that address abandoned and dormant accounts, checking accounts, and funds availability. These lists are not exclusive, and the courts, or the OCC, may subsequently conclude that other types of laws also are preempted under our rule and the applicable principles of Constitutional law. The regulation addressing other authorized national bank activities does not list particular types of state laws that are preempted, but it spells out the same basic preemption standard applicable to any national bank power. This standard is distilled from decisions of the U.S. Supreme Court and is not intended to establish any new standard distinct from the standards that the Supreme Court has expressed in its decisions under the National Bank Act dating back over 130 years.

We have taken the extra step of including in our preemption rule two new provisions to ensure that the federal standards under which national banks operate directly address abusive or predatory lending practices. First, the preemption rule prohibits national banks from making any consumer loan based predominantly on the foreclosure or liquidation value of a borrower's collateral, rather than on the borrower's ability to repay the loan according to its terms. This anti-predatory lending standard applies uniformly to all consumer-lending activities of national banks, regardless of the location from which the bank conducts those activities or where their customers live. It is comprehensive, it is nationwide, and it strikes at the heart of predatory lending, namely lending practices that effectively swindle a homeowner out of his or her home.

Second, the preemption rule provides that national banks shall not engage in unfair and deceptive practices within the meaning of section 5 of the Federal Trade Commission Act in connection with any type of lending. section 5 prohibits "unfair or deceptive acts or practices" in interstate commerce. We added an express reference to section 5 to our rule in response to commenters who urged us to affirm that this *federal* standard applies to national banks. We viewed this addition as particularly appropriate in light of the fact that the OCC pioneered the use of section 5 as a basis for enforcement actions against banks that have engaged in such conduct.

It is important to clarify several things that the preemption rule does *not* do. The final rule *does not* immunize national banks from all state laws, and it does *not preempt* undiscriminating laws of general applicability that form the legal infrastructure for conducting a banking or other business. Examples of laws that are not preempted are also identified in the preemption rule and include state laws on contracts, rights to collect debts, acquisition and transfer of property, taxation, zoning, crimes, and torts. In addition, any other law that only incidentally affects national banks' exercise of their *federally* authorized powers to lend, take deposits, and engage in other federally authorized activities would not be preempted under the final rule. This distinction is solidly founded in decisions of the U.S. Supreme Court.

Although some aspects of state anti-predatory lending laws—such as state restrictions on particular loan terms and state prohibitions on particular loan products—are preempted by the rule, the rule *does not preempt anti-discrimination and fair lending laws.* There appears to have been some misunderstanding on this point, perhaps because some state predatory lending laws have "fair lending" in their titles but do not actually address unlawful discrimination in lending.[1] The preemption rule, consistent with *federal* judicial precedents,[2] the extensive body of *federal* anti-discrimination laws, and the OCC's unyielding commitment to national banks' fair treatment of their customers, does not preempt any law prohibiting discrimination in lending.

In addition to *not* preempting a wide variety of state laws, the preemption rule does not authorize any new national bank activities or powers, such as real estate brokerage. Moreover, while we believe the text and the history of the statute authorizing national banks' real estate lending activities (12 USC 371) supports a conclusion that Congress authorized the OCC to occupy the field of national bank real estate lending through regulation, we declined to do so in the preemption rule and took a more targeted approach.

Finally, the preemption rule makes no changes to the OCC's rules governing the activities of operating subsidiaries. The OCC already has rules on the books imposing the same terms and conditions on national banks' activities whether they are conducted directly or through an operating subsidiary. These rules provide that state laws apply to national bank operating subsidiaries only to the extent that those laws apply to the parent bank. By virtue of these pre-existing regulations,[3] the preemption rule has the same effect on national bank operating subsidiaries as it has on national banks.

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[1] *See, e.g.,* the Georgia Fair Lending Act, GA Code. Ann. §§ 7–6A–1 et seq., which does not address lending discrimination.

[2] *See, e.g., National State Bank* v. *Long,* 630 F.2d 981 (3d Cir. 1980) (New Jersey anti-redlining statute applicable to national banks); *see also Peatros* v. *Bank of America NT&SA et al.,* 22 Cal 4th 147 (2000) (where *federal* law otherwise provides in employment discrimination context, state anti-discrimination statute not necessarily preempted).

[3] See 12 CFR 5.34 (operating subsidiaries subject to same "terms and conditions" as apply to the parent bank) and 7.4006 (applicability of state law to national banks). See also id. at § 34.1(b) (real estate lending rule applies to national bank operating subsidiaries).

The Visitorial Powers Rule

"Visitorial powers" refer to the authority to examine, supervise, and regulate the affairs of a corporate entity. Under the National Bank Act, the OCC has exclusive visitorial powers over national banks. This provision dates from the earliest days of the national banking system. It is integral to the overall scheme of the national banking system and to the ability of national banks to operate efficiently today, because it helps to assure that the business of banking conducted by national banks is subject to uniform, consistent standards and supervision, wherever national banks operate.

Our existing regulations implemented the visitorial powers statute by providing that state officials are not authorized to inspect, examine, or regulate national banks, except where another *federal* law authorizes them to do so.[4] The amendment to the visitorial powers rule that we have just issued clarifies that the scope of the OCC's exclusive visitorial authority applies to the content and conduct of national bank activities authorized under *federal* law. In other words, the OCC is exclusive supervisor of a national bank's banking activities. The rule *does not prevent* state officials from enforcing state laws that do not pertain to a national bank's banking activities, such as health and safety standards or criminal laws of general applicability.

The new visitorial powers rule also clarifies that the National Bank Act does not give state officials authority, in addition to whatever they may otherwise have, to use the court system to exercise visitorial powers over national banks. Thus, state officials may not use the courts to accomplish indirectly what the federal statute prohibits them from accomplishing directly through administrative action. The visitorial powers rule *does not* preclude states from seeking a declaratory judgment from a court as to whether a particular state law applies to the federally authorized business of a national bank.

Finally, like the preemption rule, the visitorial powers rule makes no change to the treatment of operating subsidiaries. Thus, in accordance with previously adopted OCC regulations, states generally can exercise visitorial powers over operating subsidiaries only to the extent that they could exercise visitorial powers over a national bank.

Some of the comments we received during the rulemaking process and some reactions to the final rules characterize them as "radical" or "dramatic" departures from the *status quo.* That characterization is simply incorrect.

The standard used in the preemption rule encapsulates the standards that the United States Supreme Court has applied in national bank preemption cases for well over 130 years. It is phrased in words—"obstruct, impair, or condition"—that are taken directly from those cases. The types of state laws identified as preempted in the rule include types of laws that a federal court has previ-

[4] 12 CFR 7.4000.

ously held, or that the OCC has previously opined, are preempted. The types of laws listed as preempted are virtually the same as those listed in OTS regulations that have been on the books since 1996. The clarifications we have added to our existing visitorial powers rule reinforce the point that the statutory prohibition on the exercise of visitorial powers by authorities other than the OCC means what the text clearly says. No one other than the OCC is empowered to regulate or supervise the banking business of national banks unless federal law provides that authority, and the statutory prohibition cannot be defeated by resort to the courts to impose indirectly standards or sanctions that the statute forbids them to impose directly.

What, then, has changed? What is different is that the legal standards that we have applied, and the legal conclusions that we have reached, for the most part, only on a case-by-case basis—for example, in legal opinions, orders, and sometimes briefs in litigation—are now collected together in one place and codified in our rules. Now, all national banks can rely on specified and predictable standards to define their compliance responsibilities. As I next explain, this is critically important if national banks are to be able to exercise fully the powers that federal law gives them in order to operate efficiently and compete successfully in today's financial services markets.

III. The OCC's Reasons for Adopting the Regulations

As we explained in the preamble to the preemption rule, markets for credit, deposits, and many other financial products and services are now national, if not international, in scope, as a result of significant changes in the financial services marketplace, particularly in the last 20 years. Now, more than ever before, the imposition of an overlay of 50 state and an indeterminate number of local standards and requirements on top of the federal requirements and OCC supervisory standards to which national banks already are subject has costly consequences that materially affect a national bank's ability to serve its customers. Moreover, this regulatory burden is unnecessary—in the most literal sense of the word—because it is inconsistent as a matter of law with the federal character of the national bank charter. Finally, the federal preemption standards that form the basis of our regulations are so well developed, and have been so consistently applied by the federal courts over time in an extensive body of judicial precedent, that exclusive reliance on a case-by-case approach is no longer warranted.

The changing financial services marketplace

The changes we see in the market for financial services are the result of a combination of factors, including technological innovations, the erosion of legal barriers, and an increasingly mobile society.

Technology has expanded the potential availability of credit and made possible virtually instantaneous credit decisions. Mortgage financing that once took weeks, for example, now can take only hours, with decisions based on sophisticated credit-scoring derived from centralized credit under-

writing facilities. Consumer credit can be obtained at the point of sale at retailers and even when buying a major item such as a car. Consumers can shop for investment products and deposits on-line, from providers whose location may well be irrelevant. With respect to deposits, consumers can compare rates and duration of a variety of deposit products offered by financial institutions located far from where the consumer resides.

Changes in applicable law also have contributed to the expansion of markets for national banks and their operating subsidiaries. These changes have affected both the type of products that may be offered and the geographic region in which banks—large and small—may conduct business. As a result of these changes, banks may branch across state lines and offer a broader array of products than ever before. An even wider range of customers can be reached through the use of technology, including the Internet. Community national banks, as well as the largest national banks, reach customers across state lines and use new technologies to expand their reach and service to customers.

Our modern society is also highly mobile. Forty million Americans move annually, according to a recent Congressional report issued in connection with enactment of the Fair and Accurate Credit Transactions Act of 2003.[5] And when they move, they often have the desire, if not the expectation, that the financial relationships and status they have established will be portable and will remain consistent.

These developments highlight the significance of being able to conduct a banking business pursuant to consistent, national standards, regardless of the location of a customer when he or she first becomes a bank customer or the location to which the customer may move *after* becoming a bank customer. They also accentuate the costs and interference that diverse and potentially conflicting state and local laws have on the ability of national banks to operate under the powers granted by their federal charter.

When national banks are unable to operate under uniform, consistent, and predictable standards, their business suffers, and their customers may face higher costs or more limited product offerings—or both—as a result. The application of multiple, often unpredictable, different state or local restrictions and requirements prevents them from operating in the manner authorized under federal law, is costly and burdensome, interferes with their ability to plan their business and manage their risks, and subjects them to uncertain liabilities and potential financial exposure. In some cases, this deters them from making certain products available in certain jurisdictions. As was recently observed by Federal Reserve Board Chairman Alan Greenspan, "increased costs resulting from restrictions that differ based on geography, may lead to an increase in the price or a reduction in the availability of credit, as well as a reduction in the optimal sharing of risk and reward."[6]

[5] See S. Rep. No. 108–166, at 10 (2003) (quoting the hearing testimony of Secretary of the Treasury Snow).

[6] Letter of February 28, 2003, from Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System, to The Honorable Ruben Hinojosa (cited by Congressman Hinojosa on November 21, 2003, during House debate on the Conference Report to accompany H.R. 2622 (Conference Report 108–396)).

It has been suggested that the ability to do business in multiple states under uniform, consistent and predictable standards, primarily benefits the largest banks. In fact, for community and intermediate-sized banks with customers in multiple jurisdictions, this attribute of the national bank charter may have even more practical significance than for a "megabank." Take, for example, a community bank with customers in a multi-state metropolitan area like New York or Philadelphia; or a community bank with customers in a compact multi-state region, such as New England; or any state-based bank in a state in which cities or municipalities enact unique local requirements for bank operations. Community and intermediate-sized regional banks have a smaller base of operations, e.g., a smaller number of loans, over which they are able to spread the overhead costs of legal staff, compliance staff, technology, and printing costs necessary to keep abreast of multiple state (and potentially local) requirements. This drives up their costs, and detracts from their ability to compete effectively with larger banks that have a bigger base of operations over which to apply overhead costs. This, in turn, serves as a disincentive for that bank to incur still more costs by expanding service to customers in a new state. Ultimately, the inability to compete on a cost-effective basis can be a factor that contributes to management decisions to merge or be acquired by a larger institution.

At the OCC, we supervise thousands of community and midsized national banks, and we are as concerned about the consequences of the inability of those institutions to operate efficiently under uniform, consistent, and predictable standards, consistent with the character of their national bank charter, as we are about the ability of our national "megabanks" to operate under such standards.

The federal character of the national bank charter

Federal law is the exclusive source of all of national banks' powers and authorities. Key to these powers is the clause set forth at 12 USC 24(Seventh) that permits national banks to engage in the "business of banking "and to exercise "all such incidental powers as shall be necessary to carry on the business of banking." This flexible grant of authority furthers Congress's long-range goals in establishing the national banking system, including financing commerce, establishing private depositories, and generally supporting economic growth and development nationwide.[7] The achievement of these goals requires national banks that are safe and sound and whose powers are dynamic and capable of evolving so that they can perform their intended roles. The broad grant of authority provided by 12 USC 24(Seventh), as well as the more targeted grants of authority provided by other statutes, enable national banks to evolve their operations in order to meet the changing needs of our economy and commercial and consumers.

Moreover, the ability to operate under uniform standards is fundamental to the character of the national bank charter. As we explained in 2002 when we added to our rules new provisions con-

[7] For a more detailed discussion of Congress's purposes in establishing a national banking system that would operate to achieve these goals distinctly and separately from the existing system of state banks, *see* 68 *Fed. Reg.* 46119, 46120 (August 5, 2003) (preamble to the proposed preemption rule). *See also* Office of the Comptroller of the Currency, *National Banks and the Dual Banking System* (publication dated September 2003).

cerning national banks' electronic activities, "freedom from state control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended." [8]

As we have learned from our experience supervising national banks, from the inquiries we have received, by the extent of litigation in recent years over these state efforts, and by the comments we received during our rulemakings, national banks' ability to conduct operations to the full extent authorized by federal law has been impaired as a result of increasing efforts by states and localities to apply state and local laws to national banks.

For example, commenters on our proposal to adopt the preemption rule noted that the variety of state and local laws that have been enacted in recent years—including laws regulating fees, disclosures, conditions on lending, and licensing—have created higher costs, increased risks, and operational impediments.[9] Other commenters noted the proliferation of state and local predatory lending laws and the impact that those laws are having on lending in the affected jurisdictions. As a result, national banks must absorb the costs, pass the costs on to consumers, or eliminate various products from jurisdictions where the costs are prohibitive or risks are imprudent. Commenters noted that this result occurs even in situations where a bank concludes that a law is preempted, simply so that the bank may avoid litigation costs or anticipated reputational injury.

Even the efforts of a single state to regulate the operations of a national bank operating only within that state can have a detrimental effect on that bank's operations and consumers. As we explained in our recent preemption Determination and Order regarding the Georgia Fair Lending Act (GFLA),[10] the GFLA caused secondary market participants to cease purchasing certain Georgia mortgages and some mortgage lenders to curtail their mortgage lending activities in Georgia. National banks have also been forced to withdraw from some products and markets in other states as a result of the impact of state and local restrictions on their activities. The impact of particular state laws on the mortgage market and credit availability is discussed in detail in part IV, below.

Federal preemption precedent

The Constitutional principles supporting the preemption of state laws that limit the powers and activities of federally chartered banks have been recognized from the earliest decades of our Na-

[8] 67 *Fed. Reg.* 34992, 34997 (May 17, 2002).

[9] Illustrative of comments along these lines were those of banks who noted that various state laws would result in the following costs: (a) approximately $44 million in start-up costs incurred by 6 banks as a result of a recently enacted California law mandating a minimum payment warning; (b) 250 programming days required to change one of several computer systems that needed to be changed to comply with anti-predatory lending laws enacted in three states and the District of Columbia; and (c) $7.1 million in costs a bank would incur as a result of complying with mandated annual statements to credit card customers.

[10] *See* 68 *Fed. Reg.* 46264 (August 5, 2003).

tion. The principle of the primacy of federal law under the Supremacy Clause was first articulated in the Supreme Court's *McCulloch* v. *Maryland* decision in 1819, a case involving the federally chartered Second Bank of the United States. Precedents of the Supreme Court dating back to 1869 have addressed preemption in the context of national banks and have consistently and repeatedly recognized that national banks were designed by Congress to operate, throughout the nation, under uniform, federally set standards of banking operations.

As a result, there is an extensive body of federal court precedents that reiterate and apply preemption principles to a variety of different types of state laws.[11] To date, the OCC has relied on these precedents to issue many legal opinions of its own that address the applicability of state law. As national banks operate in an increasingly complex and multi-state environment, however, the shortcomings of this case-by-case approach have become increasingly apparent. Legal opinions and judicial decisions may be construed to be confined to their facts. In addition, the financial and opportunity costs to banks of a case-by-case approach may be significant—especially where litigation becomes necessary to establish clear standards upon which a business may prudently rely.

We concluded that continued, exclusive use of a case-by-case approach had become unnecessary and inefficient in light of the substantial and consistent body of federal judicial precedent. Rather than continuing to address preemption issues on a piecemeal basis, therefore, the preemption rules address them comprehensively—by clarifying and codifying prior judicial and OCC interpretations based on long-established Constitutional principles—to provide much-needed clarity to national banks.

IV. The Timing of the Final Rules

Madam Chairwoman, you, as well as some other members of the Committee and some of the commenters on our proposals, have suggested that the OCC should have waited longer before finalizing our rules. Please be assured that we considered timing concerns very carefully, but we ultimately concluded that taking action, following an open and inclusive comment process, which included Members of Congress and their staffs, was both respectful of the role of Congress and the course most consistent with our responsibilities as supervisors of the national banking system.

We reached this conclusion for several related reasons. First, as described earlier in my testimony, the laws under which we acted exist today, and the principles incorporated in our preemption reg-

[11] *See, e.g., Bank of America* v. *City & County of San Francisco,* 309 F.3d 551 (9th Cir. 2002), *cert. denied,* 123 S.Ct. 2220, 2003 U.S. LEXIS 4253 (May 27, 2003) (the National Bank Act and OCC regulations together preempt conflicting state limitations on the authority of national banks to collect fees for the provision of electronic services through ATMs; municipal ordinances prohibiting such fees are invalid under the Supremacy Clause); *Wells Fargo Bank, Texas, N.A.* v. *James,* 321 F.3d 488 (5th Cir. 2003) (Texas statute prohibiting certain check cashing fees is preempted by the National Bank Act); *Metrobank* v. *Foster,* 193 F. Supp. 2d 1156 (S.D. Iowa 2002) (national bank authority to charge fees for ATM use preempted Iowa prohibition on such fees). *See also Bank One, Utah* v. *Guttau,* 190 F.3d 844 (8th Cir. 1999), *cert. denied sub nom Foster* v. *Bank One, Utah,* 529 U.S. 1087 (2000) (holding that federal law preempted Iowa restrictions on ATM operation, location, and advertising).

ulation and in the clarification of our visitorial powers rule are not new. The new rules are entirely consistent with existing law, namely, the powers Congress has granted national banks—within the past decade and dating back to the original provisions of the National Bank Act. To characterize these regulations as dramatic changes from the status quo is simply incorrect.

Second, the continuing uncertainty about the applicability of state laws has already affected national banks' ability to lend in certain markets and to access the secondary market, a curtailment of their business that is not only inconsistent with their federally authorized powers but also one that has the potential to adversely affect credit availability as well as detract from the banks' financial strength. Moreover, we believe that the addition of predatory lending standards to our lending rules materially *reinforces* national banks' obligation to treat their customers fairly and operate pursuant to the highest standards of integrity. Delaying the implementation of those standards is, accordingly, inconsistent with our responsibility to ensure that national banks satisfy those obligations.

The trend at the state and local levels toward enacting legislation that seeks to impose costly and inconsistent compliance burdens on national banks has accelerated. These laws are well intentioned but nonetheless curtail national banks' ability to conduct operations to the full extent authorized by federal law and disrupt crucial credit delivery systems.

For example, in recent years, various states and localities have enacted predatory lending laws, each employing a combination of standards that differs in some respects from the others, but each typically singling out loan product features and either barring loans with those features or imposing requirements that make it impractically costly for lenders to offer them. The goals of these laws—to eliminate predatory and abusive mortgage lending practices—are laudable and we strongly support their objectives. As Comptroller Hawke has said repeatedly, predatory and abusive practices have no place in the national banking system, and we fully agree that such practices should be promptly addressed where they arise.

However, these state and local law approaches effectively ban loans based on certain loan terms. They generally prohibit certain mortgage loan terms and impose extra compliance obligations when certain other loan terms or conditions are present. They introduce new standards for subprime lending that are untested, sometimes vague, often complex, and, in many cases, different from established and well-understood federal requirements. They also create new potential liabilities and penalties for any lender who missteps in its efforts to comply with those new standards and restrictions. These laws materially increase a bank's costs and compliance and reputation risks, especially in connection with risk-based pricing to the subprime market.

It is important to understand that this approach, while intended to stop abusive practices, also can work to constrain legitimate risk-priced lending to credit-worthy subprime borrowers.[12] The OCC

[12] It is important to note that many legitimate, risk-priced mortgage loans would be considered "high cost home loans" under some state anti-predatory lending laws. For example, a "high cost" home loan under Georgia's anti-predatory

is as dedicated as any state regulator to ensuring that the institutions we supervise are not engaged in abusive or predatory lending practices. However, our approach is to focus on preventing those *practices,* not on banning or restricting specified loan products or terms in the absence of evidence of abusive, predatory, unfair or deceptive practices.

Generally, state and local predatory lending laws that have such a *product*- rather than practice-focus have created uncertainties that adversely affect banks' ability to access the secondary market for legitimate, risk-priced mortgage loans. Let me briefly explain the material, practical significance of this issue.

When a bank is able to sell a loan on a cost-effective basis to Fannie Mae or Freddie Mac, or obtains a rating for a pool of loans that it "securitizes" and sells to investors, the bank is able to liquify its loans and redeploy capital to make additional loans available. If Fannie or Freddie are unwilling to purchase loans made in jurisdictions with specialized predatory lending restrictions and potential liabilities, or if they impose additional costs in return for their willingness to buy such loans, the funds banks have available to make additional credit available are diminished. Similarly, if a bank is unable to obtain a rating from Standard & Poor's, Moody's Investors Services, or Fitch Ratings, it will not be able to securitize its loans on a cost effective basis and reallocate capital to make additional credit available. In other words, localized and state-based restrictions on loan terms substantially affect the marketability of such loans, and that, in turn, affects overall credit availability to credit-worthy consumers.

Fannie Mae and Freddie Mac have both issued policies concerning their willingness to purchase residential mortgage loans subject to various state predatory lending laws. Fannie Mae and Freddie Mac will not purchase high cost home loans from **Arkansas, Georgia, Kentucky, Illinois, Maine, Nevada, New Jersey, New Mexico, New York, and Oklahoma.**

S&P, Moody's, and Fitch have also issued policies concerning the inclusion of such loans in structured finance transactions.[13] Under these policies, the rating agencies generally exclude from their rated structured finance transactions loans that carry unquantifiable assignee liability, as do some loans under certain state and predatory lending laws.[14]

As a result, lenders doing business in the states discussed below face the following additional secondary market constraints:

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lending law includes mortgages that have total points and fees exceeding 5 percent of the loan amount if the mortgage is $20,000 or more. On a $30,000 mortgage, this would mean any loan with origination fees of more than $1,500 would be considered "high cost." According to the Mortgage Bankers Association's 2002 Cost Study, the average cost to originate a mortgage in 2001 was $1,744.

[13] *See* Standard & Poor's: Evaluating Predatory Lending Laws: Standard & Poor's Explains its Approach (April 15, 2003); Moody's Investor Services: Impact of Predatory Lending Laws on RMBS Securitizations (May 6, 2003); and Fitch Press Release: Fitch Revises its Rating Criteria in the Wake of Predatory Lending Legislation (May 1, 2003).

[14] *See, e.g.,* § 6(b) of the New Jersey Homeownership Security Act; and § 11 of the New Mexico Home Loan Protection Act.

