

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 nondelegated 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 and the FDIC's Department of Resolutions 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.

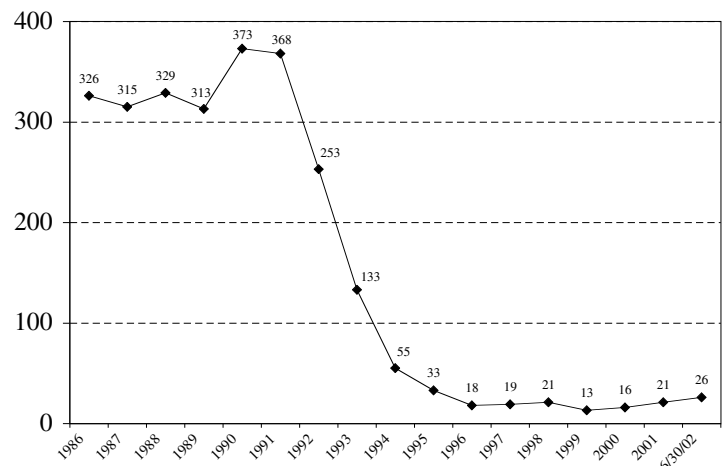
Problem National Banks and National Bank Failures

Problem banks represented approximately 1 percent of the national bank population as of June 30, 2002. The volume of problem banks, those with a CAMELS rating of 4 or 5, is now increasing. 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 4 and 5 rated banks is 26, up from 21 at December 31, 2001 and 16 at June 30, 2001. Levels haven't been this high since 1995. Additionally, the volume of banks rated 3 is also increasing. These banks total 105 at June 30, 2002 compared to 92 at year-end 2001. This increasing volume of problem banks reflects current economic conditions. Three national bank failures occurred during the first half of 2002 out of a total of eight commercial bank failures.

Enforcement Actions

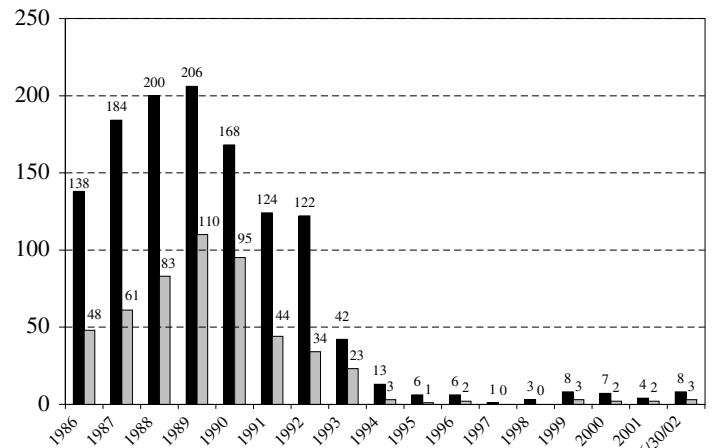
The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these

Figure 1—Problem national bank historical trend line



Source: Special Supervision

Figure 2—Total bank failures compared to OCC failures



Source: FDIC Department of Resolution

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.

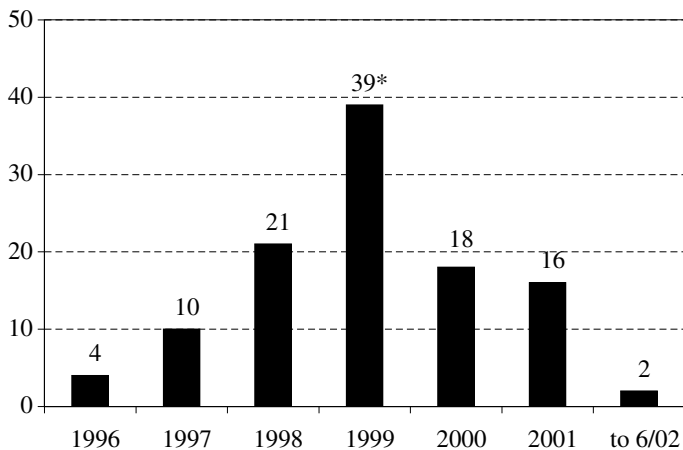
The OCC takes enforcement actions against national banks, individuals affiliated with national banks, and agents and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of 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 comply with 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 national banks in the last several years. Year-2000 (Y2K) related actions taken in 1999 are noted in parentheses.

