

Special Supervision/Fraud and Enforcement Activities

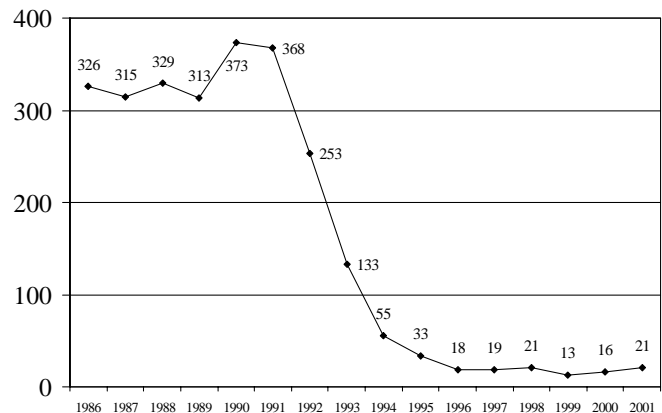
The Special Supervision/Fraud division of the Mid-Size/Community Bank Supervision department supervises the resolution of critical problem banks through rehabilitation or orderly failure management, monitors the supervision of delegated problem banks, coordinates fraud/white collar crime examinations, provides training, disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem bank and fraud/white collar crime related issues. Fraud experts are located throughout the United States representing each of the OCC's district offices, and they also provide support to the OCC's largest supervised banks.

This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by OCC's Special Supervision/Fraud division in Washington. Information on enforcement actions is provided by the Enforcement and Compliance division (E&C) of the law department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

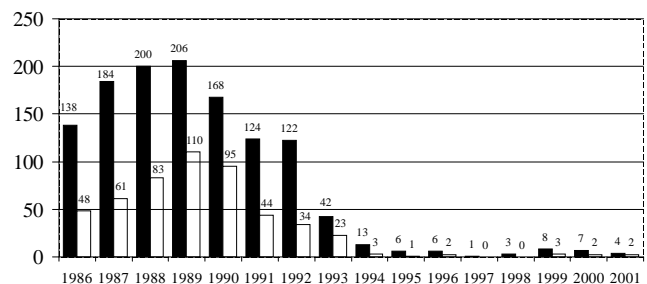
Problem banks represented less than 1 percent of the national bank population as of December 31, 2001. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been stable for several years. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks is 21 at December 31, 2001, up from 16 at June 30, 2001. This low volume of problem banks reflects the stable economy and generally favorable economic conditions enjoyed for the past several years. Two national bank failures occurred during 2001 out of the four commercial bank failures.

Figure 1— Problem national bank historical trend line



Source: Special Supervision. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 2— Bank failures



Source: OCC Supervisory Monitoring System (SMS) data. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

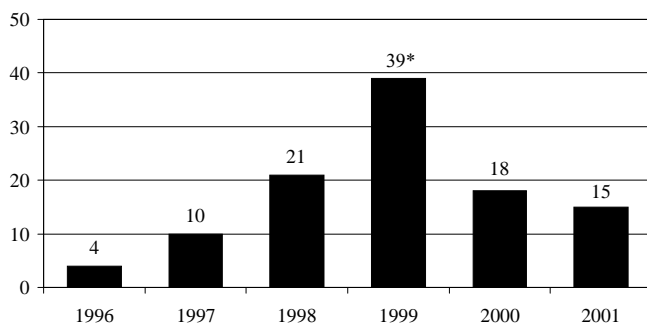
Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies

safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

The OCC takes enforcement actions against national banks, individuals associated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of enforcement actions completed by the OCC against banks in the last several years. (Year-2000 related actions taken in 1999 are noted in parentheses.)

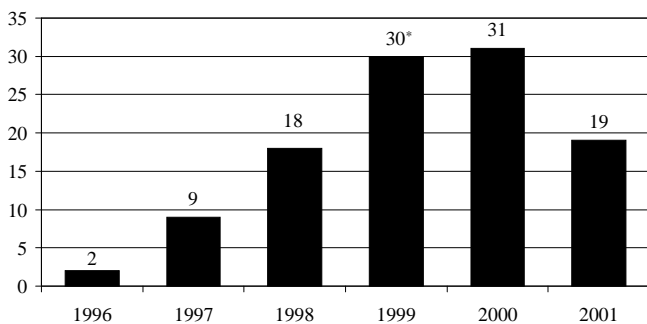
Figure 3— Commitment letters



Source: OCC Supervisory Monitoring System (SMS). Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are for year-2000 problems