- **Arkansas, Georgia, Illinois, Maine, Nevada, New York, and Oklahoma.** In these states, S&P generally requires that sellers provide representations and warranties that the loans were originated in compliance with all applicable laws and that their compliance procedures effectively identify high cost home loans and determine that the loans do not violate predatory lending laws. Further, S&P requires that the provider of these representations and warranties is sufficiently credit worthy to purchase any loans that are in violation and cover any contingent liability associated with securitizing high cost home loans.[15] Fitch will generally rate securitizations with loans from these jurisdictions subject to additional credit enhancements.[16]

- **Kentucky.** S&P requires sellers to conduct a loan-by-loan review of all high-cost home loans, and provide the representations and warranties noted above before it will allow high cost home loans from Kentucky in rated transactions.[17] Fitch will not allow any high cost loans from Kentucky in rated transactions. In order to rate a transaction including *any* loans from Kentucky, Fitch requires receipt of a certification from a third party unaffiliated with the originators of the relevant loans that such third party conducted due diligence on a random sample of the greater of 5 loans or 10 percent of the loans from Kentucky and that no high cost home loans were uncovered in the sample. If the review of the sample of loans uncovers any high-cost home loans, Fitch requires a review of every loan in the pool originated in Kentucky.[18]

- **New Jersey.** S&P and Fitch will not rate securitizations with certain high cost home loans from New Jersey.[19] In order to rate a transaction including *any* loans from New Jersey, Fitch requires, as it does in Kentucky, receipt of a certification from a third party unaffiliated with the originators of the relevant loans that such third party conducted due diligence on a random sample of the greater of 5 loans or 10 percent of the loans from New Jersey and that no

[15] *See* S&P Addresses Arkansas Home Loan Protection Law (July 11, 2003); Standard & Poor's: Evaluating Predatory Lending Laws: Standard & Poor's Explains its Approach (April 15, 2003) (Georgia and New York); S&P Addresses Illinois High Risk Home Loans Act (Nov. 17, 2003); S&P Addresses Amendment to Maine Truth in Lending Act (September 12, 2003); S&P Addresses Nevada Anti-Predatory Lending Law; and S&P Addresses Oklahoma Anti-Predatory Lending Law (November 18, 2003).

[16] *See* Fitch Ratings Responds to Arkansas Predatory Lending Legislation (June 20, 2003); Mortgage Bankers Association Industry News: "Fitch to Rate RMBS After Amendment to Georgia Predatory Lending Statute, GFLA" (March 14, 2003); Mortgage Bankers Association Industry News: "Fitch Ratings Addresses Illinois Predatory Lending Legislation" (December 15, 2003); Fitch Ratings Responds to Maine Predatory Lending Legislation (September 29, 2003); Fitch Ratings Responds to Nevada Predatory Lending Legislation (October 3, 2003); Mortgage Bankers Association Industry News: "Fitch: New York State Anti-Predatory Lending Legislation" (March 26, 2003); and Fitch Ratings Addresses Predatory Lending Legislation of Oklahoma (October 30, 2003).

[17] *See* S&P Addresses Kentucky High-Cost Law (June 20, 2003).

[18] *See* Mortgage Bankers Association Industry News: "Fitch Ratings Responds to Kentucky Predatory Lending Legislation" (June 30, 2003); and Mortgage Bankers Association Industry News: "Fitch Ratings Updates Criteria Regarding Predatory Loans" (January 15, 2004).

[19] *See* S&P Permits Additional New Jersey Mortgage Loans Into Related SF Transactions (November 25, 2003).

high cost home loans were uncovered in the sample. If the review of the sample of loans uncovers any high-cost home loans, Fitch requires a review of every loan in the pool originated in New Jersey.[20]

- **New Mexico.** S&P will rate securitizations containing high-cost home loans subject to the additional credit enhancements it requires in Arkansas, Georgia, Illinois, Maine, Nevada, New York, and Oklahoma.[21] Fitch, however, will not rate any transaction containing high-cost home loans subject to New Mexico's anti-predatory lending law. Fitch notes that assignee liability may be unlimited in the case of punitive damages, which may be imposed for acts found to be reckless or malicious. Fitch further requires that the seller of any New Mexico loan provide adequate evidence that the transaction will enjoy the benefits of the new law's safe harbor from the law's unlimited liability for assignees and purchasers. In order to be protected by this safe harbor, a purchaser/securitizer must conduct due diligence and provide certain representations and warranties. Because it is unclear what constitutes sufficient "due diligence" under the New Mexico statute, Fitch requires the third-party certificate and random sampling it requires in Kentucky and New Jersey.[22]

These constraints translate into cost burdens at each stage of the lending process. For example, a rating agency that is willing to rate a "high-cost" loan securitization at all may, as we have seen, require representations, warranties, sampling, and certifications that go beyond the industry standard for prime loans. Satisfying these extra conditions may require a bank to increase its compliance staff, provide additional training to both existing and new staff, and pay fees to obtain third-party sampling and certification. If the rating agency requires additional credit enhancement, providing that—in the form of a guarantee, for example—will add to the financial cost of the transaction to the bank. Finally, if the bank cannot securitize the loans and must therefore retain them on book, the bank does not realize funds that it could use to make additional loans, the bank will incur carrying costs, and the bank's servicing fee income will be diminished. These costs either will be passed back to the bank's customers or, if the bank concludes they are unacceptably high, will compel the bank to stop making loans covered by state anti-predatory lending laws.

The rating agencies have, however, responded favorably to preemption decisions by the federal banking agencies. Shortly after Fitch announced that it would not rate residential mortgage backed securitizations containing high cost home loans originated in New Mexico, Fitch also announced that, beginning the day the OCC's preemption rule becomes effective (February 12, 2004), it *will* rate residential mortgage backed securitizations containing loans subject to any state

[20] *See* Fitch Ratings Responds to New Jersey Predatory Lending Legislation (June 5, 2003); and Mortgage Bankers Association Industry News: "Fitch Ratings Updates Criteria Regarding Predatory Loans" (January 15, 2004).

[21] *See* S&P Addresses New Mexico's Home Loan Protection Act (November 25, 2003).

[22] *See* Mortgage Bankers Association Industry News: "Fitch Ratings Addresses New Mexico Predatory Lending Legislation" (January 15, 2004).

or local anti-predatory lending laws that were originated by OCC-regulated national banks or their operating subsidiaries without additional credit enhancements.[23] This follows Fitch's August 22, 2003, decisions to rate securitizations without additional credit enhancement by OCC-regulated lenders in Georgia in light of the OCC's Preemption Order and Determination concerning the GFLA,[24] and by OTS-regulated lenders in all jurisdictions in light of the OTS's preemption regulations and various preemption opinions.[25] On October 3, 2003, S&P made the same decision concerning the GFLA Determination and Order,[26] and, on November 25, 2003, having reviewed the OTS's preemption opinions concerning the anti-predatory lending laws in Georgia, New Jersey, New Mexico, and New York, S&P announced that it would no longer apply its published criteria to federal thrifts and their operating subsidiaries operating in those states.[27]

These decisions are critical because, as we noted in our Preemption Determination and Order concerning the Georgia Fair Lending Act, without a certain secondary market for these loans, banks making risk-priced loans covered by this type of state law will be required to hold more of these loans to maturity. This, in turn, ties up more of a bank's capital as it carries the mortgage assets on its books, and thus adversely affects the ability of the bank to originate or acquire other real estate loans.

As a result of these higher costs and operational challenges, lenders must absorb the costs, pass the costs on to consumers, or discontinue offering various products in jurisdictions where the costs or exposure to uncertain liabilities are prohibitive. Notably, Option One Mortgage Corporation, a subsidiary of Wells Fargo, reportedly ceased funding for loans subject to New Mexico's anti-predatory lending law, which took effect January 1, and GMAC Residential Funding Corporation has significantly curtailed its operations in that state. Similarly, three lenders have announced they will no longer do business in New Jersey because of the state's predatory lending law, and at least 18 have significantly limited their lending activities there.[28] As lenders react like this, consumers will have fewer options for their home loans.

Finally, I must emphasize that our exercise of rulemaking authority was an open, broadly inclusive, and deliberative process in which we informally sought views from a number of perspectives even before proceeding with our preemption proposal. Recognizing that, in today's environment, the ability of national banks to operate under consistent, uniform national standards will be a crucial factor in their business future, the OCC began in 2002 discussing with consumer groups,

[23] *See* Fitch Ratings Addresses Preemption Statement from the OCC (January 16, 2004).

[24] *See* 68 *Fed. Reg.* 46264 (August 5, 2003).

[25] *See* Fitch Ratings Addresses Preemption Statements from the OTS and OCC (August 22, 2003).

[26] *See* S&P Announces Position on OCC's Preemption Order for the GFLA (October 3, 2003).

[27] *See* S&P Announces Position on OTS Preemption Pronouncements (November 25, 2003).

[28] *See* Paul Muolo and Brad Finkelstein, *Lenders Leaving New Jersey,* December 2003, American Banker–Bond Buyer, Vol. 13, No. 3 at 41.

members of Congress and their staffs, and industry groups the need for regulations to codify well-established preemption precedents and clarify the statute governing the OCC's exclusive visitorial powers. We have been completely open about the issues that concerned us, and the potential actions that we might take. The actions that we ultimately determined to take were not dramatic departures from existing precedent; moreover they were the product of an extended and highly inclusive process that was fully cognizant of the interest and role of Congress.

V. Correcting Misconceptions about the Preemption and Visitorial Powers Rules

Some of the comments and reaction we have received in response to our rules seem to reflect fundamental misconceptions about the law on which the rules are based, or the effect of the regulations. I welcome the opportunity to correct these misconceptions.

1. The preemption and visitorial powers rules will not demolish the dual banking system.

Some critics have suggested that by codifying in regulations the exclusivity of the OCC's supervision of national banks and the types of state laws that are, or are not, preempted as applied to national banks, the OCC "will demolish" the dual banking system, or "deprive bankers of a choice of charters." We even heard recently that a state legislator was told that our regulation would lead to dismantling of his state's banking department because it would prevent that department from regulating *state banks.*

Some of this rhetoric is, obviously, fanciful. Other comments in the same vein profoundly shortchange the qualities of the *state* banking systems. More fundamentally, the argument being advanced is simply backwards. Distinctions between *state* and federal bank charters, powers, supervision, and regulation are not contrary to the dual banking system; they are the essence of it. Clarification of how the federal powers of national banks preempt inconsistent *state* laws is entirely consistent with the distinctions that make the dual banking system dual.

The national and *state* charters each have their own distinct advantages. But many national banks engage in multi-state businesses that particularly benefit from the efficiency of a uniform, nationwide system of laws and regulations. Customers of national banks enjoy protections that are as strong as—and in some cases stronger than—those available to customers of *state* banks. But they also benefit from the efficiencies of the national banking system, and predictable, uniform, consistent regulation. It is important to remember that the dual banking system offers American consumers a choice—those who believe the *state* system offers greater protections, or desirable variety, are free to make that choice.

2. The OCC is using the correct preemption standards in our preemption rule.

Some critics of the regulation have claimed that we are using incorrect preemption standards in our preemption rule. They argue that that preemption should only occur when state law significantly impairs a national bank's *express* rights under federal law. These critics also argue that the OCC contends that national banks are immune from *state* law. These assertions misstate both OCC's positions and the relevant judicial standards for preemption.

The OCC is not arguing that national banks are immune from state law. As I have mentioned previously, the preemption standards in our new regulation are firmly grounded on standards announced by the U.S. Supreme Court in cases that trace back over 130 years, and our authority to adopt the regulation is solidly based on our statutes. The final regulation specifically—and meticulously—explains the sources of our authority to issue the regulation and the standards we use. In a nutshell, the preemption standards the OCC applies derive from Supreme Court and lower federal court precedents that provide that federal law can preempt state laws that obstruct (stand as an obstacle), *Hines* v. *Davidowitz (1941);* impair the efficiency of, *National Bank* v. *Commonwealth (1869), Davis* v. *Elmira Savings Bank (1896), McClellan* v. *Chipman (1896);* or condition the ability of national banks to exercise powers granted under federal law, *Barnett Bank of Marion County* v. *Nelson (1996); Franklin (1954);* and that state "legal infrastructure" laws—such as contract, torts, and real property laws—that do not restrict the content or extent of powers granted under federal law are **not** preempted. *National Bank* v. *Commonwealth (1869); McClellan* v. *Chipman (1896); B of A* v. *City and County of S.F. (9th Cir. 2002).*

It is relevant to note in that regard that the laws listed as preempted in our new regulation are virtually identical to those listed as preempted with respect to federal thrifts in existing regulations of the OTS.

3. There is no presumption against preemption in the case of the national banking laws, as confirmed by federal case law and the Riegle–Neal Act.

Critics of both the preemption and visitorial powers rules contend that the rules are inconsistent with the presumptive application of state law to national banks, allegedly embodied in the Riegle–Neal Act. This is simply incorrect.

As an initial matter, case law, whether decided before or after Riegle–Neal was enacted, is consistent in holding that there is no presumption against preemption in the national bank context. The Supreme Court has said that a presumption against preemption "is not triggered when the state regulates in an area where there has been a history of significant federal presence."[29] Courts have consistently held that the regulation of national banks is an area where there has been an extensive history of significant federal presence. As recently observed by the U.S. Court of Appeals

[29] *U.S.* v. *Locke,* 529 U.S. 89, 108 (2000) (explaining *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218 (1947)).

for the Ninth Circuit, "since the passage of the National Bank Act in 1864, the federal presence in banking has been significant." The court thus specifically concluded that "the presumption against the preemption of state law is inapplicable."[30] Indeed, when analyzing national bank powers, the Supreme Court has interpreted "grants of both enumerated and incidental 'powers' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law."[31]

The relevant text of the Riegle–Neal Act is fully consistent with these conclusions. As explained in the preamble to the visitorial powers rule, the Riegle–Neal Act sorted out which state's laws—host state or home state—regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, would apply to interstate branches of national banks, and provided that the host state's laws in those areas would apply to national banks ***"except when federal law preempts the application of such State laws to a national bank."*** The potential preemption of state laws thus was expressly recognized as possible in the Riegle–Neal legislation itself.

Moreover, the legislative history of the Riegle–Neal Act indicates that Congress expected the OCC to apply traditional, recognized preemption standards in deciding preemption issues, which, as I have already explained, is exactly what the OCC is doing.

Finally, the Riegle–Neal Act also specifically provided that the provisions of any state law to which a branch of a national bank is subject under the Act *"shall be enforced, with respect to such branch, by the Comptroller of the Currency."* Thus, the Riegle–Neal Act is entirely consistent with the visitorial powers rule in providing that even when state law may be applicable to interstate branches of national banks, the OCC is to enforce such laws (in other words, the OCC retains exclusive visitorial authority).

4. The OCC has ample authority to adopt the preemption rule.

As mentioned previously, the OCC's authority to issue the preemption regulation comes from both 12 USC 371 (regarding real estate lending) and section 93a (for all other activities). This statutory authority was recognized by the D.C. Circuit two decades ago in *CSBS* v. *Conover.*[32] In that case, the court expressly held that the Comptroller has the power under section 371 to issue a regulation that preempts aspects of state laws regarding real estate lending and has authority

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[30] *Bank of America,* 309 F.3d at 558–59 (citations omitted).

[31] *Barnett,* 517 U.S. at 32. The *Barnett* Court went on to elaborate:

> [W]here Congress has not expressly conditioned the grant of "power" upon a grant of state permission, the Court has ordinarily found that no such condition applies. In Franklin Nat. Bank, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions, because the federal power-granting statute there in question contained "no indication that Congress [so] intended . . . as it has done by express language in several other instances."

Id. at 34 (emphasis in original) (citations omitted).

[32] 710 F.2d 878 (D.C. Cir 1983).

under section 93a more generally to issue regulations preempting state laws that are inconsistent with the activities permissible under ***federal*** law for national banks. In the words of the court:

> It bears repeating that the entire legislative scheme is one that contemplates the operation of state law only in the absence of federal law and where such state law does not conflict with the policies of the National Banking Act. *So long as he does not authorize activities that run afoul of federal laws governing the activities of the national banks, therefore, the Comptroller has the power to preempt inconsistent state laws.*[33]

The authority under sections 93a and 371 described by the court in CSBS v. Conover thus amply supports the adoption of regulations providing that specified types of state laws purporting to govern as applied to national banks' activities and operations are preempted.

5. State law applies to national bank operating subsidiaries to the same extent as their parent banks; therefore, the preemption and visitorial powers rules apply to national banks and their operating subsidiaries equally.

As explained previously, the preemption and visitorial powers rules make no changes to the OCC's rules governing the activities of operating subsidiaries. As already set out in 12 CFR 5.34, 7.4006, and 34.1(b), national bank operating subsidiaries conduct their activities subject to the same terms and conditions as apply to the parent banks. Therefore, *by virtue of regulations already in place,* the rules apply equally to national banks and their operating subsidiaries.

It is important to note that the OCC's position does not implicate the corporate existence or governance rules of state corporations; it concerns the ability of those entities to conduct certain activities subject to *federal* supervision and regulation. National bank operating subsidiaries conduct their activities pursuant to a *federal* license under OCC regulations and *federal* law, and do not need a state license to conduct activities they are authorized to conduct under a *federal* permit. Operating subsidiaries are thus a federally authorized means by which national banks may conduct activities authorized under *federal* law; as reflected in the OCC's rules, state laws in conflict with that authority must give way.

6. States' ability to protect consumers will not be undermined by the OCC's positions on preemption of state laws and visitorial powers.

It is simply not the case that consumers will be hurt by our rules. National banks and national bank operating subsidiaries are subject to extensive *federal* consumer protection laws and regulations, administered and enforced by the OCC.[34] OCC examinations of national banks and national

[33] *Id.* at 878 (emphasis added).

[34] Federal consumer protection laws and regulations that apply to national banks and to national bank operating subsidiaries include: the Federal Trade Commission Act; Truth in Lending Act; Home Ownership and Equity Protection Act; Fair Housing Act; Equal Credit Opportunity Act; Real Estate Settlement Procedures Act; Community Reinvestment Act; Truth in Savings Act; Electronic Fund Transfer Act; Expedited Funds Availability Act; Flood Disaster Protection Act; Home Mortgage Disclosure Act; Fair Housing Home Loan Data System; Credit Practices Rule; Fair Credit

bank operating subsidiaries are conducted to ensure and enforce compliance with these laws and regulations and supplemental OCC supervisory standards.

As the OCC has made clear on a number of occasions, predatory and abusive lending practices have no place in the national banking system, and we have no evidence that national banks (or their subsidiaries) are engaged in such practices to any significant degree. Virtually all state attorneys general have more than once expressed the view that information available to them does not show that banks and their subsidiaries are engaged in abusive or predatory lending practices. Indeed, in briefs filed in litigation involving the OTS, the state attorneys general have acknowledged that predatory lending problems are centered in state-licensed non-depository institution lenders.

On those limited occasions where we have found national banks to be engaged in unacceptable practices, we have taken vigorous enforcement action.[35] We are firmly committed to using our many supervisory measures and enforcement tools available to keep such practices out of the national banking system.

Of course, nothing in the OCC's preemption or visitorial powers rules prevents the states from applying state standards and taking actions against the entities they supervise and regulate. Indeed, *resources* would be deployed more efficiently to protect *more consumers* if states applied their resources to the conduct of state-*supervised entities,* the OCC applied its resources to national banks, and state officials referred problems involving national banks that come to their attention to the OCC.

We very much regret that these legal issues are assuming the complexion of a turf battle between *federal* and state authorities. I firmly believe that we have common goals, and we have tried to avoid this result by offering a cooperative, information sharing agreement regarding consumer complaints to state officials. The response to date has been disappointing, but we will continue to pursue cooperative arrangements with the states wherever possible.

Reporting Act; Federal Privacy Laws; Fair Debt Collection Practices Act; the new OCC anti-predatory lending rules in 12 CFR Parts 7 and 34; OCC rules imposing consumer protections in connection with the sales of debt cancellation and suspension agreements; OCC standards on unfair and deceptive practices (http://www.occ.treas.gov/ftp/advisory/2002-3.doc.); and OCC standards on preventing predatory and abusive practices in direct lending and brokered and purchased loan transactions (http://www.occ.treas.gov/ftp/advisory/2003-2.doc. and http://www.occ.treas.gov/ftp/advisory/2003-3.doc.).

[35] For example, see In the Matter of First Consumers National Bank, Beaverton, Oregon, Enforcement Action 2003–100 (required restitution of annual fees and overlimit fees for credit cards); In the Matter of Household Bank (SB), N.A., Las Vegas, Nevada, Enforcement Action 2003–17 (required restitution regarding private label credit cards); In the Matter of First National Bank in Brookings, Brookings, South Dakota, Enforcement Action 2003–1 (required restitution regarding credit cards); In the Matter of First National Bank of Marin, Las Vegas, Nevada, Enforcement Action 2001–97 (restitution regarding credit cards); and In the Matter of Direct Merchants Credit Card Bank, N.A., Scottsdale, Arizona, Enforcement Action 2001–24 (restitution regarding credit cards). These orders can be found on the OCC's Web site within the "Popular FOIA Requests" section at http://www.occ.treas.gov/foia/foiadocs.htm.

V. Conclusion

In conclusion, Madam Chairwoman, we believe our new regulations provide benefits for national bank customers, are good for national banks, are good for our economy, and are entirely consistent with the fundamentals of the dual banking system. Perhaps most importantly, our actions also are entirely consistent with Congress's design of the national banking system, the powers and authority Congress has vested in national banks, and with legal precedent dating from the earliest years of the national banking system up to current times.

I am pleased to have had this opportunity to provide our views and respond to your concerns. Once again, thank you, Madam Chairwoman, for inviting the OCC's participation in this hearing.

Remarks by Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, before the Annual Legal Conference of the Independent Bankers Association of Texas and Texas Savings and Community Bankers Association, on OCC's preemption rules, San Antonio, Texas, February 12, 2004

A long time ago the legendary Will Rogers used to say that San Antonio was one of just three places—the others being New Orleans and San Francisco—with so much character that no one could ever confuse them with typical U.S. cities. I love those cities too, but I am very grateful for the opportunity to be back here—particularly because it is an opportunity to re-connect with many good friends who are here today.

In reflecting on my topic for today, I made a wild guess that you might expect me to talk about the preemption regulations recently issued by the Office of the Comptroller of the Currency (OCC), and the current controversy surrounding them. I'm not going to surprise you on that score; actually, this is a welcome opportunity to step back and describe what we have done, and to expand on some of the issues that have arisen as a result.

First, let me describe what we did. We acted on two regulations, adopting a new regulation, which I'll call the "preemption rule," and amending our existing regulation on the OCC's exclusive "visitorial powers" with respect to national banks.

The preemption rule adds provisions to our regulations expressly addressing the applicability of certain types of state laws to national banks' lending, deposit-taking, and other federally authorized activities. With regard to all three categories, the preemption rule states the general principle that, except where made applicable by federal law, state laws do not apply to national banks if they "obstruct, impair, or condition" the bank's exercise of powers granted under federal law. We tried to be very clear in the preamble to the rules that these words are not designed to create a new standard of preemption, but rather to distill the various phrases the Supreme Court has used in its preemption decisions. In the lending and deposit-taking areas, the preemption rule then lists specific types of state laws that are preempted and thus not applicable to national banks. In other words, the rule preempts the types of laws that are listed in the rule; other types of laws remain subject to case-by-case evaluation under established judicial standards.

In the lending area, examples of preempted laws include laws that restrict or prescribe the terms of credit, amortization schedules, permissible security property, escrow accounts, disclosures and advertising, and laws that would require a state license as a condition of national banks' ability to make loans. For deposit-taking (in addition to laws dealing with disclosure requirements and licensing and registration requirements), the laws listed include laws that address abandoned and dormant accounts, checking accounts, and funds availability. In both areas, the listed types of laws either are preempted under longstanding, pre-existing OCC regulations, have been addressed

in OCC preemption opinions, have been found to be preempted by the courts, or have been determined to be preempted by the Office of Thrift Supervision (OTS) with respect to federal thrifts.

The preemption rule also contains two new provisions that expressly prohibit abusive or predatory lending practices. First, the rule prohibits national banks from making any consumer loan based predominantly on the foreclosure or liquidation value of a borrower's collateral, rather than on the borrower's ability to repay the loan according to its terms. This anti-predatory lending standard applies uniformly to all consumer lending activities of national banks, regardless of the location from which the bank conducts those activities or where its customers reside. This standard strikes at the heart of predatory lending, namely, lending practices that effectively swindle a homeowner out of his or her property.

Second, the preemption rule provides that, in connection with *any* type of lending, national banks shall not engage in unfair and deceptive practices within the meaning of section 5 of the Federal Trade Commission Act (FTC Act), which prohibits "unfair or deceptive acts or practices" in interstate commerce. Although we do not have the statutory authority to define particular acts or practices as "unfair" or "deceptive" under the FTC Act, we added an express reference to section 5 to our rule in response to commenters who urged us to affirm that the principles of the act apply to national banks. We viewed this addition as particularly appropriate in light of the fact that the OCC pioneered the use of section 5 as a basis for enforcement actions against banks that have engaged in such conduct.