The most common types of formal enforcement actions issued by the OCC against national 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 may also initiate the safety and soundness order process under 12 CFR 30, which begins when the OCC issues a notice of deficiency. The notice of deficiency notifies the affected bank that it needs to submit a plan for bringing its operations into compliance with safety and soundness standards. The OCC issued no CMPs against national banks from January 1, 2002, to June 30, 2002, nor issued any notices of deficiency.

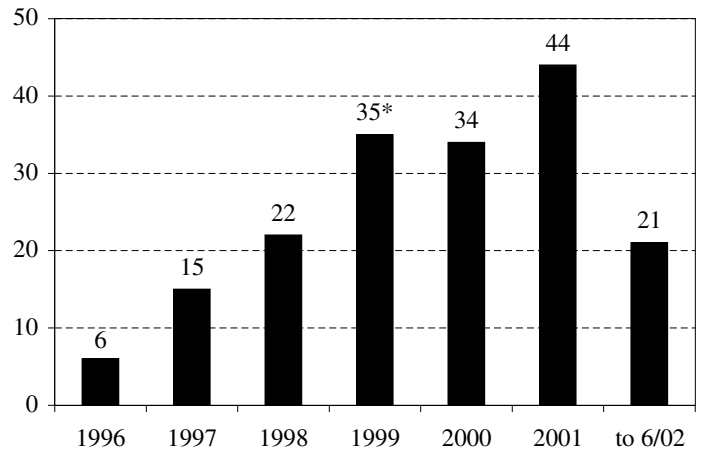
Figure 3—Commitment letters



Source: OCC Supervisory Monitoring System (SMS) and Examiner View (EV). 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

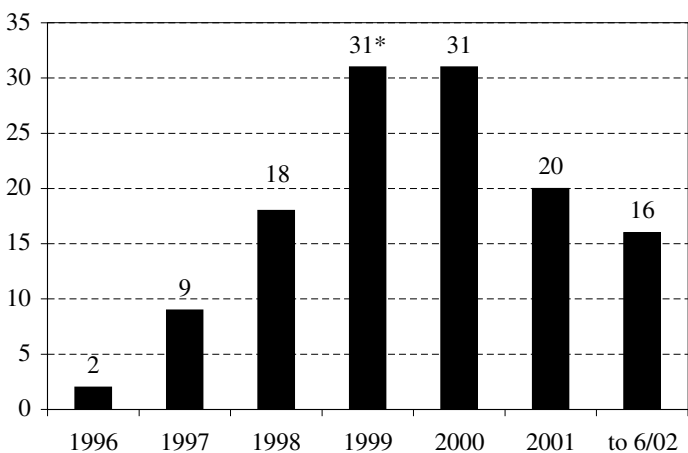
Figure 5—Formal agreements



Source: SMS & EV. 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

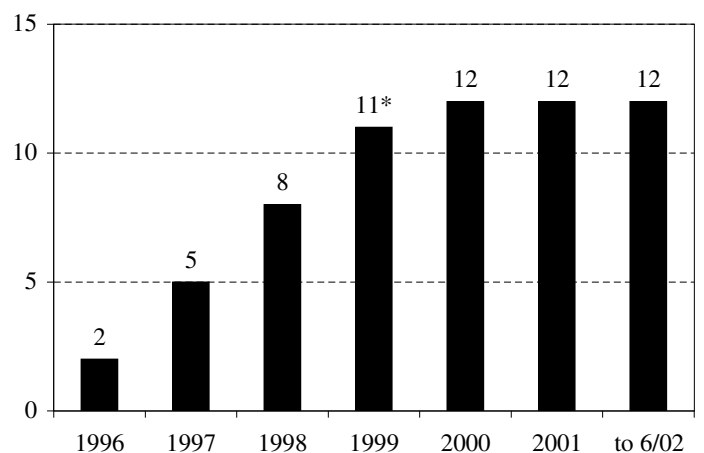
Figure 4—Memorandums of understanding



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

*6 of which are for year-2000 problem

Figure 6—Cease-and-desist orders against banks



Source: SMS & EV. 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 civil money penalties (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.