Figure 4— Memorandums of understanding



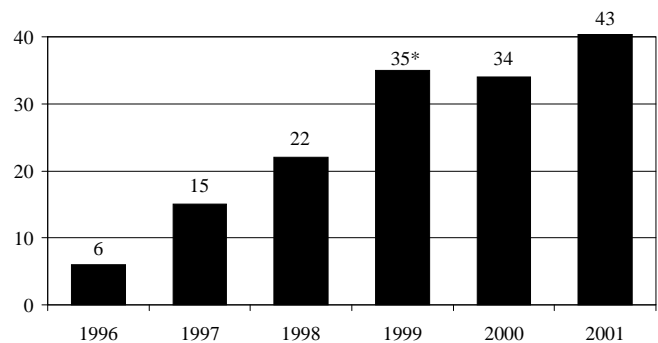
Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are for year-2000 problems

The most common types of formal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements, but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court.

The OCC issued no CMPs against national banks in 2001, but did issue three notices of deficiency, which notified the affected banks that they needed to submit a plan for bringing their operations into compliance with safety and soundness standards. In 2001, the OCC did not issue any safety and soundness orders.

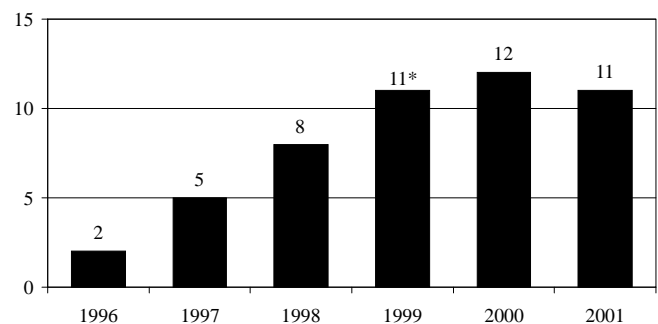
Figure 5— Formal agreements



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*2 of which are for year-2000 problems

Figure 6— Cease-and-desist orders against banks

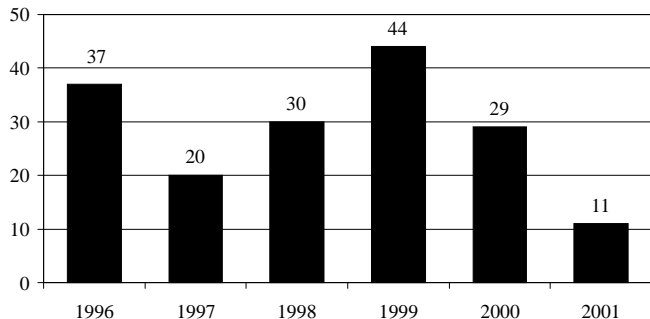


Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*1 of which is for year-2000 problems

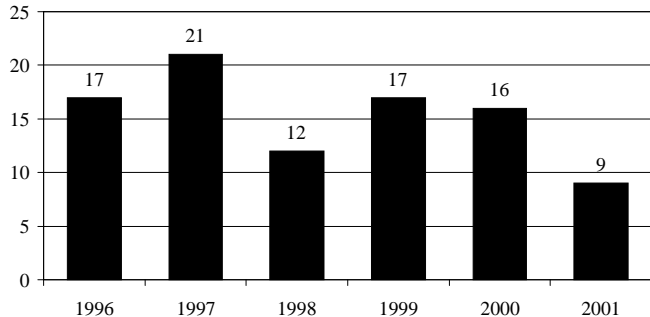
The most common enforcement actions against individuals are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, and under certain circumstances, unsafe or unsound banking practices and breaches of fiduciary duty. Personal C&Ds may be used to restrict individuals' activities and to order payment of restitution. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

Figure 7— Civil money penalties against individuals



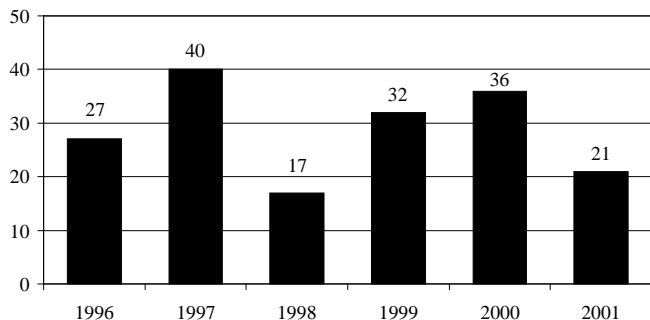
Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 8— Cease-and-desist orders against individuals



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 9— Removal and prohibition orders



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Notable Enforcement Actions and Decisions