These new standards are comprehensive and they apply nationwide, to all national banks. They apply strong protections for national bank customers in every state—including the majority of states that do not have their own anti-predatory lending standards.

Our new regulations have stirred quite a bit of controversy, based in part, in my view, on some misunderstandings of what they do and do not do. So, it also is important to emphasize several things that the preemption rule does *not* do. The final rule *does not* immunize national banks from all state laws, and it does *not preempt* undiscriminating laws of general applicability that form the legal infrastructure for conducting a banking or other business. Non-exclusive examples of laws that are not preempted are also identified in the preemption rule and include state laws on contracts, rights to collect debts, acquisition and transfer of property, taxation, zoning, crimes, and torts.

The rule *does not preempt anti-discrimination laws.* I am glad to have this opportunity to be clear on this point, since there appears to have been uncertainty on the issue, perhaps because some state predatory lending laws that actually seek to regulate loan terms have "fair lending" in their titles.

The preemption rule does not authorize any new national bank activities or powers, such as real estate brokerage. The rule does not address or affect the application of state law to activities authorized for financial subsidiaries. Nor does it impinge on the functional regulation framework for insurance and securities activities established by Congress in the Gramm–Leach–Bliley Act.

Our second action involved amendments to our existing regulation concerning the OCC's exclusive "visitorial powers" with respect to national banks. "Visitorial powers" is a term used to refer to the authority to examine, supervise, and regulate the affairs of a corporate entity. Under federal law, the OCC has exclusive visitorial powers over national banks—except where federal law provides otherwise. Specifically, 12 USC 484 provides that "no national bank shall be subject to any visitorial powers except as authorized by federal law, vested in the courts of justice" or exercised by Congress or a committee of Congress. This provision dates from the earliest days of the national banking system and is integral to the overall design of the system and the ability of national banks to conduct the business of banking subject to uniform, consistent standards and supervision, wherever in the nation they operate.

Existing OCC regulations implement the statute by providing that state officials are not authorized to inspect, examine, or regulate national banks, except where another federal law authorizes them to do so. One amendment to the visitorial powers rule clarifies that the scope of the OCC's exclusive visitorial authority applies to the content and conduct of national bank activities authorized under federal law. In other words, the OCC is exclusive supervisor of a national bank's banking activities. The rule *does not prevent* state officials from enforcing state laws that do not pertain to a national bank's banking activities, such as public safety standards or criminal laws of general applicability.

Another amendment to the existing rule clarifies that the *preservation* of visitorial powers "vested in the courts of justice" does not *grant* state regulatory or *law* enforcement officials new authority, in addition to whatever they may otherwise have, to exercise visitorial powers over national banks. In other words, state officials may not use the courts to accomplish indirectly what the federal statute clearly prohibits them from accomplishing directly. The visitorial powers rule *does not* preclude states from seeking a declaratory judgment from a court as to whether a particular state law applies to the federally authorized business of a national bank.

Neither the preemption rule nor the visitorial powers amendments change the OCC's rules governing the activities of operating subsidiaries. The OCC already has rules on the books providing that the activities of national bank operating subsidiaries are subject to state law to the same extent as their parent bank, except where federal law or regulation otherwise provide. By virtue of these pre-existing regulations, the preemption rule and the visitorial powers amendments apply to national bank operating subsidiaries to the same extent as they apply to national banks.

So that's what we did—and didn't do.

The controversy that has followed our actions seems to fall into several basic categories: first, that our actions were legally incorrect and unsustainable; second, that codification of preemption principles for national banks in the areas of lending and deposit-taking will decimate the dual banking system; and third, that the results of preemption will be injurious to consumers, particularly in the context of preemption of state predatory lending laws. I'll take each of these in turn.

First, the legal basis for the rules. The principles for preemption used in the rule encapsulate the standards that the U. S. Supreme Court has applied in preemption cases for well over 130 years. It is phrased in words—"obstruct, impair, or condition"—that we took from those cases. We emphasized that we were not creating a new test for the threshold of preemption. The types of state laws specifically identified as preempted in the rule include types of laws that a federal court has previously held, or that the OCC has previously opined, are preempted, or that are already preempted under existing OCC regulations. Additional types of laws listed as preempted are virtually the same as those specifically listed in OTS regulations that have been on the books since 1996.

Our authority to issue preemption *regulations* also is well founded, and it is based on two statutory sources. We find it significant that this authority was specifically recognized by the D.C. Circuit in a case decided over two decades ago—*CSBS* v. *Conover.* In that case, the Federal Court of Appeals for the District of Columbia held that the OCC has the power under 12 USC 371 to issue a regulation that preempts aspects of state law regarding real estate lending, and has authority under 12 USC 93a more generally to issue regulations preempting state laws that are inconsistent with the activities permitted under federal law for national banks.

Turning to our existing visitorial powers rule, the clarifications we added reinforce the point that the statutory prohibition on the exercise of visitorial powers by authorities other than the OCC means what the text says. No one other than the OCC is empowered to regulate or supervise the banking business of national banks unless federal law provides that authority. The rule change clarifies that this statutory prohibition cannot be eluded by resort to a judicial process to impose regulatory standards or sanctions that the statute forbids state authorities from imposing through direct action.

The second criticism of our new regulations that I'll mention—and the one that has surprised me the most—is that the new rules will "demolish" the dual banking system. Yes, that word actually was used, and frankly I'm perplexed by the assertion that the dual banking system will be decimated by the OCC collecting together and codifying in a regulation a list of types of state laws that are preempted—a list that reflects legal conclusions contained in preexisting OCC rules and previously expressed on a case-by-case basis in legal opinions, orders, and briefs in litigation—plus several other types of laws long-recognized as preempted for federal thrifts.

This second criticism, I think, profoundly short-changes the state banking systems. More fundamentally, the argument advanced is simply backwards. National and state charters each have their own distinct advantages. Indeed, today state banking supervisors vigorously assert that the state charter is superior and some even actively market the advantages of a state bank charter!

The distinctions between state and federal charters, powers, supervision and regulation that are reflected in our new regulations are not contrary to the dual banking system; they are the essence of it. Thus, we firmly believe that clarification of how the federal powers of national banks interact with state laws is entirely consistent with the fundamental distinctions that make the dual banking system dual—and which have made it successful.

Finally, let me address the third area of concern, that our new rules will be injurious to consumers, particularly in the context of preemption of state predatory lending laws. As I described earlier in my remarks, national banks and their subsidiaries are highly supervised enterprises. The preemption rule puts into place additional focused standards to protect customers of national banks from unfair, deceptive, abusive or predatory lending practices. These new standards apply nationwide, to all national banks, and provide additional protections to national bank customers in every state—including the majority of states that do not have their own predatory lending standards. Our new rule does not leave customers of national banks or their subsidiaries vulnerable to predatory lending practices.

But some ask—why not allow state and local predatory lending laws to apply as well? Isn't more regulation and more regulators always better?

To this we would answer: Not necessarily. More regulation and more regulators can have their own consequences and are not the answer unless there has been a failure of the existing regulatory regime. That is simply not the case with national banks and their subsidiaries. Clearly, predatory lending is a problem in this country, but national banks and their subsidiaries are not where those practices are festering. Whatever our differences with the state attorneys general, they have stated in various filings that there is scant evidence that national banks, or their subsidiaries, are engaged in predatory lending practices.

National banks and their subsidiaries already are highly regulated and closely supervised. They must comply with a multitude of federal consumer protection requirements. The largest national banks have teams of examiners on premises at all times, constantly reviewing their operations. Other banks have regular on-site exams, supplemented by targeted reviews as needed and off-site monitoring. Overall, for the approximately 2,200 national banks in the national banking system, we have nearly 1700 examiners, including compliance specialists, in addition to dozens of attorneys and consumer complaint specialists. Our approach to predatory lending is a comprehensive, ongoing, integrated, supervisory approach, focused on *preventing predatory practices,* not just punishing those that commit them. We have substantial resources available, nationwide, and a wide array of supervisory and enforcement tools to make sure that our supervision, in this and other areas, is effective.

Adding layers of regulation brings added costs, which may lead to higher prices for customers. It may also have other undesirable collateral consequences, such as diminished product availability. State and local laws that increase a bank's costs and its potential liabilities in connection with subprime loans, which are already high risk, inevitably will cause some legitimate lenders to

conclude that the cost and risks are not worth it. The result is diminished credit availability, and legitimate credit options that may otherwise be available to a segment of potentially credit-worthy subprime borrowers will be reduced. We believe our approach does not diminish credit access but does effectively target credit abuses.

Adding additional *regulators* also has implications. Just look at the typical responsibilities of a state Attorney Genera—prosecuting Medicaid fraud, investigating and prosecuting organized crime, enforcing the state's environmental protection laws, overseeing the integrity of charitable organizations, investigating and litigating civil rights complaints, advocating for consumers stymied by health maintenance organizations (HMOs), enforcing the state's securities laws to combat fraud—the list could literally go on for pages. And look at the types of businesses supervised by state banking departments, in addition to banks—check cashers, consumer finance companies, credit unions, industrial loan companies, other licensed lenders, money transmitters, mortgage brokers, trust companies, pawnshops, payday lenders, thrifts, and title lenders. This list could go on as well.

Setting aside for the moment the issue of whether state officials have the *legal authority* to take actions against national banks and their subsidiaries, when state authorities insist on trying to put a state cop on the national bank beat, especially in today's fiscally challenged environment, that's probably one less state cop available to protect the state's consumers in connection with all the other potential sources of problems those consumers face.

This is one reason why I regret that the most conspicuous response to our new regulations by state officials has been to assert that they will still try to employ their resources to take actions directly against national banks and their subsidiaries, even with respect to core banking activities, such as lending. The net result, I think, is unfortunate because it diminishes the availability of precious resources to protect consumers in *other* areas—other areas where there is evidence of predatory lending—other areas that are not as highly regulated as the banking business.

Our jurisdiction over national banks and their subsidiaries should not and does not deprive state regulators of a role in protecting consumers in their states, and we would like to work cooperatively with them to further that goal. We have invited state authorities to refer consumer complaints concerning national banks to the OCC and to bring to our attention concerns that any national bank is engaged in unfair, deceptive, abusive or predatory practices. We have set up special procedures to handle and track referrals from state authorities. The OCC and the states already cooperate extensively in many respects, referring consumer complaints to the appropriate regulator of the entity generating the complaint. Personally, I continue to hope that we can move beyond the rhetoric of the current controversy and leverage off these existing cooperative processes to put our collective resources to work to maximize their coverage.

Finally, I'll close with a different, but vital point about preemption. Preemption provides benefits to banks in the form of uniform, consistent, and predictable standards that apply wherever in the nation a bank does business. But with preemption also comes responsibility, and this is a timely opportunity for national banks as well as state banks to recommit to the highest standards of customer service, integrity, and fair play in their business. The *very best* way to counter the controversies that I have just discussed and preserve the benefits of preemption for the banking business as a whole is for bankers to be leaders in responsible corporate behavior and exemplary customer treatment. You, as their counsel, can play a vital role in helping to achieve this objective.

Remarks by Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, before America's Community Bankers Government Affairs Conference, on national banks and uniform standards, Washington, D.C., March 9, 2004

My topic today is billed as "National Banks and Uniform Standards," and I doubt it will surprise you to hear that I'm going to talk about preemption and the Office of the Comptroller of the Currency's (OCC's) recently issued preemption regulations. Actually, this is a welcome opportunity to step back and describe what we have done and to address some of the issues that have arisen as a result. And given some of those issues, what better audience for this topic than a group that includes CEOs of federally chartered thrifts—institutions very familiar with the benefits of preemption and whose track record emphatically demonstrates that preemption and consumer protection are not incompatible principles.

What I really want to know, though, is why our regulations have provoked such controversy, when the Office of Thrift Supervision (OTS) issued virtually identical regulations nearly 10 years ago, and there was hardly a ripple. Obviously, we need to ask Jim Gilleran where he got his Teflon suit—some days I feel like what I need is a suit of armor.

Actually, our regulations have prompted a remarkable outpouring of reactions, and some particularly notable misunderstandings and mischaracterizations of what we did. One publication recently editorialized that by our action we were "tak[ing] over [from the states] the job of protecting consumers," that "the change threatens strong consumer protection laws that have been the responsibility of states for more than a century," and that our action "leaves millions of customers vulnerable" to abusive lending practices. The same publication asserted that the OCC's resources involved in consumer compliance supervision "cannot match" the resources the states have available to look out for consumer interests.

This is simply baloney.

First, let me describe what we did. We acted on two regulations, adopting a new regulation, which I'll call the "preemption rule," and amending our existing regulation on the OCC's exclusive "visitorial powers" with respect to national banks.

The OCC preemption rule adds provisions to our regulations expressly addressing the applicability of certain types of state laws to national banks' lending, deposit-taking activities. If this sounds familiar, it should, since it is the approach reflected in the OTS's preemption regulations. In the case of the new OCC rules, the listed types of laws either already are preempted under longstanding, preexisting OCC regulations, have been found to be preempted in OCC preemption opinions, have been found to be preempted by the courts, or have been determined to be preempted for federal thrifts by the OTS. Other types of laws, not listed in the regulations, will continue to be evaluated by the OCC under pre-existing, judicially established standards for federal preemption.

The preemption rule distills those standards, stating the general principle that, except where made applicable by federal law, state laws do not apply to national banks if they "obstruct, impair, or condition" the bank's exercise of powers granted under federal law. We tried to be very clear in the preamble to the rules that these words are not designed to create a new standard of preemption, but rather to reflect the various phrases the Supreme Court has used in its preemption decisions.

Our preemption rule also contains two new provisions that expressly prohibit abusive or predatory lending practices. First, the rule prohibits national banks from making any consumer loan based predominantly on the foreclosure or liquidation value of a borrower's collateral, rather than on the borrower's ability to repay the loan according to its terms. This anti-predatory lending standard applies uniformly to all consumer lending activities of national banks and their operating subsidiaries, regardless of the location from which those activities are conducted or where customers reside. This standard strikes at the heart of predatory lending, namely lending practices that effectively swindle a homeowner out of his or her property.

Second, our preemption rule provides that, in connection with *any* type of lending, national banks and their operating subsidiaries shall not engage in unfair and deceptive practices within the meaning of section 5 of the Federal Trade Commission Act (FTC Act), which prohibits "unfair or deceptive acts or practices" in interstate commerce. Although we do not have the statutory authority to define particular acts or practices as "unfair" or "deceptive" under the FTC Act, we added an express reference to section 5 to our rule in response to commenters who urged us to affirm that the principles of the act apply to national banks. We viewed this addition as particularly appropriate in light of the fact that the OCC pioneered the use of section 5 as a basis for enforcement actions against banks that have engaged in such conduct, and have obtained substantial restitution for customers as a result.

These new standards are comprehensive and they apply nationwide to all national banks and their operating subsidiaries. They apply strong protections for national bank customers in every state—including the many states that do not have their own anti-predatory lending standards.

Does this sound like a change that threatens strong consumer protection laws? Does this sound like we have left "millions of customers vulnerable" to abusive lending practices?

Our second action involved amendments to our existing regulation concerning the OCC's exclusive "visitorial powers" with respect to national banks. "Visitorial powers" is a term used to refer to the authority to examine, supervise, and regulate the affairs of a corporate entity. Under federal law, the OCC has exclusive visitorial powers over national banks—except where Federal law provides otherwise. Specifically, 12 USC 484 provides that "no national bank shall be subject to any visitorial powers except as authorized by federal law, vested in the courts of justice" or exercised by Congress or a committee of Congress. This provision, *originally enacted in 1863,* is integral to the overall design of the system and the ability of national banks to conduct the business of banking subject to uniform, consistent standards and supervision, wherever in the nation they operate.

Existing, longstanding OCC regulations implement this law by providing that state officials are not authorized to inspect, examine, or regulate national banks, except where another federal law authorizes them to do so. One amendment to our visitorial powers rule clarified that the scope of the OCC's exclusive visitorial authority applies to the content and conduct of national bank activities authorized under federal law. In other words, the OCC is exclusive supervisor of a national bank's banking activities. The rule *does not prevent* state officials from enforcing state laws that do not pertain to a national bank's banking activities, such as public safety standards or criminal laws of general applicability.

Another amendment to the existing rule clarifies that the *preservation* of visitorial powers "vested in the courts of justice" does not *grant* state regulatory or law enforcement officials *new* authority, in addition to whatever they may otherwise have, to exercise visitorial powers over national banks. In other words, state officials may not use the courts to accomplish indirectly what federal law clearly prohibits them from accomplishing directly.

Does this sound like we are taking on a new role? Does this sound like we are assuming a new responsibility that had previously been handled by the states for more than a century?

In fact, the only thing in this picture that has been around for more than a century is the standard contained in section 484—which *prevents* states from supervising the activities of national banks.

But, where the challenge is to prevent abusive lending practices, why shouldn't state and local laws apply as well as the federal standards to which national banks—and federal thrifts—are subject? Why shouldn't state and local regulators also get into the business of supervising the activities of national banks and federal thrifts? Isn't it better to have more regulation and more regulators?

To this we would answer: Not necessarily. More regulation and more regulators can have their own consequences and are not the answer unless there has been a failure of the existing regulatory regime. That is simply not the case with national banks, federal thrifts, and their respective subsidiaries. Clearly, there is a real problem with abusive lending practices in this country, but national banks and federal thrifts are not the breeding ground. Whatever differences of opinion may exist with the state attorneys general, they have stated—unambiguously—in various filings, that there is scant evidence that banks, thrifts, or their subsidiaries, are engaged in abusive lending practices. Indeed, these state officials have recognized the extent to which banks and thrifts are highly regulated and closely supervised, and have credited that regulatory presence for the scarcity of evidence of abusive or predatory practices.

For example, the OCC today supervises approximately 2,200 national banks, together with their operating subsidiaries, which must comply with a multitude of federal consumer compliance requirements. We have nearly 1,700 examiners in the field, hundreds of which are involved in both safety and soundness and compliance supervision. Over 100 work exclusively on compliance supervision. We have over 300 examiners on site at our largest national banks, engaged in contin-

uous supervision of all aspects of their operations. These resources are supplemented by dozens of attorneys in our district offices and Washington, D.C., headquarters, and consumer complaint specialists at our Customer Assistance Group, located in Houston.

By way of comparison, based on data published by the Conference of State Bank Supervisors, state banking departments collectively supervise approximately 113,000 entities. These include, in addition to banks and thrifts—check cashers, consumer finance companies, credit unions, industrial loan companies, other licensed lenders, money transmitters, mortgage brokers, trust companies, pawnshops, payday lenders, and title lenders. For these entities, the states report that they have approximately 2,300 examiners.

Does this sound like the OCC "cannot match" the resources the states bring to bear?

Our approach is a comprehensive, ongoing, integrated, supervisory approach, focused on *preventing abusive or predatory lending practices,* not just punishing those that commit them. We have substantial resources available, nationwide, and a wide array of supervisory and enforcement tools, to make sure that our supervision, in this and other areas, is effective.

Adding layers of regulation brings added costs, which may lead to higher prices for customers. It may also have other undesirable collateral consequences, such as diminished product availability. For example, state and local laws that increase a bank's costs and its potential liabilities in connection with subprime loans, which are already high risk, inevitably will cause some legitimate lenders to conclude that the cost and risks are not worth it. The result is diminished credit availability, and legitimate credit options that may otherwise be available to a segment of potentially credit-worthy subprime borrowers will be reduced. We believe our approach to combating abusive lending practices does not diminish credit *access* but does effectively target credit *abuses.*

Adding additional *regulators* also has implications. Just look at the typical responsibilities of a state attorney general—prosecuting Medicaid fraud, investigating and prosecuting organized crime, enforcing the state's environmental protection laws, overseeing the integrity of charitable organizations, investigating and litigating civil rights complaints, advocating for consumers stymied by health maintenance organizations (HMOs), enforcing the state's securities laws to combat fraud—the list could literally go on for pages. And I've already listed the many types of businesses, in addition to banks and thrifts, that are the responsibility of state banking departments.

When state authorities insist on trying to put a state cop on the national bank—or federal thrift—beat, especially given their budget constraints today, that's probably one less state cop available to protect the state's consumers in connection with all the other potential sources of problems those consumers face. This is one reason why I regret that the most conspicuous response to our new regulations by many state officials has been to assert that they will still try to employ their resources to take actions directly against national banks and their subsidiaries, even with respect to core banking activities, such as lending. The net result, I think, is unfortunate because it dimin-

ishes the availability of precious resources to protect consumers in *other* areas—other areas where there is evidence of abusive lending—other areas that are not as highly regulated as the banking business.

Our jurisdiction over national banks and their subsidiaries also does not deprive state regulators of a role in protecting consumers in their states, and we welcome the opportunity to work cooperatively with them to further that goal. We have invited state authorities to refer consumer complaints concerning national banks to the OCC, and to bring to our attention concerns that any national bank is engaged in unfair, deceptive, abusive or predatory practices. We have set up special procedures to handle and track referrals from state authorities.

The OCC and the states already cooperate extensively in many respects, referring consumer complaints to the appropriate regulator of the entity generating the complaint, and we welcome additional opportunities to collaborate. We issued a new advisory letter to national banks just last week clarifying our expectations about how they should handle consumer complaints that are forwarded to them from state agencies and departments. Personally, I hope that we can move beyond the rhetoric of the current controversy and leverage off existing cooperative processes to put our collective resources to work to maximize their coverage.

I'll close with one last point about preemption. Preemption provides benefits to banks and thrifts in the form of efficiencies that flow from uniform, consistent, and predictable standards that apply wherever in the nation an institution does business. In other words, you know you can run a better railroad if the track gauge doesn't change with every state and county line that you cross. But with preemption also comes responsibility, and this is a timely opportunity for all bankers to recommit to the highest standards of customer service, integrity, and fair play in their business. The *very best* way to counter the controversies that I have just discussed and preserve the benefits of preemption is for bankers to be leaders in responsible corporate behavior and exemplary customer treatment. That way, both bankers and their customers come out winners.

Remarks by Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, before the New York Bankers Association Financial Services Forum, on preemption and the evolving business of banking, New York, N.Y., March 25, 2004

Good morning. I'm honored to be here. And, it is a particular pleasure to have an opportunity to re-connect with many good friends in the New York banking community.

The New York Bankers Association, with a proud history—which it is currently upholding under Mike Smith's fine leadership—and the New York state banking system and New York State Banking Department have played a vital role in the development of the banking business and bank regulatory systems throughout the nation. Indeed, when the original version of the National Bank Act was crafted by Congress in 1863, many important features of the act were drawn from provisions of the New York state banking law. So, I think it is particularly appropriate that this meeting of the New York Bankers Association provides an opportunity to talk about the evolution and future of our financial services markets, relative to the fundamental character of the national bank charter—and preemption.

In doing this, I particularly want to set the record straight regarding the nature and the consequences of our recent preemption regulations. We are not surprised that they are controversial in some quarters; we are surprised at how much they have been misunderstood and mischaracterized. I'm going to take a crack at correcting some of that this morning.

Let me begin with some perspectives on the financial services environment and then link that to why we adopted our new preemption regulations.

I don't have to tell you that today's financial services markets are vastly different from the markets bankers confronted 20 or even 10 years ago. These changes have affected both the types of products that may be offered and the geographic region in which banks—large and small—may conduct business.

Many legal barriers to geographic expansion have been eliminated by Congress, or simply eroded by market developments. Advances in data analytics and communications, and changing customer demographics also have profoundly changed the business of banking. Consumers can shop for financial products and services on-line and can initiate financial transactions over the Internet regardless of where they or their bank are located. Banks use technology to make available a wider array of products and services and to deliver those products and services more quickly than ever before.

Credit decisions—approving a mortgage loan, applying for a credit card—that used to take weeks, can now be made through centralized scoring systems in a matter of hours, maybe minutes, for a customer across your desk or across the country. Consumers also are increasingly mo-

bile, and they look to be able to take with them financial relationships that they have established, whether they are moving across the country or vacationing or retiring to Florida.

These developments highlight the increasing anomaly of applying geographically based regulatory standards to markets for credit, deposits, and other financial services that are regional, national, and sometimes international in scope. Markets, in other words, are not divisible based on state or county lines, nor do they begin and end at the city limits.

Yet, the trend at the state—and sometimes even local—level has been to perpetuate, and even to enact more laws that localize—some would say "balkanize"—bank regulation. While the objectives of these laws may be laudable, the result is that the same activity, conducted by the same entity, can be subject to an assortment of different standards, based on the location of a customer, or of the regulated event.