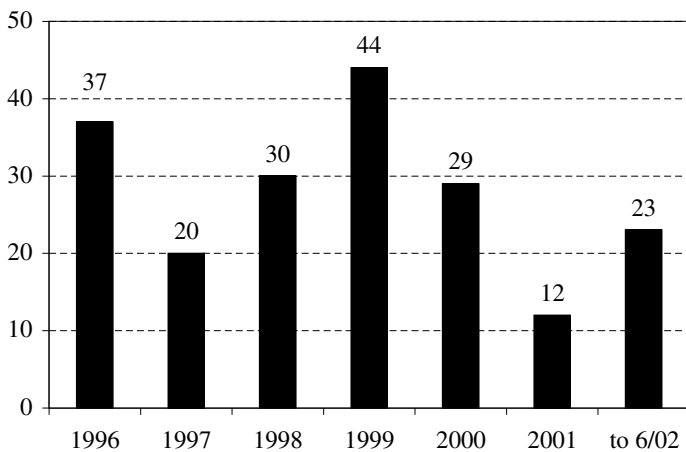
Recent Enforcement Cases

In January 2002, the OCC assessed a civil money penalty of \$10 million against one of the federal branches of the

Bank of China located in New York City. At the same time, the bank also consented to pay another \$10 million penalty to its home-country regulator, the People's Bank of China, which cooperated with the OCC in the investigation. After a lengthy investigation, the OCC uncovered a series of questionable transactions at the branch, extending back several years. The transactions resulted in significant losses to the New York branch and included several that showed preferential treatment to certain customers of the New York branch who had personal relationships with some members of the New York branch's prior management. In addition to the penalty, the OCC also issued a consent order to the bank, which covered the New York branch where the transactions occurred, the bank's other branch in New York, and its branch in Los Angeles. The consent order required numerous remedial measures and imposed restrictions to prevent recurrence of these actions. The bank's current management, which has cooperated with the investigation, has also removed officers suspected of misconduct, uncovered and reported acts of misconduct to the two regulatory agencies, and required the U.S. branches to implement several action plans over the past 18 months to correct actions of prior management.

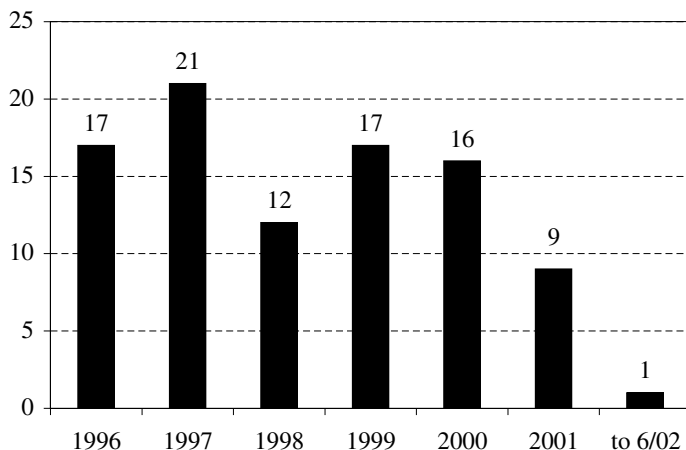
In January 2002, the OCC issued supervisory letters and letters of reprimand to several officers and directors of a national bank in Florida. The bank, which was placed into receivership in the same month, had failed to comply with several provisions of a cease and desist order that the OCC had issued in September 2000. The directors were charged with causing the bank to violate the order and to file materially inaccurate Reports of Condition, in violation of 12 USC 161.

Figure 7—Civil money penalties against individuals



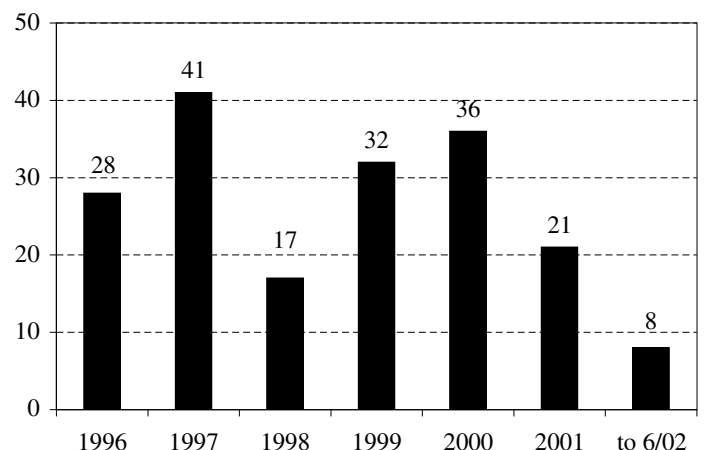
Source: SMS & EV. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates

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.

