Comptroller of the Currency
Administrator of National Banks

Quarterly Journal

NO. 2
VOLUME TWENTY

Office of the Comptroller of the Currency
June 2001

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 six 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 United States Senate for a five-year term starting on October 13, 1999. Prior to his appointment Mr. Hawke served for 3½ years as Under Secretary of the Treasury for Domestic Finance. He oversaw development of policy and legislation on financial institutions, debt management, and capital markets; served as chairman of the Advanced Counterfeit Deterrence Steering Committee; and was a member of the board of the Securities Investor Protection Corporation. Before joining Treasury, he was a senior partner at the Washington, D.C. law firm of Arnold & Porter, which he joined as an associate in 1962. In 1975 he left to serve as general counsel to the Board of Governors of the Federal Reserve System, returning in 1978. At Arnold & Porter he headed the financial institutions practice. From 1987 to 1995 he was chairman of the firm.

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

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

The *Quarterly Journal* is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and congressional testimony, material released in the interpretive letters series, statistical data, and other information of interest to the administration of national banks. Send suggestions or questions to Rebecca Miller, Senior Writer-Editor, Communications Division, Comptroller of the Currency, Washington, DC 20219. Subscriptions are available for $100 a year by writing to Publications—QJ, Comptroller of the Currency, P.O. Box 70004, Chicago, IL 60673–0004. The *Quarterly Journal* is on the Web at http://www.occ.treas.gov/qj/qj.htm.

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Office of the Comptroller of the Currency

John D. Hawke Jr.

Comptroller of the Currency

The Administrator of National Banks

Volume 20, Number 2
June 2001

Contents

Condition and Performance of Commercial Banks

Summary of Condition and Performance

The banking industry had record net profits of $19.8 billion in the first quarter of 2001, surpassing the previous high set in the first quarter of last year, as shown in Table 1. Return on equity was below year ago levels but improved compared to the fourth quarter 2000 and remained quite robust by historical standards. However, much of the gain came from sources that are unlikely to be recurring. In core areas the earnings environment has deteriorated. Growth in net interest income was weak and more than offset by increases in provisioning as asset quality slipped. In addition, the pace of expansion in noninterest income, which had been a primary factor in improving bank earnings in the late 1990s, slowed sharply. Despite these negative trends, the overall banking system has benefited from several years of exceptionally vigorous performance and remains quite strong, with 98 percent of banks well capitalized.

There was a noticeable distinction in performance among banks by size. Smaller institutions generally experienced a sharper decline in return on equity than their larger competitors. For example, national banks with less than $100 million in assets on average saw a 300 basis points decline in return on equity over the year. In another indication of the squeeze on smaller banks, less than half of commercial banks below $100 in asset size experienced an increase in net income compared to the first quarter 2000. Banks in all other size classes on average reported gains.

Table 1—Summary of quarterly data for commercial and national banks, 2000 and 2001

All commercial banks		
(Quarterly data)	*1st quarter 2000*	*1st quarter 2001*
Net Income	$19.5 billion	$19.8 billion
ROA	1.35%	1.27%
ROE	16.05%	14.78%
Noncurrent C&I loans ratio	1.28%	1.82%
Equity capital to assets	8.41%	8.66%
Banks well capitalized	97.6%	97.7%
All national banks		
(Quarterly data)	*1st quarter 2000*	*1st quarter 2001*
Net Income	$11.5 billion	$11.4 billion
ROA	1.41%	1.33%
ROE	16.55%	15.16%
Noncurrent C&I loans ratio	1.23%	1.88%
Equity capital to assets	8.52%	8.90%
Banks well capitalized	98.1%	98.2%

Banking industry assets grew by about 8 percent in the last year even as the industry continued to consolidate. The total number of FDIC-insured commercial banks dropped by 279, to 8,237. There was a decline of 126 in the number of national banks, to 2,201, in the year.

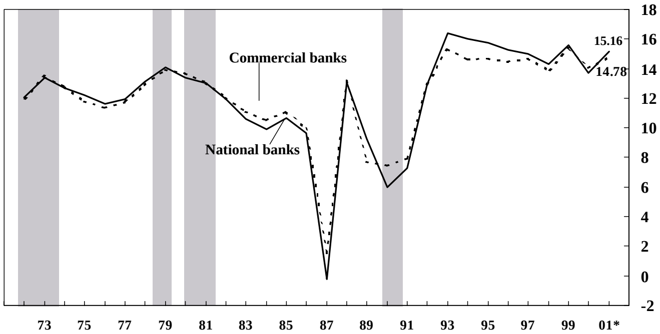
Key Trends

One of the principal factors behind the rise in earnings in the first quarter was nonrecurring gains from the sale of securities. Securities are a significant balance sheet component, accounting for approximately 16.6 percent of assets at commercial banks and 14.4 percent at national banks. Realized gains or losses from a relatively small portion of these assets can have a significant impact on earnings. Historically, such gains have tended to move closely with fluctuations in interest rates and, as a result, they cannot be relied on to supply continued expansion in earnings. For example, in calendar year 2000, when interest rates were generally rising, commercial banks realized losses of $2.5 billion on securities. In the first quarter of this year with interest rates declining, banks earned $1.2

billion from such sales. Without such gains, return on equity would have been 85 basis points lower for commercial banks and 65 basis points lower for national banks. As interest rates have moved down further since the end of the first quarter, banks may continue to enjoy gains in this area in the near term.

Figure 1—Return on equity (ROE) boosted by securities gains

Commercial and national bank ROE | Percent

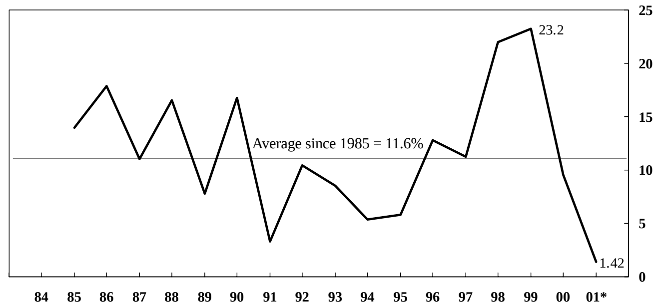


*2001 data as of March 31, 2001. All other data as of year-end. Shaded areas represent periods of recession.
Source: Integrated Banking Information System

In contrast, core earnings were under pressure in the past quarter. Rapid growth in non-interest income has been a key element in the strong earnings that banks have enjoyed in recent years. Since 1984, banks have recorded an average annual expansion of over 11 percent in this category. This area was even more impressive in the late 1990s, recording growth of over 20 percent year over year at national banks in the first quarters of both 1998 and 1999. However, recently growth has dropped off sharply. For example, in the first quarter of 2001 the year over year increase in non-interest income was a scant 1.4 percent. While all the factors behind the falloff are not yet clear, the general slowing of the economy has been an important contributing factor. Therefore it seems unlikely that there will be a substantial rebound in this category until the economy begins to grow more strongly.

Figure 2—Noninterest income growth well below 15-year average

National banks | Percent

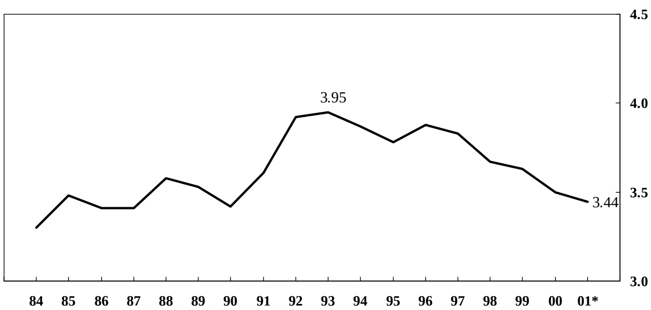


* 2001 data as of March 31, 2001. Year-to-year growth rate for the first quarter of each year.
Source: Integrated Banking Information System

The net interest margin has continued to decline. The 3.45 percent margin for national banks in the first quarter represents a 10-year low and is more than 50 basis points below 1993 levels. Major macro-economic trends appear to play an important part in this trend. A key function for banks is to intermediate between depositors and borrowers; the former are willing to supply funds for relatively short periods of time, and the latter are interested in securing financing for longer terms. As the general market spread between long and short rates has narrowed in recent years, reflecting a lessening of concern about inflation and a corresponding reduction in the premium for longer dated risk, this has had a direct impact on net interest margin. Another important element contributing to the trend has been the heightened competition for funds, which has forced banks to increase their reliance on more expensive sources. Core deposits, which generally provide the cheapest source of financing to banks, covered only 46.6 percent of assets in the first quarter compared to 46.7 percent a year ago and almost 80 percent at year-end 1991.

Figure 3—Net interest margin declines to 10-year low

National banks Percent

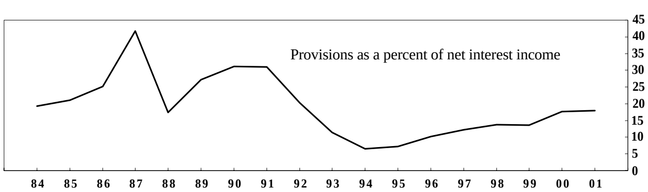


* 2001 data as of March 31, 2001.
Source: Integrated Banking Information System

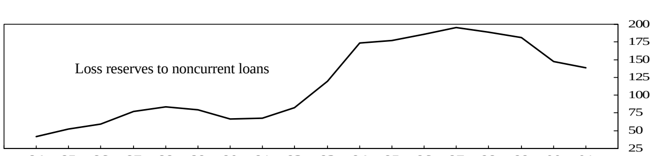
A deterioration in asset quality has also become a drain on earnings through higher loan loss provisioning to maintain or enhance reserves. Almost 18 percent of net interest income was offset by loan loss provisions by national banks in the first quarter. This is comparable to the level in 1992, when the United States was coming out of the last economic recession, although it remains well below the 30 percent reached in 1990 and 1991. Despite the pickup in provisioning, noncurrent loans have continued to rise more rapidly. The loss reserves to noncurrent loans ratio declined to its lowest level since 1993. As asset quality continues to deteriorate, we expect to see an increase in provisioning by banks to replenish loan loss reserves, which have declined relative to noncurrent and total loans.

Figure 4—Loan loss provisioning absorbs more of net interest income

National banks Percent



Loss reserves lowest since 1993



Data are for the first quarter of each year.
Source: Integrated Banking Information System

The deterioration in credit quality has predominantly shown up in the commercial and industrial loan category. Noncurrent commercial and industrial (C&I) loans have risen by 22 basis points since the fourth quarter. This continues to be a more significant issue for large national banks but in the first quarter there were signs that it has begun to spread to smaller banks. Noncurrent credit card loans also increased in the first quarter. So far asset quality in real estate lending has held up fairly well, although there is some slippage in construction loans. The concentration of the problem in business lending tracks developments in the overall economy with corporate profits declining and bond default rates moving up.

Table 2—Commercial and industrial (C&I), credit card, and construction loans show deterioration

Percent noncurrent in each category—national banks

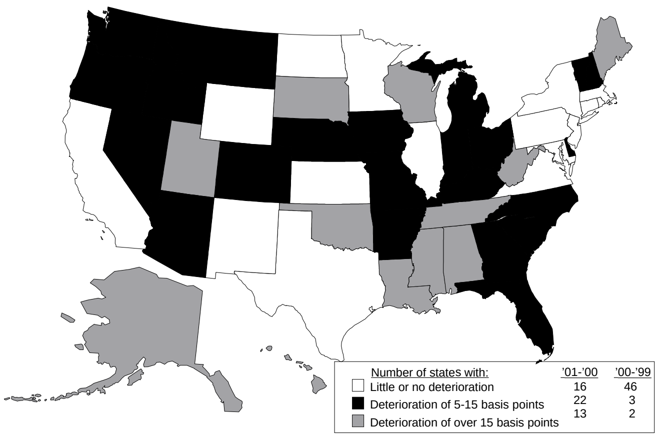
Loan category	1999	2000	2001:Q1
Total noncurrent loans	0.98	1.22	1.31
C&I loans*	1.11	1.66	1.88
Banks under $1 B	1.19	1.20	1.27
Banks over $1 B	1.08	1.68	1.91
Credit card loans	2.00	1.89	2.15
Construction RE loans	0.63	0.82	0.90

* Includes "All other loans" for banks under $1 billion in assets.
Source: Integrated Banking Information System.

The slippage in credit quality is also relatively widespread with small banks in 35 states reporting increases of 5 basis points or more in noncurrent loans in the last year. In contrast, in the first quarter of 2000, banks in only five states reported comparable deterioration.

Figure 5—Shift from economic boom to slowdown leads to deterioration in loan quality

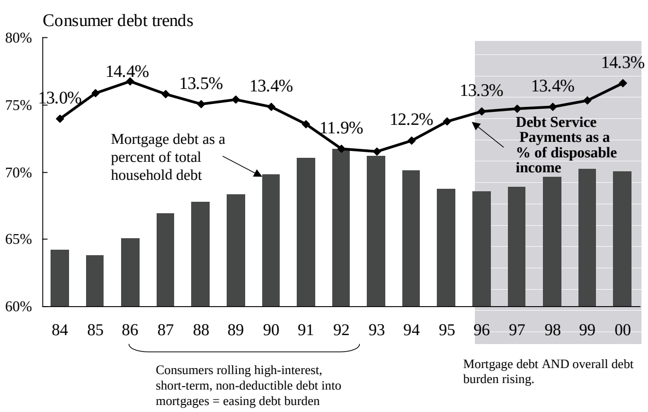
Increase in noncurrent loans ratio at small banks, 2000 Q1 to 2001 Q1



Source: Integrated Banking Information System

Although the credit quality of loans to individuals has generally not shown signs of stress comparable to that for business lending, pressure is also increasing on the consumer. Debt servicing levels have risen and now account for a relatively high 14.3 percent of disposable income. Mortgage refinancing is providing an opportunity for homeowners to take advantage of lower long-term rates and correspondingly mortgage debt has been rising. However, unlike the 1986-1992 period, when consumers were using the proceeds to reduce other shorter term obligations, debt servicing is continuing to increase.

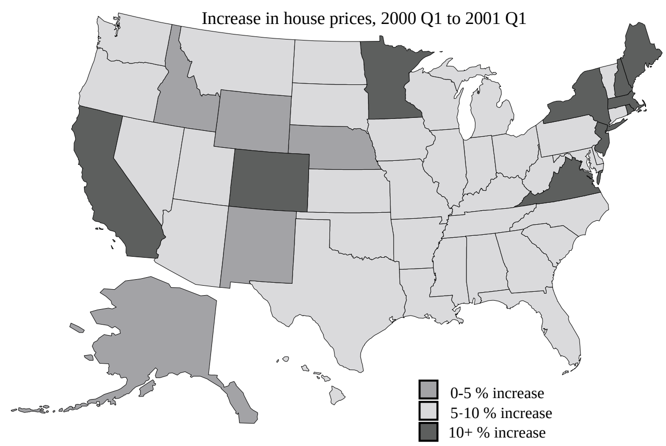
Figure 6—Consumer is also under pressure



Source: Haver Analytics/from Federal Reserve, "Flow of Funds" data.

So far, as noted above, despite the slower economy, appreciation in home values has continued to be robust and widespread. This has been an important offset to weakening equity markets and, together with lower mortgage rates, has increased consumers' financial flexibility. It has also provided an important psychological boost.

Figure 7—So far, housing appreciation has provided a cushion



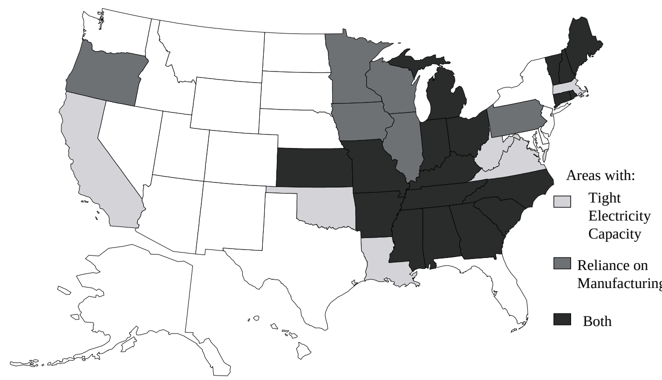
Source: Office of Federal Housing Enterprise Oversight

However, gains in housing prices may not be sustained. In the past, they have faded when the economy slowed. In the first half of 1990s, for example, home appreciation was subdued and it took several years of strong economic growth before housing prices picked up substantially. If the general economic malaise does spill over into this sector, it is likely to be especially significant for construction loans, the most rapidly growing area of real estate lending.

Figure 8—But housing price gains tend to fade quickly as economy weakens

Sources: Department of Commerce and Office of Federal Housing Enterprise Oversight

Figure 9—Some states vulnerable to combination of negatives



Note: Northwest TX, northwest FL, western PA, western half of MO also have tight electricity capacity.
Sources: Haver Analytics/Bureau of Labor Statistics and North American Electric Reliability Council (NERC)

Manufacturing has been hardest hit in the current slowdown and employment in the sector has been pared back. As a result, regions that are heavily dependent on manufacturing are experiencing the downturn more severely. This is particularly the case in Midwest, the Southeast and the central part of the country.

In addition, there are concerns about the potential impact of energy shortages this summer in certain states. While California has gotten the most press, there are several other areas where spare electricity capacity is below 15 percent. Manufacturing is a heavy consumer of electricity and areas in the central part of the country look particularly vulnerable, having both a dependence on manufacturing industries and tight electricity supplies.

Conclusion

Although banks reported strong first quarter results, these were primarily supported by nonrecurring income and the squeeze to core earnings is likely to continue through this year. Banks have begun to recognize the deterioration in their loan book by increased provisioning. With the overall U.S. economy remaining weak, it is likely that further additions to reserves will be needed in future quarters. Moreover, much of the steam has come out of growth in noninterest income, which was a key element in the recent string of record performances. If interest rates continue to soften, gains on securities sales may offset some of the weakness in other areas. However, continued growth in bank earnings is dependent on an economic rebound in the second half of the year.

Key indicators, FDIC-insured national banks
Annual 1997–2000, year-to-date through March 31, 2001, first quarter 2000, and first quarter 2001
(Dollar figures in millions)

	1997	1998	1999	2000	Preliminary 2001YTD	2000Q1	Preliminary 2001Q1
Number of institutions reporting	2,597	2,456	2,364	2,230	2,201	2,327	2,201
Total employees (FTEs)	912,463	974,871	983,186	948,648	966,748	963,540	966,748
Selected income data ($)							
Net income	$35,782	$37,607	$42,590	$38,973	$11,434	$11,536	$11,434
Net interest income	106,639	110,985	114,534	115,905	29,745	29,119	29,745
Provision for loan losses	13,065	15,242	15,548	20,536	5,321	4,114	5,321
Noninterest income	65,429	81,344	92,672	96,187	25,053	24,703	25,053
Noninterest expense	104,682	122,606	125,812	128,539	32,164	31,088	32,164
Net operating income	34,993	35,548	42,415	40,222	11,393	11,978	11,393
Cash dividends declared	28,587	25,414	29,870	32,325	7,042	6,723	7,042
Net charge-offs to loan and lease reserve	12,661	14,492	14,176	17,231	4,797	3,639	4,797
Selected condition data ($)							
Total assets	2,893,910	3,183,384	3,271,262	3,414,469	3,440,218	3,301,903	3,440,218
Total loans and leases	1,840,485	2,015,585	2,127,880	2,227,081	2,251,533	2,141,396	2,251,533
Reserve for losses	34,865	36,810	37,687	40,007	40,641	37,989	40,641
Securities	452,118	516,117	537,185	502,296	487,081	533,927	487,081
Other real estate owned	2,112	1,833	1,572	1,553	1,639	1,533	1,639
Noncurrent loans and leases	17,878	19,513	20,814	27,163	29,403	21,703	29,403
Total deposits	2,004,867	2,137,946	2,154,276	2,250,464	2,262,226	2,166,617	2,262,226
Domestic deposits	1,685,316	1,785,856	1,776,129	1,827,126	1,871,693	1,785,434	1,871,693
Equity capital	244,794	274,192	278,013	293,859	306,175	281,214	306,175
Off-balance-sheet derivatives	8,704,481	10,953,514	12,077,568	15,502,911	16,521,375	13,134,168	16,521,375
Performance ratios (annualized %)							
Return on equity	15.00	14.29	15.57	13.71	15.16	16.55	15.16
Return on assets	1.29	1.24	1.35	1.18	1.33	1.41	1.33
Net interest income to assets	3.83	3.67	3.63	3.50	3.45	3.55	3.45
Loss provision to assets	0.47	0.50	0.49	0.62	0.62	0.50	0.62
Net operating income to assets	1.26	1.18	1.35	1.22	1.32	1.46	1.32
Noninterest income to assets	2.35	2.69	2.94	2.91	2.91	3.01	2.91
Noninterest expense to assets	3.76	4.05	3.99	3.88	3.73	3.79	3.73
Loss provision to loans and leases	0.73	0.79	0.76	0.95	0.95	0.77	0.95
Net charge-offs to loans and leases	0.71	0.75	0.70	0.80	0.85	0.68	0.85
Loss provision to net charge-offs	103.19	105.12	109.68	119.18	110.93	113.06	110.93
Performance ratios (%)							
Percent of institutions unprofitable	4.89	5.94	7.06	6.82	6.36	5.72	6.36
Percent of institutions with earnings gains	67.96	61.60	62.18	66.91	54.79	65.02	54.34
Nonint. income to net operating revenue	38.02	42.29	44.72	45.35	45.72	45.90	45.72
Nonint. expense to net operating revenue	60.84	63.75	60.72	60.61	58.70	57.76	58.70
Condition ratios (%)							
Nonperforming assets to assets	0.70	0.68	0.70	0.86	0.91	0.71	0.91
Noncurrent loans to loans	0.97	0.97	0.98	1.22	1.31	1.01	1.31
Loss reserve to noncurrent loans	195.01	188.65	181.06	147.29	138.22	175.04	138.22
Loss reserve to loans	1.89	1.83	1.77	1.80	1.81	1.77	1.81
Equity capital to assets	8.46	8.61	8.50	8.61	8.90	8.52	8.90
Leverage ratio	7.42	7.43	7.49	7.49	7.59	7.59	7.59
Risk-based capital ratio	11.84	11.79	11.72	11.85	12.11	11.86	12.11
Net loans and leases to assets	62.39	62.16	63.90	64.05	64.27	63.70	64.27
Securities to assets	15.62	16.21	16.42	14.71	14.16	16.17	14.16
Appreciation in securities (% of par)	1.11	0.82	−2.45	−0.01	0.80	−2.57	0.80
Residential mortgage assets to assets	20.10	20.41	20.60	19.60	20.53	20.55	20.53
Total deposits to assets	69.28	67.16	65.85	65.91	65.76	65.62	65.76
Core deposits to assets	51.59	49.72	47.01	45.61	46.60	46.67	46.60
Volatile liabilities to assets	31.42	31.77	34.81	35.18	33.01	34.74	33.01

Loan performance, FDIC-insured national banks
Annual 1997–2000, year-to-date through March 31, 2001, first quarter 2000, and first quarter 2001
(Dollar figures in millions)

	1997	1998	1999	2000	Preliminary 2001YTD	2000Q1	Preliminary 2001Q1
Percent of loans past due 30–89 days							
Total loans and leases	1.32	1.27	1.16	1.26	1.21	1.12	1.21
Loans secured by real estate (RE)	1.39	1.33	1.22	1.42	1.35	1.18	1.35
1–4 family residential mortgages	1.65	1.50	1.61	1.95	1.72	1.41	1.72
Home equity loans	0.93	0.97	0.77	1.07	0.88	0.85	0.88
Multifamily residential mortgages	1.33	0.94	0.69	0.59	0.70	0.67	0.70
Commercial RE loans	0.95	1.02	0.70	0.72	0.84	0.80	0.84
Construction RE loans	1.63	1.82	1.07	1.12	1.27	1.41	1.27
Commercial and industrial loans*	0.76	0.81	0.71	0.71	0.72	0.78	0.72
Loans to individuals	2.52	2.44	2.36	2.40	2.11	2.10	2.11
Credit cards	2.75	2.52	2.53	2.50	2.46	2.36	2.46
Installment loans and other plans	2.34	2.37	2.24	2.31	2.04	1.90	2.04
All other loans and leases	0.46	0.46	0.50	0.58	0.75	0.56	0.75
Percent of loans noncurrent							
Total loans and leases	0.97	0.97	0.98	1.22	1.31	1.01	1.31
Loans secured by real estate (RE)	1.07	0.98	0.87	0.93	0.99	0.88	0.99
1–4 family residential mortgages	1.01	0.95	0.91	1.06	1.12	0.92	1.12
Home equity loans	0.43	0.41	0.32	0.41	0.43	0.35	0.43
Multifamily residential mortgages	1.01	0.88	0.43	0.55	0.41	0.43	0.41
Commercial RE loans	1.27	1.01	0.84	0.77	0.85	0.83	0.85
Construction RE loans	1.00	0.80	0.63	0.82	0.90	0.80	0.90
Commercial and industrial loans	0.78	0.86	1.11	1.66	1.88	1.23	1.88
Loans to individuals	1.49	1.59	1.52	1.46	1.48	1.43	1.48
Credit cards	2.03	2.06	2.00	1.89	2.15	1.93	2.15
Installment loans and other plans	1.04	1.19	1.16	1.06	1.11	1.07	1.11
All other loans and leases	0.27	0.31	0.40	0.85	0.84	0.46	0.84
Percent of loans charged-off, net							
Total loans and leases	0.71	0.75	0.70	0.80	0.85	0.68	0.85
Loans secured by real estate (RE)	0.06	0.05	0.10	0.12	0.16	0.10	0.16
1–4 family residential mortgages	0.08	0.07	0.14	0.14	0.14	0.13	0.14
Home equity loans	0.18	0.16	0.19	0.23	0.34	0.21	0.34
Multifamily residential mortgages	0.01	0.07	0.02	0.03	0.06	−0.09	0.06
Commercial RE loans	−0.01	−0.02	0.03	0.07	0.14	0.06	0.14
Construction RE loans	−0.10	−0.01	0.03	0.05	0.12	0.01	0.12
Commercial and industrial loans*	0.27	0.38	0.54	0.87	0.99	0.59	0.99
Loans to individuals	2.86	2.92	2.65	2.84	2.70	2.75	2.70
Credit cards	4.95	5.03	4.51	4.43	4.24	4.69	4.24
Installment loans and other plans	1.20	1.23	1.27	1.54	1.46	1.32	1.46
All other loans and leases	0.30	1.58	0.93	0.96	0.41	0.19	0.41
Loans outstanding ($)							
Total loans and leases	$1,840,485	$2,015,585	$2,127,880	$2,227,081	$2,251,533	$2,141,396	$2,251,533
Loans secured by real estate (RE)	725,305	764,944	853,141	892,153	918,720	869,005	918,720
1–4 family residential mortgages	363,329	381,597	433,807	443,088	457,331	438,018	457,331
Home equity loans	67,669	66,091	67,267	82,672	86,033	70,303	86,033
Multifamily residential mortgages	23,346	23,201	26,561	28,021	28,676	28,363	28,676
Commercial RE loans	190,067	200,469	214,145	221,218	223,943	219,281	223,943
Construction RE loans	47,410	56,261	71,578	76,884	82,998	73,296	82,998
Farmland loans	10,178	10,930	11,957	12,346	12,395	12,112	12,395
RE loans from foreign offices	23,306	26,396	27,825	27,923	27,344	27,632	27,344
Commercial and industrial loans	508,589	583,903	622,006	647,001	650,357	632,617	650,357
Loans to individuals	371,477	386,410	348,581	370,363	366,413	342,566	366,413
Credit cards**	168,236	176,408	147,126	176,372	152,686	144,706	152,686
Other revolving credit plans	na	na	na	na	19,823	na	19,823
Installment loans	203,241	210,003	201,455	193,991	193,904	197,860	193,904
All other loans and leases	237,326	282,367	306,042	319,145	317,580	298,906	317,580
Less: Unearned income	2,212	2,039	1,890	1,581	1,536	1,699	1,536

*Includes “All other loans” for institutions under $1 billion in asset size.

**Previously banks reported “Credit card & related plans.” Starting with 2001 this item will be split into separate categories, “Credit cards” and “Other revolving credit plans.”