New York state has seen its own intra-state balkanization experience in this regard in connection with New York City's initiative to apply a city predatory-lending law. The New York Bankers Association participated in litigation challenging that law, arguing ably and successfully that various federal and state laws preempted the city law. I must note here that New York state also argued that the city law was preempted not only by state law, but also, with respect to national banks, by provisions of the National Bank Act. The lesson here, I suppose, is that the topic of preemption is not without irony!

In any case, for bankers who want to serve existing customers or reach new customers in multi-state metropolitan areas, or in regional or national markets, regulation based on geography can result in a maze of inconsistent restrictions and requirements, regulatory overlaps and gaps. This multiplicity of regulation can limit product offerings, materially increase operating expenses, and reduce the efficiency with which banks do business. And, this is not an issue for banks alone. Product restrictions, higher operating expenses, and inefficient operations translate into higher prices for bank customers and reduction in product selection.

Moreover, efforts to apply state and local bank regulation to national banks run headlong into the fundamental character of the national bank charter. National banks are designed to exercise uniform powers granted under federal law, under consistent, national standards of operation, and uniform federal administration of those standards. These characteristics take on heightened significance in view of the evolution of the banking business that I've just described.

Yet, increasingly, national banks were being confronted by assertions that various state and local restrictions and regulatory directives were applicable to their operations. Questions of preemption of these laws were growing in number. For several years, we dealt with those issues on a case-by-case basis. Then, we finally concluded that more definitive, effective clarification was needed.

In January of this year, we finalized two rules—our preemption rule and amendments to our existing visitorial powers rule—intended to provide national banks with the guidance they need to op-

erate under uniform, predictable, nationally applicable federal standards—plus rigorous principles of consumer protection.

The preemption rule adds provisions to our regulations expressly addressing the applicability of certain listed types of state laws to national banks' lending and deposit-taking activities. Some have called this new rule a "dramatic," "revolutionary," or "breathtaking" enhancement of preemption for national banks. Some have said that, by adopting the rule, the OCC will "demolish" the dual banking system. These characterizations of the rules—and some associated characterizations of our motives in adopting them—are far off the mark.

The new regulation only preempts the types of laws listed in the rule. They are laws that are already preempted under longstanding, preexisting OCC regulations, that have been found to be preempted in OCC preemption determinations, that have been found to be preempted by the courts, or that have been determined to be preempted for federal thrifts by the OTS. In other words, they were the types of laws for which there was substantial precedent recognizing the interference they posed to the ability of federally chartered institutions to operate under uniform federal standards. We will continue to evaluate other types of laws not listed in the regulations, on a case-by-case basis, as we did before, under the pre-existing, judicially established standards of federal preemption.

We could have continued issuing individual preemption opinions and litigating individual preemption cases involving state laws. But what purpose is served by requiring banks to ask the same question over and over? What purpose is served by forcing bankers to litigate the same issue again and again? What purpose is served by forcing them to incur the extra costs of those efforts? What is accomplished by delaying clarifying what standards apply to their operations?

We thought that the precedents and application of preemption principles were clear, and that inclusion of the listed laws in a regulation would provide certainty for bank operations. We make no apology for striving for an efficient, consistent, predictable—and rigorous—regulatory environment for national banks. In fact, we think that is our responsibility.

Moving to our second regulatory action, we amended our existing regulation concerning the OCC's exclusive "visitorial powers" with respect to national banks. "Visitorial powers" is a term used to refer to the authority to examine, supervise, and regulate the affairs of a corporate entity. Federal law specifically provides that "no national bank shall be subject to any visitorial powers except as authorized by federal law, vested in the courts of justice" or exercised by Congress or a committee of Congress.

This provision, which was originally enacted in 1863, is integral to the character of the national bank charter and is important today for national banks with multi-jurisdictional operations because it allows them to conduct their banking business subject to consistent federally administered standards and uniform supervision of their banking business, wherever in the nation they operate. Despite all the rhetoric you have undoubtedly heard, state attorneys general—including

your own—do not dispute that this federal law prohibits them from examining or taking action administratively against national banks, such as through cease-and-desist proceedings.

It's also important to note here that various federal laws do authorize state authorities to regulate or take enforcement actions against national banks and their subsidiaries in a number of areas: securities, insurance, "do not call" lists and telemarketing sales practices, and enforcement of the Fair Credit Reporting Act are examples.

Thus, without getting into legal technicalities, our differences with state officials in connection with this rule change can be distilled to two issues: in matters where federal law has not authorized state authorities to bring lawsuits against national banks, may state officials bring suit against national banks to accomplish regulatory and enforcement purposes that they acknowledge they cannot accomplish directly through administrative actions? And, for matters where authority is not provided for them under federal law, may state officials regulate and take actions against national bank operating subsidiaries in connection with activities those subsidiaries are authorized to conduct under federal law?

These questions illustrate that our position on "visitorial powers" has a discrete and identifiable scope of potential impact. Clearly, it does not entail the OCC "taking over" a vast domain of supervisory and enforcement activity directed at national banks that some assert has historically been performed by the states.

Yet, this image of a sweeping shift of responsibilities from the states to the OCC has lately been used as a springboard for assertions that the OCC lacks the resources to shoulder what is being portrayed as substantial new responsibilities taken over from the states. In essence, the argument being made is that the OCC lacks the commitment to consumer protection, or the necessary resources, or both, to handle the extensive new responsibilities it has stripped from the states, and that in order to assure that customers of national banks are adequately protected against abuses, state as well as federal consumer protection laws must apply to national banks, and state as well as federal enforcers must apply them. We profoundly disagree.

First, as I described at the outset of my remarks, our regulatory actions were based on substantial precedent and are hardly "breathtaking" in scope or impact. Second, to hear the arguments advanced, you would never guess that the OCC has a long and credible track record of consumer protection activity.

We were the first federal banking agency to conduct regular, separate, full-scope consumer examinations, using specially trained consumer examination specialists, and to produce consumer examination manuals and policy guidelines for bankers. That was in 1976.

Also in 1976, we implemented a consumer-complaint information system to track complaints systematically. That early attempt to assemble a consumer database has evolved into our Customer Assistance Group (the CAG), headed by our ombudsman, who reports directly to the Comptroller.

Where we have found that national banks have engaged in abusive practices, we have not only acted with dispatch to end those practices, but have also used every legal and supervisory tool available—and have developed new tools—in order to secure restitution to consumers and penalize the institutions involved.

We have pioneered the use of section 5 of the Federal Trade Commission Act as a basis to take enforcement action where we found instances of unfair or deceptive practices by national banks. We have thwarted payday lenders in their "rent-a-charter" designs to use national banks as a cover for evading state consumer-protection laws. We have taken the lead in raising concerns about abusive practices in connection with so-called bounce-protection products and in urging the other federal banking agencies to adopt standards to address those practices. And, we have issued the most comprehensive supervisory guidance ever issued by any federal banking agency, defining and describing predatory lending and warning banks about the supervisory consequences of engaging, directly or indirectly through purchased or brokered loans, in such practices.

Today, we supervise approximately 2,100 national banks, together with their operating subsidiaries. Consumer compliance is a longstanding, integral part of our mission, and we devote substantial resources to it. Compliance and enforcement are carried out through our corps of bank examiners and attorneys. We have nearly 1,700 examiners in the field, hundreds of whom are involved in both safety and soundness and compliance supervision. Over 100 examiners throughout the country work exclusively on compliance supervision. We have over 300 examiners on-site at our largest national banks, engaged in continuous supervision of all aspects of their operations. These resources are supplemented by dozens of attorneys in our district offices and Washington, D.C., who work on compliance matters.

I should add that if and when we do find problems affecting consumers, we have formidable authority to take corrective action—no ifs, ands, or buts. We don't need to go into court; and we don't need additional authorization or documents. We can take that action even when the bank has offices in many different states, and, in a single action, we can obtain remedies for customers in every state.

Our new regulation strengthens this already impressive authority, for it contains two new provisions that expressly forbid abusive- or predatory-lending practices. The first prohibits national banks from making any consumer loan based predominantly on the foreclosure or liquidation value of a borrower's collateral, rather than on the borrower's ability to repay the loan—a provision that strikes at the heart of predatory lending. The second provides that national banks shall not engage in unfair and deceptive practices within the meaning of section 5 of the Federal Trade Commission Act—an addition that seemed appropriate inasmuch as the OCC pioneered the use of section 5 as a basis for enforcement actions against banks that have engaged in such conduct.

So, if you recently heard assertions that the OCC handles its consumer compliance responsibilities solely through a 40-person staff at our Customer Assistance Group, located in Houston, those statements are just plain wrong. The CAG provides direct assistance to customers of national

banks and their subsidiaries to resolve individual complaints, and it employs state-of-the-art technology to help resolve matters with banks promptly. It also collates and disseminates complaint data that point our examiners to banks, and bank activities, that require further investigation and transaction testing. While the CAG is an important supplement to our compliance supervision functions, it is, by no means, all there is to it.

On behalf of our ombudsman, today, I extend—indeed repeat—an invitation to state banking supervisors and state attorneys general, to visit the CAG and learn how the CAG operates, and hear from us how we handle consumer compliance supervision. Come and learn what we do and how we operate. Then, let's talk.

I offer this information and invitation not to brag—although we are very proud of our record here—but to be clear about our commitment to consumer compliance and the resources we have available to do our job. This foundation is vital to set the stage for some more constructive next steps with state authorities; it is also vital for national bank customers to know.

On the first point, we are hopeful that a constructive dialogue can emerge with state officials. It has never made sense to us that the OCC and the states would be locked in some kind of competition to supervise the same institutions when supervisory and enforcement resources are so dear, and, as a result, so many institutions—overwhelmingly nonbanks that probably need it most—may be effectively under-supervised. So, let me renew the call to discuss ways in which we and state authorities can better cooperate on consumer issues—exchanging information on complaints, creating more effective mechanisms to ensure that complaints wind up in the hands of the authorities best positioned to take swift and effective action against offenders, identifying systemic problems, and enhancing transparency about how customers' problems are resolved.

I believe the OCC took an important step in that direction in our recent advisory letter concerning how national banks and their subsidiaries should handle consumer complaints forwarded by state authorities. We made clear that a complaint forwarded by a state official for resolution did not constitute an illegal "visitation" under the National Bank Act, and that national banks should not cite the OCC's exclusive visitorial power as a justification for not addressing the complaint. Nor should they resist a request from the referring state agency for information on how the complaint was resolved.

We also described how states may refer consumer issues concerning national banks to the OCC, including directly to my office, and the special procedures we have set up to handle and track these referrals. By coordinating our resources and working cooperatively with the states, we are convinced we can maximize benefits to consumers, close gaps between existing consumer-protection laws, and most effectively target financial predators. We welcome further dialogue with the states to explore these goals.

I must also tell you candidly that I am personally troubled by any effort to use preemption as a shield to avoid promptly responding to customers' concerns. That doesn't mean that the customer

is always right. It does mean addressing their problem and giving them an answer. Failure to do so is not just bad customer relations, it endangers the hard-fought benefits of the national charter, and plays directly into the hands of those who will see such behavior as proof that banks require more aggressive, more intrusive regulation, and more regulators to watch over them. Surely, that's not the outcome you want.

And, that brings me to the second reason why accurate information on the OCC's approach and the OCC's resources is important—and to my final comment. Your program says our topic this morning is "Perspectives on the Future of the Financial Services Industry." Whether your future will be robust or not depends on your ability to attract and retain customers—wholesale and retail—commercial and individual.

Customers of national banks deserve to know that the OCC expects national banks' business practices to reflect high integrity and high standards of customer treatment, and that the OCC stands ready with the commitment and the resources to make that expectation a reality. These expectations are goals all bankers should share. The market developments I discussed at the beginning of my remarks should be reason enough. While they enable bankers to offer products and services to more customers in more places, these developments also make it easier for them to leave you for another provider that gives them better treatment.

Many, many banks, in fact, are exemplary in their approaches to customer relations and resolution of customers' problems, and many have stepped up to the plate to improve their practices. But, in closing, for those that have not gotten the message, let me be clear; get with it. We will be watching, we will be there, and we care.

Quarterly Journal

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978—December 4, 2003

12 CFR 4.31

[Summary: Letter denies a request for a Suspicious Activity Report (SAR) for use in private litigation because the public policy against disclosure, as reflected in congressional enactments, agency regulations, and recent court decisions, is very strong.]

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Subject: *Commerce Bank, N.A.* v. *Smith, No. 02-3226 (Bankr. W.D.N.C.)*

Dear Mr. Schaaf:

This responds to your letter seeking a Suspicious Activity Report (SAR) under 12 CFR 4.31 *et seq.* for use in the above referenced litigation.

I regret that I must deny your request. The public policy against disclosure of a SAR is very strong. Under 31 USC 5318(g)(2), a SAR is confidential. Congress recently buttressed this policy by amending the statute to provide that no officer or employee of the federal government, or of any state, local, tribal or territorial government who knows that a SAR was filed, may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the employee's official duties. 31 USC 5318(g)(2)(A)(ii), as amended by the USA Patriot Act of 2001, Pub. L. No. 107-56, 351(b), 115 Stat. 272, 320-21 (2001). Similarly, regulations issued by the OCC and FinCen underline the confidentiality of a SAR. 12 CFR 21.11(k); 31 CFR 103.18(e), respectively. The state and federal courts have been virtually unanimous in emphasizing the confidentiality of a SAR. *See Int'l Bank of Miami, N.A.* v. *Shinitzky,* 849 So. 2d 1188 (Fla. 2003); *Matkin* v. *Fidelity Nat'l Bank,* 2002 WL 32059740 (D.S.C. 2002); *Cotton* v. *PrivateBank & Trust Co.,* 235 F. Supp. 2d 809 (N.D. Ill. 2002) (collecting cases). The courts have been equally insistent that even the act of filing of a SAR is confidential. *Lee* v. *Bankers Trust Co.,* 166 F. 3d 540, 544 (2d Cir. 1999) ("[E]ven in a suit for damages based on disclosures allegedly made in an SAR, a financial institution cannot reveal what disclosures it made in an SAR, or even whether it filed an SAR at all").

The applicable statute and agency regulations are predicated on the belief that, absent confidentiality, banks would be reluctant to file SARs, or would hesitate to describe fully the suspected misconduct. Moreover, the willingness of banks to make these filings will be diminished if SARs are made freely available to private litigants. The Congressional interest in not discouraging banks from filing SARs is reflected in the safe harbor provision that protects banks from suit, 31 USC 5318(g)(3)(A). *See Stoutt* v. *Banco Popular de Puerto Rico,* 320 F.3d 26, 30-31 (1st Cir.

2003), a recent decision that refused to read into the safe harbor provision a requirement that the bank filing the SAR do so in good faith. The failure of financial institutions to liberally report all evidence of suspicious activities may diminish the SAR's importance in serving as a weapon in the fight to prevent terrorists from accessing the banking system. Finally, since a SAR contains unproven allegations, its disclosure could unfairly impugn the integrity of any individual named therein and might even subject the reporting party to retaliation. *U.S.* v. *Holihan,* 248 F. Supp.2d 179, 185 (W.D.N.Y. 2003).

Ford Barrett
Assistant Director, Litigation Division

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979—December 18, 2003

12 USC 84

[Summary: Letter interprets the common source of repayment test in 12 CFR 32.5(c)(1) and finds that, on the specific facts presented, the test does not result in the combination of loans to members of the Indian Community with loans to other members or with a loan to the Community.]

Subject: Applicability of Lending Limit to Loans to [ ] Indian Community of *[city, state]* and its members

Dear [ ]:

I am writing in response to your request for our opinion as to the application of the lending limit, 12 USC 84, to loans *[NB, city, state]* (bank) has made, and plans to make, to [ ] Indian Community of *[city, state]* (Community) and to members of the Community. Based on the information in your letter and in subsequent telephone conversations, it is my opinion that for purposes of the lending limit a loan to one member would generally not be combined with a loan to another member, and that loans to members would generally not be combined with loans made to the Community.

Facts

The Community is located on the south side of the [ ] in [ ] County, two miles south of *[city]* and 10 miles from the bank in *[city, state]*. The population resident on the [ ] acre reservation of the Community was approximately 300 in the year 2000.[1] The population of *[bank's city]* is approximately 1,300 and is largely dependent on the tribal enterprises run by the Community.

The bank has made a loan to the Community, the purpose of which is to finance several loans that the Community wishes to make to several members of the Community and to augment a loan fund from which the Community will make loans to other members. The loan to the Community is secured by an assignment of the underlying loans made by the Community to the members. The source of repayment for the loan to the Community is ultimately the income from various tribal enterprises. This income supports the Community's payment of monthly stipends to the members and these stipends in turn are used by the members to repay their loans to the Community. The principal tribal enterprise is the [ ] casino. A gas station and convenience store built in [ ] are adjacent to the casino. The Community also owns the nearby [ ] Motel with 122 rooms and swimming pool, a recreational vehicle park, and a six-story hotel with convention center that was built in [ ].

[1] [ ].

The bank has also made general consumer loans to members of the Community that are secured by an assignment of the members' monthly stipends that they receive from the Community. The bank may make further such loans although it is expected that no member will borrow from both the bank and from the Community loan fund described above at the same time. The source of repayment for the bank's loans to the members is the monthly stipends (currently $5,200) that Community members are allotted by the Community. Tribal enterprises, such as the casino, and not the bank's loan to the Community, support payment of these stipends by the Community. It is a requirement for receipt of the monthly stipend that the members live within a 10-mile radius of the Community's trust lands. Some members also receive wages from Community enterprises, though the bank has never asked for an assignment of wages to secure loans to members of the Community, and it is assumed for the purposes of this analysis that the members do not receive sufficient wages from which their loans and other obligations may be fully repaid.

Legal Analysis

The purpose of the lending limit is to protect the safety and soundness of national banks by preventing excessive loans to one person and to promote diversification of loans and equitable access to banking services. Generally, a national bank's total outstanding loans to one borrower may not exceed 15 percent of the bank's capital and surplus, plus an additional 10 percent of capital and surplus if the amount over the 15 percent general limit is fully secured by readily marketable collateral.[2] Also, loans to one borrower will be attributed to another person and both will be considered a borrower when, among other things, (1) the proceeds are used for the direct benefit of the other person, or (2) a common enterprise is deemed to exist between the persons.

The proceeds of a loan to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to that other person when the proceeds, or assets purchased with such proceeds, are transferred to that other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.[3]

A common enterprise is deemed to exist, inter alia, "[w]hen the expected source of repayment for each loan . . . is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and

[2] 12 USC 84(a) and 12 CFR 32.3(a).

[3] 12 CFR 32.5(b).

salaries paid to an employee unless the standards of [the common control and substantial financial interdependence test][4] are met."[5]

1. Direct Benefit

The proceeds of the loan to the Community are used by the Community to make loans to members of the Community.[6] However, such members do not also borrow from the bank. Thus, while the direct benefit test requires that the loan to the Community be *attributed* to the members to whom the Community makes loans, those attributed loans are not *combined* with any other loans under the direct benefit test.[7]

There is no information in your letter regarding the transfer of proceeds of the loans to the members (or of assets purchased with such proceeds) from one member to another member or from the members to the Community. Accordingly, without further facts, there is nothing to support attribution of the loans to members to other members or to the Community.[8]

2. Common Enterprise

The expected source of repayment for the loan to the Community is the repayment of the Community's loans to the members that is dependent on the monthly stipends that are supported by income from tribal enterprises, principally the [ ] casino. The expected source of repayment for the current and future loans to the members of the Community is the monthly stipends that each member receives from the Community and that are derived from the same tribal enterprises. The expected source of repayment for the loan to the Community and the loans to the members is thus the same. Further, no borrower—neither the Community nor any member—has another source of income from which the borrower's loan, and the borrower's other obligations, can be fully repaid.

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[4]That test provides that a common enterprise is deemed to exist when borrowers are related through common control and there is substantial financial interdependence between or among the borrowers.

[5]12 CFR 32.5(c)(1).

[6]Since the proceeds of the loan to the Community do not fund the stipends that the Community pays to members, the payment of stipends does not cause the direct benefit test to require that the loan to the Community be attributed to members.

[7]If a member borrowed from both the bank and from the Community, the direct benefit test would require that the part of the bank's loan to the Community that the Community re-loaned to the member be combined with the bank's loan to the member. The transfer of proceeds by the Community to such members would not be excepted by the exception for bona fide arm's length transactions where proceeds are used to acquire property, goods, or services. It is an established OCC position that "borrowed funds that are re-loaned to a third party would be attributed to the third party under this test." 59 *Fed. Reg.* 6593, 6596 (February 11, 1994).

[8]I assume that the members may acquire property, goods or services from the Community or its enterprises and that the bank's loans to the members may support such transactions. Provided such transactions are bona fide arm's length transactions, they would not cause the direct benefit test to require the loans to the members to be attributed to the Community.

Accordingly, absent an exception, the loans would be combinable under the common source of repayment test—the members' loans with other members' loans[9] and the members' loans with the loan to the Community.

As noted above, an employer will not be treated as a common source of repayment because of wages and salaries paid to its employees, unless the employees control[10] the employer and there is substantial financial interdependence between them. This position is sometimes referred to as the "company town" exception since it was originally intended to facilitate the granting of credit to employees in such a town. A "company town" is a town in which residents are dependent on the economic support of a single firm for maintenance of retail stores, schools, hospitals, and housing.[11] Without the exception, it would be difficult for a local bank to serve effectively the credit needs of the town's residents. As noted above, one of the purposes of the lending limit is to promote equitable access to banking services.

The current case is very similar to the company town scenario in that all the members of the Community live in a single, small geographic location and are uniquely associated with, and dependent on, a single entity that is the community hub from a commercial and socioeconomic perspective. Thus, the need for equitable access to banking services is as important in the current factual circumstances as it is in the company town scenario. Further, there is a strong public interest in making available to Indian tribes and their members access to banking services, including

[9]Some OCC precedent, beginning with interpretations of prior versions of the lending limit regulation, has taken the position that the common source of repayment test hinges on whether the repayment capacity of one borrower is dependent upon the financial health of another borrower rather than whether repayment will be made from the same expected source. Under this view, absent an exception a loan to a member of the Community would only be combined under the common source of repayment test with the loan to the Community on which the member is dependent, not with a loan to another member, since no member is dependent on another member. However, other OCC precedent has held loans to be combinable under the common source of repayment test in circumstances in which one borrower was not financially dependent on another borrower, based on the commonality of the source of repayment. The current regulation on its face does not require dependence on another borrower but rather requires neither borrower to have another source of income to fully repay its loan and other obligations. In light of this regulatory clarity, the correct position under 12 CFR part 32 is that dependence on another borrower is not required under the common source of repayment test.

[10]I note that the Community is comprised only of its members and those members elect a governing council to run the affairs of the Community. Such a democratic system does not involve concerted action by the members and does not constitute "control" for the purposes of this provision.

[11]See *The American Heritage Dictionary of the English Language* (4th ed., 2000).

credit products.[12] Although in the current case, payments received by the members are principally stipends rather than wages and salaries, the so-called company town exception is available in this case because of the unique and compelling similarities between the employer-employee relationship in a company town and the relationship between the Community and its members here. Accordingly, the loans to the members need not be combined under the common source of repayment test with loans to other members or with the loan to the Community.

Please note that this letter responds only to the common enterprise lending limit issue raised in your letter. It does not address safety and soundness risks that may be posed by the loan to the Community or by loans to the Community members, individually or in the aggregate. Under 12 CFR 32.1(c)(4), the lending limit requires that loans made by national banks must be consistent with safe and sound banking practices.

Please also note that in reaching the foregoing conclusion, I have relied on the factual representations contained in your letter and in telephone conversations with OCC staff. The position set forth in this letter depends upon the accuracy and completeness of those representations and the facts set forth in this letter. Any change in circumstances could result in a different conclusion.

I trust the foregoing is responsive to your inquiry.

Jonathan Fink
Senior Attorney, Bank Activities and Structure

[12]An entire federal agency program—the Bureau of Indian Affairs' Loan Guaranty, Insurance, and Interest Subsidy Program, 25 CFR part 103—exists to encourage eligible borrowers to develop viable Indian businesses through conventional lender financing. The program helps borrowers secure conventional financing that might otherwise be unavailable. The OCC has long regarded access to banking services by Indian tribes and their members as an important public policy objective. For example, among other initiatives, the OCC hosts the Native American Banking Resource Directory at http://www.occ.treas.gov/cdd/nativeam.htm and has published "A Guide to Mortgage Lending in Indian Country" (July 1997) and "Providing Financial Services to Native Americans in Indian Country (July 1997). In addition, the OCC hosted a Native American Banking Forum in 2002 at which the OCC's First Senior Deputy Comptroller and Chief Counsel noted "that the presence of banks is crucial for any community's economic strength" and that "banks are developing a greater understanding that exploring and serving the financial needs of underserved populations fits in with their long-term self-interest." See http://www.occ.treas.gov/cdd/Williams101602.pdf.