In August 2001, the OCC issued a prompt corrective action directive against Sinclair National Bank, Gravette, Arkansas, requiring it to recapitalize and correct numerous unsafe or unsound practices. The bank's capital had been completely eroded by the bank's continued purchase of subprime retail installment loans and its failure to price, monitor, or service these loans in a safe and sound manner. Because the bank did not successfully recapitalize or correct its unsafe or unsound practices, the OCC placed the bank into receivership on September 7, 2001. *In the Matter of Sinclair National Bank.*

In August 2001, the OCC issued a cease-and-desist order, by consent, to Mauriceville National Bank, Mauriceville, Texas. The order required the bank to recapitalize and correct numerous deficiencies in its operations, especially in its policies regarding paying against uncollected funds. *In the Matter of Mauriceville National Bank.*

On August 24, 2001, during an administrative hearing before an administrative law judge (ALJ), in which the OCC sought prohibitions, restitution orders, and civil money penalties against two former senior bank officers, the respondents sought emergency relief before the U.S. Court of Appeals for the Ninth Circuit from the ALJ's order denying a postponement of the hearing scheduled to recommence on August 27, 2001. E&C filed a responsive brief immediately and on Monday, August 27th, the 9th Circuit denied the emergency motion and the administrative hearing recommenced. The OCC alleges that the respondents caused the bank to violate the legal lending limit and engaging in unsafe and unsound lending practices. The matter was still pending at year-end. *In the Matter of Gene Ulrich and Susan Diehl-McCarthy, Six Rivers National Bank, Eureka, California.*

In September 2001, the OCC successfully defended two of its investigative subpoenas for access to financial records of two national bank directors as part of the OCC's investigation into their actions. The directors owned and ran Sinclair National Bank, Gravette, Arkansas (failed) until the bank was placed into receivership on September 7, 2001. The OCC issued subpoenas for the bank account records of the directors at the unaffiliated bank where the directors had accounts. Under the Right to Financial Privacy Act, the directors brought separate actions to quash the subpoenas in the U.S. District Court for the Western District of Missouri, claiming that the OCC's investigation was improper, illegal, and retaliatory. Upon OCC motion, the court consolidated their cases and filed its brief for enforcement of the subpoenas in camera. The court denied the directors' motions to quash, and

ordered the subpoenas enforced, "for the reasons set forth in the OCC's [brief]." *Damian and Susan Sinclair v. United States Department of the Treasury*, 01-MC-9020, 01-MC-9021 (W.D. Mo., Sep. 11, 2001).

In September 2001, the former president of a national bank in Mississippi consented to the OCC's issuance of a restitution order for over \$880,000 and a civil money penalty of \$150,000 payable over two years. The restitution amount includes \$550,000 in a guaranty against loss. In December 2001, the OCC also issued, by consent, a prohibition order against another employee at the same bank. The employee: (1) assisted the former president in (a) improper origination of questionable and poorly underwritten loans made by the bank to nominee borrowers in which the proceeds were paid directly or indirectly for the improper benefit of the bank's former president, (b) obstructing OCC examinations, and (c) preparing and issuing at least 10 unauthorized and undocumented letters of credit on behalf of the bank's largest criticized borrowers; (2) breached her fiduciary duty to the bank by working for two bank customer companies (at the former president's direction) by maintaining their books and records, and performing her duties of outside employment at the bank during bank business hours; (3) received the benefit of the proceeds of approximately \$50,576.60 in checks made payable to both actual and fictitious business entities that she presented to the bank for payment; and (4) diverted bank funds to establish, fund, and exercise control over a joint savings account at another Bank. *In the matter of John H. O'Neal Jr. and Kelly Y. Ashley, First National Bank of Lucedale, Lucedale, Mississippi.*

In November 2001, the OCC issued a prohibition order and assessed a civil money penalty of \$2,500 by consent in the case of a former executive vice president of a national bank in New Mexico. Beginning in April 1999, the former banker began taking kickbacks from a repossession and collections agent whom the bank had hired to do collections work. The payments totaled approximately \$6,000 to \$8,000 and were uncovered in December 1999. When confronted about the matter, the bank executive resigned, and made full restitution. *In the Matter of Ronald R. Firestone, Carlsbad National Bank, Carlsbad, New Mexico.*

In November 2001, the OCC assessed a \$10,000 civil money penalty against the former director and CEO of a national bank in Oklahoma. The former CEO violated insider rules involving overdrafts on his personal account and on the account of another director. In response to the OCC's Notice of Assessment, the former CEO failed to file an answer and E&C successfully sought a default judgment from both the administrative law judge and the Comptroller. *In the Matter of Gary W. Flanders, MetroBank, N.A., Oklahoma City, Oklahoma.*