Key indicators, FDIC-insured national banks by asset size
First quarter 2000 and first quarter 2001

(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1
Number of institutions reporting	1,181	1,071	975	955	126	134	45	41
Total employees (FTEs)	29,483	25,728	106,295	94,835	113,576	117,509	714,186	728,676
Selected income data ($)								
Net income	$205	$146	$881	$817	$1,621	$1,499	$8,829	$8,973
Net interest income	617	545	2,627	2,416	3,725	4,116	22,149	22,668
Provision for loan losses	31	30	198	171	468	562	3,416	4,558
Noninterest income	341	231	1,464	1,348	3,101	2,798	19,797	20,676
Noninterest expense	673	553	2,594	2,439	3,764	4,122	24,057	25,050
Net operating income	184	143	885	797	1,698	1,459	9,209	8,994
Cash dividends declared	139	86	505	354	1,871	1,124	4,208	5,478
Net charge-offs to loan and lease reserve	17	16	195	120	487	508	2,940	4,152
Selected condition data ($)								
Total assets	59,549	55,058	258,059	249,701	381,661	417,491	2,602,633	2,717,968
Total loans and leases	34,916	32,655	161,187	156,104	242,236	266,130	1,703,057	1,796,644
Reserve for losses	470	438	2,313	2,164	5,018	5,227	30,189	32,812
Securities	16,366	13,335	67,366	59,042	87,624	86,104	362,572	328,600
Other real estate owned	62	68	206	211	143	155	1,122	1,206
Noncurrent loans and leases	337	319	1,343	1,343	2,026	2,729	17,998	25,011
Total deposits	50,427	46,354	208,893	201,921	243,537	270,208	1,663,760	1,743,743
Domestic deposits	50,427	46,354	208,441	201,664	240,937	267,987	1,285,629	1,355,687
Equity capital	6,499	6,240	24,393	25,419	36,507	39,084	213,815	235,431
Off-balance-sheet derivatives	31	62	1,962	2,124	43,594	39,613	13,378,835	16,670,121
Performance ratios (annualized %)								
Return on equity	12.73	9.51	14.62	13.03	17.74	15.58	16.68	15.46
Return on assets	1.39	1.08	1.38	1.32	1.71	1.43	1.37	1.32
Net interest income to assets	4.18	4.02	4.11	3.90	3.93	3.94	3.43	3.33
Loss provision to assets	0.21	0.22	0.31	0.28	0.49	0.54	0.53	0.67
Net operating income to assets	1.25	1.05	1.39	1.29	1.79	1.40	1.43	1.32
Noninterest income to assets	2.31	1.70	2.29	2.17	3.27	2.68	3.07	3.03
Noninterest expense to assets	4.56	4.07	4.06	3.93	3.97	3.95	3.72	3.67
Loss provision to loans and leases	0.36	0.38	0.50	0.44	0.78	0.85	0.81	1.01
Net charge-offs to loans and leases	0.19	0.20	0.49	0.31	0.81	0.77	0.69	0.92
Loss provision to net charge-offs	187.48	185.35	101.62	141.92	96.21	110.63	116.18	109.77
Performance ratios (%)								
Percent of institutions unprofitable	9.23	9.99	1.85	3.04	2.38	2.99	6.67	0.00
Percent of institutions with earnings gains	63.59	51.07	67.18	56.86	65.87	59.70	53.33	63.41
Nonint. income to net operating revenue	35.58	29.71	35.79	35.81	45.43	40.47	47.20	47.70
Nonint. expense to net operating revenue	70.24	71.30	63.39	64.80	55.14	59.62	57.35	57.79
Condition ratios (%)								
Nonperforming assets to assets	0.67	0.71	0.60	0.62	0.58	0.70	0.75	0.98
Noncurrent loans to loans	0.97	0.98	0.83	0.86	0.84	1.03	1.06	1.39
Loss reserve to noncurrent loans	139.60	137.06	172.24	161.11	247.70	191.51	167.74	131.19
Loss reserve to loans	1.35	1.34	1.43	1.39	2.07	1.96	1.77	1.83
Equity capital to assets	10.91	11.33	9.45	10.18	9.57	9.36	8.22	8.66
Leverage ratio	11.10	11.13	9.43	9.73	8.63	8.23	7.17	7.22
Risk-based capital ratio	18.15	18.17	14.59	15.04	13.23	13.29	11.38	11.66
Net loans and leases to assets	57.84	58.52	61.56	61.65	62.15	62.49	64.28	64.90
Securities to assets	27.48	24.22	26.10	23.65	22.96	20.62	13.93	12.09
Appreciation in securities (% of par)	−2.40	1.33	−2.61	1.37	−2.36	0.90	−2.63	0.65
Residential mortgage assets to assets	21.46	21.63	24.94	24.09	27.36	26.10	19.09	19.33
Total deposits to asset	84.68	84.19	80.95	80.87	63.81	64.72	63.93	64.16
Core deposits to assets	72.76	70.71	68.79	67.19	54.49	54.28	42.73	43.04
Volatile liabilities to assets	14.20	15.35	18.19	18.05	28.17	26.87	37.82	35.68

Loan performance, FDIC-insured national banks by asset size
First quarter 2000 and first quarter 2001

(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1
Percent of loans past due 30–89 days								
Total loans and leases	1.48	1.56	1.14	1.32	1.26	1.37	1.09	1.17
Loans secured by real estate (RE)	1.20	1.34	0.91	1.12	0.90	1.10	1.28	1.44
1–4 family residential mortgages	1.45	1.52	1.12	1.29	0.88	1.17	1.54	1.88
Home equity loans	0.48	0.85	0.59	0.78	0.73	0.98	0.89	0.87
Multifamily residential mortgages	0.68	0.72	0.55	0.83	0.43	0.83	0.75	0.64
Commercial RE loans	0.91	0.98	0.71	0.90	0.77	0.91	0.82	0.80
Construction RE loans	1.22	1.83	0.92	1.27	1.63	1.36	1.45	1.22
Commercial and industrial loans*	3.02	1.95	1.53	1.54	1.33	1.41	0.67	0.60
Loans to individuals	1.89	2.04	1.84	1.96	2.04	2.06	2.14	2.13
Credit cards	3.24	1.98	3.32	3.17	2.19	2.27	2.36	2.48
Installment loans and other plans	1.82	2.09	1.46	1.79	1.87	2.00	1.97	2.08
All other loans and leases	N/A	N/A	N/A	N/A	0.89	1.11	0.55	0.70
Percent of loans noncurrent								
Total loans and leases	0.97	0.98	0.83	0.86	0.84	1.03	1.06	1.39
Loans secured by real estate (RE)	0.79	0.83	0.63	0.72	0.64	0.75	0.97	1.09
1–4 family residential mortgages	0.65	0.72	0.59	0.61	0.53	0.69	1.04	1.27
Home equity loans	0.32	0.21	0.29	0.39	0.31	0.39	0.36	0.44
Multifamily residential mortgages	0.57	0.37	0.32	0.53	0.38	0.58	0.45	0.35
Commercial RE loans	0.76	0.97	0.73	0.82	0.79	0.83	0.86	0.85
Construction RE loans	0.72	0.67	0.43	0.76	0.91	0.94	0.84	0.92
Commercial and industrial loans*	2.42	1.64	1.50	1.33	0.98	1.52	1.22	1.94
Loans to individuals	0.61	0.64	0.99	0.86	1.18	1.38	1.55	1.56
Credit cards	1.39	1.33	3.10	2.87	1.64	2.28	1.96	2.11
Installment loans and other plans	0.57	0.63	0.44	0.49	0.68	0.71	1.24	1.28
All other loans and leases	N/A	N/A	N/A	N/A	0.61	0.53	0.45	0.85
Percent of loans charged-off, net								
Total loans and leases	0.19	0.20	0.49	0.31	0.81	0.77	0.69	0.92
Loans secured by real estate (RE)	0.01	0.03	0.02	0.05	0.10	0.14	0.12	0.18
1–4 family residential mortgages	0.02	0.04	0.03	0.06	0.12	0.11	0.15	0.15
Home equity loans	0.01	0.00	0.03	0.07	0.21	0.91	0.22	0.28
Multifamily residential mortgages	0.03	0.00	0.02	0.00	−0.03	0.01	−0.13	0.08
Commercial RE loans	0.00	0.01	0.01	0.05	0.08	0.05	0.07	0.19
Construction RE loans	0.03	0.07	0.00	0.03	0.04	0.12	0.00	0.14
Commercial and industrial loans*	0.42	0.47	0.30	0.33	0.40	0.63	0.62	1.07
Loans to individuals	0.79	0.68	2.68	1.52	2.75	2.42	2.79	2.88
Credit cards	4.55	1.68	10.78	5.30	4.30	3.92	4.52	4.28
Installment loans and other plans	0.53	0.64	0.53	0.69	0.98	1.06	1.51	1.65
All other loans and leases	N/A	N/A	N/A	N/A	0.17	0.34	0.19	0.42
Loans outstanding ($)								
Total loans and leases	$34,916	$32,655	$161,187	$156,104	$242,236	$266,130	$1,703,057	$1,796,644
Loans secured by real estate (RE)	20,089	18,912	98,114	97,455	121,759	136,952	629,043	665,401
1–4 family residential mortgages	9,425	8,726	43,999	41,207	60,310	62,927	324,283	344,471
Home equity loans	438	460	4,014	4,006	7,172	9,023	58,680	72,544
Multifamily residential mortgages	464	411	3,396	3,467	4,479	4,882	20,024	19,916
Commercial RE loans	5,818	5,436	34,011	35,080	36,151	42,293	143,301	141,135
Construction RE loans	1,597	1,697	8,532	9,547	11,893	15,787	51,274	55,966
Farmland loans	2,346	2,182	4,153	4,143	1,565	1,892	4,047	4,178
RE loans from foreign offices	0	0	9	5	189	148	27,433	27,191
Commercial and industrial loans	5,995	5,664	28,844	28,611	47,020	52,207	550,759	563,875
Loans to individuals	4,934	4,439	24,601	20,632	58,364	58,613	254,668	282,730
Credit cards**	255	160	5,085	3,346	30,885	25,801	108,481	123,378
Other revolving credit plans	na	102	na	566	na	1,790	na	17,365
Installment loans	4,679	4,178	19,516	16,720	27,479	31,021	146,186	141,986
All other loans and leases	3,983	3,700	9,908	9,625	15,179	18,470	269,836	285,784
Less: Unearned income	85	60	280	220	85	111	1,249	1,145

*Includes "All other loans" for institutions under $1 billion in asset size.

**Previously banks reported "Credit card & related plans." Starting with 2001 this item will be split into separate categories, "Credit cards" and "Other revolving credit plans."

Key indicators, FDIC-insured national banks by region
First quarter 2001
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Number of institutions reporting	257	307	442	439	523	233	2,201
Total employees (FTEs)	295,679	262,483	172,895	77,857	55,478	102,356	966,748
Selected income data ($)							
Net income	$3,081	$2,823	$1,789	$878	$425	$2,439	$11,434
Net interest income	8,296	8,083	5,409	2,656	1,433	3,867	29,745
Provision for loan losses	1,861	1,132	917	597	110	704	5,321
Noninterest income	9,532	5,395	2,958	2,268	573	4,326	25,053
Noninterest expense	10,812	7,899	4,954	3,079	1,322	4,098	32,164
Net operating income	3,291	2,816	1,665	824	404	2,392	11,393
Cash dividends declared	2,078	1,980	639	539	286	1,520	7,042
Net charge-offs to loan and lease reserve	1,650	1,064	844	528	83	629	4,797
Selected condition data ($)							
Total assets	960,342	1,020,719	679,300	276,019	150,213	353,624	3,440,218
Total loans and leases	604,041	666,644	469,369	187,927	87,244	236,309	2,251,533
Reserve for losses	12,612	10,626	7,587	3,070	1,256	5,489	40,641
Securities	136,376	132,996	108,412	32,445	38,624	38,227	487,081
Other real estate owned	443	600	245	112	107	133	1,639
Noncurrent loans and leases	9,093	9,268	5,699	1,717	875	2,751	29,403
Total deposits	657,578	670,205	425,774	174,597	120,750	213,322	2,262,226
Domestic deposits	407,113	594,963	381,558	165,785	119,819	202,455	1,871,693
Equity capital	83,041	92,300	52,184	27,148	14,409	37,093	306,175
Off-balance-sheet derivatives	6,052,135	9,086,195	1,005,189	20,526	4,835	352,494	16,521,375
Performance ratios (annualized %)							
Return on equity	14.99	12.42	13.89	13.10	12.04	26.95	15.16
Return on assets	1.29	1.09	1.05	1.26	1.14	2.78	1.33
Net interest income to assets	3.48	3.12	3.19	3.80	3.86	4.42	3.45
Loss provision to assets	0.78	0.44	0.54	0.85	0.30	0.80	0.62
Net operating income to assets	1.38	1.09	0.98	1.18	1.09	2.73	1.32
Noninterest income to assets	3.99	2.08	1.74	3.25	1.54	4.94	2.91
Noninterest expense to assets	4.53	3.05	2.92	4.41	3.56	4.68	3.73
Loss provision to loans and leases	1.23	0.68	0.78	1.25	0.51	1.21	0.95
Net charge-offs to loans and leases	1.09	0.64	0.72	1.11	0.38	1.08	0.85
Loss provision to net charge-offs	112.77	106.41	108.66	113.09	133.44	111.99	110.93
Performance ratios (%)							
Percent of institutions unprofitable	5.06	12.05	4.07	3.19	4.78	14.16	6.36
Percent of institutions with earnings gains	59.92	54.07	53.17	54.44	52.01	55.79	54.34
Nonint. income to net operating revenue	53.47	40.03	35.35	46.06	28.55	52.80	45.72
Nonint. expense to net operating revenue	60.64	58.60	59.20	62.54	65.91	50.01	58.70
Condition ratios (%)							
Nonperforming assets to assets	1.01	0.97	0.90	0.66	0.65	0.85	0.91
Noncurrent loans to loans	1.51	1.39	1.21	0.91	1.00	1.16	1.31
Loss reserve to noncurrent loans	138.71	114.66	133.12	178.84	143.55	199.50	138.22
Loss reserve to loans	2.09	1.59	1.62	1.63	1.44	2.32	1.81
Equity capital to assets	8.65	9.04	7.68	9.84	9.59	10.49	8.90
Leverage ratio	7.66	7.35	7.24	7.73	8.29	8.40	7.59
Risk-based capital ratio	12.40	11.78	11.60	12.40	13.44	12.62	12.11
Net loans and leases to assets	61.59	64.27	67.98	66.97	57.24	65.27	64.27
Securities to assets	14.20	13.03	15.96	11.75	25.71	10.81	14.16
Appreciation in securities (% of par)	0.57	0.48	0.77	1.43	1.51	1.58	0.80
Residential mortgage assets to assets	14.09	25.69	21.35	19.21	26.12	20.24	20.53
Total deposits to assets	68.47	65.66	62.68	63.26	80.39	60.32	65.76
Core deposits to assets	34.63	50.97	47.60	54.25	66.58	50.11	46.60
Volatile liabilities to assets	43.89	28.08	33.43	25.90	19.85	28.00	33.01

Loan performance, FDIC-insured national banks by region
First quarter 2001
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30–89 days							
Total loans and leases	1.13	1.05	1.38	1.40	1.40	1.29	1.21
Loans secured by real estate (RE)	1.23	1.48	1.55	0.92	1.30	1.14	1.35
1–4 family residential mortgages	1.51	2.03	1.95	0.89	1.24	1.36	1.72
Home equity loans	0.64	0.71	1.26	0.69	0.65	0.90	0.88
Multifamily residential mortgages	0.36	0.58	0.79	0.80	0.82	1.00	0.70
Commercial RE loans	0.66	0.68	1.07	0.89	1.18	0.77	0.84
Construction RE loans	0.58	1.10	1.61	1.01	1.78	1.34	1.27
Commercial and industrial loans*	0.46	0.45	0.99	1.53	1.36	1.00	0.72
Loans to individuals	2.49	1.72	1.96	1.92	1.72	2.07	2.11
Credit cards	2.85	2.31	1.49	1.86	1.12	2.19	2.46
Installment loans and other plans	2.36	1.63	2.09	2.39	1.81	2.15	2.04
All other loans and leases	0.54	0.34	1.08	1.88	1.56	1.00	0.75
Percent of loans noncurrent							
Total loans and leases	1.51	1.39	1.21	0.91	1.00	1.16	1.31
Loans secured by real estate (RE)	1.11	1.10	1.17	0.52	0.77	0.61	0.99
1–4 family residential mortgages	0.97	1.39	1.38	0.44	0.71	0.58	1.12
Home equity loans	0.28	0.21	0.85	0.30	0.30	0.34	0.43
Multifamily residential mortgages	0.45	0.29	0.54	0.25	0.13	0.69	0.41
Commercial RE loans	0.82	0.85	1.08	0.53	0.89	0.66	0.85
Construction RE loans	0.68	1.10	1.02	0.81	0.60	0.69	0.90
Commercial and industrial loans*	1.69	2.37	1.70	1.16	1.68	1.89	1.88
Loans to individuals	2.48	0.62	0.69	1.19	0.54	1.52	1.48
Credit cards	2.61	1.60	0.88	1.53	0.83	1.96	2.15
Installment loans and other plans	2.72	0.37	0.69	1.03	0.55	0.66	1.11
All other loans and leases	0.62	0.84	0.85	1.28	1.18	1.34	0.84
Percent of loans charged-off, net							
Total loans and leases	1.09	0.64	0.72	1.11	0.38	1.08	0.85
Loans secured by real estate (RE)	0.13	0.16	0.22	0.28	0.03	0.03	0.16
1–4 family residential mortgage	0.10	0.12	0.24	0.24	0.04	0.01	0.14
Home equity loans	0.36	0.37	0.30	0.27	0.17	0.36	0.34
Multifamily residential mortgages	0.00	0.08	0.07	0.14	−0.01	0.00	0.06
Commercial RE loans	0.02	0.14	0.24	0.33	0.02	0.01	0.14
Construction RE loans	0.13	0.29	0.09	0.15	−0.02	−0.10	0.12
Commercial and industrial loans*	0.78	1.11	1.03	1.32	0.78	1.02	0.99
Loans to individuals	3.52	1.95	1.64	2.89	0.97	3.16	2.70
Credit cards	4.53	3.55	4.86	4.15	1.41	3.86	4.24
Installment loans and other plans	1.95	1.45	1.20	1.30	0.95	1.34	1.46
All other loans and leases	0.16	0.19	0.74	0.47	0.26	1.35	0.41
Loans outstanding ($)							
Total loans and leases	$604,041	$666,644	$469,369	$187,927	$87,244	$236,309	$2,251,533
Loans secured by real estate (RE)	166,875	313,370	203,967	78,880	45,819	109,808	918,720
1–4 family residential mortgages	82,201	176,057	93,535	37,113	18,358	50,067	457,331
Home equity loans	16,200	28,440	25,117	6,233	1,088	8,955	86,033
Multifamily residential mortgages	3,298	9,862	7,713	2,620	1,496	3,687	28,676
Commercial RE loans	32,898	67,943	53,833	20,943	16,244	32,082	223,943
Construction RE loans	7,415	25,532	20,358	8,854	7,047	13,791	82,998
Farmland loans	479	2,599	3,400	3,116	1,586	1,216	12,395
RE loans from foreign offices	24,385	2,937	12	0	0	10	27,344
Commercial and industrial loans	193,452	196,526	136,543	46,536	23,221	54,079	650,357
Loans to individuals	132,036	70,666	62,021	38,133	13,122	50,436	366,413
Credit cards**	76,940	15,437	6,594	18,944	354	34,416	152,686
Other revolving credit plans	8,693	2,829	1,981	3,282	513	2,526	19,823
Installment loans	46,402	52,400	53,446	15,907	12,255	13,494	193,904
All other loans and leases	112,496	86,424	66,948	24,394	5,203	22,116	317,580
Less: Unearned income	819	342	110	16	121	129	1,536

*Includes “All other loans;; for institutions under $1 billion in asset size.

**Previously banks reported “Credit card & related plans.” Starting with 2001 this item will be split into separate categories, “Credit cards” and “Other revolving credit plans.”

Key indicators, FDIC-insured commercial banks
Annual 1997–2000, year-to-date through March 31, 2001, first quarter 2000, and first quarter 2001
(Dollar figures in millions)

	1997	1998	1999	2000	Preliminary 2001YTD	2000Q1	Preliminary 2001Q1
Number of institutions reporting	9,142	8,774	8,581	8,314	8,237	8,516	8,237
Total employees (FTEs)	1,538,408	1,627,073	1,657,688	1,669,625	1,681,725	1,648,826	1,681,725
Selected income data ($)							
Net income	$59,156	$61,785	$71,551	$71,042	$19,878	$19,501	$19,878
Net interest income	174,502	182,753	192,207	203,825	51,813	50,076	51,813
Provision for loan losses	19,851	22,216	21,815	29,955	7,938	5,819	7,938
Noninterest income	104,499	123,699	144,403	153,435	40,150	38,438	40,150
Noninterest expense	169,983	194,143	204,216	215,963	54,991	51,993	54,991
Net operating income	57,928	59,227	71,317	72,631	19,379	19,965	19,379
Cash dividends declared	42,541	41,004	51,937	53,816	13,450	11,535	13,450
Net charge-offs to loan and lease reserve	18,318	20,740	20,361	24,761	6,968	5,047	6,968
Selected condition data ($)							
Total assets	5,014,942	5,442,588	5,735,240	6,239,080	6,310,814	5,845,520	6,310,814
Total loans and leases	2,970,747	3,238,342	3,491,665	3,816,522	3,828,145	3,567,939	3,828,145
Reserve for losses	54,685	57,262	58,773	64,090	64,665	59,861	64,665
Securities	871,868	979,854	1,046,410	1,077,765	1,047,974	1,056,607	1,047,974
Other real estate owned	3,795	3,150	2,796	2,904	3,053	2,765	3,053
Noncurrent loans and leases	28,542	31,253	32,997	42,922	46,090	34,603	46,090
Total deposits	3,421,726	3,681,443	3,831,132	4,176,942	4,183,723	3,877,329	4,183,723
Domestic deposits	2,895,531	3,109,409	3,175,543	3,470,276	3,512,628	3,237,841	3,512,628
Equity capital	417,774	462,150	479,761	529,478	546,240	491,546	546,240
Off-balance-sheet derivatives	25,063,799	33,005,561	34,817,484	40,571,148	43,921,632	36,925,725	43,921,632
Performance ratios (annualized %)							
Return on equity	14.68	13.93	15.31	14.04	14.78	16.05	14.78
Return on assets	1.23	1.19	1.31	1.19	1.27	1.35	1.27
Net interest income to assets	3.64	3.51	3.51	3.41	3.30	3.46	3.30
Loss provision to assets	0.41	0.43	0.40	0.50	0.51	0.40	0.51
Net operating income to assets	1.21	1.14	1.30	1.22	1.24	1.38	1.24
Noninterest income to assets	2.18	2.37	2.64	2.57	2.56	2.65	2.56
Noninterest expense to assets	3.54	3.73	3.73	3.61	3.51	3.59	3.51
Loss provision to loans and leases	0.69	0.72	0.66	0.82	0.83	0.66	0.83
Net charge-offs to loans and leases	0.64	0.67	0.61	0.67	0.73	0.57	0.73
Loss provision to net charge-offs	108.37	104.81	107.14	120.97	113.92	115.34	113.92
Performance ratios (%)							
Percent of institutions unprofitable	4.85	6.11	7.48	7.23	6.86	6.49	6.86
Percent of institutions with earnings gains	68.35	61.21	62.81	67.55	52.94	67.75	52.18
Nonint. income to net operating revenue	37.45	40.36	42.90	42.95	43.66	43.43	43.66
Nonint. expense to net operating revenue	60.93	63.35	60.67	60.45	59.80	58.74	59.80
Condition ratios (%)							
Nonperforming assets to assets	0.66	0.65	0.63	0.74	0.79	0.65	0.79
Noncurrent loans to loans	0.96	0.97	0.95	1.12	1.20	0.97	1.20
Loss reserve to noncurrent loans	191.59	183.22	178.11	149.32	140.30	172.99	140.30
Loss reserve to loans	1.84	1.77	1.68	1.68	1.69	1.68	1.69
Equity capital to assets	8.33	8.49	8.37	8.49	8.66	8.41	8.66
Leverage ratio	7.56	7.54	7.79	7.70	7.68	7.79	7.68
Risk-based capital ratio	12.23	12.23	12.16	12.13	12.28	12.25	12.28
Net loans and leases to assets	58.15	58.45	59.86	60.14	59.64	60.01	59.64
Securities to assets	17.39	18.00	18.25	17.27	16.61	18.08	16.61
Appreciation in securities (% of par)	1.10	1.07	-2.31	0.20	1.00	−2.47	1.00
Residential mortgage assets to assets	20.03	20.93	20.78	20.19	20.44	20.80	20.44
Total deposits to assets	68.23	67.64	66.80	66.95	66.29	66.33	66.29
Core deposits to assets	50.06	49.39	46.96	46.40	46.56	46.83	46.56
Volatile liabilities to assets	31.92	31.68	34.94	34.98	34.09	34.96	34.09

Loan performance, FDIC-insured commercial banks
Annual 1997–2000, year-to-date through March 31, 2001, first quarter 2000, and first quarter 2001
(Dollar figures in millions)

	1997	1998	1999	2000	Preliminary 2001YTD	2000Q1	Preliminary 2001Q1
Percent of loans past due 30–89 days							
Total loans and leases	1.31	1.26	1.14	1.26	1.23	1.12	1.23
Loans secured by real estate (RE)	1.33	1.26	1.09	1.26	1.23	1.08	1.23
1–4 family residential mortgages	1.59	1.44	1.43	1.72	1.51	1.27	1.51
Home equity loans	0.96	0.98	0.75	0.98	0.85	0.77	0.85
Multifamily residential mortgages	1.11	0.86	0.57	0.55	0.64	0.58	0.64
Commercial RE loans	0.97	0.99	0.69	0.74	0.87	0.79	0.87
Construction RE loans	1.42	1.50	0.98	1.06	1.24	1.27	1.24
Commercial and industrial loans*	0.83	0.88	0.79	0.83	0.88	0.89	0.88
Loans to individuals	2.50	2.43	2.33	2.46	2.15	2.06	2.15
Credit cards	2.73	2.58	2.59	2.66	2.54	2.36	2.54
Installment loans and other plans	2.33	2.33	2.18	2.32	2.07	1.88	2.07
All other loans and leases	0.51	0.51	0.55	0.66	0.87	0.56	0.87
Percent of loans noncurrent							
Total loans and leases	0.96	0.97	0.95	1.12	1.20	0.97	1.20
Loans secured by real estate (RE)	1.01	0.91	0.79	0.81	0.87	0.79	0.87
1–4 family residential mortgages	0.94	0.88	0.82	0.90	0.95	0.82	0.95
Home equity loans	0.44	0.42	0.33	0.37	0.44	0.34	0.44
Multifamily residential mortgages	0.95	0.83	0.41	0.44	0.39	0.38	0.39
Commercial RE loans	1.21	0.95	0.77	0.72	0.79	0.77	0.79
Construction RE loans	0.97	0.81	0.67	0.76	0.86	0.74	0.86
Commercial and industrial loans	0.86	0.99	1.17	1.66	1.82	1.28	1.82
Loans to individuals	1.47	1.52	1.42	1.40	1.41	1.35	1.41
Credit cards	2.18	2.22	2.05	2.01	2.18	1.98	2.18
Installment loans and other plans	0.98	1.06	1.04	0.98	1.04	0.97	1.04
All other loans and leases	0.25	0.34	0.39	0.70	0.80	0.42	0.80
Percent of loans charged-off, net							
Total loans and leases	0.64	0.67	0.61	0.67	0.73	0.57	0.73
Loans secured by real estate (RE)	0.06	0.05	0.08	0.09	0.12	0.07	0.12
1–4 family residential mortgages	0.08	0.07	0.11	0.11	0.10	0.10	0.10
Home equity loans	0.16	0.14	0.15	0.18	0.25	0.16	0.25
Multifamily residential mortgages	0.04	0.05	0.02	0.03	0.03	−0.04	0.03
Commercial RE loans	0.01	0.00	0.03	0.05	0.10	0.04	0.10
Construction RE loans	−0.02	0.01	0.04	0.05	0.11	0.02	0.11
Commercial and industrial loans*	0.28	0.42	0.58	0.81	0.90	0.52	0.90
Loans to individuals	2.70	2.69	2.32	2.42	2.43	2.35	2.43
Credit cards	5.11	5.19	4.46	4.39	4.44	4.55	4.44
Installment loans and other plans	1.04	1.04	1.04	1.18	1.17	1.03	1.17
All other loans and leases	0.32	1.55	1.02	0.93	0.38	0.17	0.38
Loans outstanding ($)							
Total loans and leases	$2,970,747	$3,238,342	$3,491,665	$3,816,522	$3,828,145	$3,567,939	$3,828,145
Loans secured by real estate (RE)	1,244,985	1,345,644	1,510,393	1,670,663	1,699,384	1,561,389	1,699,384
1–4 family residential mortgages	620,599	668,752	737,145	789,191	795,907	754,457	795,907
Home equity loans	98,163	96,647	102,339	127,496	130,123	108,047	130,123
Multifamily residential mortgages	41,231	43,242	53,168	60,207	60,960	57,277	60,960
Commercial RE loans	341,522	370,544	417,634	465,556	469,305	434,027	469,305
Construction RE loans	88,242	106,729	135,647	162,138	173,709	142,477	173,709
Farmland loans	27,072	29,096	31,902	34,043	34,269	32,739	34,269
RE loans from foreign offices	28,157	30,635	32,558	32,033	35,111	32,366	35,111
Commercial and industrial loans	794,998	898,556	970,986	1,050,638	1,045,503	1,000,927	1,045,503
Loans to individuals	561,325	570,863	558,372	609,724	597,505	556,694	597,505
Credit cards**	231,092	228,781	211,998	249,363	216,527	207,636	216,527
Other revolving credit plans	na	na	na	na	26,680	na	26,680
Installment loans	330,233	342,081	346,374	360,361	354,299	349,058	354,299
All other loans and leases	373,907	427,397	455,584	488,412	488,527	452,180	488,527
Less: Unearned income	4,469	4,117	3,671	2,915	2,774	3,252	2,774

*Includes "All other loans" for institutions under $1 billion in asset size.
**Previously banks reported "Credit card & related plans." Starting with 2001 this item will be split into separate categories, "Credit cards" and "Other revolving credit plans."

Key indicators, FDIC-insured commercial banks by asset size
First quarter 2000 and first quarter 2001
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1
Number of institutions reporting	5,091	4,759	3,047	3,088	299	311	79	79
Total employees (FTEs)	105,917	96,842	302,216	290,591	261,760	248,767	978,933	1,045,525
Selected income data ($)								
Net income	$677	$566	$2,502	$2,434	$3,287	$3,040	$13,036	$13,839
Net interest income	2,453	2,231	7,896	7,641	8,497	8,583	31,231	33,358
Provision for loan losses	125	125	527	531	1,074	1,215	4,092	6,067
Noninterest income	664	572	3,056	3,086	5,775	5,044	28,944	31,447
Noninterest expense	2,102	1,948	6,799	6,793	8,049	7,952	35,043	38,298
Net operating income	663	552	2,512	2,375	3,365	2,946	13,425	13,506
Cash dividends declared	436	364	1,327	1,124	2,793	3,795	6,979	8,167
Net charge-offs to loan and lease reserve	60	70	379	357	923	1,038	3,685	5,503
Selected condition data ($)								
Total assets	238,633	229,489	761,754	781,116	856,964	884,054	3,988,169	4,416,155
Total loans and leases	143,774	139,920	488,810	505,940	544,404	567,665	2,390,951	2,614,620
Reserve for losses	2,052	1,955	7,030	7,189	10,174	10,467	40,605	45,054
Securities	64,868	54,120	190,646	171,950	201,950	189,661	599,142	632,243
Other real estate owned	267	269	664	726	401	410	1,432	1,649
Noncurrent loans and leases	1,377	1,407	3,838	4,369	4,683	5,856	24,706	34,458
Total deposits	202,735	193,934	620,983	639,033	579,747	612,433	2,473,864	2,738,324
Domestic deposits	202,733	193,933	618,939	637,233	567,613	600,161	1,848,556	2,081,300
Equity capital	25,755	25,690	70,821	76,392	77,080	82,085	317,889	362,072
Off-balance-sheet derivatives	197	140	6,993	6,706	93,223	79,948	37,296,939	44,244,972
Performance ratios (annualized %)								
Return on equity	10.58	8.94	14.30	12.96	17.16	15.10	16.61	15.51
Return on assets	1.14	1.00	1.33	1.26	1.55	1.38	1.32	1.26
Net interest income to assets	4.15	3.94	4.19	3.95	4.00	3.89	3.16	3.04
Loss provision to assets	0.21	0.22	0.28	0.27	0.51	0.55	0.41	0.55
Net operating income to assets	1.12	0.97	1.33	1.23	1.58	1.33	1.36	1.23
Noninterest income to assets	1.12	1.01	1.62	1.60	2.72	2.28	2.93	2.86
Noninterest expense to assets	3.56	3.44	3.61	3.52	3.79	3.60	3.54	3.49
Loss provision to loans and leases	0.35	0.36	0.44	0.42	0.80	0.86	0.69	0.93
Net charge-offs to loans and leases	0.17	0.20	0.31	0.28	0.68	0.73	0.62	0.84
Loss provision to net charge-offs	208.02	178.94	139.13	148.58	116.35	117.03	111.12	110.25
Performance ratios (%)								
Percent of institutions unprofitable	9.70	10.28	1.61	2.17	2.34	2.57	3.80	1.27
Percent of institutions with earnings gains	65.72	47.01	71.15	58.84	69.57	63.02	60.76	60.76
Nonint. income to net operating revenue	21.30	20.41	27.90	28.77	40.47	37.02	48.10	48.53
Nonint. expense to net operating revenue	67.47	69.52	62.08	63.33	56.40	58.35	58.23	59.10
Condition ratios (%)								
Nonperforming assets to assets	0.69	0.73	0.59	0.65	0.60	0.72	0.67	0.83
Noncurrent loans to loans	0.96	1.01	0.79	0.86	0.86	1.03	1.03	1.32
Loss reserve to noncurrent loans	149.09	139.00	183.16	164.53	217.28	178.75	164.35	130.75
Loss reserve to loans	1.43	1.40	1.44	1.42	1.87	1.84	1.70	1.72
Equity capital to assets	10.79	11.19	9.30	9.78	8.99	9.29	7.97	8.20
Leverage ratio	11.03	10.96	9.31	9.37	8.47	8.33	7.16	7.07
Risk-based capital ratio	17.80	17.44	14.25	14.29	12.99	12.86	11.53	11.65
Net loans and leases to assets	59.39	60.12	63.25	63.85	62.34	63.03	58.93	58.19
Securities to assets	27.18	23.58	25.03	22.01	23.57	21.45	15.02	14.32
Appreciation in securities (% of par)	−2.42	1.33	−2.51	1.37	−2.55	0.97	−2.43	0.87
Residential mortgage assets to assets	21.03	21.16	23.65	23.31	26.87	25.47	18.94	18.88
Total deposits to assets	84.96	84.51	81.52	81.81	67.65	69.28	62.03	62.01
Core deposits to assets	73.00	71.03	69.00	67.73	55.24	55.33	39.23	39.78
Volatile liabilities to assets	14.05	15.10	18.06	18.11	28.55	27.38	40.81	39.24

Loan performance, FDIC-insured commercial banks by asset size
First quarter 2000 and first quarter 2001
(Dollar figures in millions)

	Less than $100M		$100M to $1B		$1B to $10B		Greater than $10B	
	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1	2000Q1	2001Q1
Percent of loans past due 30–89 days								
Total loans and leases	1.60	1.78	1.19	1.37	1.25	1.34	1.04	1.16
Loans secured by real estate (RE)	1.33	1.53	0.98	1.19	0.89	1.04	1.16	1.29
1–4 family residential mortgages	1.60	1.77	1.22	1.39	0.94	1.11	1.36	1.62
Home equity loans	0.65	1.00	0.65	0.85	0.69	0.95	0.81	0.83
Multifamily residential mortgages	0.81	0.73	0.50	0.72	0.48	0.86	0.62	0.54
Commercial RE loans	1.00	1.23	0.75	0.92	0.78	0.88	0.80	0.80
Construction RE loans	1.16	1.42	1.07	1.46	1.19	1.24	1.41	1.14
Commercial and industrial loans*	1.89	1.98	1.40	1.53	1.36	1.38	0.66	0.68
Loans to individuals	2.10	2.38	1.87	2.08	2.16	2.22	2.06	2.14
Credit cards	2.38	2.16	3.29	4.21	2.56	2.65	2.23	2.45
Installment loans and other plans	2.09	2.45	1.59	1.88	1.83	2.09	1.95	2.08
All other loans and leases	N/A	N/A	N/A	N/A	1.00	1.20	0.55	0.77
Percent of loans noncurrent								
Total loans and leases	0.96	1.01	0.79	0.86	0.86	1.03	1.03	1.32
Loans secured by real estate (RE)	0.78	0.87	0.62	0.71	0.71	0.78	0.88	0.95
1–4 family residential mortgages	0.69	0.78	0.60	0.65	0.69	0.78	0.93	1.08
Home equity loans	0.25	0.31	0.31	0.38	0.34	0.41	0.35	0.46
Multifamily residential mortgages	0.54	0.43	0.43	0.46	0.42	0.54	0.34	0.32
Commercial RE loans	0.77	0.98	0.64	0.73	0.78	0.80	0.84	0.80
Construction RE loans	0.58	0.77	0.56	0.83	0.82	0.89	0.79	0.86
Commercial and industrial loans*	1.39	1.32	1.20	1.26	1.08	1.58	1.26	1.92
Loans to individuals	0.76	0.88	0.85	0.88	1.10	1.24	1.54	1.54
Credit cards	1.28	2.00	2.61	3.32	1.73	2.22	2.02	2.12
Installment loans and other plans	0.74	0.87	0.51	0.57	0.58	0.68	1.22	1.25
All other loans and leases	N/A	N/A	N/A	N/A	0.58	0.70	0.42	0.78
Percent of loans charged-off, net								
Total loans and leases	0.17	0.20	0.31	0.28	0.68	0.73	0.62	0.84
Loans secured by real estate (RE)	0.03	0.04	0.02	0.04	0.07	0.10	0.09	0.15
1–4 family residential mortgages	0.04	0.04	0.04	0.05	0.09	0.09	0.12	0.13
Home equity loans	0.04	0.04	0.04	0.07	0.17	0.51	0.18	0.23
Multifamily residential mortgages	0.03	0.11	0.01	0.02	0.02	−0.02	−0.07	0.05
Commercial RE loans	0.02	0.04	0.01	0.05	0.03	0.06	0.05	0.16
Construction RE loans	0.03	0.08	0.00	0.02	0.05	0.12	0.01	0.14
Commercial and industrial loans*	0.24	0.29	0.28	0.39	0.48	0.67	0.56	1.00
Loans to individuals	0.60	0.72	1.75	1.38	2.62	2.78	2.48	2.57
Credit cards	3.30	2.02	7.82	5.92	4.60	5.04	4.31	4.25
Installment loans and other plans	0.48	0.67	0.54	0.68	0.98	1.22	1.21	1.30
All other loans and leases	N/A	N/A	N/A	N/A	0.21	0.35	0.18	0.40
Loans outstanding ($)								
Total loans and leases	$143,774	$139,920	$488,810	$505,940	$544,404	$567,665	$2,390,951	$2,614,620
Loans secured by real estate (RE)	82,671	80,960	311,286	328,432	288,730	308,710	878,702	981,281
1–4 family residential mortgages	38,386	36,906	128,210	130,186	130,671	128,832	457,189	499,983
Home equity loans	1,889	2,017	12,990	13,729	17,296	18,150	75,872	96,227
Multifamily residential mortgages	1,793	1,758	10,668	10,947	11,245	12,470	33,571	35,784
Commercial RE loans	23,279	22,665	113,830	122,242	94,754	104,928	202,164	219,471
Construction RE loans	6,581	7,273	32,578	37,612	30,850	39,896	72,468	88,928
Farmland loans	10,744	10,341	12,963	13,672	3,549	4,109	5,484	6,147
RE loans from foreign offices	0	0	47	44	365	324	31,954	34,742
Commercial and industrial loans	24,681	24,480	88,524	92,286	115,564	123,520	772,157	805,216
Loans to individuals	19,937	18,383	64,306	59,755	109,312	101,806	363,139	417,561
Credit cards**	754	505	10,559	7,175	48,859	39,067	147,464	169,779
Other revolving credit plans	na	433	na	2,405	na	4,403	na	19,440
Installment loans	19,184	17,445	53,748	50,175	60,452	58,336	215,675	228,342
All other loans and leases	16,755	16,282	25,516	26,146	31,410	34,176	378,499	411,922
Less: Unearned income	270	187	823	679	613	547	1,546	1,361

*Includes "All other loans" for institutions under $1 billion in asset size.
*Previously banks reported "Credit card & related plans." Starting with 2001 this item will be split into separate categories, "Credit cards" and "Other revolving credit plans."