980—December 24, 2003

12 USC 36

[Summary: Letter concludes that the installation of UPS drop boxes at nonbranch offices of a bank will not cause those offices to be considered branches under 12 USC 36, because they are owned by an independent third party and can be used by the general public for nonbanking transactions.]

Subject: UPS drop boxes at *[NB],* financial centers

Dear [ ]:

This is in your response to your request for confirmation that the installation of United Parcel Service (UPS) drop boxes at various nonbranch offices of *[NB, city, state]* (the bank), does not cause those offices to be considered branches, which would subject them to restrictions on branching set forth in 12 USC 36. Your inquiry was prompted by the OCC's request seeking additional information about the operation of drop boxes on the premises of the bank's financial centers into which deposit account applicants would place their applications, along with their initial deposits, for pick up and delivery to the bank's main office in *[state]*. The concern at the time was that the operation of these drop boxes could cause the financial centers to be considered to be branches of the bank.[1]

Since then, you advised us that the drop boxes are being replaced with UPS drop boxes. You seek OCC confirmation that, as operated, these drop boxes do not cause the financial centers to be considered branches. We understand that while bank customers still use these drop boxes to send the account-opening documentation and a check or checks representing the initial deposit to the bank's main office, the UPS drop boxes also are available for use by the general public. In this regard, you note that UPS lists the drop box sites at the bank's financial centers, along with all of its other drop box locations, on its UPS web site. In addition, the locations of the drop boxes also are available by dialing the UPS 800 number, which directs callers to nearby drop box locations, based on zip code or telephone number, along with last pick-up times. Moreover, the drop boxes

[1]Facilities of national banks that provide for the in-person receipt of deposits, paying of checks, or lending of money between the bank and a customer are considered to be branches. 12 USC 36(j); 12 CFR 5.30(d)(1). The Supreme Court has determined that bank-provided drop boxes, in which customers place deposits, require branch authorization, and the OCC branching regulation reflects this determination. *First National Bank in Plant City* v. *Dickinson,* 396 U.S. 122, 137–138 (1969) (stating that "at the time a customer delivers a sum of money . . . to . . . the stationary receptacle, the bank has for all purposes contemplated by Congress in [12 USC 36(j)] received a deposit"); 12 CFR 5.30(d)(1)(i). In contrast, while customers may fill out deposit account forms and give them to a bank at a bank office, this does not, standing alone, convert the facility into a branch. 12 CFR 7.4004(a).) We note also that the exception in section 36(j), adopted in 1996, for automated teller machines and remote service facilities applies only to automated facilities for receiving deposits or paying withdrawals. 12 CFR 7.4003.

at the financial centers are available to ship any items that UPS drop boxes normally handle to any location to which UPS normally delivers, including to other financial institutions. You further represent that UPS shipping supplies, such as envelopes and waybills, are provided at the drop boxes so that any person wishing to utilize the service may do so. Moreover, we understand that the drop boxes in no way indicate that they are available for use only by bank customers, are clearly marked with UPS logos, are not be customized in any way for the bank, and are of the same type and appearance as those placed by UPS in commercial office buildings and on street corners nationally.

You further represent that UPS, a nationwide delivery service that operates thousands of pick up locations, including drop boxes, throughout the country and which delivers to virtually everywhere in the United States and abroad, is an independent third party that is not owned, operated or controlled by the bank. You note that UPS employs and controls the persons who provide the services in question, that the bank and UPS do not share employees at the sites, and that only UPS employees, not bank employees, have access to the contents of the drop boxes. Moreover, you note that bank employees at no time handle the deposits; envelopes containing deposit account documentation and deposits are placed in the drop boxes directly by bank customers, not by bank employees.[2] Further, UPS determines the schedule by which it picks up, transports and delivers shipments.

You also represent that UPS acts as agent for the customers and all others using the drop boxes while the items are in the drop boxes or in transit, and that UPS does not act as agent for the bank. Accordingly, UPS assumes responsibility for items during transit, and for maintaining adequate insurance covering thefts, employee fidelity, and other transit losses, as well as for loss or dam-

[2]As we understand the facts, customers seeking to open deposit accounts with the bank may fill out application forms at these financial centers. Bank employees provide customers with information regarding bank products and assist customers with completion of account opening documentation. In addition to the application, account disclosures, and signature cards, bank employees provide customers seeking to open a deposit account a bank inner envelope and a preaddressed UPS Next Day Air Envelope (the UPS envelope). The customer is instructed to place the account opening documentation, which may include a check or checks for the initial deposit, in the bank's inner envelope, complete and retain the disclosure form on the bank's inner envelope, and place the bank's inner envelope in the UPS envelope. The customer is instructed to seal and place the UPS envelope in the UPS drop box. Once the UPS envelope is inside the UPS drop box, bank employees cannot retrieve it; UPS maintains the only keys to the drop box. A UPS employee removes the contents of the drop box on a daily basis based on UPS's own routing schedule and UPS delivers the UPS envelopes to the bank's main office in *[state]* and the other shipments to the stated addressees. The bank then processes the account application at its main office and either opens the account or returns the applicant's check by mail if the account is not opened.

age to third persons and property resulting from the installation and use of the drop boxes. Only upon physical delivery of the checks by UPS to the bank's main office, and processing by bank employees of the account opening documents, are the checks accepted for deposit.[3]

For the following reasons, we confirm that the presence of the UPS drop boxes, as you describe, at nonbranch offices of the bank does not cause those offices to be considered branches under 12 USC 36.

National banks are permitted to share space with other businesses under 12 USC 7.3001(a), subject to the requirements set forth in paragraph (c).[4] The bank has represented that its space sharing arrangement with UPS complies with each of these requirements. In this regard, the bank notes that the drop boxes are conspicuously identified as belonging to UPS and that no bank advertising suggests otherwise; that the arrangement between the bank and UPS does not constitute a joint venture or partnership under applicable law; that the arrangement is an arm's length relationship with no shared responsibilities or liabilities; that UPS, by contract, incurs liability for security issues unless any loss or damage is the result of negligence or wrong-doing by the bank; that the activities of UPS do not adversely affect the safety and soundness of the bank; and that the assets and records of UPS and the bank are segregated. According to the bank, while the lease agreement under which UPS places its drop box in bank facilities is rent-free, this is consistent with the UPS's customary and usual practice when it places a drop box on the premises of any business that requests placement of a drop box.

Moreover, as the facts are represented by the bank and described above, the arrangement complies with the factors set forth in 12 USC 7.1012(c)(2), which the OCC employs in determining whether a messenger service that transports items for deposit to a national bank should not be considered a branch of that bank. Section 7.1012(c)(1) provides that a messenger service is not considered a branch of a bank provided that it is established and operated by a third party. Section 7.1012(c)(2) provides that whether a messenger service is established by a third party is determined on a case-by-case basis and then provides a variety of factors that are considered in making that determination.[5]

[3]The bank represents that customers are advised in writing prior to the use of the UPS service that (a) UPS, a third party delivery service, acts as agent of the customer rather than the bank, (b) that the bank is not responsible should the deposit be lost, stolen, damaged or delayed in delivery; and (c) the application and deposit are not considered to be received by the bank until received at the bank's main office. These disclosures are contained on a form attached to the outside of the bank's inner envelope on which the customer writes the date, the title of the account, a reference number that the bank has assigned to the account, the check number and amount, and the UPS tracking number. In addition, the form contains a box for the customer to check in order to acknowledge receipt of the disclosures. The customer tears off and retains one copy of this form and the other remains attached to the bank inner envelope.

[4]These requirements pertain to conspicuous identification of the businesses, that the arrangement does not constitute a joint venture or partnership, that the relationship between the entities is at arm's length, that security issues are resolved, that the activities of the other business do not adversely affect the safety and soundness of the bank, and that the assets and records of the parties are segregated. We note that UPS and the bank do not share any employees; consequently, the provisions of section 7.3001 that pertain to the sharing of employees are not applicable.

[5]12 CFR 7.1012(c)(2)(i)–(vi).

These factors are: A party other than the national bank owns or rents the messenger service and its facilities, and employs the persons who provide the service; the messenger service must retain the discretion to determine in its own business judgment which customers and geographic areas it serves;[6] the messenger service maintains ultimate responsibility for scheduling, movement, and routing; the messenger service does not operate under the name of the bank, and the bank and the messenger service do not advertise, or otherwise represent, that the bank itself is providing the service, although the bank may advertise that its customers may use one or more third-party messenger services to transact business with the bank; the messenger service assumes responsibility for the items during transit and for maintaining adequate insurance covering thefts, employee fidelity, and other in-transit losses; the messenger service must act as the agent for the customer when the items are in transit; and the bank must deem items intended for deposit to be deposited when credited to the customer's account at the bank's main office, branch office or other permissible nonbranch location.[7]

I conclude that based upon the bank's representations and the analysis set forth above, the placement of UPS drop boxes in the bank's nonbranch financial center offices does not cause those facilities to be considered branches of the bank and does not subject those offices to branching restrictions and requirements. I hope that this is responsive to your inquiry.

Eric Thompson
Director, Bank Activities and Structure

[6]Where the messenger service and the bank are under common ownership or control, the regulation sets forth an alternative factor—that the "the messenger service actually provides its services to the general public, including other depository institutions. . . ." *Id.* at 7.1012(c)(2)(ii)(B). We note that construing the placement and operation of the UPS drop boxes on bank premises as being subject to the control of the bank, this alternative requirement is satisfied. The drop boxes clearly are made available to the general public.

[7]We note that a national bank may defray all or part of the costs incurred by a customer in transporting items through a messenger service, but that payment of those costs may only cover expenses associated with each transaction involving the customer and the messenger service. The national bank may impose terms, conditions, and limitations that it deems appropriate with respect to the payment of such costs. 12 CFR 7.1012(c)(3).

981—August 14, 2003

[Summary: Letter states that a national bank may rely on the rating assigned to the uninsured portion of the bank's certificates of deposit to satisfy the debt rating requirement necessary to establish a financial subsidiary under Section 121 of the Gramm–Leach–Bliley Act. The certificates of deposit qualify as "eligible debt" for purposes of the requirement under Section 121 that any of the 50 largest insured banks must have at least one investment grade rated issue of debt outstanding in order for the bank to establish a financial subsidiary.]

Subject: [ ] (Bank) Request for Interpretive Letter on Financial Subsidiary Debt Rating Requirement

Dear [ ]:

This is in response to your request for confirmation that the bank may rely upon a rating from Standard and Poor's (S&P) on the uninsured portion of the bank's long-term certificates of deposit (CDs) for purposes of the debt rating requirement the bank must satisfy in order to establish a financial subsidiary engaged in certain financially related activities as principal, such as securities underwriting and dealing.[1] For the reasons discussed below, we conclude that the bank may use its investment grade rated CDs to meet this debt rating requirement.

Background

Under section 121 of the Gramm–Leach–Bliley Act,[2] a national bank is authorized to establish a financial subsidiary to engage in activities, not otherwise permissible for a national bank, that have been determined to be financial in nature provided certain specified conditions are met.[3] Where the financial subsidiary will be engaged in such activities as principal rather than solely as agent, a bank that is one of the 50 largest FDIC-insured banks must have at least one issue of outstanding eligible debt that is currently rated within the three highest investment grade categories by a nationally recognized statistical rating organization (debt rating requirement).[4]

Based upon its consolidated assets as of December 31, 2002, the bank is one of the 50 largest FDIC-insured banks. As a result, it must satisfy the debt rating requirement in order to acquire or establish a financial subsidiary that engages in financial in nature activities as principal, not otherwise permissible for a national bank, such as securities underwriting and dealing. At present, the

[1]*See* 12 USC 24a(a)(3)(A)(i), 12 CFR 5.39 and discussion below.

[2]Public Law 106–102, 113 Stat. 1338.

[3]*See* 12 USC 24a.

[4]12 USC 24a(a)(3)(A)(i). A bank does not have to satisfy the debt rating requirement if its financial subsidiaries engage in newly authorized financial activities solely as agent and not as principal.

bank has not issued and does not have outstanding any issues of nondeposit debt.[5] The bank does, however, have outstanding long-term CDs that are rated investment grade. S&P has assigned a long-term Certificate of Deposit issue rating to the bank of "A–" [A minus].[6] This credit rating does not relate to the FDIC-insured portion of any CD issued by the bank. The rating category "A" (Strong) is the third highest of S&P's investment grade rating categories, and the addition of a plus (+) or minus (–) sign shows relative standing within a rating category. This rating applies to the uninsured portion of all the CDs that the bank issues that are long-term and in an initial amount of $100,000 or greater. S&P has advised the bank that the ratings criteria, definitions, and methodology employed by S&P in assigning a long-term CD rating are the same as those employed by S&P in assigning a rating to an issue of long-term nondeposit debt. The bank contends that its rated CDs satisfy the debt rating requirement because they are rated investment grade, and they qualify as eligible debt.

Discussion

To qualify as "eligible debt," the instrument must be "unsecured long-term debt that (A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and (B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or any affiliate of the bank."[7] The OCC's financial subsidiary regulation defines the term "long-term debt" to mean "any debt obligation with an initial maturity of 360 days or more."[8]

Consistent with those definitions, the bank's Jumbo CDs are unsecured and long-term, with an initial maturity of one year or longer, and in an initial amount of $100,000 or greater. The CDs are not supported by any form of credit enhancement, including a guarantee or standby letter of credit.[9] And they are offered generally to the public and are not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.[10] The only remaining issue is whether they are "debt" of the bank for purposes of the debt-rating requirement.

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[5]According to the bank, this is due largely to the fact that the bank is a wholly owned subsidiary of [ ] (Holding Company), and the holding company issues all nondeposit debt for the company and its subsidiaries.

[6]The total outstanding amount of the bank's long-term jumbo CDs as reported in the call report for [ ] was $286,855,000.

[7]12 USC 24a(a)(3)(A)(i).

[8]12 CFR 5.39(d)(8).

[9]The rated portion of the CD is not covered by FDIC insurance, and S&P does not take the existence of FDIC insurance into account in assigning its rating.

[10]The bank has advised the OCC that the amount of CDs held by affiliates represents approximately [ ] percent of the total long-term jumbo CDs issued by the bank.

The term "debt" is not defined in the statute or the OCC's financial subsidiary regulation.[11] As a general rule of statutory construction, when the words of a statute are not defined, they are given their plain or ordinary meaning.[12]

The term "debt" ordinarily refers to an obligation owed to another person. *Webster's Dictionary* defines "debt" as "something owed, as money, goods or services" and as "an obligation or liability to pay or render something to another."[13] Similarly, *Ballentine's Law Dictionary* defines debt as "an unconditional and legally enforceable obligation for the payment of money; it involves the relationship of debtor and creditor, or of borrower and lender."[14]

A certificate of deposit falls squarely within those definitions. *Webster's* defines a certificate of deposit as a "document evidencing ownership or debt," and *Ballentine's* defines a certificate of deposit as a bank's ". . . promise to pay the depositor, whereby the relation of debtor and creditor between the bank and the depositor is created."[15] Thus, like the ordinary meaning of "debt," a CD is commonly understood as an obligation owed to another person.

That CDs are "debt" also is evident from their accounting treatment. For example, certificates of deposit, like other debt obligations, are reported as liabilities on the issuing bank's balance sheet.[16] Similarly, a bank that issues a certificate of deposit is required to report it as a liability of that bank in the bank's Consolidated Reports of Condition and Income (call reports). Likewise, a certificate of deposit purchased by a bank and due from another bank is listed as an asset of the purchasing bank in the balance sheet portion of the call report. The OCC has characterized the uninsured portion of a certificate of deposit that a bank purchases from an issuing bank as an "unsecured debt of the issuing bank."[17]

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[11]*See* 12 USC 24a and 12 CFR 5.39(d)(8). The OCC declined to define the term "debt" in its financial subsidiary regulation, reasoning, "in cases where there is a question about whether an obligation qualifies as debt, the issue is better addressed on a case-by-case basis." 65 *Fed. Reg.* 12905 (2000).

[12]*See generally*, Singer, *Statutes and Statutory Construction* ¶ 46:01 (6th ed. 2000).

[13]*Webster's II New Riverside University Dictionary* at 328 (1984).

[14]*Ballentine's Law Dictionary* 311 (3rd ed. 1969). *Black's Law Dictionary* defines debt as "a sum of money due by certain and express agreement." *Black's Law Dictionary* 210 (5th ed. 1983).

[15]*Webster's supra* at 223 and *Ballentine's Law Dictionary, supra* at 187. Similarly, *Black's Law Dictionary* defines a CD as a "written acknowledgement by a bank . . .of a deposit with a promise to pay to depositor." *Black's Law Dictionary, supra* at 116.

[16]Under generally accepted accounting principles (GAAP), CDs, like other debt instruments, are treated as liabilities of the issuing bank. Although GAAP does not specifically define "debt," it defines "liabilities" as "probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events." CDs and debt obligations both meet that definition of liabilities. *See* United States/FASB FASB Original Pronouncements (as of 03/15/2003): Statements of Financial Accounting Concepts, CON 6: Elements of Financial Statements—Definitions of Elements.

[17]*See* OCC 1992 *Examiner's Guide to Investment Products and Practices.*

Defining "debt" to include certificates of deposit also is consistent with the purpose underlying the debt rating requirement. By imposing the debt rating requirement on large banks, Congress sought to ensure that the institutions were considered creditworthy by the financial markets. That purpose can be achieved with any highly rated debt issuance, including the bank's certificates of deposit. In fact, S&P has advised the bank that it uses the same standards in rating certificates of deposit that it uses to rate nondeposit debt issuances.

Moreover, it is clear from the legislative history that Congress viewed deposits, which would include certificates of deposit, as debt obligations of the bank. For example, prior versions of GLBA had required that large banks have at least one outstanding share of subordinated debt rated within the two highest investment grade categories.[18] The term "subordinated debt" was defined, in part, as unsecured debt that "is subordinated as to payment of principal and interest to *all other indebtedness of the bank, including deposits*. . . ."[19] This subordinated debt requirement was replaced in the final version of GLBA with the eligible debt requirement. Replacing the term "subordinated debt" with the broader and more inclusive term "eligible debt" demonstrates that Congress did not intend to limit the type of debt required to nondeposit debt.[20]

Courts also have recognized that deposits, including certificates of deposit, are debt obligations of the issuing bank. Various courts have described certificates of deposit as "debt instruments," "long-term debt obligations," and "evidence of indebtedness."[21] And the relationship of a bank to a depositor has been described as that of "debtor and creditor, founded upon contract."[22]

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[18]*See* Section 121, Title I, Subtitle C of Mark-up Draft of S. 900 and H.R. 10 as Proposed by Chairman Gramm, Chairman Leach, and Chairman Bliley, October 9, 1999 ("Chairmen's Mark").

[19]*See* Chairmen's Mark, *supra* (emphasis added).

[20]Another indication that Congress did not intend to limit the type of debt required to satisfy the debt rating requirement is evidenced by the use of the term "debt," instead of the equally common but less inclusive term "debt securities." Had Congress used the term "debt securities" in the debt rating requirement, CDs and other bank deposits may not have qualified since CDs are generally not considered securities for purposes of federal banking and securities laws. *See Marine Bank* v. *Weaver*, 455 U.S. 551 (1982) (certificates of deposit are not securities for purposes of federal securities laws because of the "extensive protections the federal regulatory scheme affords depositors.") *But see*, *Holloway* v. *Peat Marwick*, 879 F.2d 772, 777 (10th Cir. 1989) (instruments similar to certificates of deposit, but not insured by the FDIC, were securities under the federal securities laws because they were "essentially debt instruments, representing a promise by the issuing entity to repay the principal amount, plus accrued interest at a specified rate, within a specified time period or on demand").

[21]*See, e.g., Holloway* v. *Peat Marwick*, *supra* at 777; *Associates in Adolescent Psychiatry, et al.* v. *Home Life Insurance Company of New York, et al.*, 729 F. Supp. 1162 (N.D. Ill. 1989); and *MacKethan* v. *Peat, Marwick, Mitchell & Co.*, 439 F. Supp. 1090, 1094 (E.D. Va. 1977).

[22]*Bank of Marin* v. *England,* 385 U.S. 99, 101 (1966).

Conclusion

The bank may rely on its investment grade rated CDs to meet the debt rating requirement for establishing financial subsidiaries. The CD's qualify as "eligible debt" as defined by statute. In addition, they have the required investment grade issue rating from a nationally recognized statistical rating organization. This conclusion is not intended, and should not be read, as an approval of a particular financial subsidiary of the bank, however. The bank must comply with the approval requirements under 12 CFR 5.39 before establishing or acquiring an interest in a financial subsidiary.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

982—September 29, 2003

12 USC 1972

[Summary: Letter states that a national bank may condition the offering of its securities underwriting services on the use of the bank's letter of credit to secure the bond issue.]

Re: [ ] (Bank) (Consumer Case Number [ ])

Dear [ ]:

Thank you for your inquiry to the Office of the Comptroller of the Currency's (OCC's) Customer Assistance Group (CAG) concerning a proposal by a national bank, that you were concerned may involve tying under Section 106 of the Bank Holding Company Act, 12 USC 1972. As you may recall, the CAG representative forwarded your inquiry to the OCC's Law Department for resolution. In the meantime, the OCC and the Board of Governors of the Federal Reserve System ("FRB") have focused considerable attention on tying matters. The OCC and FRB recently conducted a joint review of tying practices at large banking organizations. Various other regulatory reviews also are on-going.[1] We provide the following response based on the information you submitted and our subsequent review of the matter involving the Bank and [ ] School.

You indicated you are an investment banker from [ ] Inc. ("consumer") and that you were involved in a tax-exempt bond underwriting for a private school in [state] in the spring of 2002. The school requested proposals for underwriting services and letter of credit facilities. The bank submitted a proposal. Specifically, the bank's letter stated: "[Bank]'s proposal to serve as underwriter requires that the [school] utilize a [ ] letter of credit to secure its bond issue." We understand that neither the bank nor its securities affiliate received any of the proposed underwriting or letter of credit business. You inquired whether the practice described in the bank's letter was a violation of the federal tying statute.

The federal tying statute, 12 USC 1972, provides in part:

> A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—
>
> > (A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;

[1]For example, the National Association of Securities Dealers, Inc., is conducting an investigation focusing on broker-dealers affiliated with commercial banks and seeking to determine whether tying of investment banking services and commercial credit has occurred in possible violation of their rules. Additionally, the General Accounting Office expects to issue a report concerning tying practices by banks in October 2003.

Section 1972 generally prohibits a bank from tying a product or service to another product or service offered by the bank, with certain exceptions. A bank engages in a tie by conditioning the availability of, or offering a discount on, one product or service (the "tying product") on the condition that a customer purchase another product or service offered by the bank or an affiliate (the "tied product"). Some tying arrangements are permissible under statutory and regulatory exceptions. Congress enacted the anti-tying provisions to keep banks from using bank credit and other services as a means to coerce customers and reduce competition. The FRB may permit exceptions to the anti-tying prohibitions and has interpretive authority over section 1972.[2]

Section 1972 contains an explicit exception (the statutory "traditional bank product exception") that permits a bank to tie any product or service to a loan, discount, deposit, or trust service offered by that bank. This exception applies only if the "tied product" is a traditional bank product. The availability of the exception does not depend on the type of "tying product" involved, however. Section 1972 is premised on the notion that the "tying product," also called the "desired product," is the product the customer really seeks. For example, the FRB has explained that a bank could condition the use of its messenger service on a customer's maintaining a deposit account at the bank.[3] However, a bank could not condition maintaining a deposit account on a customer using the bank's messenger service. For this reason, a tie is permissible in one direction but not in the other direction. Thus, a bank might be engaging in a prohibited tying practice if the bank would not extend credit to a customer unless the customer also engaged the bank for certain products not within the scope of a traditional bank product, such as securities underwriting.[4] This example illustrates a tying arrangement outside the traditional bank product exception because the "tied product" is not a traditional bank product.