In November 2001, the OCC issued an immediately effective Prompt Corrective Action Directive against NextBank, Phoenix, AZ. OCC examination of this Internet credit card bank revealed numerous unsafe or unsound practices, including poor quality credits, questionable accounting practices, data integrity issues, poor management information systems, and a securitization that appears to offer its investors recourse to the bank, making it likely that the entire securitization would be returned to the bank, adversely affecting the bank's already weakening capital position. The bank was given 45 days to come up with an acceptable capital restoration plan to avoid being placed into receivership and the matter was still pending at year-end. *In the Matter of NextBank, Phoenix, AZ.*

In November 2001, the OCC entered into a Formal Agreement with Providian National Bank, Tilton, New Hampshire, a monoline credit card bank that was experiencing substantial asset deterioration. In addition to the Formal Agreement, the bank also executed a Capital and Liquidity Maintenance Agreement to be executed by the bank. The terms of the formal agreement require, among other things, that the bank submit a Capital Plan and to immediately restrict the Bank's growth in certain credit card products. *In the Matter of Providian National Bank, Tilton, New Hampshire.*

In November and December 2001, the E&C and the former president and compliance officer of a national bank in Missouri filed briefs in the individual's claim against the OCC for legal fees and expenses of approximately \$67,000 under the Equal Access to Justice Act ("EAJA"). This claim stems from the Notice of Assessment of a \$2,000 civil money penalty filed against the individual for his participation in the bank's violation of 12 CFR 21.21. The civil money penalty assessment was dismissed following the issuance of a Letter of Reprimand. As of year-end, the parties were still awaiting the recommended decision from the administrative law judge. *In the Matter of Dale E. Washburn, Equal Access to Justice Applicant.*

In December 2001, the OCC entered into a Formal Agreement with First Community Bank, N.A., Alice, Texas. The Formal Agreement addressed deficiencies in the bank's capital levels, credit risk levels, credit concentrations, asset quality, levels of credit and collateral exceptions, and its methodology for calculating its allowance for loan and lease losses. The Formal Agreement also required the bank to develop and implement a profit plan. *In the Matter of First Community Bank, N.A., Alice, Texas.*

In December 2001, the OCC issued a prohibition order, by consent, against a former senior loan officer of a national bank in Ohio. The loan officer made numerous leases on behalf of the bank through a lease broker. Many of these leases were based on nonexistent collateral and

fictitious businesses. The loan officer, who claimed he had no knowledge of the fraud, failed to perform any due diligence and admits that he received approximately \$20,000 in "gifts." *In the Matter of Darren A. Lossia, Fifth Third Bank of Northwestern Ohio.*

In December 2001, the OCC issued a cease-and-desist order, by consent, against the First National Bank of Marin, N.A., Henderson, Nevada. The OCC alleged that the bank engaged in deceptive practices, in violation of the Federal Trade Commission Act, in its marketing of credit cards and associated fees to subprime customers. The credit card solicitations gave an overall net impression that consumers would receive a secured credit card that would have a useable amount of credit when received by the consumer, when in fact consumers that received the Bank's lowest credit line (typically \$250)—representing a majority of consumers during the time period covered by the OCC's order—were left with little or no available credit. The cease-and-desist order required the bank, among other things, to address these practices and to make appropriate restitution payments to harmed consumers, including the establishment of an initial reserve of \$4 million for that purpose. *In the Matter of First National Bank of Marin, N.A., Henderson, Nevada.*

In December 2001, the OCC issued an amended cease-and-desist order by consent against the First National

Bank of Sumner, Sumner, Illinois. The amended order, which replaced an earlier order executed in May 2001, requires, among other things, that the bank: (i) ensure that it has proper management in place; (ii) achieve and maintain Tier 1 capital at least equal to 12.5 percent of risk-weighted assets, and 11 percent of adjusted total assets; (iii) develop an acceptable three-year capital plan, or, alternatively, sell, merge, or liquidate itself; (iv) stop lending on ocean-going vessels, or to vehicle rental dealerships; and (v) hire third parties to review the collector car portfolio, to develop workout plans for the vessel loans, and to manage the bank's auto lending program. *In the Matter of First National Bank of Sumner, Sumner, Illinois.*

In December 2001, the OCC issued a cease-and-desist order, by consent, against Eagle National Bank, Upper Darby, Pennsylvania. The order required the bank to stop making short-term consumer loans, known in the industry as "payday loans." In addition, the order required a series of other corrective action to ensure the safe and sound operation of the bank. The need for the order grew out of the bank's aggressive growth in payday loans and its failure to comply with an earlier informal enforcement action. The bank also affiliated with a third-party vendor who essentially used the bank's federal banking powers to evade state laws that would otherwise have applied directly to the vendor. *In the Matter of Eagle National Bank, Upper Darby, Pennsylvania.*