Key indicators, FDIC-insured commercial banks by region
First quarter 2001
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West
Number of institutions reporting	656	1,420	1,767	2,133	1,365	896
Total employees (FTEs)	517,108	461,960	294,311	128,112	102,280	177,954
Selected income data ($)						
Net income	$6,585	$4,687	$3,075	$1,311	$761	$3,459
Net interest income	15,674	13,283	9,064	4,022	2,533	7,236
Provision for loan losses	2,669	1,630	1,304	711	174	1,449
Noninterest income	17,706	8,357	4,680	2,595	902	5,910
Noninterest expense	20,876	12,881	8,131	4,084	2,247	6,772
Net operating income	6,487	4,609	2,921	1,247	733	3,383
Cash dividends declared	3,850	4,882	1,450	844	448	1,977
Net charge-offs to loan and lease reserve	2,455	1,503	1,096	610	125	1,178
Selected condition data ($)						
Total assets	2,237,477	1,598,698	1,126,398	414,340	262,527	671,374
Total loans and leases	1,137,097	1,060,099	765,937	281,263	153,640	430,109
Reserve for losses	21,002	16,119	11,691	4,545	2,163	9,145
Securities	347,174	248,367	200,625	61,625	68,485	121,698
Other real estate owned	746	1,059	465	236	241	306
Noncurrent loans and leases	16,200	12,516	8,378	2,665	1,529	4,803
Total deposits	1,392,351	1,079,943	745,237	288,041	214,393	463,758
Domestic deposits	894,741	991,475	685,650	279,229	213,462	448,071
Equity capital	179,366	143,561	89,874	40,944	25,206	67,289
Off-balance-sheet derivatives	33,254,871	9,158,631	1,090,818	22,605	5,857	388,850
Performance ratios (annualized %)						
Return on equity	14.88	13.26	13.88	12.99	12.34	21.00
Return on assets	1.19	1.17	1.10	1.26	1.17	2.09
Net interest income to assets	2.84	3.31	3.24	3.86	3.90	4.38
Loss provision to assets	0.48	0.41	0.47	0.68	0.27	0.88
Net operating income to assets	1.17	1.15	1.04	1.20	1.13	2.05
Noninterest income to assets	3.21	2.08	1.67	2.49	1.39	3.57
Noninterest expense to assets	3.78	3.21	2.90	3.92	3.46	4.10
Loss provision to loans and leases	0.94	0.62	0.68	1.00	0.46	1.36
Net charge-offs to loans and leases	0.86	0.57	0.58	0.86	0.33	1.11
Loss provision to net charge-offs	108.72	108.45	119.04	116.44	139.01	123.00
Performance ratios (%)						
Percent of institutions unprofitable	9.60	10.21	6.00	4.13	5.13	10.38
Percent of institutions with earnings gains	58.38	50.35	53.31	47.77	51.58	59.71
Nonint. income to net operating revenue	53.04	38.62	34.05	39.21	26.25	44.96
Nonint. expense to net operating revenue	62.54	59.52	59.16	61.72	65.43	51.51
Condition ratios (%)						
Nonperforming assets to assets	0.77	0.85	0.80	0.70	0.68	0.78
Noncurrent loans to loans	1.42	1.18	1.09	0.95	1.00	1.12
Loss reserve to noncurrent loans	129.65	128.79	139.55	170.55	141.46	190.42
Loss reserve to loans	1.85	1.52	1.53	1.62	1.41	2.13
Equity capital to assets	8.02	8.98	7.98	9.88	9.60	10.02
Leverage ratio	7.22	7.66	7.57	8.31	8.64	8.67
Risk-based capital ratio	12.37	11.89	11.83	12.95	14.04	12.79
Net loans and leases to assets	49.88	65.30	66.96	66.79	57.70	62.70
Securities to assets	15.52	15.54	17.81	14.87	26.09	18.13
Appreciation in securities (% of par)	0.56	1.46	0.89	1.48	1.37	1.02
Residential mortgage assets to assets	15.62	25.57	22.48	19.26	25.01	19.79
Total deposits to assets	62.23	67.55	66.16	69.52	81.67	69.08
Core deposits to assets	31.73	53.34	50.82	59.89	66.83	56.50
Volatile liabilities to assets	47.40	26.39	31.28	22.15	20.03	25.63

Loan performance, FDIC-insured commercial banks by region
First quarter 2001
(Dollar figures in millions)

	Northeast	Southeast	Central	Midwest	Southwest	West	All institutions
Percent of loans past due 30–89 days							
Total loans and leases	1.16	1.12	1.36	1.52	1.42	1.24	1.23
Loans secured by real estate (RE)	1.15	1.31	1.35	1.10	1.29	1.03	1.23
1–4 family residential mortgages	1.28	1.79	1.61	1.07	1.40	1.23	1.51
Home equity loans	0.66	0.73	1.16	0.76	0.70	0.88	0.85
Multifamily residential mortgages	0.33	0.63	0.92	0.83	0.95	0.61	0.64
Commercial RE loans	0.89	0.76	1.02	0.98	1.07	0.71	0.87
Construction RE loans	1.16	1.08	1.43	1.26	1.46	1.33	1.24
Commercial and industrial loans*	0.61	0.63	1.16	1.57	1.42	1.23	0.88
Loans to individuals	2.47	1.94	1.93	2.24	1.80	1.91	2.15
Credit cards	2.85	2.62	1.56	2.54	1.44	2.05	2.54
Installment loans and other plans	2.36	1.83	2.03	2.29	1.87	1.90	2.07
All other loans and leases	0.67	0.43	1.29	1.95	1.63	0.96	0.87
Percent of loans noncurrent							
Total loans and leases	1.42	1.18	1.09	0.95	1.00	1.12	1.20
Loans secured by real estate (RE)	0.93	0.91	0.98	0.62	0.80	0.67	0.87
1–4 family residential mortgages	0.86	1.15	1.05	0.50	0.76	0.64	0.95
Home equity loans	0.31	0.24	0.86	0.33	0.40	0.32	0.44
Multifamily residential mortgages	0.31	0.39	0.49	0.31	0.33	0.45	0.39
Commercial RE loans	0.79	0.75	0.96	0.64	0.85	0.68	0.79
Construction RE loans	1.21	0.78	0.92	1.01	0.73	0.73	0.86
Commercial and industrial loans*	1.90	2.06	1.60	1.20	1.62	1.82	1.82
Loans to individuals	2.15	0.85	0.65	1.31	0.61	1.36	1.41
Credit cards	2.59	1.79	0.95	1.97	1.01	1.88	2.18
Installment loans and other plans	1.95	0.60	0.64	0.91	0.62	0.53	1.04
All other loans and leases	0.68	0.75	0.76	1.19	1.17	1.17	0.80
Percent of loans charged-off, net							
Total loans and leases	0.86	0.57	0.58	0.86	0.33	1.11	0.73
Loans secured by real estate (RE)	0.09	0.11	0.17	0.19	0.04	0.06	0.12
1–4 family residential mortgages 0.08	0.10	0.18	0.16	0.04	0.03	0.10	
Home equity loans	0.25	0.26	0.25	0.26	0.24	0.23	0.25
Multifamily residential mortgages	0.00	0.07	0.05	0.08	0.02	−0.03	0.03
Commercial RE loans	0.03	0.09	0.15	0.23	0.03	0.10	0.10
Construction RE loans	0.04	0.15	0.19	0.12	0.03	−0.02	0.11
Commercial and industrial loans*	0.71	0.97	0.90	1.07	0.66	1.30	0.90
Loans to individuals	2.94	1.90	1.39	2.70	0.86	3.24	2.43
Credit cards	4.70	4.15	4.34	4.49	1.93	4.15	4.44
Installment loans and other plans	1.27	1.18	1.05	1.00	0.82	1.47	1.17
All other loans and leases	0.19	0.20	0.63	0.37	0.29	1.36	0.38
Loans outstanding ($)							
Total loans and leases	$1,137,097	$1,060,099	$765,937	$281,263	$153,640	$430,109	$3,828,145
Loans secured by real estate (RE)	362,433	549,061	364,317	131,081	84,142	208,351	1,699,384
1–4 family residential mortgages	191,556	270,963	165,028	57,579	33,067	77,716	795,907
Home equity loans	26,790	44,134	36,784	7,656	1,360	13,399	130,123
Multifamily residential mortgages	15,343	16,836	13,464	4,008	2,435	8,874	60,960
Commercial RE loans	79,154	143,713	103,576	36,717	30,810	75,335	469,305
Construction RE loans	16,864	63,667	36,844	14,477	12,761	29,097	173,709
Farmland loans	1,295	6,813	8,594	10,644	3,708	3,215	34,269
RE loans from foreign offices	31,431	2,937	28	0	0	715	35,111
Commercial and industrial loans	348,816	273,578	220,421	63,958	37,051	101,679	1,045,503
Loans to individuals	223,761	130,902	87,555	48,951	23,071	83,264	597,505
Credit cards**	104,010	29,887	8,018	21,415	693	52,504	216,527
Other revolving credit plans	11,487	4,807	2,570	3,472	720	3,626	26,680
Installment loans	108,265	96,209	76,967	24,064	21,658	27,135	354,299
All other loans and leases	203,256	107,187	93,908	37,321	9,598	37,256	488,527
Less: Unearned income	1,168	629	264	48	222	443	2,774

*Includes “All other loans” for institutions under $1 billion in asset size.

**Previously banks reported “Credit card & related plans.” Starting with 2001 this item will be split into separate categories, “Credit cards” and “Other revolving credit plans.”

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—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 1–4 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 Corporate Decisions

The OCC publishes monthly, in its publication *Interpretations and Actions*, corporate decisions that represent a new or changed policy, or present issues of general interest to the public or the banking industry. In addition, summaries of selected corporate decisions appear in each issue of the *Quarterly Journal*. In the first quarter of 2001, the following corporate decisions were of particular importance because they were precedent setting or otherwise represented issues of importance. The OCC's decision documents for these decisions may be found in *Interpretations and Actions* using the decision number at the end of each summary.

Charters

On March 1, 2001, the OCC granted preliminary conditional approval for Goldman Sachs Group Inc., a global investment banking and securities firm, to establish Goldman Sachs Trust Company, N.A., New York City, New York. The bank will serve primarily high-net-worth individuals nationwide. The bank also plans to operate a trust office in Wilmington, Delaware. As a condition of approval, Goldman Sachs Group will enter into a written agreement with the bank setting forth its obligations to provide capital assurance and liquidity maintenance to the bank, if and when necessary. [Conditional Approval No. 455]

On March 23, 2001, the OCC granted final conditional approval for Cabela's Inc., a sporting goods retailer, to establish World's Foremost Bank, N.A., Sidney, Nebraska (bank), as a credit card bank. The approval is subject to the condition that any contract between the parent, or any affiliate, and the bank concerning the purchase of receivables from the bank may not contain any provision enabling the parent or affiliate to terminate the contract upon an event of bankruptcy by the parent or any affiliate. In addition, as a condition of approval, Cabela's Inc. entered into a written agreement with the bank setting forth Cabela's obligations to provide capital assurance and liquidity maintenance to the bank, if and when necessary. [Conditional Approval No. 459]

Conversion

On March 15, 2001, the OCC granted conditional approval for Rushmore Trust and Savings Bank, FSB, to convert to a national bank. Immediately following conversion, the bank was acquired by Friedman, Billings, Ramsey Group, Inc., Arlington, Virginia, an investment banking and asset management firm. The condition of approval requires the bank to provide at least 60 days prior advance notice and receive the OCC's prior approval before any significant deviation or change from the proposed operating plan during the bank's first three years of operation. [Conditional Approval No. 457]

Operating Subsidiary

On March 10, 2001, the OCC granted conditional approval for Wachovia Bank, N.A., Winston-Salem, North Carolina to establish an operating subsidiary that will hold a noncontrolling interest in a corporation that is a licensed professional employer organization. Wachovia will market human resource and employee-related administrative services to small- and medium-sized customers. The approval is subject to the standard conditions for noncontrolling investments. [Conditional Approval No. 456]

Community Reinvestment Act Decisions

On February 12, 2001, the OCC granted conditional approval for Fleet National Bank, Providence, Rhode Island, to acquire Summit Bank, Hackensack, New Jersey; Summit Bank, Norwalk, Connecticut; and Summit Bank, Bethlehem, Pennsylvania. Two community organizations expressed concerns with the banks' records of Community Reinvestment Act (CRA) performance and with the potential effects of the merger on the convenience and needs of the communities to be served. The OCC's investigation of those concerns disclosed no information that was inconsistent with approval under the Community Reinvestment Act. The conditions of approval were unrelated to the comments or CRA. [Conditional Approval No. 454]

On February 15, 2001, the OCC granted approval for Wells Fargo Bank New Mexico, N.A., Albuquerque, New Mexico, to purchase 29 branches of First Security Bank of New Mexico, N.A., Albuquerque, New Mexico. The OCC considered comments received from a community organization in August 2000, during the comment period for the proposed merger of Wells Fargo & Company and First Security Corporation. The commenter expressed concerns that Wells Fargo New Mexico, N.A.'s record reflected a low level of lending to Hispanics and a low level of home lending to low- and moderate-income borrowers. The OCC's investigation of those concerns disclosed no information that was inconsistent with approval under the Community Reinvestment Act. [CRA Decision No. 108]

On March 13, 2001, the OCC granted approval to Chase Manhattan Bank USA, N.A., Wilmington, Delaware, to acquire First USA Financial Services, Inc., Salt Lake City, Utah. One community organization expressed concerns with First USA's Financial Services, Inc.'s "needs to improve' CRA rating and with certain Home Mortgage Disclosure Act data of Chase Manhattan Bank USA, N.A. The OCC's investigation of those concerns disclosed no information that was inconsistent with approval under the Community Reinvestment Act. [Corporate Decision No. 2001–06]

Speeches and Congressional Testimony

Page

Of the Comptroller of the Currency

Of the First Senior Deputy Comptroller and Chief Counsel

Remarks by John D. Hawke Jr., Comptroller of the Currency, before an International Monetary Seminar, on Internet banking, Paris, France, February 5, 2001

In the early 1930s, the American humorist Will Rogers would solemnly tell his audience that there had been "three great inventions since the beginning of time: fire—the wheel—and central banking." That usually brought a big laugh. A decade earlier, when central banking was young in many countries—including mine—central bankers were hailed as soldiers of peace, international cooperation, and financial stability. But by the 1930s, those same central bankers were held in widespread contempt for passivity or complicity—or both—in the events that led to the Great Depression. By then, many central banks had been transformed—not always against their will—into instruments of economic nationalism and international rivalry that would soon plunge the world into war. Not until well after the restoration of peace did the central banks of the world reclaim the optimistic vision of that earlier age.

Today Rogers' "three great inventions" would be regarded as nothing more than an exaggeration to make a valid point, and that's a tribute to the extraordinarily important role that central bankers play in ensuring a sound global economy. In times of political turmoil, the world can count on its central banks as anchors of calm and stability. Everyone may not appreciate it, but I know of no other institutions, public or private, that do more to advance the development of sound economies, high standards of living, and the dignity of all the world's people.

From the beginning, it was understood that the goals of central banking could be best advanced through concerted action among central bankers. The formation of the Bank for International Settlements (BIS) in 1930 was an important step in this direction. Today, as you know, we have a variety of mechanisms through which central bankers can draw on each other's expertise to address the pressing financial issues that confront us.

From the perspective of bank supervisors, the establishment of the Basel Committee on Bank Supervision in 1974 was an event of scarcely less significance than the creation of the BIS itself. The committee was formed in response to the growing internationalization and interdependence of the world's financial markets—a trend that lends even greater urgency to its work today. Under its auspices, great progress has been made in improving supervisory understanding and the quality of bank supervision worldwide.

The committee pursues these goals in three principal ways: by improving the effectiveness of techniques for supervising international banking; by exchanging information on national supervisory arrangements; and by setting minimum supervisory standards in areas where they are considered desirable. In recent years, the committee has actively expanded its links with supervisors in nonmember countries, with a view to strengthening prudential supervisory standards in all the major markets.

Initially, the Basel Committee's posture was primarily reactive; its goal was to ensure a coordinated response to the spillover effects of multinational bank failures. Today, in keeping with modern supervisory theory, it aims to avert crisis. Thus, the committee focuses on studying risk management, disseminating its principles among bankers and bank supervisors, and identifying areas of rising and emerging risk so that national supervisors can take early and effective action.

The best—and best-known—example of the committee's response to risk is its continuing work on capital standards. The committee was persuaded to tackle the subject back in early 1980s not only by the erosion in the capital ratios of major international banks, but also by cross-border concerns—that capital requirements in some countries were being manipulated to lend a competitive advantage to banking organizations located in those countries. The landmark Capital Accord of 1988 addressed many of these concerns. Since then, the Accord has been frequently updated and amplified, with the most recent proposals for revisions having come just last month. But though much has changed, the fundamental principles embodied in the original Accord—that supervisory standards regarding capital should be harmonized around the world and that all internationally active banks in the G–10 countries should meet certain minimum requirements—have been repeatedly reaffirmed.

In some ways, electronic banking—e-banking, for our purposes—epitomizes the supervisory challenge that the Basel Committee was created to address. The technology on which it is based is inherently transnational. One of its very purposes is to give the banks that employ it the ability to offer products and services to customers wherever they might be located, without regard to national borders. The issue that's presented for supervisors and policy makers is how such offerings can or should be regulated in this transnational environment. It should be obvious that if every jurisdiction into which an e-banking offering was broadcast attempted to regulate the offering, or the offerer, the major benefit of the new technology could very quickly be lost. One is tempted to say that if no mechanism existed for coordinating bank supervision internationally, one would have to be invented to deal with the challenge that e-banking presents.

Although e-banking was an exceedingly negligible presence in the overall financial marketplace in 1998, the fundamental characteristics I've just mentioned, as well as a recognition of its future promise, led the Basel Committee to conduct a preliminary study of its risk management implications. That study demonstrated a clear need for more work in the area, and the mission was entrusted to a group formed for the purpose, the Electronic Banking Group, or EBG, which it's my honor to head. The EBG membership comprises 17 central banks and bank supervisory agencies from the G–10, along with observers representing the European Central Bank, the European Commission, and, most recently, bank supervisors from Australia, Hong Kong, and Singapore.

One of the EBG's first orders of business was to inventory and assess the major risks associated with e-banking. Those risks, we concluded, fall into six broad risk categories: strategic risk; legal risk; operational risk; country risk; reputational risk; and, finally, credit, market, and liquidity risk. Let me elaborate briefly on each.

E-banking is undergoing constant and rapid change, and this intensifies *strategic* risk for many banking organizations. Historically, banks would gradually roll out new products and services only after in-depth testing. Today, however, banks face competitive pressures to introduce new e-banking applications in very compressed time frames—often no more than a few months from concept to production. It's the responsibility of bank directors and bank managers to ensure that adequate strategic review has been conducted *before* the activity commences.

As I've already noted, e-banking gives financial institutions unprecedented ability to serve customers across national borders. But in reaching out to these customers, banks also face unprecedented complexities arising from differences in legal and regulatory environments, including different consumer protection laws, record-keeping and reporting requirements, privacy rules, and money-laundering laws. E-banking institutions—and their primary regulators—have to find ways to effectively manage these *legal* risks.

Verifying the legitimacy of customer communications, transactions, and access requests is an essential part of the e-banking business. Banks must therefore build adequate authentication capabilities into their electronic systems. Failure to authenticate e-banking users can expose a bank to *operational* risk, fraud, or unknowing involvement in criminal activity.

In an effort to bring e-banking products rapidly to market, many institutions that lack the in-house technology base to do so on their own have formed partnerships with other financial institutions and technology vendors both inside and outside their home countries. While these partnerships are often successful, banks must be aware of the possibility of increased *operational* risk that could result from the loss of risk management and control. It's critical that banks conduct comprehensive and ongoing oversight of all outsourced and third-party dependencies that could have a material impact on its operations.

Any firm, financial or otherwise, doing business abroad faces *country* risks associated with unforeseeable changes in the economic, social, or political climate that could disrupt service. Different compliance and regulatory requirements, labor unrest, political instability, and currency fluctuations are just a few of the country risks that cross-border e-banking poses.

Reputational risk refers to the damage that can occur when a bank is unable to deliver on its service commitments. This can include failing to adequately meet customer account needs or expectations, unreliable or inefficient delivery systems, untimely responses to customer inquiries, or violations of customer privacy.

Finally, there are the *credit*, *market*, *and liquidity* risks associated with rapid expansion through electronic channels into new markets; with making loans over the Internet to applicants whose credit history may be reported in unfamiliar ways or not at all; and with the potential for greater funding volatility related to reliance on price-sensitive deposits obtained through the Internet.

It should be noted that none of these risks are unique to e-banking. They apply to all banking organizations, and each has been addressed in previous risk management initiatives of the Basel Committee. But these risks are all magnified in a technology-intensive environment.

The EBG's catalogue of e-banking risks—and the all-important question of how bankers and bank supervisors might best respond to those risks—have largely defined the EBG's agenda over the past year. It's been a year of intensive research and study. We initiated an ambitious outreach and communication program with prominent private sector institutions active in e-banking developments and activities, including financial institutions, third-party service providers, and vendors. A series of Industry Roundtables, held in North America, Europe, and Asia, have allowed the EBG to obtain invaluable insight and information regarding e-banking risk issues, current strategic and product developments, and emerging risk management standards. It's been a lively and productive year.

Now, after digesting all that we've learned, the EBG has prepared a report entitled "Principles for Risk Management of Electronic Banking," which is in final draft and will be released for comment later this month. The theme of the report is that e-banking should be conducted with no less attention to the fundamentals of safety and soundness than banking activities conducted through traditional delivery channels. Our report presents 14 risk management principles, organized under three headings: Board and Management Oversight; Security Controls; and Legal and Reputational Risk Management.

In preparing this guidance, we have tried to be as specific as possible in alerting financial institutions and their supervisors to the nature of the risks they face in the e-banking environment and in suggesting sound practices to manage these risks. But we have also been mindful of the fact that each e-banking situation is different and may require its own customized approach to risk mitigation. Our expectation is that bankers will put these principles to use as they develop policies and procedures to govern their e-banking activities.

This expectation is embodied in principle number one. Permit me to read it verbatim: "The Board of Directors and/or senior management should establish effective management oversight over the risks associated with e-banking activities, including the establishment of specific accountabilities, policies, and controls to manage those risks. In addition, e-banking risk management should be integrated within the institution's overall risk management process."

I should tell you that it was no accident that this particular principle wound up at the top of our list. After all is said and done, management recognition of the risks inherent in e-banking and support for a supportive risk management environment is fundamental if the specific risks that are addressed in the other 13 principles are to be properly controlled.

While this report should be very useful to financial institutions "going electronic," the manner in which the study was prepared—and in which current EBG initiatives are being conducted—may prove to be just as auspicious a development for the future of e-banking. Experience teaches us that achieving the right kind of international consensus can be a painstaking and time-consuming process. The pace of developments in e-banking has required the EBG to bring our work to the attention of the banking community in a timely way, without compromising the breadth and depth of the consultation and outreach that has gone into it. I'm proud of the way that the group and our staff have met this challenge.

We shall continue to consult methodically with the industry, with our supervisory counterparts, and with other interested parties as the EBG continues to explore the ramifications of e-banking. Having developed risk management principles for e-bankers, we are now hard at work on guiding principles for cross-border cooperation among bank supervisors. We know that if e-banking is to proceed relatively unimpeded and to deliver the benefits we anticipate, host country supervisors will need to achieve a high level of comfort with home country supervision. The alternative, new laws and regulations governing e-banking in each country in which it is conducted, would impose a heavy burden on innovation. The goal of the EBG's ongoing work in this area is to avoid such an outcome and allow e-banking's promise to be fulfilled in a safe and sound manner.

In keeping with this emphasis on consultation, I would like to conclude my remarks by reporting to you on another promising initiative. Last year, I had the pleasure of participating in a meeting with our colleague, Mr. Andrew Crockett, chairman of the Financial Stability Forum, to discuss how the broad community of financial supervisors, including the insurance and securities regulators, might exchange information on e-finance activities within their respective spheres. It was agreed that we would set up an informal Contact Group for E-Finance, which would facilitate the exchange of information across the various financial sectors and promote discussion of the possible systemic implications of e-finance activities. Andrew asked me to chair this group. Our aim is not to duplicate work under way in the EBG or its counterparts in any other organization, but simply to share information and continue the process of consultation and coordination that is so necessary and that has already been so fruitful. It was in that spirit that I wanted to share my thoughts with you this evening.

Will Rogers, whom I quoted at the outset of these remarks, had no more use for after-dinner speakers than he had for bankers. He called them "the two most nonessential industries we have." The thought of a banker—or a bank supervisor—doubling as an after-dinner speaker would surely have filled him with dread. I have tried this evening to do nothing that would have justified his apprehension, and I appreciate your bearing with me in this effort.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before a Conference on financial e-commerce, sponsored by the Federal Reserve Bank of New York, on Internet banking, February 23, 2001, New York, New York

Among the many things technology has changed are the ways we think and talk about technology itself. The term "electronic banking," for example, once referred to ATMs and direct deposit. Today, it generally means banking online, through the personal computer and over the Internet. That's the brave new world of banking in the 21st century—and one of the key subjects of this timely conference.

It's taken a fair amount of self-discipline not to get swept up in the e-banking enthusiasms of recent years. It seems only yesterday that the conventional wisdom held that bankers who were unable to offer customers a full range of products and services over the Internet might as well turn in their charters. In fact, some analysts argued that, in order to take full advantage of the new medium, banks would have to develop Internet banking apart from traditional banking operations. It was expected that the Internet's low operating costs, compared to the large costs associated with maintaining branches, would allow banks to charge lower fees and offer higher deposit rates. The Internet would provide the convenience of banking wherever and whenever the customer chose to use the service. And the ability to gather and process valuable customer information over the Internet would allow Internet-savvy bankers to tailor and market services to individual customer demands and to respond rapidly to changing market circumstances.

Yet, so far, the evidence has not supported the prediction that banks with traditional branch networks would be unable to compete successfully with more agile Internet-focused banks. The most successful Internet banking operations have been those that operate as part of an existing traditional bank, while Internet-only banks have been having difficulty growing and generating profits. Increasingly, industry analysts have begun to question the case for a pure Internet strategy.

Of course, we should always be cautious about drawing sweeping conclusions about events that are still unfolding. We're very much in the early stages of Internet banking, and confident pronouncements of what the future holds should be treated with skepticism. Nevertheless, I think it is worth reflecting on recent market developments and how, as regulators, we should react to these developments. In that spirit I want to address several questions today:

- What has the Internet's impact actually been on the banking industry so far?
- Where will it take the industry in the near future?
- What special risks—individually or in combination—does e-banking present to a safe and sound banking system?

Some of these questions are impossible to answer with any precision, and the hazards of the crystal ball are well known. But, with all the appropriate cautions and caveats, I will venture a few educated guesses on the impact of the Internet on the banking industry and discuss my views on how we should approach regulatory policy and supervision given the large uncertainties as to future developments.

A Status Report on Internet Banking—and Some Musings on the Future

In discussing Internet banking, we should begin by differentiating between pure Internet startups, on the one hand, and traditional banks that have embraced the Internet as an additional delivery channel, on the other. Popular impressions to the contrary, only about two dozen banks and thrifts operate as Internet-only (or Internet-mainly) institutions. Of that group, five are national banks chartered and supervised by the OCC. At the end of the third quarter of last year, those five banks held assets totaling $1.4 billion—a drop in the bucket, relatively speaking. As I've already mentioned, these primarily Internet banks have not yet made significant inroads into the markets of traditional banking organizations, and, generally they are finding it challenging to generate profits and growth.

What kinds of obstacles have pure Internet banks encountered? Customer concerns about online security and privacy, unfriendly Web sites, unresponsive customer service, and the simple fact that you can't deposit or cash a check online—all of these have been impediments to the success of an Internet-only strategy. Another important factor is the enormous promotional cost of building a customer base to critical mass from scratch—particularly when traditional banking services work extremely well and are relatively inexpensive for most consumers. This may explain the very high percentage of newly opened Internet banking accounts that lie fallow. By one estimate, in 1999 nearly 50 percent of all banking accounts opened with Internet startups were inactive.

As a result, some Internet-primarily operators are now retrenching, adopting cost-saving measures and shedding customers who add nothing to the bottom line. Fees are rising, premiums are shrinking, and the attraction—along with the rationale—for Internet-primarily banking seems less and less obvious.

While it's clear that to date Internet banking has not overwhelmed traditional banking, this should not be interpreted to mean that Internet banking is a bust. In fact, Internet banking has become an important factor in the industry over a very short time. For any number of reasons, many banks and virtually all of the biggest banks have an Internet presence and others are coming to the same conclusion almost every day. As 2001 began, 37 percent of all national banks were offering transactional online banking—nearly twice as many as were offering it only 15 months earlier. Today, most of the very large institutions offer Internet banking, with OCC economists estimating that approximately 90 percent of all customers currently bank at institutions offering Internet banking. That's to say that while it is estimated that only about 13 percent of U.S. households currently *use* the Internet to bank, a very large percentage of banking customers could easily do so if they believed that the service was superior to traditional channels.