The information here indicates the bank offered a nontraditional product, i.e., the securities underwriting, conditioned on the use of the traditional bank product, i.e., the letter of credit. Under the statutory exception, traditional bank products include "loans." National banks have long-provided "letters of credit" as part of their expressly authorized lending function under 12 USC 24

[2]Recently, the FRB issued a proposed interpretation and supervisory guidance providing comprehensive discussion on many aspects of the federal tying restrictions applicable to banks, including examples of conduct, actions, and arrangements by banks that are prohibited and permissible under section 1972. *See* Board of Governors of the Federal Reserve System, *Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970* (August 25, 2003) ("Fed Tying Release"). The FRB's release requests public comments by September 30, 2003.

[3]62 *Fed. Reg.* 9290, 9314 (1997) (FRB amendments to its tying regulation).

[4]*See, e.g.,* Fed Tying Release, at 13. The FRB has indicated for purposes of section 1972 that a "nonbanking product" or "nontraditional" banking product is anything other than a "loan, discount, deposit, or trust service." *See, e.g.,* 12 USC 1972(1)(A); Letter from William W. Wiles, Secretary of the Board, FRB (September 19, 1997); 60 *Fed. Reg*. 20186, 20188 (1995).

(Seventh).[5] The direct advance of funds to a borrower through a letter of credit is well recognized in the industry as a traditional bank product.[6]

Accordingly, for this particular situation, based on the bank's letter, the OCC's review, the language of the statute, and the FRB's precedent, the arrangement described was not a prohibited tying arrangement because it was within the statutory traditional bank product exception of 12 USC 1972(1).

If you have any questions regarding this letter, please contact Suzette H. Greco, Special Counsel, Securities and Corporate Practices Division, at (202) 874–5210.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[5] *See American Insurance Ass'n* v. *Clarke,* 656 F. Supp. 404 (D.D.C. 1987), *aff'd*, 865 F.2d 278 (D.C. Cir. 1988); R. Trimble, "The Implied Power of National Banks to Issue Letters of Credit and Accept Bills," 58 Yale L.J. 713 (1949).

[6] In its recent release, the FRB specifically recognizes letters of credit as a product within the scope of a defined traditional bank product. *See* Fed Tying Release, at 17.

983—October 24, 2003

12 USC 2901

[Summary: Letter opines that a bank's proposed investment in a fund with the purpose of providing employment for low- and moderate-income individuals would be a qualified investment under the Community Reinvestment Act regulations.]

Subject: *["The Fund"]*

Dear [ ]:

This letter responds to your inquiry whether a proposed investment by *[bank]* would be considered a qualified investment under the Community Reinvestment Act (CRA). You also asked whether the investment would be considered a complex and innovative investment of the type not routinely provided by private investors that is responsive to community development needs. For the reasons discussed below, it appears that the proposed investment would be considered a qualified investment for CRA purposes. Further, the bank should receive qualitative consideration for its investment because of the bank's involvement in helping to structure the new investment fund.

Description of the Bank's Proposed Investment

The bank proposes to invest in *[the fund]*. The managing member of the fund will be *[the intermediary]*, a nonprofit financial intermediary with a workforce development mission, the majority of whose board appointments are controlled jointly by the *[AA]* and the *[BB]*. The fund's sole activity will be to invest in an operating company, *[operating company]*.

The operating company will be structured as a limited liability company whose managing member will be a wholly owned nonprofit subsidiary of the *[CDC]* of *[city, state],* a community development corporation (CDC). The operating company will employ individuals, a majority of whom are low- and moderate-income, and who are expected to qualify for various federal employment tax credits, including the Work Opportunity Credit, the Welfare-to-Work Credit, and the Renewal Community Employment Credit. These operating company employees will be assigned to provide labor hours at *[the CDC]* and other *[state]*-area institutions on a temporary and permanent basis under contract to such institutions. Employees will be hired to perform various types of work, including clerical, retail, security, and building maintenance. During the term of the bank's proposed investment, the operating company, which will be a start-up company, is projected to have less than $11.5 million in annual receipts (the current Small Business Administration definition of a small business in the Employee Leasing Services category).

The bank's investment will finance the employment of the operating company's employees and the provision of ancillary services to facilitate employees' continued employment, such as job training, medical insurance, and employee assistance programs (e.g., counseling and referrals intended to enable employees to overcome job-threatening obstacles).

The bank has invested staff time and substantial funds in analyzing and structuring this investment. The bank also asserts that this investment is the first of its kind in the country. The bank's financial return on its investment is expected to come primarily in the form of tax benefits from the federal employment tax credits mentioned above. Further, the proposed investment will benefit the bank's assessment area, which includes *[city, state]*.

Discussion

Under the CRA regulations, a "qualified investment" is "a lawful investment, deposit, membership share, or grant that has as its primary purpose community development."[1] "Community development" is defined to include:

- Community services targeted to low- or moderate-income individuals; or
- Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's (SBA's) Development Company or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less.[2]

Through the "Interagency Questions and Answers Regarding Community Reinvestments"[3] (Qs & As), the agencies have provided additional guidance about the types of investments that are considered qualified investments. Among the Qs & As relevant to this proposed investment is __.12(h)(3) & 563e.12(i)(3)–1. This Q & A states, in pertinent part, that an investment intended to promote economic development by financing small businesses is a qualified investment if it meets both a size test and a purpose test. The investment meets the size test if it will finance entities that either meet the size eligibility standards of the SBA's Development Company or SBIC programs or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An investment is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low-or moderate-income, or supports permanent job creation retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment.

In this case, the bank will invest in the fund. The bank's investment will help to finance the operating company. The operating company is projected to meet the size requirements referenced above during the term of the bank's investment. In addition, the objective of the operating company is to provide employment to low- and moderate-income individuals (insofar as they qualify

[1] 12 CFR 25.12(s).

[2] 12 CFR 25.12(h)(2)–(3).

[3] 66 *Fed. Reg.* 36,620 (July 12, 2001).

for the Work Opportunity Credit (26 USC 51) and/or the Welfare-to-Work Credit (26 USC 51A)) and individuals residing in the federally designated *[state]* Renewal Community (who are eligible for the Renewal Community[4] Employment Credit (26 USC 1400H)). It appears, therefore, that the bank's investment will promote economic development by financing a small business, within the meaning of the CRA regulation.

In addition, Q & A __.12(s) & 563e.12(r)–4 states that an example of a qualified investment is an investment in an organization supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, job training programs that enable people to work. In addition to providing employment to low- and moderate-income individuals, the operating company will provide job training and other employee-assistance programs to its employees. The bank's investment in the fund will help the operating company fund such training and programs, which may be considered community services targeted to low- and moderate-income individuals. This also leads to a conclusion that the bank's investment would be a qualified investment under the CRA regulation.

A bank may also receive "qualitative" consideration for certain qualified investments if such investments are innovative or complex, they are responsive to credit and community development needs, and private investors do not routinely provide them. In this case, in order to be designated a Renewal Community, unemployment in the *[state]* area was at least one and one-half times higher than the national average. In addition, according to the information you provided, the CDC has identified job creation and workforce development as an area need because relatively few private sources are available to fund the employment of people with limited job opportunities and experience. *[The intermediary],* the *[AA],* and *[BB]* have worked together to structure this investment, and the bank has been assisting them with their efforts. The bank's investment appears to be responsive to the community development needs of the area. Because it appears to be the first fund of its type, it also is innovative and has not been routinely provided by private investors. Further, because of the bank's involvement with the structuring of the investment, the investment by the bank may be considered complex.

I trust this letter responds to your inquiry. If you have further questions, please contact Margaret Hesse, an attorney on my staff, or me at (202) 874–5750.

Michael S. Bylsma
Director, Community and Consumer Law Division

[4]A community that is eligible for designation as a Renewal Community must be an area of pervasive poverty, unemployment, and general distress. At least 70 percent of the households living in the area must have incomes below 80 percent of the median income of households within the jurisdiction of the local government and the unemployment rate must be at least one and one-half times the national unemployment rate. For further information about Renewal Community requirements, see 26 USC 1400E.

984—December 17, 2003

12 USC 2901

[Summary: Letter opines that a bank's investment in connection with the New Markets Tax Credit program in a "Community Development Entity" (CDE), or a loan by a bank CDE to a "Qualified Active Low-Income Community Business" or another CDE, would received consideration as a qualified investment or a community development loan, respectively, when the institution's Community Reinvestment Act performance is evaluated.]

Subject: New Markets Tax Credits

Dear **[ ]**:

This letter responds to your inquiry whether a financial institution's investment in connection with the New Markets Tax Credit (NMTC) Program in a "Community Development Entity" (CDE), or a loan by a financial institution CDE to a "Qualified Active Low-Income Community Business" (QALICBs) or another CDE, would receive consideration as a qualified investment or a community development loan, respectively, when the institution's Community Reinvestment Act (CRA) performance is evaluated. We conclude that such investments and loans would be favorably considered under the CRA.

New Markets Tax Credit Program

The NMTC Program ("program") was a part of the Community Renewal Tax Relief Act of 2000.[1] The program was expected to stimulate investments that, in turn, would facilitate economic and community development in distressed communities.[2]

The program created a tax credit for taxpayers' "Qualified Equity Investments" (QEIs) in CDEs.[3] A CDE is a domestic corporation or partnership that is an intermediary vehicle for the provision of loans, investments, or financial counseling in "Low-Income Communities" (LICs).[4] CDEs must demonstrate that they (1) have a primary mission of serving, or providing investment capital for, LICs or low-income persons and (2) are accountable to residents of the LICs that they serve. CDEs are required to invest "substantially all" (generally 85 percent) of the proceeds of the QEIs

[1]H.R. 5662, introduced on December 14, 2000. Section 121(a) of Subtitle C of Title I of H.R. 5662 was enacted by section 1(a)(7) of the Consolidated Appropriations Act of 2001, Pub. L. 106-554 (Dec. 21, 2000).

[2]*See, e.g.,* Guidance, New Markets Tax Credit Program, 66 *Fed. Reg.* 21,846 (May 1, 2001).

[3]See 26 USC 45D. Over a seven-year period, an investor may claim a tax credit of 39 percent (30 percent in present value terms) of the amount of its QEI.

[4]LICs are census tracts with a poverty rate of at least 20 percent, or census tracts where the median family income is below 80 percent of the area median family income.

into LICs, including loans or investments in QALICBs.[5] In addition to investments in QALICBs, other "Qualified Low-Income Community Investments" (QLICIs) for CDEs are equity investments in, or to, another CDE; the purchase of a QLICI loan from another CDE; and financial counseling and other services to businesses located in, or residents of, LICs.

Community Development Financial Institutions and Specialized Small Business Investment Companies are automatically eligible to be designated as CDEs, but must complete an abbreviated application. Insured depository institutions with a primary mission of serving LICs or low-income persons, and with accountability to the LIC,[6] also may be designated as CDEs.

Community Reinvestment Act

Community development loans and qualified investments are important considerations in financial institutions' CRA performance evaluations. For larger banks, which are evaluated under the lending, investment and service tests, examiners routinely evaluate both community development loans and qualified investments. For smaller institutions, community development loans are routinely included when determining an institution's loan-to-deposit ratio, while qualified investments that are lending-related are considered along with an institution's loans. In addition, examiners will consider a small institution's other qualified investments if a small institution wishes to be considered for an "Outstanding" rating. Along with community development services, community development loans and qualified investments comprise the basis for the CRA performance evaluation for wholesale and limited purpose institutions that are evaluated under the community development test. Finally, institutions that are evaluated under an approved strategic plan may include community development loans and qualified investments in their measurable goals.

A "community development loan":

- has a primary purpose of community development; and,

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[5]In order to qualify as a QALICB, and therefore be eligible to receive CDE investments, a business must meet the following criteria:

At least 50 percent of the total gross income is from the active conduct of a qualified business in LICs;

At least 40 percent of the use of the tangible property of the business is located in LICs;

At least 40 percent of the services provided by the business' employees are performed in LICs;

Less the 5 percent of the average of the aggregate unadjusted bases of the property is attributable to collectibles (e.g., art and antiques), other than those held for sale in the ordinary course of business (i.e., inventory); and

Less than 5 percent of the average of the aggregate unadjusted bases of the property is attributable to nonqualified financial property (e.g., debt instruments with a term in excess of 18 months).

(The gross income test is deemed to be met if *either* the tangible property *or* the services test is at 50 percent or higher.)

[6]"Accountability" to the LIC may be demonstrated, for example, through representation by residents of the LIC on a governing board or advisory board of a corporate CDE.

- except in the case of wholesale or limited purpose banks,
    - has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan; and
    - benefits the institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s).[7]

A "qualified investment" is a "lawful investment, deposit, membership share, or grant that has as its primary purpose community development."[8]

"Community development" means:

1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;
2) Community services targeted to low- or moderate-income individuals;
3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's development company or small business investment company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or
4) Activities that revitalize or stabilize low- or moderate-income geographies.[9]

Discussion

Would a financial institution's investment in a CDE receive consideration as a qualified investment during the institution's CRA evaluation?

An institution's equity investment in a CDE would receive consideration as a qualified investment if the investment benefits the institution's assessment areas or a broader statewide or regional area that includes its assessment areas. Such investments may be considered to have a community

[7] 12 CFR 25.12(i).

[8] 12 CFR 25.12(s).

[9] 12 CFR 25.12(h). Low- or moderate-income individuals have income that is less than 80 percent of the area median income. Low- or moderate-income geographies have a median family income that is less than 80 percent of the area median income.

development purpose under two prongs of the "community development" definition. First, to the extent that the CDE loans or invests in small businesses or farms, the qualified investment in the CDE promotes economic development by financing small businesses or farms. Second, because the primary mission of the CDE is to serve LICs, the loans and investments made by the CDE generally would help to revitalize or stabilize low- or moderate-income geographies.

Would a loan by a financial institution CDE to a QALICB or to another CDE receive consideration as a community development loan?

As long as a loan by a financial institution CDE to a QALICB or to another CDE has not been reported or collected by the institution or an affiliate for consideration in the institution's assessment area as a home mortgage, small business, small farm, or consumer loan (unless it is a multifamily dwelling loan), the loan would receive consideration as a community development loan.[10] Loans under $1 million to a QALICB or CDE by a retail institution would be reported as small business loans. However, larger loans would be considered community development loans because the loans have a primary purpose of community development, as discussed above.[11] For wholesale and limited purpose institutions, which are not evaluated on their small business lending, loans of any amount to a QALICB or CDE would be considered community development loans.

I trust this letter responds to your inquiry. I have shared this response with my colleagues at the other bank and thrift regulatory agencies, and they concur with this analysis. If you have further questions, please contact me at (202) 874–5750.

Michael S. Bylsma
Director, Community and Consumer Law Division

[10]Of course, for retail institutions, the loan would also need to benefit the institution's assessment areas or a broader statewide or regional area that includes its assessment areas.

[11]The analysis whether a loan by any retail institution to a CDE would be a community development loan would be the same—if the loan is not reported or collected as a home mortgage, small business, small farm or consumer loan (unless it is a multifamily dwelling loan), it would receive consideration as a community development loan.

985—January 14, 2004

12 CFR 5.36(e)

[Summary: Letter concludes that (1) the activities of a mortgage reinsurance company are substantively the same as those of a group mortgage reinsurance facility previously authorized by the OCC; and that (2) a national bank seeking to make a noncontrolling investment, directly or indirectly through an operating subsidiary, in the mortgage reinsurance company, may use the notice procedure available under the OCC's regulations at 12 CFR 5.36(e), if the bank otherwise qualifies under the criteria of that section.]

Subject: Proposed Group Mortgage Reinsurance Program

Dear [ ]:

This responds to your letter dated October 16, 2003, requesting the OCC's confirmation that a national bank's noncontrolling investment, made directly or indirectly through an operating subsidiary, in *[the reinsurer],* would qualify for the notice process in 12 CFR 5.36(e) because the activity of the reinsurer is substantively the same as that of a group mortgage reinsurance facility previously authorized by the OCC. The reinsurer is an association captive insurance company that will provide mortgage reinsurance on the loans of its participating financial institutions ("participating banks") and their affiliates and subsidiaries.

As explained below, we conclude that the activities of the reinsurer are substantively the same as those of a group mortgage reinsurance facility previously authorized by the OCC. Accordingly, a national bank seeking to make a non-controlling investment, directly or indirectly through an operating subsidiary, in the reinsurer, may use the notice procedure available under the OCC's regulations at 12 CFR 5.36(e), if the bank otherwise qualifies under the criteria of that section.

I. Background

The reinsurer was organized under the sponsorship of the *[ABC]* as an association captive insurance company[1] pursuant to Vermont's captive insurance law (Title 8 of the Vermont Statutes Annotated, Chapter 141). The Vermont Commissioner of Banking, Insurance, Securities and Health Care Administration (the "Vermont Commissioner") approved the *[ABC]'s* application to organize the reinsurer and granted it a certificate of authority to conduct business on *[date]*.

[1]Captive insurers insure or reinsure risks related to the business of their owner(s) and are subject to special insurance regulations. Association captives are a type of captive insurer, all of whose participants or owners are also members of a sponsoring industry association or similar group (in this case, the *[ABC]),* and which insures or reinsures only risks relating to its members.

Pursuant to the reinsurer's business plan filed with the Vermont Commissioner, ownership of the reinsurer's common stock is limited to member financial institutions of the *[ABC]* and their subsidiaries and affiliates. Participating banks are not liable for the reinsurer's reinsurance obligations or other debts and liabilities.[2] The reinsurer's authorized activities consist solely of reinsuring the mortgage insurance coverage[3] issued by nonaffiliated third-party mortgage insurers with respect to loans originated, purchased or serviced by the participating banks and their subsidiaries and affiliates. Any material change in the reinsurer's business plan, including the writing of any direct insurance or any other kind of reinsurance, requires the prior approval of the Vermont Commissioner.

As a licensed Vermont captive insurance company, the reinsurer will be subject to ongoing supervision and regulation by the Vermont Commissioner, and its operations will be limited to those specified in its certificate of authority from the Vermont Commissioner (mortgage reinsurance). Any material change in the reinsurer's business plan, including the writing of any direct insurance or any other kind of reinsurance, requires the prior approval of the Vermont Commissioner. In return for accepting the limited credit risk associated with the program, the reinsurer will receive reinsurance premiums.

The reinsurer has entered into a reinsurance agreement with *[Co.],* a *[state]* monoline mortgage insurance company, to assume (reinsure) a portion of *[Co.]'s* risk on mortgage insurance it provides on residential mortgage loans originated, purchased, or serviced by the participating banks, or their affiliates or subsidiaries. The participating banks' credit underwriting analysis and decision-making in connection with insured mortgage loans will not be delegated to *[Co.],* or any other party. *[Co.]* will perform its own independent insurance underwriting evaluation of loans submitted for coverage by a particular participating bank (other than participating banks approved by *[Co.]* for delegated underwriting[4]) and will accept for mortgage insurance only those loans that meet its underwriting criteria. You represent in your letter that it is expected that *[Co.]'s* un-

[2]The reinsurer is organized as a Vermont corporation. Under Vermont law, the shareholders of a corporation are not personally liable for the acts and debts of the corporation. *See* 11A V.S.A. § 6.22.

[3]Mortgage insurance protects an investor holding a mortgage loan against the risk of default by the mortgagor. Lenders generally require that borrowers obtain mortgage insurance on low down payment loans (generally loans having a down payment of less than 20 percent or a loan-to-value ratio in excess of 80 percent). Mortgage insurance serves an important function by assisting low and moderate-income families to become homeowners. Mortgage insurance also has expanded the secondary market for low down payment mortgages and the funding available for these loans. *See* Interpretive Letter No. 828 (citing Mortgage Insurance Companies of America 1995–1996 Fact Book).

[4]*[Co.]* may approve delegated underwriting authority for certain participating banks. A lender with delegated underwriting authority has the ability to bind mortgage insurance coverage for a loan that it approves utilizing *[Co.]*-approved underwriting criteria. *[Co.]* periodically reviews that lender's exercise of its delegated authority to insure that its credit underwriting criteria are being properly and consistently applied. Generally, lenders approved for delegated underwriting are those that generate a significant loan volume and have exhibited a proven favorable track record in the performance of their insured loan portfolios.

derwriting criteria will be applied by the participating bank as a supplement to their own particular organization's underwriting criteria, and will thus ensure homogeneity among the participating banks in the standards for origination and approval of reinsured loans.

II. The Reinsurer's Activities are Substantively the Same as Activities Previously Approved by the OCC

A. Reinsurer's Activities are Substantively the Same as Previously Approved Activities

Pursuant to OCC regulations at 12 CFR 5.36(e), well-managed, well-capitalized national banks may make a noncontrolling investment directly, or indirectly though an operating subsidiary, in an enterprise that engages in certain pre-approved activities or activities that are "substantively the same" as activities previously approved in published OCC precedent. The pre-approved activities, which are listed in 12 CFR 5.34(e)(5)(v), include "reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates. . . ."[5] The activities of the reinsurer, however, involve reinsuring mortgage insurance on the loans of unaffiliated financial institutions. In this respect, the reinsurer's activities are substantively the same as activities previously approved by the OCC. Specifically, the reinsurer's activities are substantively similar to the reciprocal mortgage reinsurance exchange (the "exchange") activities the OCC approved as being part of, or incidental to, the business of banking, in Interpretive Letter No. 828 (April 6, 1998) ("IL 828").[6]

In IL 828 the OCC authorized national banks to participate in a reciprocal mortgage reinsurance exchange that provided for the reinsurance of mortgage insurance on loans originated or purchased by participating lenders.[7] Participants in the exchange used the exchange arrangement as a means to reinsure their own mortgages. Similarly, participating banks will use the reinsurance arrangement as a means of reinsuring their own mortgages. In both situations, the risks assumed by the banks are essentially the same risks associated with underwriting mortgage loans. The analysis of the permissibility of the exchange participants' activities described in IL 828 applies equally to the activities of the participating banks in this case, and supports the conclusion that participation in the reinsurer's program is a permissible activity.

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[5] 12 CFR 5.34(e)(5)(v)(Q).

[6] The exchange described in IL 828 differs from the reinsurer in that the exchange is not a separate legal entity, but rather, exists as a relationship among the participating lenders that is established through agreements. The reinsurer, on the other hand, is a separate incorporated legal entity. The reinsurance activities of the exchange and reinsurer, however, are substantively the same.

[7] Like the reinsurer in this case, the exchange was a Vermont group captive insurer open to participation by nonaffiliated financial institutions; and like the reinsurer, the exchange provided economies of scale to small to mid-size banks which would otherwise have been unable to maintain a captive mortgage reinsurance facility of their own.

B. Application of Section 302 of the Gramm–Leach–Bliley Act

Under Section 302 of the Gramm–Leach–Bliley Act (GLBA), national banks and their subsidiaries may not provide insurance products as principal, except for "authorized products." The term "authorized products" is defined to include any product that the OCC had determined in writing, as of January 1, 1999, that national banks may provide as principal, or that national banks were in fact lawfully providing as principal, provided that, as of such date, no court had rendered a final judgment overturning such determination. Thus, Section 302 of the GLBA preserves the authority of national banks and their subsidiaries to provide an insurance product as principal so long as the product was authorized by the OCC on or before January 1, 1999.

The participating banks' mortgage reinsurance activities constitute authorized products. The OCC authorized national banks and their subsidiaries to reinsure mortgage insurance prior to January 1, 1999.[8] Further, in IL 828, issued on April 6, 1998, the OCC determined that the authority to reinsure mortgage insurance included national banks' participation in the exchange, a group mortgage reinsurance facility involving unaffiliated lenders. These determinations had not been overturned by any court as of January 1, 1999, (nor have they been overturned subsequent to that date). Accordingly, mortgage reinsurance, including such reinsurance offered through a group facility involving unaffiliated lenders, satisfies the "authorized product" exception in Section 302 of the GLBA.[9]

III. Conclusion

Accordingly, the activities of the reinsurer are substantively the same as those of a group mortgage reinsurance facility previously authorized by the OCC, and thus, a national bank seeking to make a non-controlling investment, directly or indirectly through an operating subsidiary, in the Reinsurer, may use the notice procedure available under 12 CFR 5.36(e),[10] if the bank otherwise qualifies under the criteria of that section.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

[8] *See, e.g.,* Corporate Decisions No. 97–97 (November 10, 1997) (First Tennessee); No. 97–93 (October 20, 1997) (SunTrust); No. 97–89 (September 26, 1997) (Norwest); No. 97–27 (May 2, 1997) (Bank One); No. 97–15 (March 17, 1997) (PNC); and No. 97–06 (January 22, 1997) (Chase); and Interpretive Letter No. 743, *reprinted in* [1996–1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶81-108 (October 17, 1996).