In January 2002, the OCC issued a prohibition order with the consent of the former senior loan officer of a national bank in California. The loan officer improperly released the guarantee supporting a bank loan within a day or two of when the loan was originated. He then falsely reported to the bank and to the OCC that the guarantee was still in place. The bank did not discover his actions until it after had advanced additional funds to the borrower. The bank lost approximately \$3 million on the loan.

In February 2002, the OCC issued a prohibition order and assessed a \$4,000 civil money penalty with the consent of a former senior portfolio manager at a national bank in Utah. The portfolio manager purchased unsuitably risky and volatile securities for several asset management accounts, cross-sold some of these securities between accounts to hide losses, and misstated the value of the securities on the bank's pricing sheet and on monthly statements to clients. The bank ultimately reimbursed various harmed investors for approximately \$650,000 in resulting losses.

In February 2002, the OCC issued a prohibition and restitution order to the former president of a national bank in Texas. The former president, who consented to the order, agreed to pay \$100,000 in restitution. The former president caused the bank to violate its legal lending limit under 12 USC 84, violated 12 CFR 32, and made and concealed several nominee loans and overdrafts that contributed to the bank's failure.

In February 2002, the OCC received a favorable decision from the administrative law judge (ALJ) who presided over a challenge to a now-dismissed OCC enforcement action. The challenge, brought under the Equal Access to Justice Act (EAJA), alleged that the OCC lacked a good-faith basis for the civil money penalty action it brought last year against the former president and compliance officer of a national bank in Missouri. Subsequent to commencing the action, the OCC dropped the case on the motion of OCC Enforcement counsel. The administrative law judge hearing the EAJA challenge held that the OCC was substantially justified in issuing the Notice of Assessment of a Civil Money Penalty and, therefore, the plaintiff was not entitled to relief under the EAJA. The ALJ's recommended decision was adopted by the Comptroller and the plaintiff has appealed the Comptroller's decision to the DC Circuit Court. The appellate court has yet not ruled on the appeal.

In March 2002, the OCC issued a prohibition order and assessed a civil money penalty of \$100,000 with the consent of a former senior vice president and loan officer of a national bank in Louisiana. While at the bank, the

officer originated at least three fictitious loans, and then used the proceeds of the loans for his personal benefit.

In March 2002, the OCC assessed civil money penalties against two former officers of an operating subsidiary of a national bank in California. The former officers consented to pay the penalties, \$10,000 and \$3,000, respectively, for their role in causing the subsidiary to employ one of the officers, despite his prior felony conviction.

In April 2002, the OCC entered into a formal agreement with a national bank in Arizona in connection with its credit card lending program. The bank suffered from numerous unsafe or unsound practices in its risk management and underwriting policies, as well as its management information systems and accounting.

In May 2002, the OCC entered into a cease-and-desist order with a CEBA credit card bank. The order included provisions that require the bank to correct its record-keeping and affiliate transaction deficiencies and to go out of business by December 31, 2002. In addition, the bank's ultimate parent established a \$120 million escrow account for the defeasance of the bank's deposits and a \$78 million letter of credit to cover the risk associated with the funding of credit card receivables for the bank's merchant parent. The merchant affiliates also agreed to amend their contracts to ensure that the bank did not fund the credit card remittances until and unless it received payment from the merchant affiliates. The consent order also required the bank to establish a \$15 million liquidity reserve deposit.

Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement Program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks, but who are not being criminally prosecuted, are prohibited from working in the banking industry. As part of the Fast Track Enforcement Program, E&C secured four consent prohibition orders against institution-affiliated parties in the first half of 2002. Some of these orders also incorporated restitution payments to the appropriate banks for losses incurred. In addition, E&C sent out ten notifications to former bank employees who were convicted of crimes that federal law prohibits them from working again in a federally insured depository institution.

As a typical example of a Fast Track case, the OCC issued a prohibition order in April 2002 against a former branch manager of a national bank in New Jersey. The branch manager defrauded the bank and agreed to the OCC's prohibition order, which was handled through the OCC's Fast Track program.