We need to remind ourselves that the Internet banking "era" has really just begun. As recently as 1997, only about 100 banks and thrifts offered banking over the Internet. Since then, as I've mentioned, the rate at which banks have "gone online" has been rapid, especially compared to the early phases of other technology-based banking services such as automated teller machines. Further, many banks, including some of the nation's largest institutions, see the development of online services as a major component of their business and marketing strategies. These institutions are investing very significant resources in upgrading their technological capabilities and in acquiring the human resources to effectively utilize those capabilities.

Interestingly, we're finding a strong generational correlation among Internet banking users. It's perhaps to be expected that Internet banking would appeal to younger people who have grown up around computers. What one might not expect is that older folks and retirees would be among the most enthusiastic customers for e-banking services. Yet surveys show that the older generation is spending more time with the Internet and e-mail, and is increasingly comfortable with the idea of conducting financial transactions online. Many of these people are less mobile than they once were, and they welcome the opportunity to pay bills, transfer funds, and monitor their accounts from the comfort and safety of home.

It's the middle-age folks—people who have grown up with conventional banking—who have been least inclined to make the switch so far. They don't necessarily see the Internet as offering them significant new value. Indeed, as I've already argued, the cost savings that middle-income consumers can expect to receive when performing basic banking services over the Internet are unlikely to be very large. This suggests that any breakthrough in consumer usage of online banking may depend on the development of new and better services, rather than on reductions in the price of standard banking products.

On the other hand, even relatively modest transaction cost reductions will be very attractive to business customers that handle a large volume of payments and receipts. Thus, there is a compelling economic case for significant growth in demand for Internet banking services by banks' business customers, and to the extent this demand grows, banks that remain on the sidelines may risk losing business customers to competitors with more aggressive Internet strategies.

The impact of the Internet on the banking industry is not simply a question of how many bank customers will check balances, transfer funds, and pay bills via the Internet. Fundamentally, the business of banking involves the collection, storage, transfer, and processing of information assets, and the Internet is an incredibly powerful and efficient tool for handling these processes. It is impossible to predict precisely all the ways in which this tool will be used for banks and their customers. But it *is* possible to say with confidence that eventually the Internet *will* change the nature of banking services.

We can already see changes taking place. Traditionally, small, start-up firms, for which little information is available to evaluate creditworthiness, are unable to secure financing from formal credit markets, including banking. Often entrepreneurs have to seek funds from relatives, friends, or private credit markets. Technological advances in data collection, data management, and financial engineering have improved the ability of potential creditors to assess the creditworthiness of these borrowers and to price the risks associated with them. As a result, the range of businesses that can obtain loans through financial institutions is expanding rapidly.

Another example of how the Internet can fundamentally change the business of banking is illustrated by its impact on the "finder" function of banks. Banks have traditionally brought together parties who then negotiate and complete transactions between themselves. In the past, because of limitations on communications and information technology, this "finder" function was of limited utility. However, with the development of the Internet, the finder function empowers banks to play a central role in electronic commerce. The OCC recognized this important development in our Fleet decision, which concluded that national banks can act as finders to offer commercially enabled Web site hosting services to their merchant customers. The bank-hosted sites serve to bring together buyers and sellers-a technologically advanced expression of the finder function.

The Challenges for Regulators

Regulators have an important role to play in the new world of Internet banking—a role that goes well beyond determining whether a particular online banking activity is permissible under existing law. We're also responsible for ensuring that both the novel and more generic risks associated with Internet banking are properly understood and managed by the bankers we supervise, and properly provided for in our supervisory policies and practices.

Regulation can be a powerful spur to innovation—or a formidable obstacle. In the case of the OCC, we have long taken the view—going back to the days of the first electric adding machines—that technology is a positive force capable of delivering significant benefits to banks and their customers. That's the conviction from which our policies flow—and not just those relating to Internet banking. Our aim is to encourage innovation rather than stifle it, and while circumstances may occasionally force the adoption of new rules and restrictions, we believe that regulatory self-restraint is most likely to produce the best results for all concerned.

There are several ways in which the development of Internet banking generates potential challenges for regulatory policy. First, Internet banking—and developing technology more generally—is changing the structure and function of financial institutions. Our existing regulatory framework has evolved as a series of specialized responses to the rise of specialized types of financial institutions, but technology, among other factors, is rapidly blurring these differences. Second, Internet banking may raise either new public policy concerns or cast existing concerns in a new light—the privacy issue, for example. Third, Internet banking challenges traditional methods of safety and soundness supervision by changing the nature and scope of existing risks, and possibly by creating new risks. Finally, the nature and scope of technological change may require authorities to rebalance their emphases on regulatory rules and industry discretion.

Technology makes it increasingly desirable and easy for some institutions to offer a wider range of services. Improvements in the ability to integrate financial products and to more efficiently market and cross-sell are major advantages of the online environment. But the wider the range of services offered by banks, the more intricate becomes the task of identifying which lines of business banks are engaged in, and the more difficult it becomes to coordinate supervision among functional supervisors.

Yet regulation also has a prophylactic function. Innovation is inherently risky, and it's the responsibility of regulators to help bankers manage that risk and preserve the safety and soundness of the banking system as a whole.

Internet banking involves some of the same risks that are common to all bank activities. Avoidance of credit concentrations, funds management, capital adequacy, contingency planning, internal controls—the rudiments of good banking practice apply with equal force whether banks operate online or not. And I can assure you that our supervision expects no less rigor in minding these fundamentals from those that do.

But it's also important to recognize that Internet banking involves additional risks—risks novel in kind or degree. Three areas seem especially relevant to Internet banking.

The first of these is security. So far, only a handful of financial institutions have reported being victimized by online security violations. But as electronic banking becomes more widespread and complex, the need for banks to assess and manage security risks will become ever more crucial. Risks and threats in the digital world appear to mirror those of the physical world, but the fast pace of the Internet magnifies those risks. Consider a transactional fraud that by itself offers a minimal pay-off. Once this fraud is automated and repeated over the course of a day, for perhaps tens of thousands of accounts, it can provide an attractive incentive for criminals. We also need to consider how new products and services, such as account aggregation, may increase risk by centralizing information, thereby creating a richer target for attackers.

Vendor management is another particular concern for Internet banks, many of which rely on third-party service providers for advanced technology. Such relationships enable small banks to offer Internet banking to their customers, and can reduce cost burdens even for the largest banks. But this specialization and division of labor raises risk management issues. A handful of big service providers dominate the field, and if any of them were to experience problems, a large number of banks could be affected. Banks must therefore negotiate contracts that clearly identify bank and vendor responsibilities for addressing risks. Banks must also establish procedures to effectively monitor vendor compliance within these terms—and develop contingency plans in the event that a vendor goes down. This can be especially important for vendors that are new and relatively untested in the marketplace, and for vendors that operate in industries less regulated than banking.

The final area of supervisory concern centers on the cross-border implications of e-banking. By its very nature, Internet banking defies geographic boundaries. Banks in one national jurisdiction can transact banking business with customers in other countries, without ever establishing a physical presence there. Indeed, once a bank goes on the Internet to offer its products and services, it cannot limit the geographic reach of that offering. Important questions are likely to be raised about which country's supervisors have jurisdiction over remotely conducted cross-border offerings and transactions, and which laws within each country apply. In addition, some banks and service providers may choose to operate from countries in which the activities are unregulated or less regulated. Risk exposures to, and competition with, such entities may become increasingly important for banks of all sizes.

An additional broad policy consideration is determining when to establish formal rules and when to allow financial institutions to develop their own nonregulatory approaches to managing new risks. Rapid changes in technology can render supervisory policies obsolete before they've even been implemented. Moreover, regulatory and supervisory policies could retard or distort desirable market developments. At the same time, relying on industry discretion poses risks of its own, and supervisors must carefully monitor industry behavior to ensure the continued protection of the public interest.

Having identified these areas of risk for Internet banks, it may well be asked what the OCC is doing to respond to them. The first thing we're doing, of course, is talking about them, here and at other forums around the country and around the world. Awareness of a problem is a first step toward dealing with it, and we want financial institutions to ask the right questions early on in the Internet planning process.

To further assist in that effort, we've dedicated significant resources to the analysis of current and future e-banking trends. OCC economists and technical experts have been conducting extensive research in this area. Our examiners are undergoing extensive training to help them identify problems relating to banks' online activities, and we regularly poll them to report on Internet activities in the banks they supervise. These data are the foundation for OCC's supervisory guidance.

For example, we are about to release an OCC bulletin that suggests ways to manage the specific risks associated with account aggregation. We will offer guidance on how banks involved in aggregation can avoid such business catastrophes as system intrusions and denial of service situations; how they should structure contracts with third-party providers; and how they can develop effective strategies to ensure that their activities in this area comply with all the relevant law, including the privacy provisions of the Gramm–Leach–Bliley Act. This guidance document and much else of value to the e-banking community are available on the OCC's Internet banking Web site.

Much of the guidance we release is the outgrowth of our comprehensive collaboration with other domestic and foreign bank supervisors. Late last year, the OCC, as a member of the Federal Financial Institutions Examination Council, or FFIEC, released guidance that should be of real assistance to banks involved in relationships with third-party technology vendors, and, in cooperation with the other FFIEC agencies, we recently issued final guidelines for safeguarding customer information. The guidelines address the "security" side of the privacy issue.

Existing mechanisms for coordinating bank supervision internationally have also been mobilized successfully to address cross-border e-banking issues. The Basel Committee on Bank Supervision has taken the lead in this area through the creation of its Electronic Banking Group, (EBG) which it's my honor to chair. The EBG, whose members represent 17 central banks and bank supervisory agencies—including the Federal Reserve Board, the FDIC, and the Federal Reserve Bank of New York—has been highly productive. We have conducted industry forums around the world and we are currently putting the final touches on a paper that provides guidance to banks on the management of risks associated with e-banking. We are also in the process of developing an issues paper addressing some of the challenges involved in the supervision of cross-border e-banking.

In light of the developments I've discussed, in the industry and in the regulatory community, I believe that the best days for e-banking lie ahead. Over the next five years or so, literally millions of bank customers will be coming on stream for whom the Internet has been a way of life since childhood. It will be a challenge for the banking industry to be prepared for this coming boom.

In short, the Internet holds tremendous promise for generating value for banks and their customers, and, with you, I look forward to learning more about what the future holds in this important area of the economy. This conference takes us an important step in that direction.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the National Association of Affordable Housing Lenders, on community development bankers, Washington, D.C., March 1, 2001

I'm delighted to be a participant in NAAHL's [National Association of Affordable Housing Lenders] annual legislative and policy conference, and am grateful for the opportunity to share my thoughts with you on some subjects of mutual concern. You and the organizations you represent deserve great credit for the immensely important work you're doing every day in cities and towns all across America. Thanks to you, our country is a better place to live—and not just for those who are the direct beneficiaries of your work. I'm particularly proud of the contribution that national banks make to your efforts, not only as lenders and investors, but also as partners fully committed to the communities they serve.

Community development (CD) is a rich and varied field. But whether your specialty is some facet of small-business lending, or affordable housing, or something else, each of you is also in the business of overcoming challenges. Your experiences have demonstrated that community-development lending can be good business; that low-income individuals are generally just as reliable—sometimes even more reliable—in meeting their financial obligations as more affluent borrowers; and that through public and private partnerships, communities *can* be rebuilt—one brick, one building, one block at a time.

Now there's a new challenge before us. The prosperity of the 1990s may not have lifted *all* boats, but there's little doubt that the benefits of nearly a decade of uninterrupted economic growth were widespread. It's no coincidence that the last decade was also one of dramatic accomplishment in the community development arena. And there's little doubt that at least some of the CD projects undertaken over the last 10 years would have had trouble getting off the ground in a less buoyant economy.

So it's natural for those directly involved in these community development projects to wonder whether and to what extent the current economic slowdown will affect current and future CD initiatives.

Obviously, a lot will depend on the nature of the slowdown. With any luck, it may turn out to be a mere interlude before the economy regains its momentum. While I don't want to speculate on economic issues beyond my purview, the OCC has, over many months, been working dutifully, through what I believe has been judicious supervision of national banks, to ensure that our banks remain healthy and retain the ability to continue to make loans to creditworthy borrowers, at prices that fairly reflect the risks and costs involved. That's the best way to safeguard the strength of the banking system—and the strength of the economy that depends upon it.

But we can't rule out the possibility that economic uncertainty and a reduced appetite for risk on the part of financial institutions could affect the viability of some community development projects, especially those still on the drawing board, and put bank officials responsible for these projects into a position of having to justify them anew.

How do we respond to this challenge? And what can be done to assure that the progress of recent years in rebuilding our communities continues, regardless of which way the economic wind blows?

I don't think anyone who hears banks discuss their CD activities today can help but be struck by a shift in attitude. Most banks that are active in this market characterize their involvement as motivated by sound business considerations, rather than as a legal imperative. Banks have increasingly found that if they structure and manage community development loans and investments, it doesn't take years before they start paying off. As neighborhoods stabilize, property values rise, residents begin to accumulate wealth, and they return with their business to the banks that helped them succeed. When banks invest in their communities, they're also investing in their own future success.

Indeed, our leading financial institutions are institutionalizing their involvement in community development. Under the law, banks need at least satisfactory CRA ratings in order to take advantage of various expansion opportunities, but the activities that qualify for those ratings increasingly stand or fall on their merits, as they should. CRA should not be the sole determinant of whether or not banks take on a project. A program of community development investments motivated solely by carrot-and-stick inducements is not likely to be as effective in achieving beneficial results for the community as one that is solidly grounded in the underlying economic merits.

Still, as I suggested earlier, the merits of some CD projects are not always self-evident, and at a time of growing earnings pressure for financial institutions, these projects may find themselves under tougher scrutiny than ever before. In this more challenging economic environment, community development bankers will have to become more efficient, more resourceful, and more creative in structuring projects in ways that reduce risk and maximize returns—for the community and the financial institution itself.

Fortunately, we have each other's experiences to draw upon and learn from. From our experience in administering the Part 24 investment authority and in working with national banks seeking to expand community development activities, we see examples every day of how banks have learned to conduct these activities in a way that is creative, efficient, risk sensitive, and profitable. I'd like to share a few of these examples with you today.

First, we've learned that an integrated approach to community development works best. There was a time when banks addressed community development needs simply by easing the requirements for traditional products like small-business and mortgage loans so that some nontraditional customers could obtain them. Now, there's a wider recognition that substandard housing and a lack of small-business capital are symptoms of deeper ills that afflict our neediest communities, and that banks that define their own participation more broadly in programs that attack these ills at their source can not only make important contributions to the health of the communities in which they operate, but can do so in a manner that is fully consistent with safety and soundness and reasonable profitability.

This generally means offering an integrated menu of CD lending, investment, and service products, and of embracing a strategy of targeting these products to designated neighborhoods, rather than scattering them over a wider area. Although some banks still choose to specialize in a particular product line, many offer a broader mix that may include support for single- and multi-family housing construction and rehabilitation, small-business establishment and expansion, larger commercial development, and infrastructure improvements. Some banks even integrate into their community development strategy the financing of hospitals and health-care clinics, educational facilities, churches, and libraries that serve or are located in the targeted communities.

Second, we've learned that comprehensive community development requires comprehensive community effort, including local governments, community organizations, charitable and religious groups, the business community, and other interested parties. It may require several lenders to work together, pooling their resources and expertise. And this coordination and cooperation should come into play, not just when a passing need arises, but as part of an ongoing relationship that does not necessarily end when the keys are turned over to the new homeowner or small-businessperson.

Teaming up with experienced and well-run nonprofit CDCs can actually reduce a bank's transaction costs if the CDC partner prescreens the good deals from the bad ones, provides pre-purchase homeownership counseling, and helps to shape up credit proposals that satisfy the bank's needs and requirements.

The bank partnerships I've seen are as varied as the organizations that enter into them. And there are about 3,600 community development corporations currently operating, four major national housing intermediaries and their subsidiaries, and thousands of financial institutions of every type—it's obviously difficult to generalize—except about the importance of flexibility in choosing the right partners for each project.

The CDCs can play a crucial role as intermediaries and facilitators. They typically provide resources and services that supplement banks' activities, gather market information about the neighborhoods in which banks are contemplating lending or investment, and enhance communications between banks and community residents. They work with local governments and utilities to obtain licenses and approvals. They may provide a variety of customer-support services, including counseling for potential homebuyers and recent homebuyers, and those interested in starting or expanding a small business. Such counseling can make the difference between a loan that stays current and one that becomes troubled; and it's a service that many of the CDCs do very well.

The third point speaks to the importance of creativity in assembling financing for CD projects. Here, too, banks may be able to take advantage of a variety of resources—in the form of public subsidies, tax credits, secondary market mechanisms, and foundation grants, to name just a few—that only a short time ago either did not exist or were unavailable for purposes of community development. But they are now, in part, because CD projects have achieved greater recognition and viability in the marketplace. Indeed, there are likely to be increased opportunities for public and private collaboration resulting from the recent expansion of federal low-income housing tax credits, tax exempt bond authority for the states, and other economic development initiatives like the New Markets program, passed by Congress.

Banks often work with each other in order to share expenses and spread risk; often times, they have no choice in the matter, given the scope of the undertaking. CDCs and Community Development Financial Institutions frequently serve as vehicles through which these multi-bank sharing arrangements are consummated. Most frequently, CDCs are sources both of supplemental financing and of expertise in arranging such financing from third-party sources. Especially for smaller banks, which may lack in-house expertise of their own, community organizations often can provide technical knowledge to help assemble these frequently complex financial packages. As a result, they are often able to offer opportunities to banks to participate in projects as lenders or investors, that the banks would not have been able to arrange on their own.

Let me give you another example of how CD lending and investment can be creative, safe, and profitable. In a recent issue of our *Community Developments* newsletter, we highlighted a low-income housing tax credit transaction in the Bickerdike neighborhood of Chicago that included five sources of financing. The bank's permanent mortgage amounted to only 2.9 percent of the total project cost. I know that the lender sleeps much more peacefully knowing that not a single dollar of the additional $6.4 million invested in this deal has a priority over the bank's first mortgage position.

The kind of partnering between financial institutions and community organizations that I've been describing enables each party to the transaction to focus most efficiently on what each does best, and to get maximum impact from each dollar in meeting the pressing needs of their communities. It's also the best way to ensure that CD projects are not disproportionately affected by changes in the economy.

In my recent travels around the country, I've seen these techniques at work, changing neighborhoods and changing lives. Here in the nation's capital, where skyrocketing real estate values have contributed to a severe shortage of affordable housing, the Local Initiatives Support Corporation, or LISC, has been a catalyst for revitalization efforts. Its work in the long-depressed 14th Street corridor offers a good illustration of how creative financing can bring ambitious CD projects to life. In one case, Washington's historic Whitelaw Hotel was converted into 38 units of affordable rental housing, using national bank investments in LISC's National Equity Fund, investments made possible by the OCC's Part 24 investment authority. The project also received assistance from the federal Low Income Housing Tax Credit and Historic Tax Credit programs.

In Chicago, New York, and many other cities, local Neighborhood Housing Services organizations have done heroic work in troubled communities, arranging financing for housing construction and rehabilitation, and working with local government to reduce crime, improve city services, and make these communities attractive places to live.

And it's not only our big cities that are seeing the benefits of community development partnerships. In a small town in the Midwest hit by the loss of a major employer, a national bank resolved to turn things around. Working with state and local officials, public utilities, and members of the business community, the bank took advantage of Part 24 authority to finance construction of three commercial buildings. Because the new buildings were located within a state enterprise zone, the tenants received significant tax advantages. As a limited partner in these arrangements, the bank received cash dividends from the sale of the properties. But for the bank and its partners, the biggest dividends lie ahead, as prosperity makes a comeback in that town.

I know of many such stories, and I imagine that any of you could tell a few of your own. What's significant is that these are no longer isolated cases. They're the expression of a trend full of promise for our needy communities. Because of your hard work—and the resourcefulness and creativity that you bring to it—I believe that community development has passed that critical point of no return. Community development activities will continue to thrive even during difficult times as long as banks and their partners work together, pooling resources and expertise in an integrated and targeted approach to the business. Our communities are counting on your continued commitment to a cause so vital to their well being—and yours. I have never been more confident that we're equal to whatever challenges the future holds—one brick, one building, one block at a time.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the Institute of International Bankers, on Internet banking, Washington, D.C., March 5, 2001

The IIB's [Institute of International Bankers'] annual Washington conference has long been a highlight of the season for me and for the Washington financial community, and I'm delighted to be speaking to you at such an eventful time for international bankers. The past year has seen a number of supervisory initiatives of real consequence for IIB members. But rather than surveying what is truly a broad field, I thought I'd focus in on one area that's engaged a considerable portion of my time and thought in recent months—the supervisory challenges presented by Internet banking.

The rise of the Internet will certainly be remembered as one of the defining developments of our time. The financial services industry felt its effects early on, and in some parts of the industry the effects were far reaching. Online trading of securities, which offered customers cost savings and convenience that traditional brokers were hard pressed to match, not only transformed the securities business, but also helped drive the bull market that reached its peak last year. There's little doubt that the advent of online trading was a big factor in the increase in the number of Americans who have participated in these markets in recent years.

In the banking industry, the effects of the Internet have been less dramatic, but scarcely less significant. Three years ago, only about 100 banks and thrifts offered any banking services over the Internet. Since then, the rate at which banks have "gone online" has been rapid, especially compared to the early phases of other technology-based banking services, such as automated teller machines. Although five institutions have already been chartered by the OCC as Internet banks, the vast majority of banks that have embraced the Internet have done so as an additional delivery channel rather than as a stand-alone application. Today, most banks see the development of online services as a major component of their business and marketing strategies, and are investing very significant resources in upgrading their technological capabilities and in acquiring the human resources to effectively utilize those capabilities.

The dynamism of Internet banking is reflected in a recent OCC survey. It shows that 37 percent of all national banks allow customers to conduct financial transactions online—nearly twice as many as were offering online transactional services only 15 months earlier. Twenty-eight percent of national banks make account information available on the Internet. Thirty-five percent of national banks still have no Internet presence, but they are invariably smaller banks that, in total, account for only 10 percent of all national bank customers. Even so, the number of national banks that are not online in some capacity is almost certain to drop, as bank customers increasingly come to expect online access to their financial information, regardless of the size of the institution they bank with.

Whether conducted as a stand-alone activity or as an adjunct to a traditional network of brick-and-mortar branches, Internet banking obviously poses some special risk management challenges for bankers and supervisors. For example, most banks outsource the technical design, installation, and maintenance of their Internet systems, choosing not to do themselves what others can probably do better and cheaper. But the relationship between the bank and the technology vendor takes on a new sensitivity in the Internet environment. The more customers respond to marketing efforts and increase their reliance on bank Web sites to conduct routine transactions remotely, the greater the bank's dependence on those who make those transactions possible. In such situations, banks have a great deal to lose—reputationally and otherwise—if the vendor's performance comes up short.

Security is another issue with serious implications for Internet banking providers. The risk of intrusions and security breaches has grown exponentially with the number of remote access devices and the availability of sophisticated tools that, in the wrong hands, can turn just about anyone with access to a PC into a dangerous hacker. And, with more and more sensitive information available online, computer criminals—as likely to be motivated by politics or self-aggrandizement as material gain—have greater incentive to cause mischief than ever before.

Finally, Internet banking presents unprecedented cross-border and international challenges for bankers and bank supervisors. It's this aspect of the Internet banking phenomenon that I'd like to focus on today.

We should begin by noting that the risks I've just mentioned—a list intended to be suggestive rather than exhaustive—are by no means unique to Internet banks. All financial institutions run risks associated with outsourcing and information security, whether or not they operate in the Internet environment. And all financial institutions that operate in the international environment—as each of you well know—have to deal with cross-border issues relating to such things as the political, economic, and social values and habits of their transnational customers and the legal and regulatory frameworks of host countries.

The Basel Committee on Bank Supervision was born of the recognition that banks everywhere face common—and increasingly interrelated—risks. Since its establishment in 1974, the committee's work can be understood in terms of two general goals. First, it has always had as its purpose to facilitate the exchange of ideas and the sharing of practices capable of being adapted to the special circumstances of each nation's supervisory system. Initially, the committee's approach embraced a kind of nonjudgmental agnosticism—rejecting, if only by implication, the idea that any one supervisory approach was preferable to another, and operating from the presumption that the bank supervision that suited one nation might not suit another. But over the years, while by no means abandoning its deference to and respect for national differences, the committee has evolved a commitment to common principles of supervision, aiming to harmonize global supervision and to establish minimum supervisory standards where necessary. The committee's work on capital standards is perhaps the best known example of this approach.

Second, in a more active mode, the committee has striven to become a deliberative body through which coordinated supervisory responses can be fashioned to situations that require them. Indeed, it should be remembered that the committee had its genesis in the Bankhaus I.D. Herstatt incident of 1974—a relatively small bank whose failure had global repercussions. For bank supervisors, that event was a wake-up call, and from it came a new commitment to international cooperation, which was increasingly recognized as essential if the spillover effects of such disruptions were to be contained. Further, supervisors recognized that instability in the international setting was a two-way street—that it could move from the provinces to the center, as it were, just as easily as from the center outward, as was the case with Herstatt. Either way, cooperation among supervisors was crucial.

So, the challenge of cross-border supervision was a big part of the committee's raison d'être from the beginning, and an early focus of its work. In 1983, the committee released a set of principles for the supervision of banks' foreign establishments, which was revised in 1992 and then again in 1996. These statements established four main principles:

- All international banks should be supervised by a home country authority that capably performs consolidated supervision and has the right to prohibit corporate structures that impede supervision;
- The creation of a cross-border banking establishment should receive the prior consent of both the host country and the home country authority;
- Home country authorities should possess the right to gather information from their cross-border banking establishments; and
- If the host country authority determines that any of these three standards is not being met, it could impose restrictive measures or prohibit the establishment of banking offices.

These principles, which use the respective roles of "home" and "host" country as the basis for developing cooperative cross-border bank supervision, provided significant comfort to host-country supervisors. They provided a reasonable basis for concluding that cross-border branches and subsidiaries licensed and supervised within their borders were being capably supervised by the parent bank's home-country supervisor.

But this guidance did not reckon with the Internet. The guidance was grounded in the assumption that cross-border banking will be carried out through a physical presence in the host country. It never contemplated the virtually unlimited capability of Internet banks to distribute products and services across national borders without a physical presence. It did not address the practical difficulties facing host country authorities that might wish to monitor or control Internet banking offerings originating in other jurisdictions, at least insofar as those offerings reached citizens of the host country. It did not take into account the potential ability of a bank or nonbank to use the Internet to cross borders and to seamlessly link banking activities that might be unsupervised by any financial market authority.

It was in response to these circumstances that the Basel Committee formed a subgroup, the Electronic Banking Group, or EBG, which it's my honor to chair. The EBG membership comprises 17 central banks and bank supervisory agencies from G–10 countries, along with a number of observers.

One of the EBG's first orders of business was to inventory and assess the major risks associated with e-banking. Those risks, we concluded, fall into six broad risk categories: strategic risk; legal risk; operational risk; country risk; reputational risk; and, finally, credit, market, and liquidity risk.

The EBG's catalogue of e-banking risks—and the all-important question of how bankers and bank supervisors might best respond to those risks—have largely defined the EBG's agenda over the past year. It's been a year of intensive research and study. We initiated an ambitious outreach and communication program with prominent private sector institutions active in e-banking developments and activities, including financial institutions, third-party service providers, and vendors. A series of Industry Roundtables, held in North America, Europe, and Asia, have allowed the EBG to obtain invaluable insight and information regarding e-banking risk issues, current strategic and product developments, and emerging risk management standards. It's been a lively and productive year.

Now, after digesting all that we've learned, the EBG has prepared a report entitled "Principles for Risk Management of Electronic Banking," which is in final draft, and I expect will be released for public comment later this month. The theme of the report is that e-banking should be conducted with no less attention to the fundamentals of safety and soundness than banking activities conducted through traditional delivery channels. Our report presents 14 risk management principles, organized under three headings: Board and Management Oversight; Security Controls; and Legal and Reputational Risk Management.

In preparing this guidance, we have tried to be as specific as possible in alerting financial institutions and their supervisors to the nature of the risks they face in the e-banking environment and in suggesting sound practices to manage these risks. But, we have also been mindful of the fact that each e-banking situation is different and may require its own customized approach to risk mitigation. Our expectation is that bankers will put these principles to use as they develop policies and procedures to govern their e-banking activities.

More recently, the EBG has turned its attention to developing guiding principles for cross-border cooperation among bank supervisors. In a study now under way, we're looking more specifically into the practical difficulties of applying the existing Basel cross-border framework in the Internet environment, how home countries should go about supervising Internet banks, how host countries can be affected, how differing supervisory standards for Internet banks can be reconciled, and how home- and host-country supervision of these "virtual" banks might work. Finally, we're working to identify possible actions that the bank supervisory community can take to facilitate supervisory cooperation on cross-border Internet banking.

Since I've already offered a few examples of how Internet banking has complicated implementation of the existing Basel cross-border principles, let me give you some idea of where our thoughts are now headed in terms of what may be required to cope with the supervisory challenge of the virtual environment.

Our fundamental belief is that the responsibility for effective supervision of Internet banking—even more than for brick-and-mortar banking—rests with the home country supervisor. Home supervisors need to make certain that their banks understand the risks posed by Internet banking and how to manage these risks effectively. As I've mentioned, the EBG has dedicated considerable time and effort to that goal. Communicating supervisory expectations and procedures for overseeing Internet banking activity is essential both to help ensure that locally supervised banks properly manage risks and to help host supervisors understand the supervisory regime that the home supervisor uses for its institutions.

Where, then, does the host supervisor enter the picture? Is its role limited to placing its faith in the competence and good intentions of the home supervisor and hoping for the best? How do local policies on a whole variety of issues get taken into account? In the earlier world of physical banking, these were relatively easy issues, since any institution working to establish a physical presence in a host state could be required to obtain a license that would expressly subject them to local laws and policies.

Needless to say, sound principles of cross-border supervision in the virtual world must address the role of host country supervision. While Internet banking certainly poses difficulties for the host country, the EBG is developing a progressive framework for host country supervisors to use, if, for example, they become concerned about the legality or prudential nature of a foreign bank's Internet banking activities. This escalating approach would have the host country supervisor start by remonstrating with the foreign banking entity itself. If that proved unsuccessful, the supervisor would bring the problem to the attention of the home country supervisor. And, if that too did not produce the desired results, the host supervisor would alert local consumers that the Internet banking entity was operating improperly. At the heart of this approach is the belief that supervisory cooperation is crucial to supervisory effectiveness in the Internet environment.

Of course, difficult issues may well be presented. For example, how much contact with a country must a foreign Internet institution have to warrant application of host country laws? And what legal sanctions might a home country have to vindicate its policies? These are far-reaching questions not covered by the EBG's work.

It's worth mentioning that efforts are underway to enlarge the realm of supervisory cooperation. Early last month, the Financial Stability Forum's Contact Group on E-Finance held its first formal meeting. This group, which I also chair, was formed to promote enhanced information-sharing among the various international sector-based working groups dealing with e-finance supervisory issues—e-trading, retail payments systems, e-commerce, and so on.

At our recent meeting, we exchanged information on each other's work plans, took stock of e-finance developments, and explored areas for enhanced cooperation across industry sectors on supervisory policy. Three e-finance issues were identified as warranting consideration from a cross-sectoral standpoint: risk management principles for providing online financial services; greater prevalence of third-party dependencies, including outsourcing; and cross-border issues. We agreed that while it would conduct no operational or policy development on its own, the Contact Group would serve as a clearinghouse for collaboration among the constituent working groups. Such collaboration, we believe, holds the key to effective supervision of e-finance activities in the future.

The future, members of the Contact Group agreed, is where the real challenges for supervisors lie. Because most e-finance activities are still in their infancy, the risks those activities present are not great at this time. What is urgent, however, is that we come to terms with the supervisory issues they present and build on the existing framework of international cooperation to address them. By understanding the issues and working together now, a practical cross-border approach to supervision should be attainable before the potential risks become a material reality.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the National Community Reinvestment Coalition on electronic transfer accounts for the unbanked, Washington, D.C., March 6, 2001

Winston Churchill used to say of democracy that it was the worst form of government ever devised—except for all the others. Churchill's comment can also be applied to banking. Although little loved, banks are nonetheless the best instruments yet invented for the promotion of thrift, wealth, and general prosperity. That's why we focus so much on what banks can do to help improve the lot of Americans who remain outside the financial mainstream. And that's what I want to focus on this afternoon.

Bankers have never had a monopoly on the provision of financial services in this country. They have always shared that market with a host of other providers—many of them unregulated—and that's never been truer than it is today. A walk through virtually any town or city in America gives a sense of how diverse the financial marketplace is, and how many different kinds of financial providers operate and compete in our communities. All of them have a role to play in meeting a wide variety of financial needs. Choice, after all, is an essential element of our economy, and to suggest that banks can be, or should try to be, all things to all people would be unrealistic.