[9] *See also,* Corporate Decision 2001–10 (April 23, 2001) (OCC approved, after January 1, 1999, credit-related reinsurance activities in connection with loans of both affiliated and unaffiliated lenders, because the OCC had established the authority of national banks and their subsidiaries to reinsure credit-related products in connection with the bank's and other lenders' loans, prior to January 1, 1999).

[10] If a national bank seeks to make a noncontrolling investment in the Reinsurer through an operating subsidiary, the bank must ensure that it complies with the applicable requirements of 12 CFR 5.34.

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Mergers —
January 1 to March 31, 2004

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Mergers—January 1 to March 31, 2004

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 January 1 to March 31, 2004

Title and location (charter number)	Total assets
Arizona	
Dillard National Bank , Gilbert (018777)	19,806,000
and Dillard National Bank, Baton Rouge, Louisiana (023324)	3,263,000
merged on February 20, 2004, under the title of **Dillard National Bank, Gilbert** (018777)	23,069,000
California	
Union Bank of California, National Association, San Francisco (021541)	42,093,253,000
and Business Bank of California, San Bernardino, California	663,800,000
merged on January 16, 2004, under the title of **Union Bank of California, National Association, San Francisco** (021541)	42,832,227,000
Illinois	
The First National Bank in Tremont, Tremont (013579)	81,713,000
and Community Bank of Hopedale, Hopedale, Illinois	13,950,000
merged on March 12, 2004, under the title of **The First National Bank in Tremont, Tremont** (013579)	95,739,000
Mississippi	
Trustmark National Bank, Jackson (010523)	7,479,860,000
and Plaza Bank, Houston, Texas	2,000,000
merged on January 23, 2004, under the title of **Trustmark National Bank, Jackson** (010523)	7,481,860,000
New York	
Marathon National Bank of New York, Astoria (021686)	339,250,000
and Interbank of New York, New York City, New York	296,350,000
merged on January 23, 2004, under the title of **Marathon National Bank of New York, Astoria** (021686)	642,878,000
Virginia	
First Community Bank, National Association, Bluefield (023892)	1,671,820,000
and People's Community Bank, Johnson City, Tennessee	171,591,000
merged on March 31, 2004, under the title of **First Community Bank, National Association, Bluefield** (023892)	1,830,000,000

Nonaffiliated mergers—thrift (mergers consummated involving nonaffiliated national banks and savings and loan associations) from January 1 to March 31, 2004

Title and location (charter number)	Total assets
Mississippi	
Trustmark National Bank, Jackson (010523)	7,479,860,000
and Allied Houston Bank, Houston, Texas	173,724,000
merged on March 12, 2004, under the title of **Trustmark National Bank, Jackson** (010523)	7,479,860,000
Rhode Island	
Fleet National Bank, Providence (000200)	191,041,000,000
and Progress Bank, Blue Bell, Pennsylvania	1,102,611,000
merged on February 1, 2004, under the title of **Fleet National Bank, Providence** (000200)	192,330,611,000

Affiliated mergers (mergers consummated involving affiliated operating banks) from January 1 to March 31, 2004

Title and location (charter number)	Total assets
California	
Wells Fargo Bank, National Association, San Francisco (001741)	323,329,436,000
and Bank of Grand Junction, Grand Junction, Colorado	68,361,000
merged on December 6, 2003, under the title of **Wells Fargo Bank, National Association, San Francisco** (001741)	325,405,497,000
Greater Bay Bank, National Association, Palo Alto (024489)	1,582,000
and Bay Area Bank, Redwood City, California	406,000,000
and San Jose National Bank, San Jose, California (017315)	731,000,000
and Bay Bank of Commerce, San Leandro, California	342,000,000
and Golden Gate Bank, San Francisco, California	418,000,000
and Bank of Petaluma, Petaluma, California	399,000,000
and Cupertino National Bank, Cupertino, California (018595)	2,138,000,000
and Mt. Diablo National Bank, Danville, California (022511)	560,000,000
and Peninsula Bank of Commerce, Millbrae, California	420,000,000
and Coast Commercial Bank, Santa Cruz, California	597,000,000
and Bank of Santa Clara, Santa Clara, California	598,000,000
merged on February 1, 2004, under the title of **Greater Bay Bank, National Association, Palo Alto** (024489)	8,261,000
Colorado	
Western National Bank, Colorado Springs (015383)	657,141,000
and American National Bank, Cheyenne, Wyoming (011380)	303,527,000
and Mesa National Bank, Grand Junction, Colorado (022182)	324,409,000
merged on February 13, 2004, under the title of **American National Bank, Denver** (015383)	1,272,933,000
Massachusetts	
Atlantic Trust Company, National Association, Boston (021452)	17,793,000
and Whitehall Trust Company, New York, New York	2,001,000
merged on February 3, 2004, under the title of **Atlantic Trust Company, National Association, Boston** (021452)	18,043,000
Minnesota	
The First National Bank and Trust, Pipestone (003982)	116,710,000
and First National Bank of Luverne, Luverne, Minnesota (012488)	3,966,000
merged on February 6, 2004, under the title of **The First National Bank and Trust, Pipestone** (003982)	120,676,000
Mississippi	
The First National Bank of South Mississippi, Hattiesburg (022949)	107,657,000
and The First National Bank of the Pine Belt, Laurel, Mississippi (023724)	46,969,000
merged on January 23, 2004, under the title of **The First National Bank of South Mississippi, Hattiesburg** (022949)	154,626,000
Pennsylvania	
PNC Bank, National Association, Pittsburgh (001316)	60,693,000,000
and UnitedTrust Bank, Bridgewater, New Jersey	3,029,000,000
merged on March 19, 2004, under the title of **PNC Bank, National Association, Pittsburgh** (001316)	64,216,000,000
First National Bank of Pennsylvania, Greenville (000249)	4,428,663,000
and First National Trust Company, Hermitage, Pennsylvania (024283)	4,451,000
merged on December 31, 2003, under the title of **First National Bank of Pennsylvania, Greenville** (000249)	4,433,065,000

Affiliated mergers (mergers consummated involving affiliated operating banks) from January 1 to March 31, 2004 (continued)

Title and location (charter number)	Total assets
South Dakota	
Wells Fargo Bank, National Association, San Francisco (001741)	248,123,000,000
and Wells Fargo Bank Indiana, National Association, Fort Wayne, Indiana (013987)	2,191,134,000
and Wells Fargo Bank Iowa, National Association, Des Moines, Iowa (002307)	8,601,186,000
and Wells Fargo Bank Michigan, National Association, Marquette, Michigan (000390)	743,161,000
and Wells Fargo Bank Minnesota, National Association, Minneapolis, Minnesota (002006)	50,104,900,000
and Wells Fargo Bank Nevada, National Association, Las Vegas, Nevada (023444)	10,196,817,000
and Wells Fargo Bank New Mexico, National Association, Albuquerque, New Mexico (006187)	4,977,228,000
and Wells Fargo Bank North Dakota, National Association, Fargo, North Dakota (002377)	1,557,214,000
and Wells Fargo Bank Ohio, National Association, Van Wert, Ohio (022697)	79,976,000
and Wells Fargo Bank South Dakota, National Association, Sioux Falls, South Dakota (010592)	9,586,253,000
and Wells Fargo Bank Wisconsin National Association, Milwaukee, Wisconsin (015057)	2,637,578,000
and Wells Fargo Bank Arizona, National Association, Phoenix, Arizona (015715)	12,261,387,000
and Wells Fargo Bank Illinois, National Association, Galesburg, Illinois (022636)	481,700,000
merged on February 20, 2004, under the title of **Wells Fargo Bank, National Association, Sioux Falls** (001741)	315,775,224,000
Texas	
American Bank of Texas, National Association, Marble Falls (017003)	150,438,000
and American Bank of Texas, N.A.—Fredericksburg, Fredericksburg, Texas (017626)	75,302,000
merged on January 1, 2004, under the title of **American Bank of Texas, National Association, Marble Falls** (017003)	233,216,000
Southwest Bank of Texas National Association, Houston (017479)	5,655,200,000
and Lone Star Bank, Dallas, Texas	215,700,000
merged on January 31, 2004, under the title of **Southwest Bank of Texas National Association, Houston** (017479)	5,904,900,000

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Financial Performance of National Banks

Financial Performance of National Banks

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Assets, liabilities, and capital accounts of national banks
March 31, 2003, and March 31, 2004
(Dollar figures in millions)

	March 31, 2003	March 31, 2004	Change March 31, 2003-March 31, 2004 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	**2,065**	**1,969**	**(96)**	**(4.65)**
Total assets	**$4,001,896**	**$4,436,042**	**$434,146**	**10.85**
Cash and balances due from depositories	**215,356**	**203,575**	**(11,781)**	**(5.47)**
Noninterest-bearing balances, currency and coin	155,248	136,322	(18,927)	(12.19)
Interest bearing balances	60,108	67,253	7,145	11.89
Securities	**689,963**	**855,122**	**165,159**	**23.94**
Held-to-maturity securities, amortized cost	25,590	26,508	917	3.58
Available-for-sale securities, fair value	664,372	828,614	164,242	24.72
Federal funds sold and securities purchased	**152,519**	**161,132**	**8,613**	**5.65**
Net loans and leases	**2,416,560**	**2,616,526**	**199,966**	**8.27**
Total loans and leases	2,464,931	2,664,252	199,321	8.09
Loans and leases, gross	2,467,471	2,666,092	198,621	8.05
Less: Unearned income	2,540	1,840	(700)	(27.57)
Less: Reserve for losses	48,371	47,726	(645)	(1.33)
Assets held in trading account	**168,462**	**208,098**	**39,637**	**23.53**
Other real estate owned	**2,078**	**1,891**	**(187)**	**(9.00)**
Intangible assets	**90,482**	**108,515**	**18,033**	**19.93**
All other assets	**266,476**	**281,183**	**14,707**	**5.52**
Total liabilities and equity capital	**4,001,896**	**4,436,042**	**434,146**	**10.85**
Deposits in domestic offices	2,231,393	2,382,362	150,969	6.77
Deposits in foreign offices	404,519	509,628	105,108	25.98
Total deposits	**2,635,913**	**2,891,990**	**256,077**	**9.71**
Noninterest-bearing deposits	571,549	574,328	2,779	0.49
Interest-bearing deposits	2,064,364	2,317,662	253,298	12.27
Federal funds purchased and securities sold	**282,615**	**288,902**	**6,288**	**2.22**
Other borrowed money	**371,057**	**497,324**	**126,267**	**34.03**
Trading liabilities less revaluation losses	**24,007**	**30,248**	**6,241**	**26.00**
Subordinated notes and debentures	**68,107**	**71,666**	**3,558**	**5.22**
All other liabilities	**243,861**	**252,604**	**8,743**	**3.59**
Trading liabilities revaluation losses	80,548	94,753	14,204	17.63
Other	163,313	157,851	(5,461)	(3.34)
Total equity capital	**376,336**	**403,308**	**26,972**	**7.17**
Perpetual preferred stock	2,684	2,645	(39)	(1.46)
Common stock	12,696	12,047	(648)	(5.11)
Surplus	202,247	212,339	10,092	4.99
Retained earnings and other comprehensive income	165,424	178,832	13,409	8.11
Other equity capital components	(25)	(75)	(50)	NM

NM indicates calculated percent change is not meaningful.

Quarterly income and expenses of national banks
First quarter 2003 and first quarter 2004
(Dollar figures in millions)

	First quarter 2003	First quarter 2004	Change First quarter 2003-first quarter 2004 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	**2,065**	**1,969**	**(96)**	**(4.65)**
Net income	**$15,236**	**$16,683**	**$1,447**	**9.50**
Net interest income	**35,123**	**38,345**	**3,222**	**9.17**
Total interest income	48,798	51,255	2,457	5.04
On loans	37,935	39,491	1,556	4.10
From lease financing receivables	1,646	1,330	(316)	(19.18)
On balances due from depositories	400	342	(58)	(14.53)
On securities	7,106	8,132	1,026	14.44
From assets held in trading account	802	989	187	23.30
On federal funds sold and securities repurchased	596	652	56	9.37
Less: Interest expense	13,675	12,910	(765)	(5.59)
On deposits	8,946	8,174	(772)	(8.63)
Of federal funds purchased and securities sold	1,056	1,039	(17)	(1.63)
On demand notes and other borrowed money*	2,937	2,955	18	0.63
On subordinated notes and debentures	736	742	6	0.76
Less: Provision for losses	**6,503**	**5,237**	**(1,266)**	**(19.46)**
Noninterest income	**27,446**	**28,906**	**1,460**	**5.32**
From fiduciary activities	2,025	2,431	406	20.07
Service charges on deposits	4,914	5,239	324	6.59
Trading revenue	1,618	1,608	(10)	(0.63)
From interest rate exposures	175	416	241	138.07
From foreign exchange exposures	1,149	875	(274)	(23.82)
From equity security and index exposures	247	233	(14)	(5.55)
From commodity and other exposures	46	83	37	79.45
Investment banking brokerage fees	1,139	1,301	163	14.28
Venture capital revenue	(32)	25	58	NM
Net servicing fees	2,443	3,439	996	40.78
Net securitization income	3,630	3,845	215	5.92
Insurance commissions and fees	533	600	67	12.53
Insurance and reinsurance underwriting income	86	126	40	47.19
Income from other insurance activities	447	474	26	5.89
Net gains on asset sales	1,587	1,414	(172)	(10.86)
Sales of loans and leases	1,518	1,238	(280)	(18.43)
Sales of other real estate owned	(2)	20	22	NM
Sales of other assets(excluding securities)	71	156	85	120.67
Other noninterest income	9,589	9,004	(586)	(6.11)
Gains/losses on securities	**1,124**	**1,125**	**2**	**0.14**
Less: Noninterest expense	**34,366**	**38,248**	**3,881**	**11.29**
Salaries and employee benefits	14,927	15,811	884	5.92
Of premises and fixed assets	4,195	4,299	104	2.48
Goodwill impairment losses	40	1	(40)	(98.54)
Amortization expense and impairment losses	1,037	1,195	159	15.31
Other noninterest expense	14,168	16,942	2,774	19.58
Less: Taxes on income before extraordinary items	**7,575**	**8,208**	**633**	**8.36**
Income/loss from extraordinary items, net of income taxes	**(12)**	**(0)**	**12**	**NM**
Memoranda:				
Net operating income	14,488	15,925	1,437	9.92
Income before taxes and extraordinary items	22,823	24,892	2,068	9.06
Income net of taxes before extraordinary items	15,248	16,683	1,435	9.41
Cash dividends declared	10,023	6,999	(3,025)	(30.18)
Net charge-offs to loan and lease reserve	6,841	6,038	(803)	(11.73)
Charge-offs to loan and lease reserve	8,075	7,708	(367)	(4.55)
Less: Recoveries credited to loan and lease reserve	1,234	1,669	435	35.27

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

Year-to-date income and expenses of national banks
Through March 31, 2003, and through March 31, 2004
(Dollar figures in millions)

	March 31, 2003	March 31, 2004	Change March 31, 2003-March 31, 2004 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	**2,065**	**1,969**	**(96)**	**(4.65)**
Net income	**$15,236**	**$16,683**	**$1,447**	**9.50**
Net interest income	**35,123**	**38,345**	**3,222**	**9.17**
Total interest income	48,798	51,255	2,457	5.04
On loans	37,935	39,491	1,556	4.10
From lease financing receivables	1,646	1,330	(316)	(19.18)
On balances due from depositories	400	342	(58)	(14.53)
On securities	7,106	8,132	1,026	14.44
From assets held in trading account	802	989	187	23.30
On federal funds sold and securities repurchased	596	652	56	9.37
Less: Interest expense	13,675	12,910	(765)	(5.59)
On deposits	8,946	8,174	(772)	(8.63)
Of federal funds purchased and securities sold	1,056	1,039	(17)	(1.63)
On demand notes and other borrowed money*	2,937	2,955	18	0.63
On subordinated notes and debentures	736	742	6	0.76
Less: Provision for losses	**6,503**	**5,237**	**(1,266)**	**(19.46)**
Noninterest income	**27,446**	**28,906**	**1,460**	**5.32**
From fiduciary activities	2,025	2,431	406	20.07
Service charges on deposits	4,914	5,239	324	6.59
Trading revenue	1,618	1,608	(10)	(0.63)
From interest rate exposures	175	416	241	138.07
From foreign exchange exposures	1,149	875	(274)	(23.82)
From equity security and index exposures	247	233	(14)	(5.55)
From commodity and other exposures	46	83	37	79.45
Investment banking brokerage fees	1,139	1,301	163	14.28
Venture capital revenue	(32)	25	58	NM
Net servicing fees	2,443	3,439	996	40.78
Net securitization income	3,630	3,845	215	5.92
Insurance commissions and fees	533	600	67	12.53
Insurance and reinsurance underwriting income	86	126	40	47.19
Income from other insurance activities	447	474	26	5.89
Net gains on asset sales	1,587	1,414	(172)	(10.86)
Sales of loans and leases	1,518	1,238	(280)	(18.43)
Sales of other real estate owned	(2)	20	22	NM
Sales of other assets(excluding securities)	71	156	85	120.67
Other noninterest income	9,589	9,004	(586)	(6.11)
Gains/losses on securities	**1,124**	**1,125**	**2**	**0.14**
Less: Noninterest expense	**34,366**	**38,248**	**3,881**	**11.29**
Salaries and employee benefits	14,927	15,811	884	5.92
Of premises and fixed assets	4,195	4,299	104	2.48
Goodwill impairment losses	40	1	(40)	NM
Amortization expense and impairment losses	1,037	1,195	159	15.31
Other noninterest expense	14,168	16,942	2,774	19.58
Less: Taxes on income before extraordinary items	**7,575**	**8,208**	**633**	**8.36**
Income/loss from extraordinary items, net of income taxes	**(12)**	**(0)**	**12**	**NM**
Memoranda:				
Net operating income	14,488	15,925	1,437	9.92
Income before taxes and extraordinary items	22,823	24,892	2,068	9.06
Income net of taxes before extraordinary items	15,248	16,683	1,435	9.41
Cash dividends declared	10,023	6,999	(3,025)	(30.18)
Net charge-offs to loan and lease reserve	6,841	6,038	(803)	(11.73)
Charge-offs to loan and lease reserve	8,075	7,708	(367)	(4.55)
Less: Recoveries credited to loan and lease reserve	1,234	1,669	435	35.27

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

Assets of national banks by asset size
March 31, 2004
(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	1,969	824	984	116	45	7,712
Total assets	$4,436,042	$45,283	$273,512	$346,243	$3,771,004	$7,817,696
Cash and balances due from	203,575	2,777	11,728	12,409	176,662	402,125
Securities	855,122	11,737	68,939	86,442	688,003	1,576,227
Federal funds sold and securities purchased	161,132	2,704	9,016	13,045	136,368	348,058
Net loans and leases	2,616,526	25,994	169,495	210,817	2,210,220	4,413,266
Total loans and leases	2,664,252	26,378	171,920	213,978	2,251,977	4,489,208
Loans and leases, gross	2,666,092	26,403	172,099	214,080	2,253,510	4,491,991
Less: Unearned income	1,840	25	179	102	1,533	2,783
Less: Reserve for losses	47,726	384	2,424	3,161	41,757	75,942
Assets held in trading account	208,098	0	37	297	207,764	451,317
Other real estate owned	1,891	73	284	202	1,332	4,148
Intangible assets	108,515	154	2,368	7,238	98,755	157,966
All other assets	281,183	1,846	11,645	15,793	251,899	464,588
Gross loans and leases by type:						
Loans secured by real estate	1,297,962	16,216	117,550	127,562	1,036,634	2,346,784
1-4 family residential mortgages	614,963	6,596	38,690	47,807	521,869	1,013,593
Home equity loans	212,657	493	6,877	10,131	195,157	308,864
Multifamily residential mortgages	35,480	422	4,384	4,749	25,925	81,422
Commercial RE loans	277,314	5,091	47,637	45,128	179,457	617,591
Construction RE loans	109,130	1,659	14,294	17,494	75,683	242,964
Farmland loans	13,949	1,955	5,665	1,593	4,736	41,463
RE loans from foreign offices	34,469	0	3	660	33,806	40,886
Commercial and industrial loans	502,959	4,271	28,319	41,557	428,812	865,102
Loans to individuals	509,682	3,058	16,646	28,365	461,613	750,162
Credit cards*	230,622	132	2,798	8,446	219,246	292,456
Other revolving credit plans	31,370	37	338	944	30,051	36,023
Installment loans	247,689	2,890	13,510	18,975	212,315	421,684
All other loans and leases	355,489	2,857	9,584	16,597	326,452	529,943
Securities by type:						
U.S. Treasury securities	31,976	516	1,864	3,743	25,854	79,746
Mortgage-backed securities	529,533	2,889	25,246	46,712	454,685	874,825
Pass-through securities	402,878	2,237	17,695	26,605	356,341	602,259
Collateralized mortgage obligations	126,655	652	7,551	20,107	98,345	272,566
Other securities	234,252	8,326	41,542	35,228	149,155	518,537
Other U.S. government securities	85,555	5,802	25,193	17,060	37,500	270,763
State and local government securities	51,286	2,000	12,748	7,432	29,106	111,273
Other debt securities	90,554	289	2,583	9,766	77,916	121,101
Equity securities	6,857	235	1,018	971	4,633	15,400
Memoranda:						
Agricultural production loans	18,646	2,358	5,187	1,738	9,363	43,720
Pledged securities	369,973	4,361	32,777	43,380	289,455	747,303
Book value of securities	841,218	11,590	67,935	84,910	676,783	1,553,509
Available-for-sale securities	814,711	9,884	59,061	74,132	671,633	1,443,196
Held-to-maturity securities	26,508	1,706	8,874	10,778	5,150	110,313
Market value of securities	855,644	11,773	69,158	86,614	688,099	1,578,516
Available-for-sale securities	828,614	10,030	60,066	75,665	682,853	1,465,915
Held-to-maturity securities	27,029	1,743	9,092	10,949	5,245	112,601

Past-due and nonaccrual loans and leases of national banks by asset size
March 31, 2004
(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	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Loans and leases past due 30-89 days	**$23,381**	**$383**	**$1,661**	**$1,777**	**$19,560**	**$39,470**
Loans secured by real estate	**10,204**	**213**	**987**	**934**	**8,070**	**18,213**
1-4 family residential mortgages	6,514	107	454	465	5,488	10,438
Home equity loans	761	3	29	28	702	1,089
Multifamily residential mortgages	119	3	18	26	71	277
Commercial RE loans	1,452	61	323	274	795	3,725
Construction RE loans	796	19	104	125	548	1,645
Farmland loans	141	20	59	15	47	443
RE loans from foreign offices	421	0	0	1	420	597
Commercial and industrial loans	**2,891**	**68**	**303**	**404**	**2,116**	**6,098**
Loans to individuals	**9,030**	**67**	**288**	**392**	**8,283**	**12,769**
Credit cards	4,946	2	88	188	4,668	6,269
Installment loans and other plans	4,084	65	201	204	3,615	6,501
All other loans and leases	**1,255**	**35**	**82**	**47**	**1,091**	**2,389**
Loans and leases past due 90+ days	**11,159**	**79**	**329**	**486**	**10,265**	**14,619**
Loans secured by real estate	**4,016**	**44**	**179**	**150**	**3,644**	**5,486**
1-4 family residential mortgages	3,495	21	74	88	3,311	4,263
Home equity loans	117	1	5	8	104	182
Multifamily residential mortgages	15	0	8	0	7	51
Commercial RE loans	182	11	57	32	82	533
Construction RE loans	80	2	17	20	40	227
Farmland loans	43	8	18	2	15	137
RE loans from foreign offices	84	0	0	0	84	95
Commercial and industrial loans	**579**	**13**	**55**	**100**	**411**	**1,206**
Loans to individuals	**6,408**	**12**	**74**	**231**	**6,091**	**7,587**
Credit cards	4,559	2	44	198	4,314	5,392
Installment loans and other plans	1,850	10	29	33	1,777	2,195
All other loans and leases	**155**	**10**	**22**	**5**	**119**	**340**
Nonaccrual loans and leases	**20,029**	**238**	**1,201**	**1,308**	**17,283**	**33,855**
Loans secured by real estate	**7,260**	**123**	**759**	**809**	**5,568**	**13,057**
1-4 family residential mortgages	3,019	40	203	337	2,438	5,124
Home equity loans	350	0	8	12	329	490
Multifamily residential mortgages	120	3	12	22	82	239
Commercial RE loans	2,271	51	383	331	1,507	4,628
Construction RE loans	607	11	93	75	428	1,314
Farmland loans	202	19	60	31	92	440
RE loans from foreign offices	691	0	0	0	691	823
Commercial and industrial loans	**8,745**	**71**	**301**	**374**	**7,999**	**15,272**
Loans to individuals	**2,333**	**15**	**77**	**39**	**2,202**	**3,199**
Credit cards	367	0	40	3	323	712
Installment loans and other plans	1,966	15	37	35	1,879	2,487
All other loans and leases	**1,775**	**29**	**63**	**89**	**1,594**	**2,460**