Yet, not all financial providers are created equal. At the risk of sounding parochial, let me suggest that banks add unique value to the services they deliver. Though there may be no end of places to cash a check, get a loan, or pay a bill, the millions of Americans who—for whatever reason—don't obtain those services through a bank, lose something important in the process.

What they lose are the tangible and intangible benefits that a relationship with a mainstream financial institution can provide. That may include the incentives and institutional support necessary for individuals to build assets, transaction services at prices below those of unregulated fringe providers, and financial services that fringe providers can't offer at all, such as safe repositories for funds, and cheap and efficient payment services. For a small-business loan, a loan for education or job training, or an affordable mortgage, only a bank or other mainstream institution will usually do.

There are also the benefits of building a formal credit history and a long-term financial relationship with a bank. The importance of those intangible benefits cannot be exaggerated for anyone who wants to climb the ladder of success in this country today.

If all this is so, why then do some 10 million American families still not have an account with an insured depository institution? It's possible, of course, that the benefits I've just described are not well understood by those who don't presently enjoy them. Thus, the work that you, and a host of government, community, and consumer organizations around the country do to enhance basic understanding of financial issues is a crucial aspect of tackling this problem. Educating people about making wise choices and avoiding the pitfalls that dot the road to financial security will always be an important facet of any strategy to address the problem of the unbanked.

Another explanation is the physical shortage of banking outlets in communities that are home to the unbanked—a situation that could be related to the consolidation that has taken place in the banking industry. A recent government study found, not surprisingly, that low-income central city neighborhoods have fewer bank offices than higher-income neighborhoods and those outside the central city. Affluent neighborhoods, where the median income was 120 percent or greater than the area median income, had three times as many bank offices per 10,000 residents as neighborhoods where the median income was 50 percent of area median income. In New York City, at last count, only 2.5 percent of all bank branches were located in low-income areas that housed more than 6 percent of the city's total households. In those areas, unregulated check-cashing establishments outnumbered bank branches by as much as two to one.

When we look for explanations from banks that have a low profile in low- and moderate-income neighborhoods, what they tell us is usually valid—but not necessarily sufficient. Some have tried to make a go of it, only to find that they were unable to make a profit. Some have pulled out of certain communities—or chosen not to enter them in the first place—due to security concerns. And others have decided that service to the unbanked was inconsistent with the upscale image they were seeking to cultivate.

It's obvious, I think, that in order to serve the community effectively, an institution should have a physical presence there. But the lack of physical access to banks cannot be the entire answer to the problem of the unbanked. Many of those who remain outside the banking system are there by choice. Neighborhood residents will walk right past the local bank branch—which is usually pretty hard to miss—to get to the check-cashing outlet next door. Obviously, even where banks do operate, they're not always meeting the needs of the local community.

The best way to find out what those needs are is to ask, and when we do, we usually hear the same thing. People who lack banking relationships tell us that they are uncomfortable in banks and, especially in communities in which English is not the dominant language, that it's sometimes difficult to communicate with bank personnel. Some express concerns about confidentiality. But more than anything else, they tell us that conventional banking services simply cost too much for small customers. And the evidence suggests they're right.

According to a 1999 study by the U.S. Public Interest Research Group, the average minimum balance required to avoid fees for checking accounts at large banks was $616. Consumers who were unable to meet that minimum balance requirement paid an average of $217 a year, or $18 a month, to maintain a checking account. That's about the same price that a full-time worker earning the federal minimum wage would pay to cash his or her paychecks at a typical check-cashing outlet. Even for "no frills" accounts, which provide limited check-writing with no minimum balance, consumers paid an average of $148 a year. Most banks also levy high charges for bounced checks—as much as $20 to $25 each. Indeed, I once heard a representative of one of our major money center banks boast about how bounced check fees were an important profit center for his institution—which, if true, is shocking and, in any event, not a very smart thing to say publicly. Households with low incomes may be at greater risk of paying these fees, both because they maintain low balances and because they may have less experience in managing household finance.

Given these realities, it's no wonder that so many low- and moderate-income Americans choose not to conduct financial transactions at a bank. But it's a decision that carries serious long-term consequences—for the unbanked, for the economy, and for banks themselves, which lose customers whose business could well be profitable over time. The challenge, then, is to find a way to build relationships between the unbanked and the mainstream financial institutions that make economic sense for both, over the short- and long-terms.

We have a prototype for such a relationship in the Electronic Transfer Account, or ETA, which was developed under my direction when I served as Under Secretary of the Treasury for Domestic Finance. It would be superfluous for me to describe in detail the features of the ETA to an organization that has been as intimately involved as NCRC has been in its development and promotion. The opportunity should not pass to congratulate you on the important role NCRC continues to play in this effort.

But in the context of our discussion today, it's important not to forget that that ETA concept evolved from a business decision by Congress, embodied in the Debt Collection Improvement Act of 1996, to reduce the cost of delivering federal payments by requiring that they be delivered electronically. Projections were that, when fully implemented, the conversion from paper to electronic funds transfer would save the government upwards of $100 million per year—28 cents for every paper check that would no longer have to be printed, issued, and mailed—and replaced when the first one went astray.

Of course, it was widely understood that these savings were not going to materialize unless those required to receive payments electronically had the means to do so, and we estimated that nearly 20 percent of all federal benefits recipients did not have accounts at a financial institution. The Debt Collection Improvement Act mandated that the Secretary of the Treasury assure that anyone required under the Act to receive a payment directly have access to an account at a bank for that purpose at a reasonable cost. It was in response to this mandate that we developed the ETA—a model for a utilitarian, all-electronic account, which, for a fee of no more than three dollars a month, allows recipients of many kinds of federal payments, including salaries and retirement benefits, to access their funds automatically through electronic funds transfer. The ETA was purposely designed as a "bare bones" model, in order to not preempt the development of more elaborate accounts by banking institutions.

With the help of NCRC and more than 1,400 local community-based organizations, consumer groups, and faith-based groups who are participating in the nationwide ETA campaign, we're making tremendous progress in getting the word out to potential account holders. And financial institutions, which receive $12.60 for every ETA they open, are rapidly signing up to offer it. Right now the ETA is available at more than 600 financial institutions with thousands of branches nationwide.

What's particularly encouraging is that many of these institutions are aggressively marketing the ETA as part of their basic retail banking strategy. Some banks are waiving or reducing the monthly service charge, making low-cost money orders available as an additional benefit to account holders, and allowing ATM withdrawals in excess of the four they are required to allow under Treasury rules. Some banks are offering cash bonuses to the account holder when the first government payment is received. Some are holding promotional events with local government officials. Others encourage tellers to talk about ETA with customers trying to cash a federal check, and offer tellers a bonus for every ETA customer they sign up.

Any program so new is inevitably a work in progress, and we certainly have a long way to go before we can declare the program a success. How shall we measure that success? Not so much, I believe, in the number of ETAs that are opened, though that's important. I think, rather, that the ETA's greatest value is as a stepping stone—for customers who use them to get a foothold into the financial mainstream *and* for financial institutions who use the ETA as a model to bring the benefits of a banking relationship within reach of others. I see the ETA as a prototype for a technology-intensive, low-cost account capable of generating profits—or at least paying its own way—for the banks that offer them and attracting millions of Americans who do not currently receive federal payments into the banking system. That's what I meant by the importance of building relationships between the unbanked and mainstream financial institutions that make economic sense for both.

Technology, I believe, is crucial to the solution. The savings generated by a shift from paper-based systems, like traditional checking accounts, to electronic delivery should make it possible for banks to offer low- and moderate-income customers basic banking services at prices both can afford. That was the logic behind the ETA, but it doesn't require government involvement to make it work. The importance of technology has significant implications for legislators and community groups that have typically focused on traditional paper-based delivery in promoting so-called "basic banking" legislation as a solution to the problem of the unbanked.

The ETA and similar types of electronic accounts also have important implications for the spread of unregulated fringe providers. Check-cashers and payday lenders offering high-priced services flourish where there are no lower-cost alternatives. But with the cost savings possible through electronic delivery, surely banks could offer these services at lower prices.

Indeed, we see more and more banks drawing inspiration from the ETA, but going well beyond it, developing their own low-cost electronic accounts that link direct deposit of payroll with a menu of services that can be accessed through ATMs, debit cards, and even personal computers. Banks are targeting local employers to publicize the advantages of direct deposit-advantages that, according to one research study, can add up to more than $1.25 for each payroll check that doesn't have to be issued. Savings like that help explain why more than 50 percent of private-sector employers participate in direct deposit today—a fivefold increase in little more than 10 years. Still, that takes us only half-way to what our goal should be—a goal that other countries with advanced economies are far closer to achieving.

Expanding participation among employees, of course, is crucial, and banks are making significant headway in this area, too. Bankers may visit work sites to distribute informational materials and answer questions about direct deposit and the accounts that are based on them. They're structuring these accounts in ways that make them increasingly appealing. In at least one case, employees receive a debit card that, in addition to its customary functions, can be used to transfer funds to individuals in other countries at lower cost than a traditional wire transfer. Other types of accounts offer electronic payment features, enabling employees to pay recurring bills. And, I know of a bank that offers customers short-term loans of up to 50 percent of their regular incoming direct deposit directly from an ATM. I can think of no better or more constructive response to the payday lenders and others like them who prey on our communities. It's one more way that mainstream financial institutions can help low- and moderate-income Americans get off the treadmill of debt and onto the road of greater financial security.

I believe that technology offers great potential for bringing the unbanked into the financial mainstream, with all of its benefits. It also offers new possibilities for financial institutions to develop deeper and more profitable customer relationships. In order for these possibilities to be achieved, banks, employers, and community organizations must work collaboratively and creatively to understand the needs of the individuals they serve. We in government have an important role to play as well, but it's the work you do in our communities, day in and day out, that will make the most enduring difference in the lives of our citizens.

Remarks by John D. Hawke Jr., Comptroller of the Currency, before the Independent Community Bankers of America, on risk management, Las Vegas, Nevada, March 8, 2001

I come to you this morning with some good news and some bad news. I'm going to start with the good news, in the interests of putting you in a positive frame of mind—and of putting what follows into more meaningful perspective.

It's almost impossible these days to avoid reports about the decline in asset quality in bank portfolios. You can track this decline in the press, in its migration from the sidebars to the headlines and into the consciousness of some of the nation's senior pundits and economic policy makers. Almost every week, some bank announces a new round of write-downs and charge-offs, followed by solemn pronouncements from the analysts that things are going to get worse before they get better.

At the OCC, our own data, reflecting the experiences of commercial banks of all sizes, confirm this weakening. The year 2000 was the third consecutive year of increase in the volume of large syndicated credits that were criticized in our annual interagency review. And that increase came about in a rapidly growing economy. Econometric models show a rise in default risk among publicly traded U.S. companies—and, therefore, a rise in credit risk in the banking system at large. Now, with the economy in a slowdown, one investment firm projects a 50 percent increase in loan losses this year over last. And with that increase, the overall ratio of loan loss reserves to loans has eroded—from about 2.5 percent in 1993 to just over 1.5 percent last year. Future earnings will almost certainly be impacted by the need to bolster loan loss allowances.

You're probably thinking, "If that's the good news, I don't want to hear the bad news." But there *is* good news for you here. First, we believe that the banking industry generally is better positioned to withstand these problems than it's been at almost any other time. Second, community banks are generally much better positioned than their larger counterparts.

Certainly, the capital strength of the industry is now far better than it was 10 years ago. Total equity capital today stands at more than twice what it was a decade ago, and the related ratios—capital to assets and capital to loans—are also much healthier. Clearly, bankers have internalized a key lesson of the 1990s—that it's possible to meet all the regulatory capital requirements and still not have the level of capital you need to weather a time of great stress. Indeed, at a recent OCC conference, the highly respected former CEO of one of our major banks said that one of the great lessons he learned over the past decade was the critical importance of maintaining capital ratios appreciably in excess of what we bank supervisors required. Never again, he said, would he let capital fall to even the highest level defined by the regulators.

We also believe that the industry is structurally stronger. Consolidation over the past 10 years has given us a banking system that should be more stable and more resistant to downturns. Certainly the whole industry is more diversified than it was a decade ago. Although community banks are still subject to some inherent limitations in this regard, the kinds of deep sectoral and geographic concentrations we saw in the early 1990s—concentrations that proved fatal for many banks—are much less common today. In addition, noninterest income has come to play an increasingly important role in the composition of bank earnings. The industry has taken advantage of changes in the law and regulations to offer new products and services, thus diversifying their income streams and reducing their dependence on volatile net interest income.

This movement toward diversification has come as part of a dramatic overall improvement in most banks' risk management and mitigation capabilities. Bankers today—and not only the largest banks—are using more sophisticated analytical tools and computer models to manage increasingly complex risks. And bankers, even community bankers, have far greater opportunity through the use of syndication and credit derivatives, and through the securitization markets, to design and structure the types of balance sheets and business franchises they desire.

We in the regulatory community have given a great deal of thought to the lessons of 10 years ago. Our handling of the crisis of the early nineties was widely criticized for inconsistency—for undue supervisory forbearance when problems first appeared, followed by draconian reactions when those problems had matured to the point where they could no longer be ignored. When banks showed reluctance to provide credit even to creditworthy borrowers, supervisors were blamed for creating a "credit crunch." I happen to believe that credit crunches are caused by conditions in the economy, and by banks that make economic decisions based on their own self-interest, and not by bank examiners. I also recognize that regulators can become an easy scapegoat for bankers to point to when they have decided for their own reasons to tighten up.

Nonetheless, we learned a lot from that experience, and we recognize the value of a supervisory approach that is more modulated and predictable. Since becoming Comptroller, I've emphasized the importance of fashioning a carefully calibrated response to changes we see taking place in the banks we supervise. But that does not mean sitting by silently as conditions deteriorate. It means addressing problems as we see them developing—while we still may be able to do something about them—and doing so consistently and in a measured way. Both in public and in our private meetings with bankers, we have addressed issues of declining underwriting standards and eroding credit quality, and we will continue to address these issues, keeping in mind the need to do so in a balanced manner. The greatest contribution we as bank supervisors can make to the maintenance of a healthy economy is to do what we can to help preserve the ability and capacity of our banks to extend credit to creditworthy borrowers.

Clarity is a hallmark of good communications, and we're certainly spending more time talking to the industry, explaining our policies, and providing opportunities for bankers to raise questions and express their concerns. Today, if bankers think something has gone wrong in the examination process, they can seek review by the OCC ombudsman—an option that did not exist 10 years ago. More recently we have introduced National BankNet—an extranet Web site available exclusively to national bankers. BankNet now not only provides useful analytical tools, industry and risk updates, "best practices" presentations, and internal OCC reports, but also provides a means of communicating directly with me, by e-mail. It will soon enable national banks to prepare branch and relocation applications on line and submit them electronically. And in the very near future, BankNet will handle the majority of routine transactions between the OCC and national banks, and give the industry the power to file electronic comments on regulatory proposals. This is a major improvement in the ability of bankers and regulators to communicate with one another, and it should result in improved understanding and cooperation as we enter these more challenging times.

Technology has also enhanced our ability to spot problems brewing in the banking system so that we can call early attention to them. Early in my tenure as Comptroller, I initiated a major effort to improve our early-warning tools. We dubbed it "Project Canary," alluding to the practice of coal miners who brought canaries down into the mineshafts with them to detect dangerous gases. Through this effort we have developed a series of financial ratios and measures that correlate with high levels of credit, liquidity, and interest rate risk. By applying these measures to our population of banks, we can make better judgments about what problems may arise and how we can deploy supervisory resources more efficiently.

Our approach to identifying, rehabilitating, and resolving banks under stress is described in detail in an excellent new OCC publication dealing with problem banks. It represents the distillation of years of experience, and should be especially useful to examiners—and to bankers—who haven't lived through times of banking turmoil.

Inevitably, the deterioration in the quality of bank portfolios that I mentioned earlier has affected some banks more than others. Few community banks, for example, hold many of the speculative-grade, highly leveraged, and poorly underwritten assets, especially those backed by so-called enterprise value, which have been hardest hit of late. Indeed, the level of troubled loans at community banks has been relatively stable. While the percentage of noncurrent commercial loans at national banks with over $1 billion in assets nearly doubled over the last three years—from 0.73 percent to 1.38 percent—it dropped from 1.63 to 1.59 percent at smaller banks over the same period. Similarly, loss rates at large banks have gone from 0.17 percent to 0.63 percent, which is just about where they've been for small banks since 1997.

I'm sure you have your own theories to account for this discrepancy in the performance of large and small banks, and I have a few theories of my own. It may well be that community banks are especially conscientious when it comes to minding the fundamentals of sound banking—keeping your ear to the ground, being responsive to your customers, working with borrowers in a hands-on way at the first signs of strain, pricing loans and other products for risk, and establishing a rigorous internal control environment. Most community bankers do not have the kinds of pressures faced by large institutions with widely held share holdings—including a battery of analysts who follow your stock and punish you for missing earnings targets by as little as a penny a share. As a result, you are better able to focus on long-term values in a way that will bring enduring benefits to your shareholders.

But let me caution that no one become too smug or complacent. It is not difficult for the problems afflicting larger banks to spread from big borrowers to small ones and from employers to employees—in other words, to your customers. The sequence is a familiar one: a big company defaults on its debt, or implements austerity measures, or lays off workers, and the purchasing and debt-servicing power of those workers is reduced. That's when the pain is likely to start showing up in your portfolio and bottom lines.

So what you've got, really, is a window of opportunity—time to take prudent, proactive steps to prepare for what may come, and to mitigate the effects of future adverse changes. How much time depends, of course, on the length and severity of the slowdown in the economy. If it turns out to be a mere interlude before the economy regains its momentum, you may be able to escape with only minor bruises.

For many community bankers, the test will be in how you use this window of opportunity. It may mean doing more of what you've already been doing—paying closer attention to your customers and their individual financial condition, and tightening board and management oversight; continuing to build capital and reserves; identifying and addressing vulnerabilities and excesses in the loan portfolio; making fuller use of whatever risk mitigation tools are available, including government guarantee programs. And, to prepare for the possibility that credit problems *do* materialize significantly, it makes sense to evaluate your work-out capabilities to ensure that problem loans can be resolved in an orderly way.

This is also probably a good time to review your contingency funding plans. I know how difficult it's been for many community banks as core deposits have dried up and reliance on wholesale funding has grown. While this transition has not been without its benefits, including greater diversification and flexibility, it also exposes banks to volatility in the event that the market turns against them. That's another reason why it's so important that community banks act decisively to put their houses in order now, to gain and keep the confidence of the financial community.

While some bankers might prefer that examiners ease off in their criticisms of problematic loans, the task of bank supervision is to give you our best assessments of the quality of your portfolios. I think we have been doing that extremely well, and a number of bankers, representing large and small institutions, have told me that the OCC's balanced and consistent approach has helped them to focus on credit risk problems and to improve deficiencies in risk identification and risk management. You can count on us to maintain this consistent and carefully modulated approach—calling things as we see them—in the coming months.

In business as in sports, defense usually trumps offense. This year's Super Bowl champions reminded us of how true that is. For bankers, too, success in challenging times begins at home, with strong risk management, robust internal controls, and a no-nonsense approach to credit quality. There's still time to make sure that your defenses are in order, so that next year, there will only be good news for us to share.

Statement of Julie L. Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency, before the U.S. House Subcommittees on General Oversight and Investigations and on Financial Institutions and Consumer Credit, Committee on Financial Services, on coordination and information sharing among financial institution regulators, Washington, D.C., March 6, 2001

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 those of the President.

I. Introduction

Madam Chair, Mr. Chairman, and members of the subcommittees, thank you for inviting the Office of the Comptroller of the Currency (OCC) to participate in this hearing. Effective coordination and information sharing among the regulators of financial services providers—banks, securities firms, and insurance providers—are essential in order for the functional regulation framework established by the Gramm–Leach–Bliley–Act (GLBA) to work as the Congress intended. In view of the integration of the financial services industries that the GLBA permits, and the possibilities that individuals will migrate between industries and entities will commence new activities, it is particularly important for a functional regulator to have a means to know whether individuals or entities have been subject to enforcement actions by another functional regulator. On behalf of the Comptroller, I would like to thank you for your efforts to further these objectives.

In my testimony today, I will first provide context for your current legislative work by highlighting the most important ways in which the OCC currently shares information with other federal and with state regulators. I will then offer our perspectives on key confidentiality and liability issues that are raised by proposals to enhance information sharing among financial services regulators.

II. Coordination and Information Sharing: What the OCC Does Today

The OCC currently shares a variety of types of information with federal and state regulators, including the other federal banking agencies, the Securities and Exchange Commission (SEC), and state insurance regulators. I will first review our recent work with state insurance regulators, then turn to efforts involving the SEC and the other federal banking agencies.

The OCC's Work with State Insurance Regulators

Last year, when I appeared before the Subcommittee on Finance and Hazardous Materials of the Commerce Committee, I described the progress the OCC and the National Association of Insurance Commissioners (NAIC) had made together in developing workable approaches to sharing information about consumer complaints. As I mentioned at that time, the OCC and the NAIC recognized several years ago that the sharing of certain types of information not only benefits consumers through more timely responses to inquiries and complaints, but also serves to identify common cross-industry trends or problems. As the first step in this process, the OCC and the NAIC jointly drafted a model agreement in 1998 to share consumer complaint information involving national bank insurance sales activities. This agreement requires the OCC to send to the appropriate state insurance regulator copies of all complaints that the OCC receives relating to insurance activities in that state by a national bank. Likewise, the state insurance regulator will send to the OCC copies of all complaints it receives involving a national bank insurance activity. To date, the OCC has entered into these agreements with 28 state insurance regulators.

Recently, the OCC and the NAIC have built upon their success with the complaint-sharing process and jointly drafted a second, more encompassing model agreement that provides for the sharing of broader insurance-related supervisory and enforcement information, including, but not limited to the sharing of complaint information. Under the agreement, the OCC and state insurance regulators may request from each other, and provide to each other with or without a request, confidential information regarding: (1) material risks to the operations or financial condition of a regulated entity; (2) the insurance activities of a regulated entity; or (3) other confidential information necessary to disclose fully the relations between a regulated entity supervised by the OCC and a regulated entity supervised by the state insurance regulator. The information requested must be in furtherance of the agency's lawful examination or supervision of the regulated entity.

The NAIC adopted this model agreement in December of last year, and just recently transmitted the final version of the model agreement to its members. We expect to begin entering into these new agreements as early as this week.

The OCC also has taken other steps to promote the exchange of information that may be of use to other supervisory entities operating under the functional regulation regime established by GLBA. For example, shortly after GLBA was enacted, we amended our rules relating to national bank corporate activities to ensure that information the OCC receives in connection with bank applications to affiliate with entities engaged in insurance activities is shared with the appropriate state insurance department. Under the revised procedures, a national bank must describe in its notice or application to the OCC to establish a financial subsidiary or an operating subsidiary, or to make a noncontrolling investment in an entity that will engage in insurance activities, the type of insurance activities that the bank is engaged in or will engage in and the lines of business for which the company holds or will hold an insurance license. This information is then forwarded to the appropriate state insurance regulator. To date, the OCC has forwarded information contained in almost 70 notices or applications that it has received.

Our information sharing is part of a comprehensive effort to further develop close-working relationships with state insurance regulators. With respect to insurance matters, these efforts began in 1996 when the OCC invited state insurance commissioners to the OCC to discuss ways to better coordinate our respective regulatory responsibilities. Since then, the OCC and state insurance regulators have met, separately or through the auspices of the NAIC, on numerous occasions. Our most recent meeting, in fact, was yesterday. To date, regional representatives of the OCC have met individually with insurance regulators in all 50 states and the District of Columbia to learn more about how we each implement our regulatory responsibilities as well as to discuss ways we can assist each other in these responsibilities. Moreover, senior OCC representatives attend NAIC quarterly national meetings on a regular basis to exchange information about their respective regulatory priorities and supervisory approaches and to discuss ongoing regulatory or supervisory projects.

Most importantly, the OCC and the state insurance supervisors are no longer merely observers of each other's regulatory and supervisory activities. We each now actively seek the participation of the other in matters of common supervisory concern, and we recognize that the other offers unique and relevant perspectives to the responsibilities of each respective regulator. Two recent examples illustrate the point.

First, the OCC and other federal banking regulators consulted with state insurance regulators, through the auspices of the NAIC, during the development of the insurance consumer protection regulations required by section 305 of GLBA. Section 305 required the OCC, the Federal Reserve Board (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) jointly to issue regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a bank (or other depository institution) or by any person engaged in such activities at an office of the institution or on behalf of the institution. The regulation includes, among other things, specific disclosure requirements that must be made to the consumer before completion of the insurance sale or in connection with an extension of credit. The insurance regulators and the NAIC proved to be a valuable resource providing timely and helpful insights from the experience of state insurance departments.

Second, the Consumer Protection Working Group of the NAIC, chaired by Nat Shapo, director of the Illinois Department of Insurance, recently invited the OCC and the other federal banking agencies to comment on proposed revisions to the NAIC's Model Unfair Trade Practices Act, a model statute that each state could use to establish standards for bank and thrift sales of insurance in that state. The revised Model Law is being specifically designed to take account of the preemption standards and safe harbors for state insurance laws contained in section 104 of GLBA, as well as the federal consumer protection provisions set forth in section 305 and the implementing regulations of the federal banking agencies. The OCC and the other federal banking agencies participated in several meetings discussing relevant provisions of the Model Act. We offered suggestions based on our experiences in supervising national banks and found the process initiated by Director Shapo to be open, collegial, and very constructive. As a result, we believe that the draft Model Act will reflect an important and precedential consensus between the state insurance regulators and federal bank regulators regarding the implementation of GLBA and the protection of consumers.

The OCC's Work with the SEC

The OCC also has developed a number of information-sharing arrangements with the Securities and Exchange Commission (SEC). For example, we make referrals to the SEC when the OCC discovers potential violations of the federal securities laws.[1] We share relevant information on the alleged violation with the SEC, and coordinate with the SEC's investigation and enforcement proceedings. The OCC's participation includes making available to the SEC

[1] The OCC has similar agreements to refer potential violations of law with the Department of Labor for potential violations of ERISA, and the federal Elections Commission for potential violations of federal elections law.

our bank examination reports and other confidential examination information. We also provide bank examiners to assist the SEC in reviewing OCC materials, and to testify for the SEC in its enforcement proceedings.

We make access requests to the SEC for its investigatory and examination information when this information is relevant to the OCC's bank supervision responsibilities. We also request information from the SEC that may be relevant to pending licensing applications under consideration by the OCC, including new bank charter applications and notices of change in bank control.

We have shared information with the SEC on customer complaints received by the OCC when the complaints involve matters that may be subject to the SEC's authority. We have also received information on customer complaints from the SEC related to national banks. For example, we have shared customer complaint information with the SEC in cases involving investment product sales to bank customers, and in cases related to sales of brokered certificates of deposit.

When requested by the SEC, we advise the SEC of the existence of OCC enforcement actions on national bank affiliates of publicly traded bank holding companies, in connection with the SEC's review of securities disclosures made by the holding companies. Staff of the SEC's Division of Corporation Finance have made arrangements to routinely request information on OCC enforcement actions in connection with the SEC staff's review of securities disclosure filings made by publicly traded bank holding companies. The SEC staff uses this information to verify the accuracy and completeness of public disclosures made by these bank holding companies. For example, in the past the SEC staff formed a task force to focus on the accuracy of bank holding company securities disclosure filings related to loan losses, and the SEC staff made requests to the OCC for information on hundreds of national banks as part of this initiative.

Finally, we have been working with the SEC to implement GLBA's new functional regulation provisions as they pertain to national banks' securities activities. We have had several meetings with the SEC's senior staff responsible for examinations of broker-dealers and investment companies to discuss each agency's views of GLBA's functional regulation provisions. Our discussions have covered a review of the scope of examinations conducted by the agencies. We are also in the process of identifying the types of information sharing between the agencies that would serve to facilitate functional regulation.

We also coordinate with the SEC in connection with the OCC's authority over national banks acting as transfer agents, municipal securities brokers and dealers, and government securities brokers and dealers. We routinely share examination information with the SEC on national banks that are registered transfer agents. We also have coordinated enforcement actions in the past related to transfer agents and government securities dealers. We have shared information on municipal securities dealers, including in cases involving compliance with the rules on political contributions by municipal securities professionals.

Finally, we have entered into an "Agreement in Principle" with the National Association of Securities Dealers covering information sharing on broker-dealers that are involved in selling investment products through banks.

The OCC's Work with the Federal Banking Agencies

We work in close coordination and cooperation with the other three federal banking agencies—the Federal Reserve, FDIC, and OTS—in virtually every significant aspect of our regulation and supervision of national banks. Coordination among the agencies has increased in recent years. Over the last 10 years, Congress has increasingly directed the agencies to work together to write implementing regulations for new legislation. Moreover, industry consolidation has resulted, in many instances, in banking organizations containing multiple charters that are supervised by different agencies. Few major supervisory or policy initiatives are today taken by one of the banking agencies without consultation with the others. In many cases, these initiatives are undertaken jointly by the four agencies even when there is no express statutory requirement to do so.

For this reason, it is difficult to catalog all of the ways in which the agencies coordinate and share information. I will, however, highlight a few of the more important areas where we work cooperatively with the other banking agencies on law enforcement matters. As you will note in the description that follows, the methods that the banking agencies use to share information differ depending on the level of sensitivity of the information.

The most widely available type of information is information pertaining to final enforcement actions, that is, actions initiated by one of the banking agencies pursuant to its enforcement authority[2] that result either in an order issued by the head of an agency after the matter has been litigated or in a consent order or agreement entered into by the parties.

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[2] *See generally* 12 USC 1818 (enforcement authorities of the four federal banking agencies).

Copies of final formal enforcement actions are required by statute to be made public.[3] The banking agencies separately share copies with one another. Moreover, the four banking agencies each maintain a searchable database, available on each agency's Internet Web site, that enables anyone to enter an individual's or bank's name and obtain information indicating whether that person has been the subject of a final enforcement action. Each banking agency's Web site is linked to the Web sites of other financial institutions' regulators, where similar information is available about actions taken by those agencies. For example, by logging on to the OCC's Web site,[4] the Internet user can search the OCC's database of formal enforcement actions by party name or by bank name to find out if we have taken final action against a particular individual or bank. An electronic link is also provided to the sites of the Federal Reserve, the FDIC, the OTS, the National Credit Union Administration (NCUA), and the SEC to enable the user to search for similar enforcement information on each of those sites.

The four banking agencies also share information with each other when formal enforcement actions are initiated, including when an agency issues a notice of charges based on its statutory enforcement authority. Information about the initiation of informal enforcement actions also is shared among the agencies if, for example, the bank that is the subject of the enforcement action is affiliated with an institution directly regulated by one of these agencies. Finally, when appropriate on a case-by-case basis, the OCC provides supervisory and enforcement information to staff at the Federal Reserve, the OTS, and the FDIC. This information about the initiation of enforcement proceedings is not publicly available.

Certain information that is not public may, however, be made available to federal agencies other than the federal banking agencies and to state agencies under certain circumstances. For example, OCC regulations authorize the sharing of nonpublic supervisory information to other federal and state agencies when not otherwise prohibited by law, and the information sought is in furtherance of the performance of the requesting agency's official duties.[5] Utilizing this regulatory mechanism, the OCC regularly provides access to certain confidential supervisory information to other federal and state law enforcement and regulatory agencies.[6] In addition, under the new model agreement to share information with state insurance regulators that I have previously described, the OCC will notify the state insurance regulator of any enforcement action it takes against a national bank that has a resident insurance license in that state if the action relates to activities the insurance regulator supervises or has the authority to examine, or if the activity at issue poses a material risk to the operations or financial condition of a regulated entity that the insurance regulator supervises. Likewise, the state insurance regulator will notify the OCC of any enforcement action it takes, or that it knows has been taken by another state insurance regulator, against a regulated entity that the OCC supervises or that poses a material risk to the operations or financial condition of a regulated entity that the OCC has the authority to examine.

In addition, information reported on the Suspicious Activity Reports (SARs) electronic database is available to federal law enforcement agencies, the federal banking agencies, and to state law enforcement and bank supervisory authorities. A SAR is a standardized form for reporting certain illegal or suspicious activities. Depository institutions, including national banks, state-chartered banks, federal and state-chartered thrifts, and federal credit unions, are required to file SARs when they detect a known or suspected violation of federal law, a suspicious transaction related to a money-laundering activity, or a violation of the Bank Secrecy Act.[7] Thus, the principal purpose of the SARs database is to catalog for criminal law enforcement authorities any suspicious activity and possible illegal conduct being perpetrated against, or utilizing, financial institutions. SARs are filed with the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) and maintained in an electronic database. FinCEN is a co-owner of the database with the federal

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[3] *See* 12 USC 1818(u).