Liabilities of national banks by asset size
March 31, 2004
(Dollar figures in millions)

		National banks				Memoranda:
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	All commercial banks
Number of institutions reporting	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Total liabilities and equity capital	**4,436,042**	**45,283**	**273,512**	**346,243**	**3,771,004**	**7,817,696**
Deposits in domestic offices	2,382,362	37,766	220,177	227,250	1,897,170	4,400,356
Deposits in foreign offices	509,628	14	144	2,734	506,736	779,822
Total deposits	**2,891,990**	**37,779**	**220,321**	**229,984**	**2,403,905**	**5,180,178**
Noninterest bearing	574,328	6,545	36,124	37,279	494,380	988,526
Interest bearing	2,317,662	31,235	184,196	192,706	1,909,526	4,191,652
Federal funds purchased and securities sold	**288,902**	**472**	**7,635**	**29,730**	**251,066**	**581,126**
Other borrowed funds	**497,324**	**1,226**	**14,422**	**38,937**	**442,738**	**728,787**
Trading liabilities less revaluation losses	**30,248**	**0**	**0**	**7**	**30,240**	**95,142**
Subordinated notes and debentures	**71,666**	**8**	**248**	**2,275**	**69,135**	**100,278**
All other liabilities	**252,604**	**373**	**2,760**	**7,481**	**241,990**	**416,936**
Equity capital	**403,308**	**5,425**	**28,126**	**37,829**	**331,929**	**715,248**
Total deposits by depositor:						
Individuals and corporations	2,270,531	23,076	150,701	179,681	1,917,073	4,019,818
U.S., state, and local governments	122,106	3,317	18,374	15,904	84,511	241,947
Depositories in the U.S.	72,235	684	3,186	2,419	65,946	107,621
Foreign banks and governments	120159.76	32	116	1,097	118,915	200,381
Domestic deposits by depositor:						
Individuals and corporations	1915460.623	23,063	150,695	177,592	1,564,112	3,478,451
U.S., state, and local governments	122,106	3,317	18,374	15,904	84,511	241,947
Depositories in the U.S.	32,766	684	3,143	2,328	26,610	58,464
Foreign banks and governments	5,274	32	21	548	4,674	11,963
Foreign deposits by depositor:						
Individuals and corporations	355070.339	13	6	2,090	352,961	541,367
Depositories in the U.S.	39469.668	0	43	91	39,336	49,158
Foreign banks and governments	114,886	0	95	549	114,241	188,417
Deposits in domestic offices by type:						
Transaction deposits	**369,340**	**12,117**	**54,308**	**35,934**	**266,980**	**719,900**
Demand deposits	277,062	6,419	30,992	26,402	213,250	515,406
Savings deposits	**1,440,530**	**9,122**	**76,737**	**122,451**	**1,232,220**	**2,410,216**
Money market deposit accounts	1061186.198	4,854	44,403	91,129	920,800	1,737,958
Other savings deposits	379344.056	4,268	32,334	31,322	311,421	672,258
Time deposits	**572,492**	**16,526**	**89,131**	**68,865**	**397,969**	**1,270,240**
Small time deposits	311,186	10,891	54,115	36,858	209,322	652,936
Large time deposits	261,306	5,635	35,016	32,008	188,647	617,304

Off-balance-sheet items of national banks by asset size
March 31, 2004
(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	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Unused commitments	**$4,049,143**	**$83,816**	**$148,228**	**$678,792**	**$3,138,307**	**$5,554,779**
Home equity lines	231,002	363	5,878	9,561	215,200	332,252
Credit card lines	2,755,393	79,754	114,123	625,279	1,936,237	3,468,903
Commercial RE, construction and land	95,434	944	9,468	13,659	71,363	197,187
All other unused commitments	967,314	2,755	18,760	30,292	915,507	1,556,436
Letters of credit:						
Standby letters of credit	**181,193**	**114**	**1,781**	**4,030**	**175,267**	**298,131**
Financial letters of credit	150,519	71	1,134	3,060	146,253	252,125
Performance letters of credit	30,674	44	647	969	29,014	46,006
Commercial letters of credit	**15,904**	**23**	**428**	**405**	**15,049**	**25,275**
Securities lent	**181,696**	**39**	**2,523**	**68**	**179,067**	**1,017,546**
Spot foreign exchange contracts	**414,496**	**0**	**0**	**189**	**414,307**	**699,709**
Credit derivatives (notional value)						
Reporting bank is the guarantor	243,143	0	11	0	243,132	565,314
Reporting bank is the beneficiary	276,107	0	40	0	276,067	637,167
Derivative contracts (notional value)	**34,043,863**	**22**	**3,023**	**21,822**	**34,018,995**	**76,524,405**
Futures and forward contracts	6,087,493	6	813	2,871	6,083,803	11,827,055
Interest rate contracts	3,495,471	6	810	2,440	3,492,215	7,242,364
Foreign exchange contracts	2,574,608	0	3	431	2,574,174	4,460,046
All other futures and forwards	17,414	0	0	0	17,414	124,644
Option contracts	6,912,882	11	912	5,604	6,906,355	15,709,982
Interest rate contracts	5,873,707	9	871	4,001	5,868,827	13,160,739
Foreign exchange contracts	880,978	0	0	1,595	879,382	1,664,442
All other options	158,197	2	41	8	158,146	884,801
Swaps	20,524,239	5	1,247	13,347	20,509,639	47,784,888
Interest rate contracts	19,649,657	5	1,236	8,726	19,639,690	45,780,499
Foreign exchange contracts	778,313	0	0	4,617	773,695	1,827,332
All other swaps	96,269	0	11	4	96,254	177,058
Memoranda: Derivatives by purpose						
Contracts held for trading	31,416,242	0	25	4,225	31,411,992	72,809,830
Contracts not held for trading	2,108,372	22	2,948	17,597	2,087,805	2,512,095
Memoranda: Derivatives by position						
Held for trading--positive fair value	540,724	0	0	27	540,697	1,280,783
Held for trading--negative fair value	526,932	0	0	11	526,921	1,257,236
Not for trading--positive fair value	22,864	1	27	108	22,729	27,103
Not for trading--negative fair value	21,695	0	19	530	21,147	25,442

Quarterly income and expenses of national banks by asset size
First quarter 2004
(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	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Net income	**$16,683**	**$118**	**$878**	**$1,262**	**$14,424**	**$27,286**
Net interest income	**38,345**	**425**	**2,519**	**3,055**	**32,346**	**62,767**
Total interest income	51,255	565	3,405	4,033	43,252	85,690
On loans	39,491	445	2,701	3,132	33,213	64,628
From lease financing receivables	1,330	3	18	56	1,253	1,829
On balances due from depositories	342	5	11	11	316	751
On securities	8,132	103	635	756	6,637	14,555
From assets held in trading account	989	0	0	2	987	2,152
On fed. funds sold & securities repurchased	652	6	22	44	580	1,167
Less: Interest expense	12,910	139	886	978	10,907	22,923
On deposits	8,174	126	737	621	6,691	14,734
Of federal funds purchased & securities sold	1,039	2	21	84	932	1,920
On demand notes & other borrowed money*	2,955	11	125	248	2,570	5,174
On subordinated notes and debentures	742	0	3	25	714	1,095
Less: Provision for losses	**5,237**	**20**	**149**	**311**	**4,757**	**6,977**
Noninterest income	**28,906**	**183**	**1,368**	**2,192**	**25,163**	**47,683**
From fiduciary activities	2,431	11	263	321	1,836	5,802
Service charges on deposits	5,239	54	310	303	4,571	8,042
Trading revenue	1,608	0	2	3	1,603	3,846
From interest rate exposures	416	0	2	(0)	414	1,517
From foreign exchange exposures	875	0	0	1	875	1,371
From equity security and index exposures	233	0	0	2	231	849
From commodity and other exposures	83	0	0	0	83	89
Investment banking brokerage fees	1,301	1	19	49	1,232	2,441
Venture capital revenue	25	(0)	(0)	0	25	46
Net servicing fees	3,439	40	99	166	3,134	3,949
Net securitization income	3,845	0	139	101	3,606	5,379
Insurance commissions and fees	600	9	26	40	525	991
Insurance and reinsurance underwriting income	126	0	2	0	123	178
Income from other insurance activities	474	9	24	40	402	814
Net gains on asset sales	1,414	3	86	451	875	2,230
Sales of loans and leases	1,238	3	72	447	716	1,975
Sales of other real estate owned	20	1	7	3	9	30
Sales of other assets(excluding securities)	156	(0)	7	1	149	225
Other noninterest income	9,004	64	425	758	7,756	14,958
Gains/losses on securities	**1,125**	**7**	**41**	**38**	**1,040**	**1,543**
Less: Noninterest expense	**38,248**	**446**	**2,565**	**3,071**	**32,166**	**64,636**
Salaries and employee benefits	15,811	224	1,216	1,279	13,091	28,439
Of premises and fixed assets	4,299	55	296	322	3,627	7,909
Goodwill impairment losses	1	0	0	0	0	5
Amortization expense and impairment losses	1,195	3	50	141	1,002	1,411
Other noninterest expense	16,942	164	1,003	1,329	14,446	26,872
Less: Taxes on income before extraord. items	**8,208**	**31**	**333**	**640**	**7,204**	**13,091**
Income/loss from extraord. items, net of taxes	**(0)**	**0**	**(3)**	**(0)**	**3**	**(3)**
Memoranda:						
Net operating income	15,925	113	851	1,235	13,726	26,236
Income before taxes and extraordinary items	24,892	149	1,214	1,903	21,625	40,380
Income net of taxes before extraordinary items	16,683	118	881	1,263	14,421	27,289
Cash dividends declared	6,999	72	345	970	5,612	12,664
Net loan and lease losses	6,038	14	137	261	5,627	8,036
Charge-offs to loan and lease reserve	7,708	21	187	375	7,125	10,425
Less: Recoveries credited to loan & lease resv.	1,669	7	51	113	1,498	2,388

* Includes mortgage indebtedness

Year-to-date income and expenses of national banks by asset size
Through March 31, 2004
(Dollar figures in millions)

		National banks				Memoranda:
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	All commercial banks
Number of institutions reporting	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Net income	**$16,683**	**$118**	**$878**	**$1,262**	**$14,424**	**$27,286**
Net interest income	**38,345**	**425**	**2,519**	**3,055**	**32,346**	**62,767**
Total interest income	51,255	565	3,405	4,033	43,252	85,690
On loans	39,491	445	2,701	3,132	33,213	64,628
From lease financing receivables	1,330	3	18	56	1,253	1,829
On balances due from depositories	342	5	11	11	316	751
On securities	8,132	103	635	756	6,637	14,555
From assets held in trading account	989	0	0	2	987	2,152
On fed. funds sold & securities repurchased	652	6	22	44	580	1,167
Less: Interest expense	12,910	139	886	978	10,907	22,923
On deposits	8,174	126	737	621	6,691	14,734
Of federal funds purchased & securities sold	1,039	2	21	84	932	1,920
On demand notes & other borrowed money*	2,955	11	125	248	2,570	5,174
On subordinated notes and debentures	742	0	3	25	714	1,095
Less: Provision for losses	**5,237**	**20**	**149**	**311**	**4,757**	**6,977**
Noninterest income	**28,906**	**183**	**1,368**	**2,192**	**25,163**	**47,683**
From fiduciary activities	2,431	11	263	321	1,836	5,802
Service charges on deposits	5,239	54	310	303	4,571	8,042
Trading revenue	1,608	0	2	3	1,603	3,846
From interest rate exposures	416	0	2	(0)	414	1,517
From foreign exchange exposures	875	0	0	1	875	1,371
From equity security and index exposures	233	0	0	2	231	849
From commodity and other exposures	83	0	0	0	83	89
Investment banking brokerage fees	1,301	1	19	49	1,232	2,441
Venture capital revenue	25	(0)	(0)	0	25	46
Net servicing fees	3,439	40	99	166	3,134	3,949
Net securitization income	3,845	0	139	101	3,606	5,379
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Income from other insurance activities	474	9	24	40	402	814
Net gains on asset sales	1,414	3	86	451	875	2,230
Sales of loans and leases	1,238	3	72	447	716	1,975
Sales of other real estate owned	20	1	7	3	9	30
Sales of other assets(excluding securities)	156	(0)	7	1	149	225
Other noninterest income	9,004	64	425	758	7,756	14,958
Gains/losses on securities	**1,125**	**7**	**41**	**38**	**1,040**	**1,543**
Less: Noninterest expense	**38,248**	**446**	**2,565**	**3,071**	**32,166**	**64,636**
Salaries and employee benefits	15,811	224	1,216	1,279	13,091	28,439
Of premises and fixed assets	4,299	55	296	322	3,627	7,909
Goodwill impairment losses	1	0	0	0	0	5
Amortization expense and impairment losses	1,195	3	50	141	1,002	1,411
Other noninterest expense	16,942	164	1,003	1,329	14,446	26,872
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Cash dividends declared	6,999	72	345	970	5,612	12,664
Net loan and lease losses	6,038	14	137	261	5,627	8,036
Charge-offs to loan and lease reserve	7,708	21	187	375	7,125	10,425
Less: Recoveries credited to loan & lease resv.	1,669	7	51	113	1,498	2,388

* Includes mortgage indebtedness

Quarterly net loan and lease losses of national banks by asset size
First quarter 2004
(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	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Net charge-offs to loan and lease reserve	**$6,038**	**$14**	**$137**	**$261**	**$5,627**	**$8,036**
Loans secured by real estate	**362**	**2**	**13**	**22**	**325**	**550**
1-4 family residential mortgages	214	1	6	17	190	287
Home equity loans	77	0	0	1	75	104
Multifamily residential mortgages	1	(0)	0	(2)	2	4
Commercial RE loans	29	0	5	4	20	94
Construction RE loans	14	1	2	1	11	28
Farmland loans	2	0	0	(0)	1	1
RE loans from foreign offices	26	0	0	0	26	33
Commercial and industrial loans	**894**	**5**	**18**	**60**	**812**	**1,478**
Loans to individuals	**4,620**	**6**	**101**	**175**	**4,338**	**5,761**
Credit cards	3,492	1	67	118	3,306	4,279
Installment loans and other plans	1,128	5	34	57	1,032	1,482
All other loans and leases	**162**	**1**	**5**	**4**	**152**	**246**
Charge-offs to loan and lease reserve	**7,708**	**21**	**187**	**375**	**7,125**	**10,425**
Loans secured by real estate	**481**	**3**	**19**	**32**	**427**	**725**
1-4 family residential mortgages	258	1	8	20	228	353
Home equity loans	95	0	1	2	92	128
Multifamily residential mortgages	4	0	0	1	2	7
Commercial RE loans	64	0	6	7	50	146
Construction RE loans	23	1	2	1	19	42
Farmland loans	3	0	1	0	2	7
RE loans from foreign offices	34	0	0	0	34	42
Commercial and industrial loans	**1,479**	**6**	**30**	**85**	**1,357**	**2,320**
Loans to individuals	**5,492**	**9**	**130**	**244**	**5,108**	**6,983**
Credit cards	4,036	1	80	155	3,800	5,008
Installment loans and other plans	1,455	8	51	89	1,308	1,975
All other loans and leases	**257**	**2**	**9**	**13**	**232**	**396**
Recoveries credited to loan and lease reserve	**1,669**	**7**	**51**	**113**	**1,498**	**2,388**
Loans secured by real estate	**119**	**1**	**6**	**10**	**102**	**175**
1-4 family residential mortgages	45	1	3	3	39	66
Home equity loans	18	0	0	1	17	24
Multifamily residential mortgages	3	0	0	3	0	3
Commercial RE loans	35	0	2	3	30	53
Construction RE loans	9	0	0	0	8	14
Farmland loans	1	0	1	0	0	5
RE loans from foreign offices	8	0	0	0	8	9
Commercial and industrial loans	**584**	**2**	**12**	**25**	**546**	**842**
Loans to individuals	**872**	**3**	**29**	**69**	**770**	**1,221**
Credit cards	544	0	13	37	495	729
Installment loans and other plans	327	3	17	33	276	493
All other loans and leases	**94**	**1**	**4**	**9**	**80**	**150**

Year-to-date net loan and lease losses of national banks by asset size
Through March 31, 2004
(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	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Net charge-offs to loan and lease reserve	**6,038**	**14**	**137**	**261**	**5,627**	**8,036**
Loans secured by real estate	**362**	**2**	**13**	**22**	**325**	**550**
1-4 family residential mortgages	214	1	6	17	190	287
Home equity loans	77	0	0	1	75	104
Multifamily residential mortgages	1	(0)	0	(2)	2	4
Commercial RE loans	29	0	5	4	20	94
Construction RE loans	14	1	2	1	11	28
Farmland loans	2	0	0	(0)	1	1
RE loans from foreign offices	26	0	0	0	26	33
Commercial and industrial loans	**894**	**5**	**18**	**60**	**812**	**1,478**
Loans to individuals	**4,620**	**6**	**101**	**175**	**4,338**	**5,761**
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Installment loans and other plans	1,128	5	34	57	1,032	1,482
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Multifamily residential mortgages	4	0	0	1	2	7
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Loans to individuals	**5,492**	**9**	**130**	**244**	**5,108**	**6,983**
Credit cards	4,036	1	80	155	3,800	5,008
Installment loans and other plans	1,455	8	51	89	1,308	1,975
All other loans and leases	**257**	**2**	**9**	**13**	**232**	**396**
Recoveries credited to loan and lease reserve	**1,669**	**7**	**51**	**113**	**1,498**	**2,388**
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1-4 family residential mortgages	45	1	3	3	39	66
Home equity loans	18	0	0	1	17	24
Multifamily residential mortgages	3	0	0	3	0	3
Commercial RE loans	35	0	2	3	30	53
Construction RE loans	9	0	0	0	8	14
Farmland loans	1	0	1	0	0	5
RE loans from foreign offices	8	0	0	0	8	9
Commercial and industrial loans	**584**	**2**	**12**	**25**	**546**	**842**
Loans to individuals	**872**	**3**	**29**	**69**	**770**	**1,221**
Credit cards	544	0	13	37	495	729
Installment loans and other plans	327	3	17	33	276	493
All other loans and leases	**94**	**1**	**4**	**9**	**80**	**150**

Number of national banks by state and asset size
March 31, 2004

	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
All institutions	**1,969**	**824**	**984**	**116**	**45**	**7,712**
Alabama	21	11	8	1	1	152
Alaska	2	1	0	1	0	5
Arizona	15	6	5	3	1	45
Arkansas	41	11	29	1	0	161
California	76	27	37	10	2	267
Colorado	47	22	22	3	0	168
Connecticut	9	1	7	1	0	25
Delaware	9	1	3	2	3	27
District of Columbia	4	2	2	0	0	4
Florida	68	15	45	8	0	265
Georgia	56	19	35	1	1	324
Hawaii	1	0	1	0	0	6
Idaho	1	0	1	0	0	15
Illinois	165	62	94	6	3	655
Indiana	33	7	19	6	1	146
Iowa	48	23	24	1	0	398
Kansas	97	65	29	3	0	361
Kentucky	48	17	30	1	0	217
Louisiana	14	4	8	1	1	137
Maine	6	1	4	0	1	17
Maryland	11	2	8	1	0	70
Massachusetts	12	2	8	2	0	37
Michigan	25	9	15	0	1	157
Minnesota	117	68	46	2	1	461
Mississippi	19	7	10	2	0	94
Missouri	45	22	19	3	1	344
Montana	14	11	3	0	0	77
Nebraska	70	47	22	1	0	258
Nevada	7	1	2	3	1	34
New Hampshire	4	2	1	0	1	14
New Jersey	22	0	14	7	1	78
New Mexico	14	4	7	3	0	50
New York	53	9	37	6	1	132
North Carolina	6	0	4	0	2	68
North Dakota	13	6	5	2	0	100
Ohio	84	33	38	6	7	189
Oklahoma	85	43	40	1	1	270
Oregon	3	1	1	1	0	35
Pennsylvania	75	19	44	9	3	168
Rhode Island	4	2	0	1	1	8
South Carolina	25	9	14	2	0	74
South Dakota	18	7	8	1	2	89
Tennessee	28	6	19	0	3	189
Texas	314	173	130	10	1	649
Utah	7	2	3	0	2	60
Vermont	8	2	6	0	0	14
Virginia	38	7	28	2	1	125
Washington	13	7	6	0	0	77
West Virginia	17	8	8	1	0	67
Wisconsin	42	14	26	1	1	271
Wyoming	15	6	9	0	0	41
U.S. territories	0	0	0	0	0	17

Total assets of national banks by state and asset size
March 31, 2004
(Dollar figures in millions)

		National banks				Memoranda:
	All national banks	Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	All commercial banks
All institutions	**$4,436,042**	**$45,283**	**$273,512**	**$346,243**	**$3,771,004**	**$7,817,696**
Alabama	20,682	775	2,038	1,413	16,456	216,628
Alaska	2,219	68	0	2,151	0	3,428
Arizona	45,477	312	2,642	5,626	36,898	48,917
Arkansas	9,166	600	7,393	1,172	0	36,495
California	100,634	1,515	11,123	29,524	58,473	252,581
Colorado	10,439	1,152	5,389	3,898	0	34,196
Connecticut	5,040	92	1,984	2,963	0	6,749
Delaware	122,769	82	914	6,061	115,712	161,006
District of Columbia	601	177	424	0	0	601
Florida	34,429	1,077	12,188	21,164	0	83,255
Georgia	26,199	1,225	7,138	6,094	11,742	210,454
Hawaii	436	0	436	0	0	24,988
Idaho	293	0	293	0	0	3,803
Illinois	385,572	3,452	24,858	16,264	340,999	543,209
Indiana	65,726	438	7,567	17,792	39,930	97,401
Iowa	9,570	1,360	6,626	1,584	0	44,022
Kansas	17,278	3,578	8,729	4,971	0	41,829
Kentucky	14,737	1,020	5,919	7,798	0	44,389
Louisiana	28,611	246	1,843	7,846	18,675	49,703
Maine	29,190	24	2,319	0	26,847	31,982
Maryland	3,110	85	1,902	1,124	0	34,943
Massachusetts	9,362	107	1,683	7,571	0	144,894
Michigan	49,558	397	3,783	0	45,377	181,593
Minnesota	29,496	3,484	10,357	3,835	11,820	56,796
Mississippi	11,995	421	2,573	9,001	0	40,312
Missouri	28,383	1,290	5,264	9,528	12,300	82,269
Montana	1,339	579	760	0	0	13,340
Nebraska	14,142	2,239	5,431	6,472	0	30,424
Nevada	28,520	47	1,012	8,401	19,060	49,192
New Hampshire	13,013	68	232	0	12,713	16,231
New Jersey	49,149	0	4,215	30,629	14,305	95,843
New Mexico	6,664	227	1,618	4,818	0	12,384
New York	636,547	596	13,470	16,290	606,191	1,649,619
North Carolina	1,056,757	0	1,710	0	1,055,047	1,184,170
North Dakota	10,917	287	1,877	8,754	0	18,395
Ohio	494,984	1,874	12,229	19,762	461,119	599,731
Oklahoma	24,045	2,220	8,959	1,666	11,200	48,345
Oregon	9,499	67	219	9,213	0	20,369
Pennsylvania	140,853	1,255	14,138	21,881	103,579	187,748
Rhode Island	203,251	52	0	7,876	195,323	217,552
South Carolina	8,013	616	3,259	4,138	0	34,494
South Dakota	409,538	238	3,430	5,094	400,777	419,481
Tennessee	88,736	474	7,330	0	80,932	114,886
Texas	76,584	9,041	34,894	22,604	10,045	139,944
Utah	29,414	85	515	0	28,814	147,941
Vermont	1,485	116	1,369	0	0	6,153
Virginia	40,459	356	8,809	7,561	23,733	114,723
Washington	2,002	335	1,668	0	0	26,776
West Virginia	4,468	484	1,768	2,216	0	17,958
Wisconsin	22,652	769	7,458	1,486	12,939	87,585
Wyoming	2,040	278	1,762	0	0	4,849
U.S. territories	0	0	0	0	0	83,119

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