[4] The Internet address for this searchable database is http://www.occ.treas.gov/enforce/enf_search.htm.

[5] *See* 12 CFR 4.37.

[6] Consistent with OCC regulations on the sharing of nonpublic supervisory information, the OCC has entered into a number of information-sharing agreements with other federal and state agencies. In 1984, the federal banking agencies entered into a Joint statement of Policy on the Interagency Exchange of Supervisory Information to share certain confidential or privileged supervisory information, and to make this information available to relevant state supervisory authorities. In 1986, the OCC authorized each of the OCC's district offices to execute separate sharing agreements with state supervisory authorities seeking access to nonpublic supervisory information. See OCC Policies and Procedures Manual, PPM 6100-3 (REV), January 22, 1986. The federal banking agencies' most recent interagency sharing arrangement, in 1997, addressed the notification of enforcement actions among the federal banking agencies. See Revised Policy statement on "Interagency Coordination of Formal Corrective Action by the Federal Bank Regulatory Agencies," 62 Fed. Reg. 7782 (February 20, 1997).

[7] *See*, *e.g.*, 12 CFR 21.11 (OCC regulation prescribing SAR filing requirements). The Bank Secrecy Act authorizes the Secretary of the Treasury to require "any financial institution, and any director, officer, employee, or agent of a financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation." 31 USC 5318(g). The term "financial institution" is broadly defined in that law to include a wide variety of persons and entities whose business involves monetary transactions. *See* 31 USC 5312(a) (definition of "financial institution").

banking agencies, and maintains and manages the SAR database pursuant to an agreement with the OCC, the Federal Reserve, the FDIC, the OTS, and the NCUA. That agreement permits FinCEN to share access to the database with other federal and state law enforcement agencies and regulators upon securing a written commitment to maintain confidentiality of the information and to safeguard its use. In general, the SAR system is used to provide leads for law enforcement agencies and for banking agencies to identify situations that may warrant initiation of formal enforcement actions to remove and prohibit individuals from banking.

III. Key Issues in Developing New Legislation

Based on our experience working and sharing information with federal and state regulators, I would like to highlight two areas which, in our view, present critical issues regarding the design of any new system for enhanced enforcement-related information sharing among functional regulators. The first is the need to ensure that disclosure is not prohibited or restricted by federal law and, if authorized, that agency and bank (and other regulated entities) privileges are properly preserved. The second is to recognize that expanded information sharing can raise very sensitive issues regarding the nature and reliability of the information collected and how that information is used, which need to be very carefully considered in the design of an expanded information-sharing system.

1. Authorized Disclosure and Preservation of Privileges

The ability of the OCC and the other federal banking agencies to disseminate nonpublic information to other federal and state agencies currently is limited by the restrictions contained in certain federal statutes, and also by the necessity of preserving privileges recognized under federal statutes and state common law. This nonpublic information falls into two general categories: privileged and confidential information obtained in the furtherance of the OCC's supervisory and examination authority *from* organizations that the OCC supervises; and privileged and confidential information internally prepared or generated *by* the OCC.

Among the federal statutes that prohibit or restrict the OCC from transferring nonpublic information are the Trade Secrets Act, the Right to Financial Privacy Act, and the Privacy Act of 1974.[8] In the absence of an express statutory exception, these laws prohibit or restrict certain types of nonpublic information from being shared with other federal and state agencies. Moreover, even if a statutory exception applies, a number of statutory and common law privileges recognized by the courts and available to the OCC may be waived or destroyed by the unprotected disclosure of privileged information. These include the bank examination privilege,[9] the deliberative process privilege, the self-evaluative privilege, and the attorney-client and work-product privileges.

Any statutory authorization to share confidential or privileged information with state agencies or other entities needs to appropriately address the foregoing statutory prohibitions as well as to ensure protection of all available privileges. Currently, a provision in the Federal Deposit Insurance Act expressly protects transfers of privileged information from, among others, the federal banking agencies to other federal government agencies.[10] The provision does not address the sharing of privileged materials with state agencies, such as state banking authorities, however. Although GLBA separately provides that information exchanged pursuant to its section 307(c)[11] by a federal banking regulator or a state insurance regulator will not constitute a waiver, or otherwise affect, any privilege to which the information is subject, section 307 pertains only to information regarding transactions or relationships between an insured institution and an affiliated company that is engaged in insurance activities and to certain other information that a banking agency believes is necessary or appropriate for a state insurance regulator to administer state insurance laws. It also does not cover information sharing with the NAIC. Thus, under current law, sharing of confidential or privileged information with state agencies and the NAIC runs the risk of resulting in a loss of protected status to the privileged materials.

It is also essential to protect the privileges that banks may assert over their own information that is in the possession of the federal banking agencies. Since banks have no discretion as to the information they must disclose to supervising agencies,[12] the authority for bank examiners to enter upon bank premises and review all of a bank's books and records is plenary. Thus, self-evaluative,

[8] The appendix contains a brief description of these three federal laws.

[9] *See* 12 USC 481.

[10] 12 USC 1821(t). The agencies covered by this protection are the OCC, the Federal Reserve, the FDIC, the OTS, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the NCUA, and the General Accounting Office.

[11] GLBA, sec. 307(c), *to be codified at* 15 USC 6716(c).

[12] For the statutory provisions requiring institutions to provide information to their regulators, *see* 12 USC 248 (Federal Reserve), 481 (OCC), 1820 (FDIC), 1464(d) (OTS), and 1784(a) (NCUA).

attorney-client and work-product communications maintained anywhere in a bank's books and records fall properly within the scope of the banking agencies' examination authority and may be shared with the examining agency by the supervised institution. Such information in the hands of the federal banking agencies remains privileged because it was obtained through statutory compulsion. Similarly, the sharing of such privileged information among the federal banking agencies remains protected under 12 USC 1821(t). However, the subsequent sharing of this privileged information with state agencies, without federal statutory protection, could result in the waiver of a financial institution's privileges. This, in turn, could compromise an institution's legal position and potentially adversely impact its safety and soundness.

2. Protect Privacy and Confidentiality by Limiting the Types of Information that Can Be Widely Shared

Information systems obviously create different concerns depending on the level of sensitivity and reliability of the information they contain. In our view, it would be very beneficial to establish a system for sharing and electronic access to information concerning enforcement actions taken by the banking agencies and comparable enforcement actions taken by other functional regulators. Such a system would enable regulators to identify individuals and entities with records that are relevant when those individuals or entities seek to affiliate with new entities or conduct new types of businesses. In the case of depository institutions, information on final enforcement actions is available to the public pursuant to 12 USC 1818(u), and, therefore, would not raise confidentiality or privacy concerns.

Sharing nonpublic information about banks and individuals does raise confidentiality and privacy concerns that are particularly serious, since the information could vary considerably, and may be preliminary or unsubstantiated. All of the federal banking agencies from time to time receive preliminary information that raises suspicions of illegal activity. Disclosure to other regulators of preliminary suspicions, the reliability of which could vary widely, would raise significant privacy issues, including the dissemination of potentially inaccurate accusations against individuals or institutions that could cause unwarranted harm to the reputation of the individual or the bank. Disclosure of preliminary information also could hamper ongoing investigations by law enforcement agencies or federal banking agencies and might even expose agencies to potential liability for falsely accusing individuals or institutions.

For example, the SAR system I have described, by definition, contains information about "known or suspected" violations of federal law and about "suspicious transactions" related to money laundering or violations of the Bank Secrecy Act. By its nature, information reported on a SAR is preliminary or unsubstantiated. We need to be very careful that any new system of information sharing does not taint individuals or entities based upon mere suspicion or allegation.

On the other hand, sharing nonpublic information *after* an agency has formally determined to initiate an action, has gathered its supporting documentation, and has issued a Notice of Charges, reduces the risks to confidentiality and privacy. If such non-public information were shared only with other federal and state agencies, this information would remain outside of the public arena. At the same time, since Notices of Charges are fully developed and based on an agency's extensive investigation, they can safely be viewed as relevant by other agencies with a supervisory or law enforcement interest in the individual or institution.

For these reasons, we respectfully urge that legislation focus on enhancing the availability to relevant federal and state agencies (and the NAIC on behalf of state insurance supervisors) of information regarding final enforcement and disciplinary actions. If information availability were to be expanded beyond those actions, we would urge that it focus on formally commenced enforcement actions by the participating federal and state agencies. Such a system would be very useful to functional regulators and would not present the information reliability and privacy issues that would arise if broader categories of unsubstantiated information were included.

This approach also would make it unnecessary to create any new governmental entity to manage information sharing among functional regulators. A meaningful level of information exchange already exists among federal financial institutions regulators and state regulators, though the information is not as complete or as readily accessible as is desirable. In our view, the current systems represent a good starting point, and Congress could direct the relevant agencies to build on what currently exists, to create a linked system containing public information on enforcement actions taken, with the limited addition of nonpublic information concerning the issuance of Notices of Charges (or comparable actions), as I have described, and with provision for the role of the NAIC on behalf of the state insurance supervisors in that process. That directive, coupled with the necessary protections to preserve privileges and ensure that confidentiality and privacy are protected, would be a significant aid to cooperative law enforcement among federal and state regulators of financial services providers, and would not require the creation of any new bureaucracy to oversee this activity. This would be more effective, in our view, than creating a new organization, such as a new body within of the Federal Financial Institutions Examination Council, to assume and manage this function.

IV. Conclusion

Madam Chair, Mr. Chairman, and members of the subcommittees, let me state again the appreciation of the OCC that the subcommittees are addressing these issues. You have identified an important area, where enhanced information sharing between functional regulators can enhance the integrity of the industries that we regulate. Many of the issues in this area can be quite complex, and we would be happy to work with the subcommittees and their staff to provide technical assistance as you prepare specific legislative proposals.

I would be happy to answer your questions.

Appendix

Federal Statutes Affecting Information Sharing

The following laws place restrictions on transfers of information made by federal agencies.

- *The Trade Secrets Act* (18 USC 1905). This law prohibits federal agencies and personnel from disclosing specified information unless the disclosures are authorized by law. The information subject to this prohibition "concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures by any person, firm, partnership, corporation, or association." Persons disclosing these types of information without requisite authority may be fined, imprisoned, and removed from federal service.

  It is unsettled whether inter-agency transfers are disclosures subject to the Trade Secrets Act.[13] Department of Justice opinions reflect that, in addition to express statutory authorization, lawful sources of disclosure authority under the Trade Secrets Act may arise from, among other sources, an agency's substantive regulations or necessary statutory implication.[14]

- *The Privacy Act of 1974* (5 USC 552a). This law restricts federal agencies' collection and dissemination of information about individuals. Under this law, an agency may collect and maintain information about an individual only if it is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order. Disclosure of such information may not generally occur without the consent of the information's subject. However, 12 statutory exceptions to the principle of "no disclosure without consent" exist. Of these, two have relevance to and may authorize the transfer of information about an individual to other federal or state agencies. Under the first of these exceptions, disclosure may occur pursuant to a routine use if the use is compatible with the purposes for which records about an individual are maintained. Additionally, if requested in writing by a federal or state agency for an authorized civil or criminal law enforcement purpose, disclosure may also occur.

- *The Right to Financial Privacy Act* (12 USC 3401-3422) (RFPA). While the focus of the Privacy Act is on a broader category of information about individuals, the RFPA applies only to information obtained from a financial institution's records pertaining to an individual customer's relationship with the institution. With respect to this information, federal agencies are generally limited in the means through which this information may be obtained from an institution. However, specific provision is made in the RFPA for examinations conducted by the federal financial regulatory agencies.

  Once information is obtained by a federal agency, it may not generally be transferred to another without notice of the transfer being provided to the customer. However, certain transfers are exempt from this general requirement. Included among these exemptions are transfers: (1) between two designated supervisory agencies having statutory examination authority with respect to the same institution;[15] (2) among and between FFIEC members and the SEC;[16] (3) sought by a federal agency in connection with an investigation or examination of a financial institution;[17] and (4) required by law.[18]

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[13] *Compare Shell Oil Co.* v. *Department of Energy*, 447 F. Supp. (1979), affirmed 631 F.2d 231 (3d Cir. 1980) (inter-agency transfer held to constitute disclosure) *with Emerson* v. *Schlesinger*, 609 F.2d 898 (8th Cir. 1979) (TSA was designed to apply only to public disclosures).

[14] 41 Op. Att'y Gen 106 (1953) (authority to make disclosures implied from statutory mandate to liquidate the RFC); 5 Op. Off. Legal Counsel 255 (1981) (summarization of sources of TSA disclosure authority).

[15] 12 USC 3412(d).

[16] 12 USC 3412(e).

[17] 12 USC 3413(h)(1).

[18] 12 USC 3413(d).

Interpretations—January 1 to March 31, 2001

Interpretive Letters

Interpretive Letter No. 900—June 19, 2000

12 USC 25a(a)

Subject: Participation in Lotteries by National Banks

Dear [ ]:

This is in response to your letter of June 13, 2000, requesting confirmation that certain activities would not cause your client to be in violation of 12 USC 25a, which prohibits lottery activities by national banks. As we recently discussed on the telephone, it is my opinion that the described activities would not be prohibited by this statute.

According to your letter, your client, a national bank ("the bank"), has a branch in a town that wishes to hold a raffle to raise funds for the construction of a new community building. The bank would like to donate a print for this effort, and this will be the only item in the raffle. Lottery tickets will be sold by local merchants, who will also publicize the lottery on their premises. The bank will not sell any lottery tickets, nor will it allow its premises to be used to publicize the lottery. Understandably, though, the bank would like to receive credit for donating the print. Therefore, you asked if the bank could be identified as the donor of the item in the lottery advertising that will be displayed in local stores or elsewhere not on bank premises. Specifically, you asked whether identifying the bank as the donor would violate the statutory prohibition on publicizing of a lottery by national banks.

Twelve USC 25a generally prohibits national banks from involvement in lotteries. The portion relevant to your inquiry provides that "a national bank may not . . . announce, advertise, or publicize the existence of any lottery." 12 USC 25a(a). It seems clear that this language requires some affirmative action by a national bank to publicize a lottery, for example, by displaying advertising on its premises. You have represented that no lottery publicity will be displayed on bank premises.

In my view, simply noting on an advertisement that the bank has donated the item to be raffled would not constitute action by the bank to publicize the lottery, provided the bank has no involvement with the sponsoring or display of the advertisement. From the bank's standpoint, the situation you describe is no different than a newspaper article or television story reporting that the bank has donated the item. To attribute such third party activities to the bank would be to impose vicarious liability upon the bank for the acts of others, which is not authorized by the language of the statute.

Since it does not appear that there will be any affirmative action by the bank to publicize the lottery, I conclude that the facts you describe would not cause the bank to violate the prohibition of 12 USC 25a against publicizing a lottery, or any other provision of that statute. This opinion is based on the representations made in your letter, and any material change in the facts could lead to a different conclusion.

I trust that this has been responsive to your inquiry. If you have further questions, please feel free to contact me at (202) 874–5300.

Christopher C. Manthey
Senior Attorney
Bank Activities and Structure Division

Interpretive Letter No. 901—June 29, 2000

12 USC 24(7)

Dear [ ]:

This is in response to your letter of March 23, 2000, addressed to William B. Glidden, Assistant Director, Bank Activities and Structure Division. You related that your client, [ ] ("the bank"), owns a number of life insurance policies issued by [ ] Insurance Company. These policies cover various officers and employees of the bank. Due to the planned "demutualization," or conversion to stock form, of [ ], the bank was scheduled to receive a certain number of shares of [ ] common stock. You requested confirmation that the bank may retain these shares of stock.

You represented that the bank purchased the life insurance policies for purposes that the OCC has found to be incidental to banking under 12 USC 24(Seventh), and in accordance with the guidance contained in OCC Bulletin 96–51, "Bank Purchases of Life Insurance." When a mutual life insurance underwriter converts to stock form, which has become relatively common in recent years, shares in the new company are distributed to the policyholders based on the amount of insurance that they own. Under these circumstances, the bank's receipt of the stock is probably most properly characterized as a byproduct of the permissible activity of purchasing life insurance for the bank's needs, and not as a "purchase" of stock within the meaning of 12 USC 24(Seventh). Moreover, the bank's retention of this stock does not raise any safety and soundness concerns, according to examining personnel who have considered it.

Accordingly, the OCC does not object to retention of the [ ] stock by the bank. I trust that this has been responsive to your inquiry. If you have further questions, please feel free to contact me at (202) 874–5300.

Christopher C. Manthey
Senior Attorney
Bank Activities and Structure Division

Interpretive Letter No. 902—November 16, 2000

12 USC 36J

Subject: [ ]—Missouri Loan Production Offices

Dear [ ]:

This is in response to your inquiry concerning [ ], a division of *[bank name, city, state]* ("the bank"). Mr. Gregory Omer, Chief Counsel of the Missouri Department of Economic Development, Division of Finance, has informed you that it is his belief that [ ]'s offices in that state are in violation of Missouri regulation 4 CSR 140–6.075. This regulation contains activity restrictions and reporting requirements for loan production offices (LPOs), and purports to apply to both state and national banks. You believe that, as a division of a national bank, [ ] is not subject to this regulation, and requested a letter setting forth our views on this matter. Mr. Omer is aware that you have requested our views, and we understand that you will be providing a copy of this response to him.

The bank has established no branches in Missouri but, through [ ], operates LPOs in several locations in that state. These offices originate consumer-oriented loans such as home equity loans and other secured loans. They also purchase retail installment sales contracts from various dealers. [ ] does not offer unsecured loans in Missouri, although it does in other states. All loan applications are underwritten using the bank's centrally developed and applied consumer loan credit standards. The final decision to approve or deny a loan is made by a loan officer at the LPO based upon these standards, with certain authority to make exceptions based upon personal judgment.

No processing of loan payments is performed at these offices. Borrowers are directed to mail loan payments to a postal lockbox. However, loan payments are sometimes brought to a [ ] office in spite of these instructions, and in that event, [ ] personnel simply mail the payments to the lockbox address. You asked us to address the permissibility of loan approval and receipt of loan payments at an LPO.

It is well settled that national banks may conduct business without geographic restrictions unless Congress provides otherwise. *Clarke* v. *Securities Industry Association*, 479 U.S. 388 (1987); *NBD Bank, N.A.* v. *Bennett*, 67 F.3d 629 (7th Cir. 1995); *Independent Insurance Agents of America, Inc.* v. *Ludwig*, 997 F.2d 958 (D.C. Cir. 1993). The establishment of branches is one of the few areas where Congress has provided such an exception. Twelve USC 36 incorporates state geographic restrictions on the establishment and location of national bank branches, and requires authorizing state legislation in the case of *de novo* interstate branches. Missouri has not authorized *de novo* interstate branching and considers the LPOs to be impermissible branches of the bank. However, under federal law, nonbranch national bank facilities such as LPOs are not subject to state geographic restrictions. Hence, the disagreement in this case is about whether [ ]'s offices in Missouri are "branches" under federal law so as to be subject to state geographic requirements.

The Missouri regulation provides, in relevant part:

> Loans which are originated at a loan production office must be approved or denied at the main office or branch office of the lending bank and the proceeds of these loans must be disbursed from the main office or a branch office of the lending bank; disbursement may not be effected by or through the loan production office. No payments may be accepted at a loan production office.

Mo. Code Regs. Tit. 4, 140–6.075(2) (1993). Missouri contends that if a loan production office does not observe these activity limitations, it is a branch.

However, while Missouri may define a "branch" for purposes of state law, the definition of a national bank "branch" is governed by federal law. *First National Bank in Plant City* v. *Dickinson*, 396 U.S. 122 (1969). Federal law defines a branch as any facility established by a national bank "at which deposits are received, or checks paid, or money lent." 12 USC 36(j). (Automated teller machines and remote service units are specifically excluded, but they are not at issue here.) A national bank facility that does not fit this definition, such as a loan production office, is not a branch under federal law and therefore is not subject to state geographic restrictions. *First National Bank of McCook* v. *Fulkerson*, No. 98–D–1024 (D. Colo. filed March 7, 2000); *see* Interpretive Letter No. 821, [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–271 (February 27, 1998) (ATMs); *Bank One Utah, N.A.* v. *Guttau*, 190 F.3d 844 (8th Cir. 1999), *cert. denied*, 146 L. Ed. 2d 641 (2000) (same). As the primary regulator of national banks, the OCC interprets the definition of "branch" under 12 USC 36 (the McFadden Act).

The Missouri regulation treats loan approval as a branching activity, that is, a function that *must* be performed at a main office or branch and cannot be performed at an LPO. OCC regulations provide that a national bank loan origination facility will not be considered a branch *if* the loans are approved at the bank's main office or a branch. 12 CFR 7.1004. However, this regulation is a safe harbor, not a legal requirement. OCC Interpretive Letter No. 634, *reprinted in* [1993–1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,518 (July 23, 1993) (discussing the almost identically worded predecessor of the current regulation). In other words, while that is one possible way for a bank to structure its lending operations, the OCC recognizes that loan approval may also take place at other locations without violating branching restrictions. This position is embodied in our regulation at 12 CFR 7.1005.

Credit underwriting is essentially a back office function, and has become even more so as modern technology has made it possible for loan "approval" functions to be performed virtually anywhere, based on pre-established criteria, with the results communicated instantly to anyplace else. Therefore, the physical location where loan "approval" takes place may have little significance in today's world. Moreover, the core branching function that is required under the McFadden Act is "making" loans. It is apparent that neither loan origination nor the technical act of loan approval, taken separately, constitutes the making of a loan. Interpretive Letter No. 634, *supra*. Performing two nonbranching functions at the same location does not change the nonbranching character of either. *First National Bank of McCook* v. *Fulkerson*, No. 98–D–1024 (D. Colo. filed March 7, 2000); 12 CFR 7.4005; OCC Interpretive Letter No. 691, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–006 (September 25, 1995). It follows that loan approval may take place at any location, including an LPO, without making that location a branch under federal law. OCC Interpretive Letter No. 667, *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,615 (October 12, 1994).[1] In the present situation, because loans in Missouri are underwritten using consumer loan credit standards centrally developed and applied by the bank for its consumer lending business, we think it is particularly inappropriate to view the loan as "made" in Missouri.

You also asked us to address the issue of receipt of loan payments at LPOs. The Missouri regulation also treats this as a branching activity. But while Missouri is free to take this position as a matter of state law, in our view, the activities in question are not a branching function within the meaning of 12 USC 36(j), and clearly would not be so based on the facts of the present situation, where loan payments at LPOs are proffered by customers even though the bank has instructed the customer to pay in a different manner.

One court has characterized the repayment of loans as a "deposit," a core banking function under the McFadden Act. *Independent Bankers Association of America* v. *Smith*, 534 F.2d 921, 941 (DC Cir.), *cert. denied*, 429 US 862 (1976). However, the Supreme Court has emphasized that statutes should be interpreted in accordance with their plain language. *See*, *e.g.*, *Mansell* v. *Mansell*, 490 US 581 (1989). Clearly, in adopting the definition of "branch" in 12 USC 36, Congress distinguished between deposit-taking functions and loan functions and, in the context of lending, identified the *lending* of money—not the repayment of money loaned—as the branching function. Nevertheless, even assuming the continued viability of the *Smith* decision on this point, the present case is distinguishable.

As the Supreme Court has recognized, what is relevant in construing whether a facility is a branch is whether it might give the bank "an advantage in its competition for customers." *First National Bank in Plant City* v. *Dickinson*, 396 US at 136–37. Potential borrowers do not select a lender based on where they can make loan payments; most borrowers make loan payments through the mail. [ ] borrowers are instructed to mail their loan payments to a designated lockbox address, and loan payments are only brought to a [ ] office if customers do not follow the established procedures. Thus, the number of such payments is limited, and is the result of actions by the customer, not by the bank. Even then, the payments are not processed, but are simply mailed to the proper address. Such limited functions, performed solely to accommodate customers, should not be equated with receiving and processing loan payments as a normal business practice. We therefore conclude that under such circumstances, the receipt of loan payments at the bank's LPO facility does not cause that facility to be a branch of the bank under 12 USC 36.

There is one other aspect of the Missouri regulation upon which we would like to comment. Paragraph (3) of the

[1] The OCC formerly took the position that the "aggregation" of loan origination and approval at one location was the functional equivalent of making a loan under the McFadden Act. *See*, *e.g.*, OCC Interpretive Letter No. 343, *reprinted in* [1985–1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,513 (May 24, 1985). The Missouri regulation appears to reflect the same view. For the reasons discussed above, the OCC abandoned this position in OCC Interpretive Letter No. 667, *supra*. It is possible that the Missouri regulation was originally based on OCC positions but has not been revised to reflect subsequent developments.

regulation requires that all banks, including national banks, must report annually to the state commissioner of finance the location of each loan production office; the volume of income generated by each office; the number of officers and other personnel employed at each location; and the address at which loans are approved or denied, and disbursement made. The right to operate an LPO is conditioned upon compliance with these requirements. Mo. Code Regs. Tit. 4, 140–6.075(3) (1993).

State regulations are not preempted when Congress accompanies a grant of an explicit power with an explicit statement that the exercise of that power is subject to state law. *Bank One Utah, N.A.* v. *Guttau*, 190 F.3d at 848. However, where Congress has not expressly conditioned a national bank power upon a grant of state permission, ordinarily, no such condition applies. *Barnett Bank of Marion County* v. *Nelson*, 517 US 25, 34 (1996). As explained earlier, Congress has not made state law applicable to the establishment of national bank facilities except in the case of branches. Moreover, these regulatory conditions appear to give Missouri visitorial[2] powers over national banks, at least with respect to LPOs. The OCC is the primary regulator of national banks and, unless otherwise expressly provided by federal law, has the sole visitorial and enforcement authority over them. 12 USC 484; 12 CFR 7.4000; *Guthrie* v. *Harkness*, 199 US 148 (1905).

To summarize, we conclude that loans may be approved, and loan payments may be forwarded to the proper address under the circumstances described above, at the bank's loan production office, and these activities will not cause the LPO to be a branch of the bank within the meaning of 12 USC 36. We further conclude that the Missouri regulation is not applicable to [ ] or the bank, insofar as it attempts to authorize visitorial powers over national banks, contrary to federal law.

The scope of this letter is confined to the issues of loan approval, receipt of payments, and the necessity of state approval, as discussed herein, and we take no position on any other branching issues that may exist. I hope that you have found this discussion to be helpful. Please let me know if we can be of further assistance.

Eric Thompson
Director
Bank Activities and Structure Division

[2] "Visitation" is not limited to inspection of books and records, but includes any act of a superintending official to "inspect, regulate, or control the operations of a bank to enforce the bank's observance of the law." *First Nat'l Bank of Youngstown* v. *Hughes*, 6 F. 737, 740-41 (6th Cir. 1881), *appeal dismissed*, 106 US 523 (1883). *See* 12 CFR 7.4000(a)(2).

Interpretive Letter No. 903—December 28, 2000

12 USC 24(7)

Office of the District Counsel
Northeastern District
1114 Avenue of the Americas, Suite 3900
New York, NY 10036–7780
Voice (212) 790–4010
Fax (212) 790–4058

Re: Debt Suspension Products

Dear [ ]:

This responds to your request that the Office of the Comptroller of the Currency ("OCC") confirm that [ ] (the "bank") may offer its credit card members ("cardholders") debt suspension agreements. For the reasons discussed below, we agree that the proposed activity is permissible for the bank under Section 24(Seventh) of the National Bank Act because the activity is part of the expressly authorized lending function of national banks and also because it is incidental to the business of banking.

Background

Under the proposed debt suspension agreements, the bank will agree, in exchange for the payment of a monthly fee by each participating cardholder, to "freeze" the cardholder's account for up to 24 months (up to 3 months for a leave of absence) in the event that the cardholder becomes involuntarily unemployed, hospitalized, disabled, or takes a voluntary leave of absence from work. While a credit card account is "frozen," no principal payment, finance charges or other fees will be due; no finance, late or other charges will accrue; and the bank will not send any negative report to any credit agency due to the freeze. During the "freeze," the cardholder will not be permitted to use the credit card for additional charges and will be asked to discontinue preauthorized charges to the account, e.g., subscription payments.[1] Once a "freeze" expires, the credit card account will be reactivated and the cardholder will be required to resume its minimum monthly payments. Normal rates and fees will then apply to the account.

[1] The initial debt suspension agreements will require the cardholder to discontinue preauthorized transactions, however, the bank will monitor the level of such transactions after implementation of the program in order to evaluate other approaches. If the bank concludes, after assessing the risk, that there are more "customer friendly" options to discontinuing preauthorized charges, the bank may decide to allow some or all of these charges subject to continued monitoring.

Participation will be offered to cardholders on an optional basis. In order to enroll or activate a benefit, the cardholder's account must be open and not delinquent. The bank may also establish a waiting period for new enrollees before they may claim a debt suspension benefit. After initial qualification for a deferment benefit, the cardholder must demonstrate continuing eligibility in order to continue receiving the benefit. The cardholder may cancel the agreement at any time and may do so within 30 days of initial enrollment and receive full credit for any fees charged.

Discussion

A. Business of Banking Relations

The National Bank Act provides that national banks shall have the power:

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

12 USC 24(Seventh).

The Supreme Court has held that this "powers clause" is a broad grant of the power to engage in the business of banking, including the five specifically recited powers and the business of banking as a whole. *See NationsBank of North Carolina, N.A.* v. *Variable Life Annuity Co.*, 513 U.S. 251 (1995) *("VALIC")*. Many activities that are not included in the enumerated powers are also part of the business of banking. Judicial cases reflect three general principles used to determine whether an activity is within the scope of the "business of banking": (1) is the activity functionally equivalent to or a logical outgrowth of a recognized banking activity; (2) would the activity respond to customer needs or otherwise benefit the bank or its customers; and (3) does the activity involve risks similar in nature to those already assumed by banks.[2]

1. Functionally Equivalent to or a Logical Outgrowth of Recognized Banking Functions

Lending is one of the expressly enumerated powers in 12 USC 24(Seventh). Part of any lending transaction is the negotiation of the terms of the obligation, including the interest rate, due dates of payment, etc. Loan agreements often state the consequences of default, whether those consequences are penalties, repossession of collateral, or acceleration of the debt obligation. In the case of a debt suspension product, the parties have negotiated an option for the debtor to cease payments for a time, under specified circumstances, without adverse consequences. This type of contractual provision is no less a part of lending than any of the various other terms (covenants, security interests, etc.) that are part of a loan agreement. The authority of a national bank to offer debt suspension products is, therefore, an inherent part of its express authority to make loans.[3]

Additionally, debt suspension products adjust an outstanding obligation of a customer in a way resembling, but more limited than, a debt cancellation agreement.[4] Like a debt cancellation contract, a debt suspension product helps to protect the borrower against the risk of financial hardship in times of adversity. A debt suspension product simply interrupts the obligation to pay for a specified time, rather than cancels it. From the bank's perspective, a debt suspension product provides a mechanism for the bank to manage and obtain compensation for the credit risk that it undertakes in making a loan. Thus, it is a very logical outgrowth of the bank's express lending authority.

2. Respond to Customer Needs or Otherwise Benefit the Bank or its Customers

As you note in your letter, a debt suspension product is finely tuned to the potential duration of financial problems posed by temporary situations such as involuntary unemployment and hospitalization. For these types of situations, suspension of the debt serves the customer's need for relief from financial pressure while also protecting the bank's interest in the eventual repayment of the obligation. A customer who otherwise would suffer long-term damage to his or her credit rating can instead survive a period of difficulty with his or her standing as a borrower intact.

For the bank, debt suspension products provide a source of income, from the fees charged for the debt suspension

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[2] *See*, *e.g.*, *Merchants' Bank* v. *State Bank*, 77 U.S. 604 (1871); *M&M Leasing Corp.* v. *Seattle First National Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977); *American Insurance Association* v. *Clarke*, 865 F.2d 278, 282 (2d Cir. 1988).

[3] *See* OCC Interpretive Letter No. 827, *reprinted in* [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,276 (April 3, 1998) (confirming the ability of national banks to enter into debt suspension agreements).

[4] The authority of a national bank to offer debt cancellation agreements is well established. *First National Bank of Eastern Arkansas* v. *Taylor*, 907 F.2d 775 (8th Cir.), *cert. denied*, 498 U.S. 972 (1990); 12 CFR 7.1013. A national bank may offer debt cancellation agreements contingent not only on the death of the borrower, but also on other events such as disability or involuntary unemployment. *See* OCC Interpretive Letter No. 640, *reprinted in* [1993–94 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,527 (January 7, 1994).

option, to offset credit losses on credit cards. The agreements also help both the bank and the customer manage temporary situations that might otherwise result in default on the customer's obligations, thereby enhancing the bank's ability to eventually obtain repayment from the customer. Additionally, by providing a useful option for customers, debt suspension products could increase the competitiveness of the bank's credit card offerings.

3. Risks Similar in Nature to Those Already Assumed by National Banks

In times of financial stress, some borrowers will fail to repay with or without a debt suspension product. The risk assumed when a bank provides a debt suspension product is similar to the type of risk that the bank assumes when it makes a loan or provides a debt cancellation contract as part of a loan. In any of these situations, the bank accepts the risk that the borrower may be unable to repay some or all of the loan. The bank's proposal would permit the bank to obtain compensation for its assumption of this risk and the additional cost of temporarily foregoing the collection of interest.

B. Incidental to the Business of Banking

As the Supreme Court established in the *VALIC* decision, national banks are also authorized to engage in an activity if that activity is incidental to the performance of an activity that is part of the business of banking. An activity is incidental to the business of banking if it is "convenient and useful" in the conduct of the banking business. *Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427 (1st Cir. 1972).

The OCC and the courts have long authorized national banks to engage in credit-related activities that protect the bank and the borrower against a variety of credit-related risks. The OCC's approvals and court holdings concluded that these activities are incidental to a bank's lending activities because they protect banks' interest in their loans by reducing the risk of loss if borrowers cannot make their loan repayments.[5]

The rationale behind these OCC precedents and court cases also is applicable to the bank's proposal. A debt suspension product provides a convenient and useful way for the bank and its borrowers to manage the risk of nonpayment due to temporary financial hardship. As was discussed above, it protects the bank by providing a source of compensation for the credit risk that is part of the transaction, and it protects the borrower from long-term credit damage during an interval of financial difficulty.

Conclusion

Based on the foregoing facts and analysis, we conclude that providing debt suspension products in connection with a bank's credit card business is permissible for the bank pursuant to section 24(Seventh) of the National Bank Act. This conclusion relates only to the permissibility of debt suspension agreements under the National Bank Act. The bank should, of course, satisfy itself regarding the treatment of such agreements under any other applicable laws and provide appropriate disclosures to fully inform consumers about the relevant costs and terms, such as may be required under the Truth in Lending Act regulations or other applicable regulation or supervisory guidance. In this regard, I note that the OCC has issued an advance notice of proposed rulemaking addressing debt cancellation and suspension products. The bank's product would be subject to any final regulation adopted as a result of that rulemaking.[6]

Prior to conducting the described activities, the bank should consult with its examiner-in-charge or with the appropriate supervisory office to ensure that its program will comply with reporting and reserving requirements as associated with providing debt cancellation products. *See* 61 Fed. Reg. 4852 (1996).

Jonathan Rushdoony
District Counsel

[5] *See* OCC Interpretive Letter No. 283, *reprinted in* [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,447 (March 16, 1984) (involving sales of credit life, disability, mortgage life, involuntary unemployment, and vendors single interest insurance); 12 C.F.R. Part 2 (regulating sales of credit life insurance); *IBAA* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert denied*, 449 U.S. 823 (1980) (confirming the OCC's authority to adopt its credit life insurance regulation at 12 C.F.R. Part 2). *See also* OCC Interpretive Letter No. 671, *reprinted in* [1993–1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,619 (July 10, 1995), and OCC Interpretive Letter No. 724, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,039 (April 22, 1996) (involving sales of vehicle service contracts); 12 CFR 7.1013 (1996) (confirming the ability of national banks to enter into debt cancellation contracts); *First National Bank of Eastern Arkansas* v. *Taylor*, 907 F.2d 775 (1990) (same).

[6] *See* Debt Cancellation Contracts, 65 Fed. Reg. 4176 (Jan. 26, 2000).

Interpretive Letter No. 904—January 18, 2001

12 USC 24(7)

Re: Proposal by [ ], to Engage in Finder Activity

Dear [ ]:

This responds to your request for confirmation of the legal permissibility of a proposal by [ ] ("bank"), to help arrange for the purchase of nonfinancial products by its credit card customers ("proposal"). The bank proposes to make each customer who contacts the bank's call center aware that a nonfinancial product is available to the customer and that the bank will, upon the customer's request, transmit certain information to the product's vendor. For the reasons below, and based on the representations and information provided, we find that such activities are permitted by the National Bank Act and are consistent with precedent of the Office of the Comptroller of the Currency.[1]

A. Background

The bank is one of the largest issuers of credit cards in the United States. The bank's credit card customers frequently telephone the bank in order to obtain information, request a service, or conduct some other business with the bank. Under the proposal, the bank will advise these customers that it can help arrange for the purchase of a nonfinancial product by the customer. At the end of each such "in-bound" call, the bank will inform the customer that a product is available to the customer and that the customer has an opportunity to receive the product by informing the customer service representative that he is interested. The initial nonfinancial product the bank proposes to help arrange for the purchase of is magazine subscriptions. If the customer is interested in receiving the product, the bank will forward the pertinent information about the customer's interest to the product's vendor. The customer will also be advised that the product and any follow-up after the initial indication of interest will be handled by the product's vendor.

The bank's role will not extend beyond the transmission of information to the vendor regarding a customer's indicated interest in the product, except for the bank's function as the payment intermediary for the product when the customer is charged.[2] The actual products and services will be provided by unaffiliated vendors,[3] and the bank would have no responsibility for providing the product or service. The unaffiliated vendor would compensate the bank for orders received from the bank's customers.

B. Discussion

A national bank "may act as a finder in bringing together a buyer and a seller." 12 CFR 7.1002(a). The activity of acting as a finder "includes, without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate." 12 CFR 7.1002(b). The finder function is an activity authorized for national banks under 12 USC 24(Seventh) as part of the business of banking.

OCC interpretive letters and decisions have permitted national banks acting as a finders to bring together buyers and sellers of a wide variety types of products and services. *See*, *e.g.*, Corporate Decision 2000–11 (June 24, 2000) (national bank may act as finder to bring program beneficiaries together with program benefits); Conditional Approval No. 347 (January 29, 2000) (permitting Web page hyperlinks for customers to access products and services considered useful for small businesses); OCC Interpretive Letter No. 875, *reprinted in* [1999–2000 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–369 (October 31, 1999) (permitting a national bank to create a "virtual mall," a bank-hosted collection of Web pages with

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[1] This letter addresses only the legal authority of the bank to conduct the proposed activities. We will address separately with the bank the consumer privacy and telemarketing issues implicated by the proposal. However, we note that, beginning July 1, 2001, the mandatory date for compliance with the privacy regulations (*see* 12 CFR part 40), the bank will be prohibited from disclosing its customers' account numbers to a nonaffiliated vendor so that the vendor may charge the accounts of bank customers for the vendor's products. In accordance with the regulations, the bank may provide encrypted account numbers to a vendor for use in a marketing program only if the bank does not enable the vendor to decrypt the numbers.

[2] Twelve CFR 226.12(c) states the rights of a cardholder to assert against a card issuer claims or defenses concerning property or services purchased with a credit card when a merchant fails to adequately resolve the dispute. Generally, these rights apply only if the amount of credit extended to obtain the property or services that gives rise to the dispute exceeds $50, and the disputed transaction occurred in the cardholder's home state or within 100 miles of the cardholder's home address. 12 CFR 226.12(c)(3)(ii). However, these dollar amount and geographic limitations do not apply when the person honoring the credit card, *inter alia*, obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer, *i.e.*, a statement stuffer. *Id.* at fn. 26. We recommend that the bank check with the Federal Reserve Board ("Board") to determine whether the Board would find the bank's telephone solicitation to be the equivalent of a statement stuffer for Regulation Z purposes.

[3] The bank will not be engaged in any tying arrangement whereby a subscription to a magazine would be required for the customer's participation in any other banking service offered by the bank. In addition, the bank represents that it will conduct its due diligence process for third-party vendors in light of OCC Advisory Letter 2000–9 (August 29, 2000).

links to third-party vendors' Web sites); OCC Interpretive Letter No. 653, *reprinted in* [1994–1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (December 22, 1994) (national bank may act as finder for insurance products); No-Objection Letter No. 89–02, *reprinted in* [1989–1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,014 (April 17, 1989) (permitting national bank acting as finder to distribute automobile club applications and assist customers in filling out applications).

As part of the finder authority, the OCC has permitted national banks to provide customers with information about a vendor's products and services and their availability. *See* Conditional Approval No. 347, *supra*; OCC Interpretive Letter No. 824, *reprinted in* [1997–1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–273 (February 27, 1998) (permitting national bank to distribute informational materials and refer customers to third-party vendors); No-Objection Letter No. 89–02, *supra*. As finder, national banks may also convey one party's expression of interest to the other party. *See* OCC Interpretive Letter No. 478, *reprinted in* [1989–1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,028 (March 2, 1989) (national bank acting as finder may convey expressions of interest to potential party); OCC Interpretive Letter No. 437, *reprinted in* [1988–1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,661 (July 27, 1988) (as finder, national bank may assist customers in completing applications and forward completed applications). National banks may accept a fee for their finder services. 12 CFR 7.1002(c).

The proposal is consistent with a national bank's authority to act as a finder. Bank credit card customers telephone the bank to make inquiries or to request services of the bank. At the end of each call, the bank's customer service representative will ask whether the customer is interested in receiving one of a number of magazines. If the customer indicates that he wishes to receive one or more subscriptions, the customer service representative forwards this expression of interest, along with the pertinent information collected from the customer, to the third-party vendor.

Conclusion

Based upon the foregoing facts and analysis, and the representations made by the bank in connection with its request, I conclude that the proposed activity is permissible for a national bank.

If you have any questions, please contact Steven Key, senior attorney, at (202) 874–5300.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Interpretive Letter No. 905—January 29, 2001

12 USC 24(7)

Subject: Stock of [ ]

Dear [ ]:

This is in response to your letter of December 8, 2000, addressed to Leigh Hoge, assistant deputy comptroller, Tulsa, Oklahoma. According to your letter, [ ] ("the bank") purchased a key person life insurance policy on its chairman in 1974 and still owns this policy today. Over the years, the issuer of the policy has gone through a number of mergers and corporate restructurings. The most recent change occurred on September 20, 2000, when the insurance carrier's holding company converted from mutual to stock ownership. Due to this "demutualization," the bank, as a policyholder, received a number of shares in the holding company, [ ]. It is my understanding that, under the terms of the transaction, you did not have the option to choose to receive cash instead of the shares. The number of shares involved is less than 0.01 percent of the total outstanding shares of the holding company. You requested confirmation that the bank may retain these shares of stock, and asked about the appropriate accounting treatment.

You represented that the bank purchased the life insurance policy for purposes that the OCC has found to be incidental to banking under 12 USC 24(Seventh). In fact, since the issuance of former Banking Circular 249 in 1991, the OCC has specifically listed key person life insurance as a permissible holding. When a mutual life insurance underwriter converts to stock form, which has become relatively common in recent years, shares in the new company are distributed to the policyholders based on the amount of insurance that they own. Under these circumstances, the bank's receipt of the stock is probably most properly characterized as a byproduct of the permissible activity of purchasing life insurance for the bank's needs, and not as a "purchase" of stock within the meaning of 12 USC 24(Seventh). Moreover, the bank's retention of this stock does not raise any safety and soundness concerns, according to examining personnel who have considered it. Should any such concerns arise, the bank would be expected to divest the shares, upon the direction of the OCC, as soon as practicable.

Accordingly, the OCC does not object to retention of the [ ] stock by the bank. Your supervisory office will contact the bank separately regarding the accounting question that you raised. I trust that this has been responsive to your inquiry. If you have further questions, please contact me at (202) 874–5300.

Christopher C. Manthey
Senior Attorney
Bank Activities and Structure Division

Interpretive Letter No. 906—January 19, 2001

State v. Federal Law

James Caras, Counsel
City Council Committee on Finance
75 Park Place
New York, NY 10036–7780

Re: OCC Views as to National Bank Authority to Charge ATM Fees

Dear Mr. Caras:

Pursuant to your request for comments, I am writing to bring to the attention of the New York City Council the views of the Office of the Comptroller of the Currency (OCC) concerning the applicability to national banks of state and local laws that purport to restrict national bank automated teller machine (ATM) fees.

We understand that the City Council is considering a proposed amendment to the New York administrative code to prohibit "surcharge"[1] fees on ATM transactions by financial institutions generally. Without specifically addressing the features of the proposed New York legislation, we appreciate the opportunity to present the OCC's views on this issue, and our experience thus far in litigation challenging state laws and interpretations in Connecticut[2] and Iowa that attempted to impose restrictions on national bank ATMs,[3] and municipal ordinances in San Francisco,[4] Santa Monica,[5] Newark, and Woodbridge, New Jersey that attempted to prohibit ATM "surcharges."[6]

The OCC has taken the position in these cases, primarily through the medium of briefs *amicus curiae*, that: 1) the National Bank Act and OCC regulations implementing the act authorize national banks to provide ATM services, to charge fees for those services, and to set the rates for those fees; and 2) under well-established supremacy clause principles, state or local restrictions that obstruct the exercise of those national bank powers are preempted by federal law. The OCC has also rebutted the argument consistently advanced against this position, that the federal Electronic Funds Transfer Act rather than the National Bank Act controls on these issues. None of these state or local restrictions on national bank ATM operations has thus far survived legal challenges based on these propositions.

The remainder of this letter summarizes the legal and business developments that gave rise to litigation on this subject, and the OCC's position as to the issues presented.

Background: ATM Fees Developments

The stimulus for litigation concerning ATM fees has come from statutory and market changes over the past decade that induced financial institutions to provide additional services, in a wider range of ATM locations, in return for additional fees. Until 1996, the nationwide ATM networks prohibited their member banks from charging access fees, and as a result most national banks did not do so. Over time, however, some state legislatures outlawed the network contractual restrictions,[7] and banks challenged them on antitrust grounds. Those pressures caused the nationwide networks to abandon the access fee prohibition in April 1996. As a result, the availability of ATMs increased significantly as access fees enabled banks to defray costs and sometimes earn a return on ATM deployment. The other major change, also in 1996, was an amendment to the National Bank Act that removed geo-

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[1] The OCC uses the term "access fees" to denote what some banks call "convenience fees," and what opponents call "surcharges."

[2] *First Union Nat'l Bank* v. *Burke*, 48 F. Supp. 2d 132 (D. Conn. 1999) (Connecticut enjoined from asserting enforcement jurisdiction over national bank ATMs) *("Burke"); cf. Burke* v. *Fleet Nat'l Bank*, 742 A.2d 293 (Conn. 1999) (Connecticut state law does not prohibit access fees).

[3] *See Bank One, Utah* v. *Guttau*, 190 F.3d 844 (8th Cir. 1999) (*cert. denied sub nom. Foster* v. *Bank One*, Utah, 120 S.Ct. 1718 (2000) (Iowa location, registration, and advertising restrictions on national bank ATMs preempted) *("Guttau")*.

[4] *Bank of America* v. *City and County of San Francisco*, *et al.*, No. 00–16994 (9th Cir. *filed* 7/18/00) (appeal from permanent injunction against ordinance entered 6/30/00 (N.D. Cal. No. C–99–4817–VRW).

[5] *Bank of America* v. *City and County of Santa Monica*, *et al.*, No. 00–16355 (9th Cir. *filed* 7/14/00) (appeal from permanent injunction against ordinance entered 6/30/00 (N.D. Cal. No. C–99–4817–VRW).

[6] *New Jersey Bankers Ass'n* v. *Township of Woodbridge*, No. 00–702 (JAG), (D.N.J November 8, 2000); *New Jersey Bankers Ass'n* v. *City of Newark*, No. CV–00–702 (JAG), (D.N.J. November 8, 2000) (consent order and permanent injunction against ordinances prohibiting ATM "surcharges").

[7] *See Valley Bank of Nevada* v. *Plus System, Inc.*, 914 F.2d 1186 (9th Cir. 1990) (upholding state law authorization for state banks to charge fees notwithstanding network prohibitions).

graphical limits on the deployment of national bank ATMs.[8] Some national banks exercised that freedom to introduce ATMs into states where restrictions had previously discouraged entry.

These changed circumstances led to a variety of legal conflicts between states and national banks: attempts to enforce state restrictions that no longer applied to national bank ATMs,[9] charges that access fees violated existing state law,[10] and new legislation that directly prohibited access fees.[11] Those conflicts have given rise to requests by national banks for OCC interpretations as to the scope of the national bank power to charge fees.

National Bank Authority to Charge Access Fees under the National Bank Act

The statutory authority for national banks to conduct business comes from the National Bank Act, tracing to 1863. In addition to setting forth the framework for the creation, regulation, and operation of national banks, the National Bank Act governs the scope of "banking powers"—*i.e.*, statutorily authorized banking-related activities. These include a list of five enumerated powers—*e.g.*, lending money and taking deposits, the separate authority to engage in the "business of banking," as reasonably interpreted by the OCC,[12]—and the umbrella phrase "all such incidental powers as shall be necessary to carry on the business of banking." 12 USC 24(Seventh).[13] The Supreme Court has made clear that the "business of banking" authorization is broad and flexible, and takes on additional meaning as the business of banking changes.[14] It is therefore settled that the "business of banking" evolves to meet the needs of a changing society, innovations in financial transactions, and advances in technology.[15]

The National Bank Act Authorizes National Banks to Provide Services Through ATMs

The banking services provided through ATMs represent long-established banking activities: receiving deposits, disbursing cash from bank accounts, and extending credit in the form of cash advances. Each of these activities lies at the heart of national bank authority under section 24(Seventh), whether as part of the enumerated national bank power to receive deposits, as part of the authority to engage in the "business of banking," or as an activity incidental to permissible banking activity.

That conclusion is entirely unaffected by the fact that these traditional services are delivered through ATMs rather than through teller windows.[16] The power to deploy and operate ATMs is implicit in the National Bank Act's authorization of national banks to receive deposits, make loans, and carry on the "business of banking," as the OCC has expressly reaffirmed in a recent regulation. 12 CFR 7.4003; 12 USC 24(Seventh); *Guttau*, 190 F.3d at 849. ATMs and other electronic media simply represent a different means of exercising established banking powers. That authority, as with all other powers vested in national banks, is not subject to conditions imposed by state law except where Congress has so specified.[17]

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[8] Under Section 36 of the National Bank Act, national banks may establish "branches" only to the extent that state law authorizes state banks to establish branches. *See* 12 USC 36(c)–(g). When ATMs were first deployed in the 1970s, court decisions established that national bank ATMs constituted "branches" under section 36, and thus were made subject to state-law-based location limits. *Independent Bankers Ass'n of America* v. *Smith*, 534 F.2d 921 (D.C. Cir. 1976). Accordingly, from the 1970s until 1996, national banks generally could establish ATM "branches" only to the extent that states permitted the establishment of full-service brick-and-mortar branches in the same state. The 1996 amendment reversed that status, expressly excluding ATMs from the definition of a "branch," and thereby removed national bank ATMs from the reach of state-law-based restrictions. *See* Economic Growth and Regulatory Paperwork Reduction Act, Pub. L. No. 104–208, Section 2205(a), 110 Stat. 3009–405 (September 30, 1996); *Guttau*, 190 F.3d 844 (8th Cir. 1999); 12 CFR 7.4003. Those branching limits continue to apply to national banks' full-service brick-and-mortar branches.

[9] *See*, *e.g.*, *Guttau*.

[10] *See*, *e.g.*, *Burke*.

[11] San Francisco, Santa Monica, Newark, and Woodbridge.

[12] *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Corp.*, 513 U.S. 251 (1995) *("VALIC")*

[13] 12 USC 24, in relevant part, authorizes national banks: "Seventh. To exercise . . . all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes. . . ."

[14] *VALIC*, 513 U.S. at 258 n.2 ("We expressly hold that the 'business of banking' is not limited to the enumerated powers in Section 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated").

[15] *See also M & M Leasing Corp.* v. *Seattle–First Nat'l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) ("[W]e draw comfort from the fact that commentators uniformly have recognized that the National Bank Act did not freeze the practices of national banks in their nineteenth century forms. . . . [W]e believe the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking").

[16] 12 CFR 7.1019 provides, in part: "A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver."

[17] *See*, *e.g.*, *Clarke* v. *Securities Industry Ass'n*, 479 U.S. 388, 406-408 (1987) (no geographic restrictions upon authorized securities transactions); *NBD Bank* v. *Bennett*, 67 F.3d 629, 632–33 (7th Cir. 1995) (national banks can transact business irrespective of their customers' locations unless federal law says otherwise).

National Banks are Authorized to Charge Fees for Their Services

Contrary to the suggestions of some opponents of access fees, financial institutions are private, for-profit enterprises, and not public utilities. A national bank's authority to provide a product or service necessarily carries with it the authority to charge a fee for the product or service provided.[18] National banks are charged with the authority to engage in the "*business of banking*," which cannot be separated from the authority to seek a business return. Any contrary rule would render national bank powers illusory.

The Supreme Court has long recognized that national banks are private enterprises that are entitled to conduct normal business activities. In holding that the National Bank Act preempts a state restriction on national bank advertising, the court stated: "Modern competition for business finds advertising one of the most usual and useful of weapons. . . . It would require some affirmative indication to justify an interpretation that would permit a national bank to engage in a business but gave no right to let the public know about it." *Franklin Nat'l Bank* v. *New York*, 347 U.S. 373, 377–78 (1954).[19] As a matter of statutory interpretation, it would make even less sense to permit national banks to "engage in a business," but then to deny them the ability to charge for providing the service.

National Banks are Authorized to Set the Rates for Service Fees

Because federal statutes impose neither a prohibition on charging fees nor a cap on how much a national bank may charge, national banks are free to set the prices for their services, subject only to the OCC's supervisory oversight. Even though heavily regulated, national banks are not required to seek regulatory approval for any change in their rates. The National Bank Act does not displace business judgments by dictating any general restrictions on the kinds or amounts of fees that banks may charge for services, leaving those decisions to the discretion of bank management.[20] National bank fee rate decisions are therefore not subject to limitation under either state law or federal law.

[18] By "customers," the OCC expressly includes any party that obtains a product or service from the bank, and not just deposit customers.

[19] *See also Guttau*, 190 F.3d at 850 (Iowa ban on on-terminal national bank ATM advertising preempted).

[20] That statutory freedom to set the rate for *fees* contrasts with the specific National Bank Act restriction on national bank *interest* rates, which are made subject to specified state usury laws. 12 USC 85.

The OCC's interpretations of the National Bank Act reflect these principles. The applicable OCC regulation indicates that the establishment and rate of fees are matters to be determined by the national bank "in its discretion, according to sound banking judgment and safe and sound banking principles." 12 CFR 4.002.[21] Furthermore, because those powers are inherent elements of national banks' authority to conduct the business of banking, no prior approval from the OCC is required for a national bank to set or change a fee or service charge. Unlike a utility or a common carrier, national banks are empowered to set fees in their sound business judgment, and thus may adjust them as business conditions dictate, without the necessity of regulatory approval. Within the bounds of supervisory considerations—which are monitored solely by the OCC—national banks may decide what fees to charge for the services they provide.

The Federal Electronic Funds Transfer Act does not Immunize the Ordinances Against Preemption by the National Bank Act

There is no basis for the argument that the federal Electronic Funds Transfer Act (EFTA), 15 USC 1693 *et seq.*, trumps the National Bank Act or insulates local consumer protection ordinances against preemption. That argument ignores the text of the EFTA and instead relies upon an inflated view of the scope of the EFTA "savings clause" and of the scope of the EFTA generally. This argument was raised and rejected by both the Eighth Circuit decision in *Guttau* and by the San Francisco District Court.

First, the EFTA savings clause is not a "grant of authority" to states. The text instead states that certain state consumer protection measures will be deemed consistent with the EFTA, and therefore not preempted by the EFTA *itself*. The savings clause does not purport to address the preemptive effect of any *other* federal law. The text provides:

> "*This subchapter* does not annul, alter, or affect the laws of any State relating to electronic funds transfers, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A state law is not inconsistent *with this subchapter* if the protection such law affords any consumer is greater than the protection afforded by *this subchapter*."

[21] The regulation provides that the bank's authority to charge fees, like all other banking activities, must be exercised in a manner consistent with safe and sound banking practices. The regulation addresses a variety of factors relevant to the OCC's supervisory concerns, including whether a fee is anticompetitive, unsafe or unsound, or arrived upon through collusion. If the fee-setting process in the bank has addressed these factors, there is no supervisory impediment to the exercise of the bank's authority to charge fees.

15 USC 1693q (emphasis added). The Eighth Circuit rejected an identical argument in *Guttau*: "Despite [Iowa's] claims, this anti-preemption provision is specifically limited to the provisions of the Federal EFTA, and nothing therein grants the states any additional authority to regulate national banks." 190 F.3d at 850; *see also First Union Nat'l Bank* v. *Burke*, 48 F.Supp. 2d 132, 146–47 (D.Conn. 1999) (The text of the EFTA "does not contain language from which it can be reasonably inferred that Congress intended to disrupt other federal laws including the National Bank Act. . . .") The EFTA savings clause therefore has absolutely nothing to say about the preemptive effect of the National Bank Act upon restrictive state or local laws.

Second, and independently, there is no conflict between the EFTA and the National Bank Act on this issue because the EFTA simply does not address national banks' substantive power to charge fees. Instead, the EFTA primarily addresses procedural issues such as disclosures.[22] In much the same manner as the Uniform Commercial Code, the EFTA also addresses the allocation of liabilities for electronic transactions as between consumers and financial institutions (Sections 1693g–n).[23] The Federal Reserve Board, the agency charged with interpretation of the EFTA, has published its interpretations in Regulation E, which does not even hint that the EFTA addresses the substantive power to charge fees.[24] Thus, the argument that the EFTA controls because it is "more specific" than the National Bank Act fails because the EFTA is specific only as to issues other than the power to charge fees.

Consistently, when the EFTA was recently amended so as to address ATM fee transactions, it addressed only the *procedure* for charging fees and was silent as to the power to charge fees. The Gramm–Leach–Bliley Act contains a section titled the "ATM Fee Reform Act of 1999," which requires that ATM operators give consumers *notice* of access fees rates at the time of the transaction, but says nothing about the power of banks to charge those fees. Gramm–Leach–Bliley Act, Section 701–705, S. 900, 106th Cong., 1st Sess. Section 702 (1999). Thus, in stating *the way in which* banks can charge such fees, Congress clearly contemplated that such fees could legitimately *be* charged.[25] The notice provision simply extends other disclosure requirements in the EFTA and Regulation E, and thus is utterly consistent with the other procedural provisions of the EFTA. Thus, in purporting to "reform" ATM fees, Congress made no changes to the authority of national banks under the National Bank Act to charge access fees.

There is no merit to the suggestion that the EFTA is the sole umbrella federal authority over any issue related to ATMs—in essence, "occupying the field" of federal ATM regulation. The EFTA cannot be made to fit that mold. First, the EFTA shares with other federal statutes, besides the National Bank Act, authority over various aspects of ATM operation.[26] Furthermore, ATM operations are only a subset of the electronic funds transfers to which the EFTA is addressed.[27] More broadly, the EFTA is merely one of an array of statutes that operate in conjunction with the National Bank Act without conflict, each statute supreme in its own sphere. Other transaction-specific statutory regimes include: consumer protection statutes such as the as the Truth-in-Lending Act, 15 USC 1601 *et seq.*; payments system regulation such as the Expedited Funds Availability Act, 12 USC 4001 *et seq.*; and the omnibus allocations of rights and liabilities under the Uniform Commercial Code. Accordingly, the EFTA does not displace the National Bank Act authority for national banks to charge fees for ATM use.

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[22] *E.g.*, disclosures to consumers (15 USC 1693c); documentation of transfers (Section 1693d); procedures for preauthorized transfers (Section 1693e); and procedures for error resolution (Section 1693f).

[23] In so doing, the EFTA, like other federal consumer statutes, roughly parallels the function of the Uniform Commercial Code, providing a procedural framework for transactions while other sources of authority—contract or other statutory provisions—generally provide the substance.

[24] The Federal Reserve's Regulation E interpreting the EFTA nowhere addresses the substantive authority to charge fees. *See* 12 CFR part 205. Instead, Regulation E requires at the initiation of an account the *disclosure* of fees for electronic transfers or for the right to make electronic transfers. 12 CFR 205.7(b)(5). Regulation E includes a special section on the interaction of the EFTA with "other law," which addresses the Truth-In-Lending Act and state law, but makes no reference to the National Bank Act. 12 CFR 205.12. Accordingly, the regulation reflects the Federal Reserve's presumption that the EFTA and the National Bank Act have distinct spheres that do not interact.

[25] Indeed, this precise reasoning was recently employed by the Connecticut Supreme Court in rejecting the Connecticut banking commissioner's interpretation of state law to prohibit ATM access fees. Noting that a Connecticut statute required disclosure to the depositor of any bank deposit fees, but was silent as to the substantive authority to charge fees, the Connecticut Supreme Court concluded that the disclosure statute "assumes that the authority to impose fees does exist." *Burke* v. *Fleet Nat'l Bank*, 742 A.2d 293, 304 (Conn. 1999).

[26] Aside from the National Bank Act, aspects of ATM operation are regulated at the federal level by a number of statutes, including the Expedited Funds Availability Act, 12 USC 4002(e), 4004(d)(2), and the Home Owners Loan Act, 12 USC 1461 *et seq*.

[27] In addition to ATM transactions, the scope of the EFTA covers credit card, debit card, and other electronic transfers. 15 USC 1693a(6).

State or Local Legislation that Would Prohibit Fees Authorized by the National Bank Act is Preempted by Operation of the Supremacy Clause

Under the Constitution's Supremacy Clause, when the federal government acts within the sphere of its authority, federal law is paramount over, and preempts, inconsistent state law. *See*, *e.g., McCulloch* v. *Maryland*, 17 U.S. (4 Wheat) 316 (1819). The nature and degree of inconsistency required to trigger preemption has been expressed in a variety of formulations,[28] but has been usefully summarized as a question whether, under the circumstances of a particular case, the state law may "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Barnett Bank* v. *Nelson*, 517 U.S. 25, 31 (1996), *quoting Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Federal courts have repeatedly applied those principles to determine that federal law preempts state law that would pose obstacles to the exercise of national bank powers.[29] The court has observed that the history of supremacy clause litigation of national bank authority is "one of interpreting 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." *Barnett Bank*, 517 U.S. at 27.[30]

In the case of access fee prohibitions, it is our view that local laws "pose an obstacle" to the exercise of powers conferred by federal authority. Where federal law says that national banks may charge access fees, and local ordinances say that they may not, the conflict between federal and local prescriptions is manifest and total. Accordingly, it is the OCC's position that local ordinances purporting to prohibit national bank ATM access fees are preempted by federal law and rendered unenforceable with respect to national banks.

I hope that these views will be helpful to the Council. For further information, please contact Jonathan Rushdoony, [Northeastern] District Counsel, (212) 790–4010, or Douglas Jordan, Special Counsel, (202) 874–5280.

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

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[28] "This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference." *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941); *see Bank of America Nat'l Trust & Sav. Ass'n* v. *Shirley*, 96 F.3d 1108 (8th Cir. 1996) (preemption may be express or by federal occupation of the field).

[29] The Supreme Court established long ago that "the states can exercise no control over [national banks], nor in any way affect their operation, except in so far as Congress may see proper to permit." *Farmers' & Merchants' Nat'l Bank* v. *Dearing*, 91 U.S. 29, 33–35 (1875). *See also First Nat'l Bank of Logan* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 256 (1966) (observing that "[t]he paramount power of the Congress over national banks has . . . been settled for almost a century and a half"). *See generally Barnett Bank* (federal statute preempts state statute restricting bank sales of insurance); *Davis* v. *Elmira Sav. Bank*, 161 U.S. 275, 283 (1896).

[30] It is immaterial to the application of this principle whether the federal power is explicit or implicit in the National Bank Act. *Barnett Bank*, 517 U.S. at 31; *see Franklin Nat'l Bank* v. *New York*, 347 U.S. at 375–79 and n.7.

Mergers—January 1 to March 31, 2001

Mergers—January 1 to March 31, 2001

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, 2001

Title and location (charter number)	Total assets
Indiana	
Integra Bank National Association, Evansville (012132)	2,536,224,000
and West Kentucky Bank, Madisonville	293,247,000
merged on January 31, 2001 under the title of Integra Bank National Association, Evansville (012132)	2,834,308,000
Kentucky	
Community Trust Bank, National Association, Pikeville (007030)	2,246,362,000
and The Bank of Mt. Vernon, Richmond	132,020,000
merged on January 26, 2001 under the title of Community Trust Bank, National Association, Pikeville (007030)	2,357,382,000
Minnesota	
Wells Fargo Bank Minnesota, National Association, Minneapolis (002006)	50,040,860,000
and The Buffalo National Bank, Buffalo (012959)	127,428,000
merged on January 13, 2001 under the title of Wells Fargo Bank Minnesota, National Association, Minneapolis (002006)	50,167,446,000
Missouri	
First National Bank of St. Louis, Clayton (012333)	883,529,000
and MidAmerica Bank of St. Clair County, O'Fallon	30,640,000
merged on March 1, 2001 under the title of First National Bank of St. Louis, Clayton (012333)	909,217,000
Nebraska	
Cornerstone Bank, National Association, York (002683)	303,448,000
and The First National Bank of Stromsburg, Stromsburg (008286)	25,898,000
merged on February 22, 2001 under the title of Cornerstone Bank, National Association, York (002683)	326,443,000
New Jersey	
Valley National Bank, Passaic (015790)	6,243,176,000
and The Merchants Bank of New York, New York City	1,370,000,000
merged on January 19, 2001 under the title of Valley National Bank, Passaic (015790)	7,613,176,000
New York	
Community Bank, National Association, Canton (008531)	1,928,997,000
and The Citizens National Bank of Malone, Malone (011897)	115,214,000
merged on January 26, 2001 under the title of Community Bank, National Association, Canton (008531)	2,044,211,000
Ohio	
The Farmers' National Bank of Canfield, Canfield (003654)	433,852,000
and The Security Dollar Bank, Niles	170,712,000
merged on December 31, 2000 under the title of The Farmers' National Bank of Canfield, Canfield (003654)	604,564,000
Peoples Bank, National Association, Marietta (005552)	1,117,275,000
and The Lower Salem Commercial Bank, Lower Salem	24,787,000
merged on February 23, 2001 under the title of Peoples Bank, National Association, Marietta (005552)	1,141,804,000

Nonaffiliated mergers (continued)

Title and location (charter number)	Total assets
Rhode Island	
Fleet National Bank, Providence (000200)	160,470,487,000
and Summit Bank, Hackensack	33,291,598,000
and Summit Bank, Norwalk	1,350,855,000
and Summit Bank, Bethlehem	4,388,149,000
merged on March 1, 2001 under the title of Fleet National Bank, Providence (000200)	199,501,089,000

Comptroller's Decision

Introduction

Fleet National Bank, Providence, Rhode Island (Fleet), applied to the Office of the Comptroller of the Currency (OCC) for approval to merge with: Summit Bank, Hackensack, New Jersey (Summit–NJ); Summit Bank, Bethlehem, Pennsylvania (Summit–PA); and Summit Bank, Norwalk, Connecticut (Summit–CT), (collectively Summit Banks) under Fleet's charter and title under 12 USC 215a–1, 1828(c), and 1831u (the merger).

Fleet is a national bank that has its main office in Providence, Rhode Island, and branches in the states of Rhode Island, Connecticut, Florida, Massachusetts, Maine, New Hampshire, New Jersey, and New York. Summit–NJ and Summit–PA are state banks while Summit–CT is a state savings bank. The main office and branches of each Summit Bank are located solely within that particular bank's chartering state. All parties to this application are members of the Bank Insurance Fund (BIF).

As of September 30, 2000, Fleet had approximately $163 billion in assets and $105 billion in deposits. As of the same date, Summit Bank–NJ had approximately $34 billion in assets and $32 billion in deposits; Summit Bank–PA had approximately $4.5 billion in assets and $3 billion in deposits; and Summit Bank–CT had approximately $1.3 billion in assets and $1 billion in deposits. All of the Summit Banks are wholly owned subsidiaries of Summit Bancorp, a New Jersey bank holding company.

Fleet has published notice of the application in various general circulation newspapers including those serving the head office cities of Fleet and each of the Summit Banks. All written comments received have been carefully considered as part of the merger application (see discussion below). Fleet has also submitted the required notifications to the banking supervisors of Connecticut, Rhode Island, New Jersey, and Pennsylvania.

Statutory and Policy Reviews

A. The merger is authorized under the interstate merger authority of the Riegle–Neal Act, 12 USC 215a–1, 1831u, and 36(d)

Fleet's home state is Rhode Island and the Summit Banks' home states are Connecticut, New Jersey, and Pennsylvania. Therefore, in this merger, national banks with different home states will merge. Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

> (1) In General.—Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 USC 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 USC 1831u(a)(1).[1] The Riegle–Neal Act permitted a state to elect to prohibit such interstate merger transactions under section 44 by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. *See* 12 USC 1831u(a)(2) (state "opt-out" laws). In the proposed

[1] Section 44 was added by section 102(a) of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103–328, 108 Stat. 2338 (enacted September 29, 1994) (the Riegle–Neal Act). The Riegle–Neal Act also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. *See* Riegle–Neal Act 102(b)(4) (adding a new section, codified at 12 USC 215a–1) & 102(b)(1)(B) (adding new subsection 12 USC 36(d)). Some interstate mergers may also be authorized under 12 USC 215a. *See*, *e.g.*, *Ghiglieri* v. NationsBank of Texas, N.A., No. 3:97–CV–2897–P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction); Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98–19, April 2, 1998). Since Fleet has branches in Connecticut and New Jersey, it could have acquired the Summit Banks in those states through a merger under section 215a; however, the present application was made under the Riegle–Neal Act.

merger, the home states of the banks are Rhode Island, Connecticut, New Jersey, and Pennsylvania; none of these states opted out. Accordingly, this application is covered by 12 USC 215a–1 & 1831u(a).

B. Fleet's application meets the requirements of the Riegle–Neal Act

An application to engage in an interstate merger transaction under 12 USC 1831u is also subject to certain requirements set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, to the extent that the Riegle–Neal Act authorizes such limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. This application satisfies all these requirements to the extent applicable.

1. The application satisfies the Riegle–Neal Act's age requirement

The application satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-state bank or out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.'' 12 USC 1831u(a)(5)(A). But the maximum age requirement permitted is five years. 12 USC 1831u(a)(5)(B). For purposes of complying with state-imposed age requirements, the host states for this application are Connecticut, New Jersey, and Pennsylvania. Neither the New Jersey nor the Pennsylvania interstate bank merger statutes impose a minimum age requirement on the acquisition of a bank by an out-of-state national bank. Connecticut law requires that the target bank be in existence and continuously operating for at least five years.[2] Summit–CT has been in existence in excess of five years, thereby satisfying the age requirements in that state. Thus, the application satisfies the Riegle–Neal Act requirement of compliance with state age laws.

2. The application satisfies the Riegle–Neal Act's other requirements

The proposed merger meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction'' as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. 12 USC 1831u(b)(1).[3] Of the three states in which the Summit Banks are located—Pennsylvania, New Jersey, and Connecticut—the only state that will become a host state of Fleet as a result of this merger is Pennsylvania since Fleet already has branches in the other two states. The Pennsylvania interstate bank merger statute does not contain a provision making the "qualify to do business" filing requirement imposed on nonbanking corporations applicable to out-of-state banks with branches in Pennsylvania.[4] Thus, the proposed merger satisfies the Riegle–Neal Act requirement of compliance with state filing requirements.

In addition, a bank applying for an interstate merger transaction must submit an application to the state bank supervisor of the host state. 12 USC 1831u(b)(1). This

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For purposes of section 1831u, the following definitions apply: The term ''home State'' means, with respect to a national bank, ''the state in which the main office of the bank is located.'' The term ''host State'' means, ''with respect to a bank, a state, other than the home state of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.'' The term ''interstate merger transaction'' means any merger transaction approved pursuant to section 1831u(a)(1). The term ''out-of-State bank'' means, ''with respect to any state, a bank whose home state is another state.'' The term ''responsible agency'' means the agency determined in accordance with 12 USC 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). *See* 12 USC 1831u(f)(4), (5), (6), (8) & (10).

[2] Conn. Gen. Stat. 36a–412 (1999).

[3] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle–Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, *see*, *e.g.*, Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96–29, June 1, 1996) (at pages 4–5, 12–14 and note 11).

[4] The Pennsylvania statute requires only that where a proposed merger or consolidation will result in a national bank or an interstate bank, that the banking department be notified of the merger, and that, upon request of the banking department, they be provided evidence of the adoption of the plan of merger. *See* Pa. Stat. Ann. tit. 7, § 1603(g) (1995 & Supp. 1997). The Connecticut interstate bank merger statute does contain a provision making the ''qualify to do business'' filing requirement imposed on nonbanking corporations applicable to out-of-state banks with branches in Connecticut. Fleet has complied with this requirement as part of applications it has submitted to the Connecticut Department of Banking. *See*

requirement is satisfied in this case; in fact, Fleet has represented that it has submitted the required notifications to the state banking supervisors in all of the states involved in this transaction: Pennsylvania, New Jersey, and Connecticut. Thus, the proposed merger satisfies this filing requirement of the Riegle–Neal Act.[5]

3. The proposed merger does not raise issues with respect to the deposit concentration limits of the Riegle–Neal Act

Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. Under section 1831u(b)(2)(A), the OCC may not approve an interstate merger transaction if the resulting bank (including all affiliated insured depository institutions) would control more than 10 percent of the total amount of deposits in the United States. Under section 1831u(b)(2)(B), the OCC may not approve an interstate merger transaction (1) if any bank involved in the transaction (including all affiliated insured depository institutions) has a branch in any state in which any other bank involved in the transaction has a branch and (2) if the resulting bank (including all affiliated insured depository institutions) would control 30 percent or more of the total deposits in any such state. After the merger, Fleet will control approximately 3 percent of total deposits in the United States.[6] In addition, after the merger and all divestitures, Fleet will control less than 30 percent of the deposits in each of the states of Connecticut, New Jersey, and Pennsylvania. Therefore, the application meets the Riegle–Neal Act's deposit concentration limits.

4. The proposed merger also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle–Neal Act

The proposed merger also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle–Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act (CRA), 12 USC 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 USC 1831u(b)(3). The OCC's analysis regarding the first two provisions is discussed in section III(B) of this decision, captioned "The Community Reinvestment Act."[7] As for the third provision, the OCC contacted the relevant state banking department staff and considered Fleet's compliance with applicable state community reinvestment laws. The OCC's inquiry did not reveal any information that would be inconsistent with approval of the application.

5. The proposed merger satisfies the adequacy of capital and management skills requirements in the Riegle–Neal Act

The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 USC 1831u(b)(4). As of the date the application was filed, Fleet and the Summit Banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, Fleet will continue to be at least adequately capitalized and adequately managed. The requirements of 12 USC 1831u(b)(4) are therefore satisfied.

C. Following the merger application, Fleet may retain its existing main office and branches under 12 USC 36(d) and 1831u(d)(1)

Fleet also requested that, upon the completion of the merger, Fleet (as the resulting bank in the merger) be permitted (1) to retain and operate, as its main office, its current main office in Providence, Rhode Island, under 12 USC 1831u(d)(1), and (2) to retain and operate, as branches, its other branches and Summit Banks' main offices and branches, under 12 USC 36(d) and 1831u(d)(1).

Conn. Gen. Stat. §§ 36a–412, 33–920 (2000). The New Jersey interstate bank merger and branching statutes do not appear to contain a "qualify to do business" filing requirement applicable to out-of-state national banks acquiring banks with branches in the state. *See* N.J. Stat. Ann. §§ 17:9A–133.1, 17:9A–148 (West 1984 & Supp. 2000).

[5] Rhode Island is currently a home state for Fleet and will continue as such after the merger, and so does not become one as a result of the merger. Therefore, the filing requirements of section 1831u(b)(1) do not apply with respect to it. *See* Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96–30, June 6, 1996) (page 8, note 9).

[6] Based on June 30, 1999 data.

[7] With respect to the second provision, the banks that would be affiliated as a result of the merger and that receive CRA evaluations are Fleet and Fleet Bank (Rhode Island), N.A., Providence, Rhode Island. As discussed more fully in section III(B), the OCC has taken the CRA evaluations of these banks into consideration and has discovered no information indicating that the merger should not be approved.

In interstate merger transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

> (1) Continued Operations.—A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, *as a main office* or a branch, *any office that any bank involved* in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 USC 1831u(d)(1) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 USC 1831u(f)(11).[8]

Thus, in the present application, Fleet (as the resulting bank after the merger) may retain and operate as its main office "any office that [Fleet] was operating as a main office or branch immediately before the merger transaction." The Providence office is currently operating as the main office of Fleet, and so the resulting bank may retain and operate it as its main office, provided the merger is approved under section 1831u.

Similarly, Fleet (as the resulting bank after the merger) may retain and operate as branches "any office that [either Fleet or the Summit Banks] was operating as a main office or branch immediately before the merger transaction." Fleet's main office and other branches, and the Summit Banks' main offices and branches, are all operating as main offices or branches, and so the resulting bank may retain and operate them as branches, provided the merger is approved under section 1831u.

Therefore, the merger is authorized, and Fleet may retain the proposed main office and the four banks' other offices as branches,[9] provided the application meets the requirements for an interstate merger transaction under section 1831u.

Additional Statutory and Policy Reviews

A. The Bank Merger Act

The Bank Merger Act, 12 USC 1828(c), requires the OCC's approval for a merger between insured banks where the resulting institution will be a national bank. Under the act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find this merger may be approved under section 1828(c).

1. Competitive Analysis

The OCC reviewed the impact of the proposed transaction on competition for the cluster of products and services offered by depository institutions in the areas surrounding the Summit banks Fleet is acquiring. The OCC also considered public comments that raised competitive issues. There are five relevant geographic markets for this proposal where competition between Fleet and Summit Banks is direct and immediate: Waterbury Area, CT; Fairfield Area, CT; Metro New York/New Jersey; Philadelphia, PA; and, Atlantic City, NJ.

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[8] In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

> (d) Branches Resulting From Interstate Merger Transactions.—A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 USC 36(d) (as added by Riegle–Neal Act 102(b)(1)(B)). By its action in adding section 36(d), Congress made it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 USC 36(b)(2) that apply to mergers under 12 USC 215a. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u.

[9] In addition, Fleet will succeed to the fiduciary appointments of the Summit Banks as a result of the merger, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates. *See*, *e.g.*, 12 USC 215a–1 (Riegle–Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act) and 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks); Decision on the Application to Merge Bank of America N.T. & S. A. and NationsBank, N.A. (OCC CRA Decision No. 94, May 20, 1999) (at page 6 n. 4). *See also* Decision on the Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97–33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states). *Cf.* 12 USC 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

We applied standard procedures for determining whether the competitive effects of the merger in the above markets clearly had minimal or no adverse competitive effects and found that to be true with the exception of the Atlantic City market.

The Atlantic City market is defined as consisting of the New Jersey counties of Atlantic and Cape May. Within this market, 18 banks and thrifts compete for $4.2 billion in deposits. Fleet, with 16 branches, ranks fourth with a 10.0 percent market share. Summit–NJ, with 24 branches, ranks first with a 27.7 percent share. The merger would increase Fleet's dominance of the market, increasing its share to 37.7 percent among the remaining 17 competitors.

In light of this potentially adverse impact, on January 25, 2001, Fleet entered into a formal divestiture plan with the Department of Justice (DOJ).[10] Fleet will sell five specified branches in Atlantic County, along with related deposits and consumer and commercial loans, to competitively suitable financial institutions as determined by the DOJ and the Federal Reserve Board of Governors. To further preserve the existing level of competition, the plan also requires Fleet to suspend for 180 days any existing non-compete agreements and not enter into any new such agreements with current Fleet or Summit–NJ loan officers and branch managers in the Atlantic City market. In addition, Fleet will be required to widely publicize the sale or lease of any branches in the Atlantic City market closed as a result of the merger and optimize the potential for those sites to be acquired by commercial banks.

In reviewing a merger application by the parent holding companies of Fleet and Summit Banks, the Federal Reserve Board also considered the competitive impact of the underlying bank merger. Subject to Fleet's divestiture commitment, the Federal Reserve Board concluded that the proposal would not produce a significant effect on competition or concentration of banking resources in any relevant geographic market. (*See* Federal Reserve Board Order of February 12, 2001.)

Accordingly, while the proposed merger would eliminate a direct competitor from the Atlantic City market, the formal divestiture plan and the continuing presence of other banking alternatives would mitigate any adverse effects. Therefore, consummation will not have a significantly adverse impact on competition within the Atlantic City or any other relevant banking market.

[10] *See* letter by J. Robert Kramer, chief, Litigation II Section, Antitrust Division, DOJ, to John D. Hawke Jr., Comptroller of the Currency (January 25, 2001).

2. Financial and Managerial Resources

The financial and managerial resources of Fleet and Summit Banks are presently satisfactory. The future prospects of the institutions, individually and combined, are favorable. We find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and Needs

The merger will not have an adverse impact on the convenience and needs of the communities to be served. Fleet will continue to serve the same areas that it now serves. There will not be a reduction of products or services as a result of the merger. The resulting bank is expected to meet the convenience and needs of the community to be served. While Fleet anticipates that some overlapping branches of the resulting institution will be closed as a result of the transaction, current Fleet and Summit Banks customers, as customers of the resulting bank, will have a greater number of branches at which to bank.

Fleet represents that as soon as practicable after the merger, it will offer many of its products and services to Summit Banks' customers. The Summit Banks' customers will benefit from an enhanced array of products and services at the resulting bank, *e.g.*, insurance products and broker–dealer services, higher lending limits, Internet-based products and services, and international operations as well as the investment banking services of its affiliates. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the application.

The OCC received comments from two community organizations during the public comment period. The OCC investigated the concerns raised in these letters. In addition, the OCC considered the comments that had been received by the Federal Reserve Bank of Boston in connection with the holding company application to merge FleetBoston Financial Corporation (FleetBoston) and Summit Bancorp. The concerns expressed in the letters and the results of the OCC's investigation into those concerns are discussed below. In light of the commenters' concerns, the OCC directed examiners with extensive consumer compliance experience to investigate these concerns. The scope of this review included an investigation of the specific convenience and needs and Community Reinvestment Act (CRA)-related allegations raised by the commenters. In order to investigate those concerns, on January 2, 2001, the OCC removed the application from expedited review processing.[11] In summary, our investigation and analysis of the issues identified no basis for denying or conditioning the approval of this application.[12]

a. Community Commitments

Both of the comments received by the OCC expressed concerns with FleetBoston's progress in meeting the terms of its five-year, $14.6 billion Community Investment Commitment that was announced in 1999 in connection with the merger of Fleet Financial Group, Inc., and BankBoston Corporation. The OCC does not enforce such bank community development or CRA-related commitments or agreements between private parties,[13] however, FleetBoston responded to these concerns by explaining that the results for the first six months of the commitment's term do not mean that the goals will not be achieved within five years. FleetBoston noted that loan production levels and loan demand can vary during different time periods and are not always constant.

FleetBoston also described the 20-member community oversight committee it has established, comprised of community representatives, that meets regularly with bank management to discuss opportunities to advance FleetBoston's community development efforts and to monitor the implementation of the commitment. The commitment includes targets for affordable housing lending, community development lending and investments, consumer lending targeted to low- and moderate-income (LMI) areas, and funding for technical assistance and support for community development organizations.

In connection with the merger, FleetBoston also has described how it has entered into a four-year, $1.22 billion community development agreement covering New Jersey (New Jersey agreement). FleetBoston has also announced a four-year, $0.75 billion community investment commitment covering its activities in Pennsylvania. The New Jersey and Pennsylvania initiatives include goals for affordable housing mortgage lending, community development financing and investments, small business lending and community development grants. These two initiatives are in addition to FleetBoston's $14.6 billion Community Investment Commitment.

b. Branch Closings

One of the commenters expressed concerns that Fleet had not disclosed which branches would be closed in connection with the merger. FleetBoston responded that it has not yet determined which branches will be closed, but that because Fleet and Summit Banks have overlapping branches in 97 communities (primarily in New Jersey), as many as 85 branches could be closed. As part of the New Jersey agreement, FleetBoston pledged that no branches would be closed in LMI areas for a period of four years in 13 identified towns. In four additional towns, FleetBoston pledged not to close branches for four years where the next closest branch is more than 0.5 miles away from the nearest Fleet branch. FleetBoston does not expect to close any branches in Pennsylvania as a result of the merger. For the remaining areas, FleetBoston has not yet conducted in-depth reviews of the available data concerning each of the branches located in the communities where there is overlap. After such reviews and in the event FleetBoston determines it is necessary to close a branch, FleetBoston represented that it will also make an effort to mitigate any negative impact upon the customers served by the consolidating branches.[14]

In addition, FleetBoston provided the OCC with information indicating that it has a comprehensive branch closing policy and procedure (branch policy). This branch policy includes a community impact review and business analysis, as well as providing for notifications required by law.[15] FleetBoston reported that as of October 1, 2000, 21 percent of Fleet's 1,272 branches were located in LMI areas as compared to 20.3 percent at the beginning of 2000.

c. Fees

One of the commenters expressed concerns that the merger would result in increased fees. Concerns were

[11] The commenters requested the OCC to extend the public comment period and conduct public hearings. After careful consideration of the circumstances and the standards contained in 12 CFR 5.10(b)(2) and 12 CFR 5.11(b), on January 21, 2001, the OCC denied these requests.

[12] The OCC is aware that a lawsuit was recently filed against Fleet Mortgage Corporation, a subsidiary of Fleet, by the state of Minnesota attorney general regarding Fleet Mortgage Corporation's alleged sharing of mortgage account information with telemarketers. While the filing of this lawsuit is not adequate grounds to delay rendering a decision, the OCC is committed to ensuring that national banks protect the financial privacy of consumers. On June 1, 2000, the OCC, the Federal Reserve Board, and the Office of Thrift Supervision issued a joint final rule entitled "Privacy of Consumer Financial Information." 65 *Fed. Reg.* 35,162. Compliance with this rule is mandatory as of July 1, 2001.

[13] *See* 65 *Fed. Reg.* 25,088, 25,107 (2000) (Question and Answer No. 2, § .29(b)) (federal banking agencies do not monitor or enforce CRA agreements that banks enter with private organizations).

[14] When appropriate, Fleet may upgrade the consolidated facility, add staff, and/or leave behind a remote ATM.

[15] Federal law requires banks to give notice of proposed branch closings. The Federal Deposit Insurance Act requires insured depository institutions to provide notice to the appropriate federal regulatory agency at least 30 days prior to such closing. 12 USC § 1831r–1. Additionally, the OCC considers a bank's record of branch closings, including those closed in LMI areas, in conducting examinations under the Community Reinvestment Act.

raised that Fleet would not continue to offer Summit Banks' "Regular Checking" product, which provides free checking and other benefits to customers who maintain a minimum daily balance of $99. FleetBoston has represented that it will retain the "Regular Checking" product for all customers who hold such accounts prior to consummation of the merger. After consummation of the merger, new customers will be offered a low-cost consumer checking account with a $1 minimum opening balance and a $3 maximum monthly service charge for up to eight checks and four Fleet ATM withdrawals. FleetBoston also responded that in each of the markets in which Fleet and Summit Banks currently have overlapping branch networks, Fleet will face aggressive competition from other financial institutions.

d. Systems Conversion

The commissioner of banks for the Commonwealth of Massachusetts expressed concerns to the Federal Reserve Bank of Boston regarding the high volume of complaints his office received, especially after Fleet Financial Group, Inc.'s merger with BankBoston Corporation in 1999. FleetBoston acknowledged an increase in customer problems associated with that large and complex merger, but indicated the volume had peaked in June 2000. Since the merger will be smaller and less complex than the BankBoston Corporation merger, FleetBoston has represented that it expects to be able to successfully complete the merger with no appreciable unfavorable impact on its new or existing customers. OCC examiners have reviewed the complaint history and will continue to monitor the situation.

e. Subprime Lending

One of the commenters expressed concerns that Fleet had reentered the subprime lending business. OCC examiners confirmed that Fleet is no longer engaged in subprime lending. FleetBoston also represented to the Federal Reserve Board in connection with the holding company merger that none of its lending activities fall within the coverage of the Home Ownership and Equity Protection Act, which regulates certain high-cost mortgage loans. Pub. L. No. 103–325, sections 151–158, 108 Stat. 2190 (1994) (codified at 15 USC 1602 (f), (u), (aa), 1604(a), 1610(a)(2), (b), 1604(a), (e), 1639, 1640 (a), (e), 1641 (d)).

f. Conclusion Regarding Convenience and Needs

Based on the foregoing information, the OCC found that the impact of the transaction on the convenience and needs of the communities to be served is consistent with approval of the merger.

B. The Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account each applicant bank's record of helping to meet the credit needs of the community, including LMI neighborhoods, when evaluating certain applications, including mergers. 12 USC 2903; 12 CFR 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, effective July 1, 1997, the OCC evaluates the performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of its communities, including LMI neighborhoods, is less than satisfactory. Fleet, charter number 1338, received a "satisfactory" CRA rating dated February 23, 1998. BankBoston, charter number 200, received an "outstanding" CRA rating dated March 15, 1999. When Fleet and BankBoston merged into number 200, the surviving bank was named Fleet.[16]

Summit Banks have received the following ratings in their most recent CRA examinations: Summit–PA received an "outstanding" CRA rating from the Federal Reserve Bank of Philadelphia dated March 6, 2000; Summit–NJ received an "outstanding" CRA rating from the Federal Reserve Bank of New York dated October 4, 1999; and Summit–CT received an "outstanding" CRA rating from the Federal Deposit Insurance Corporation dated August 2, 1999.

In considering Fleet's and Summit Banks' CRA record of performance, the OCC took into account the wide variety of affordable home loan programs these entities offer. For instance, Fleet offers the Affordable Advantage program, which features a low down payment, no points or private mortgage insurance, more flexible debt-to-income ratios, and below market interest rates. Fleet also participates in a number of other programs targeted to the needs of

[16] It should be noted that since Fleet's last CRA examination was conducted, the following banks also merged into Fleet: Fleet Bank, N.A., Jersey City, New Jersey (with a "satisfactory" CRA rating dated February 17, 1998); Bank of Boston—Florida, N.A., Boca Raton, Florida (with an "outstanding" CRA rating dated July 8, 1999); Fleet Bank—NH, Manchester, New Hampshire (with a "satisfactory" CRA rating dated April 13, 1998); Fleet Bank of Maine, Portland, Maine (with a "satisfactory" CRA rating dated April 13, 1998); and Fleet Bank, F.S.B., Boca Raton, Florida (with a "satisfactory" CRA rating dated April 27, 1998). In addition, Fleet Bank (Rhode Island), N.A., Providence, Rhode Island, a subsidiary of Fleet, received a "satisfactory" CRA rating dated March 6, 2000.

various communities within its assessment area. Summit Banks have made affordable mortgages available through several programs, including their Summit Partners In Pride Affordable Mortgage Product, state housing agency programs and Freddie Mac and Fannie Mae programs.

As mentioned previously, the OCC and the Federal Reserve Bank of Boston received comments expressing CRA-related concerns with Fleet and Summit Banks.[17] As detailed below, the OCC's investigation of these concerns disclosed no evidence inconsistent with approval of the merger.

1. Comments Regarding Fleet National Bank and Fleet Mortgage Corporation

One of the commenters expressed concerns that Fleet and Fleet Mortgage Corporation, a subsidiary of Fleet, rejected applications for conventional home purchase mortgages from minority applicants more frequently than from white applicants. Additionally, this commenter stated that in some instances, Fleet rejected applications for refinance loans from minority applicants more frequently than from white applicants. The commenter cited Home Mortgage Disclosure Act (HMDA) data for numerous Metropolitan Statistical Areas (MSAs) within and outside of Fleet's assessment areas.[18]

FleetBoston responded to the OCC and the commenter noting that the commenter's analysis used only data for conventional mortgages and that when all HMDA home purchase loans for the relevant FleetBoston entities are included, denial rates to minorities in most of the MSAs were generally comparable to or better than the industry denial rates for those products in those MSAs. In the instances where the denial rates were higher, FleetBoston noted its origination rate to minorities was comparable to or more favorable than the industry average. In four of the MSAs, FleetBoston observed that the number of applications from minorities was too small to draw conclusions. With respect to refinance loans in the New York City and Long Island, New York, MSAs, FleetBoston indicated that while denial ratios were higher than the industry ratios, its origination rate for minority borrowers was comparable to or more favorable than the industry rate.

One comment to the Federal Reserve Bank of Boston expressed concerns with FleetBoston's HMDA lending performance in the Rochester MSA, including the declining market share of lending from 1995 to 1999, the declining percentage of loans to LMI borrowers and census tracts, the high percentage of refinance loans in 1998 and 1999, the denial rates for minorities, and the number of applications received from minorities. Additionally, the commenter raised issues concerning FleetBoston's small business lending performance in Monroe County, New York.

FleetBoston's response acknowledged that its market share of HMDA loans has declined since 1995. It pointed out, however, that its level of loan production has remained relatively stable, despite a large increase in the number of HMDA lenders in the market.

In response to the commenter's concern regarding a decline in the percentage of FleetBoston's lending to LMI borrowers between 1995 and 1999 in the Rochester MSA, FleetBoston noted that the percentage decline is misleading because of the relatively high percentage of FleetBoston's loans that are made without collecting income data. FleetBoston's percentage of loans made without income data was 34 percent in 1999; the industry's percentage was 5.5 percent. FleetBoston noted that when the loans without income data are excluded, FleetBoston's adjusted percentage of loans to LMI borrowers of 31 percent is comparable to the industry's adjusted percentage of 34 percent.

With respect to refinancing loans in the Rochester MSA, FleetBoston noted that the demand for refinance loans across the industry was exceptionally strong in 1998 and 1999. Moreover, FleetBoston noted that from 1998 to 1999, the number of FleetBoston's home purchase and home improvement loans increased, while the number of refinance loans decreased.

FleetBoston also provided data indicating that its denial ratios for African-American and Hispanic applicants for all types of HMDA lending in the Rochester MSA during the period from 1995 to 1995 were generally comparable to or more favorable than the industry averages. Additionally, FleetBoston noted that the number of applications received from African-Americans and Hispanics increased from 1998 to 1999.

Finally, FleetBoston pointed out that its small business lending performance in Monroe County was comparable to or better than the industry average in terms of percentage of its loans originated in LMI census tracts and the

[17] One comment to the Federal Reserve Bank of Boston expressed concerns that Fleet would not maintain Summit Banks' membership with the Federal Home Loan Bank of Pittsburgh, and would therefore not have access to its Affordable Housing Program. FleetBoston represented that it was unable to maintain Summit Banks' membership, because FleetBoston is already a member of the Federal Home Loan Bank of Boston (FHLBB). However, FleetBoston represented it would work with FHLBB to address this issue.

[18] The MSAs the commenter identified are: Bergen, NJ; Birmingham, AL; Bridgeport, CT; Buffalo, NY; Detroit, MI; Houston, TX; Kansas City, MO; Long Island, NY; Memphis, TN; New York, NY; Philadelphia, PA; St. Louis, MO; Trenton, NJ; and Washington, DC.

dollar volume of these loans. Further, FleetBoston noted that within Monroe County, it performed better than the industry in terms of the percentage of loans and the dollar volume of these loans made to businesses with a gross annual revenue of less than $1 million.

OCC examiners reviewed FleetBoston's responses to the comments above and found the data presented to be accurate and reliable.[19] In addition, the OCC conducted a fair lending examination of Fleet Mortgage Corporation in the fourth quarter of 2000 and found no evidence of discrimination.[20] FleetBoston has stated that FleetBoston's fair lending policies and oversight functions will be retained for the combined bank.

2. Comments Regarding Summit Banks

While the OCC did not receive any comments regarding Summit Banks, the Federal Reserve Bank of Boston received comments concerning Summit–PA's CRA record of performance in the Scranton/Wilkes-Barre/Hazleton MSA and in Lehigh Valley.[21] Since the OCC does not have the authority to examine Summit Banks, OCC examiners reviewed the most recent CRA Public Evaluation (PE) of the Pennsylania bank, the relevant HMDA data and the banks' responses. The OCC took into account the strong overall CRA performance of Summit–PA noted in its recent PE. The OCC found no evidence concerning Summit–PA's CRA performance that would cast doubt on approval of the merger. FleetBoston has indicated its goal of continuing the "outstanding" CRA record of Summit Banks and working with communities to provide loans, investments, and services to LMI people.

With respect to the Scranton MSA, the commenter expressed concerns that the region had not received its fair share of Summit Banks' lending or investments to benefit LMI people and communities. The commenter also expressed a concern that the level of community reinvestment activity may further be reduced since FleetBoston's headquarters is so far away.

FleetBoston's response addressing these allegations provided details of qualifying grants and investments and community development loans over the past few years. FleetBoston pointed out that the MSA contained only two low-income census tracts with only 23 owner-occupied housing units. In addition, FleetBoston provided data describing Summit–PA's record of small business lending record in the Scranton MSA.

With respect to the Lehigh Valley, the commenter expressed concerns with a decline in mortgage lending to minorities and a lack of mortgage originations in the market. The commenter also expressed concerns with the level of contributions to nonprofits and community organizations. FleetBoston's response indicated that the bank's decline in mortgage lending was largely due to the exodus of Summit Banks' mortgage staff in Pennsylvania, which in turn led to a decline in mortgage originations. Summit Banks represented that they are now a hiring a mortgage representative to work with nonprofit-based affordable housing agencies to increase lending to LMI applicants. In addition to using the resources available at Fleet Mortgage Corporation, FleetBoston will further enhance its mortgage lending to LMI individuals by adding an additional affordable mortgage representative in Pennsylvania after the merger. FleetBoston's response also indicated that contrary to the allegations, Summit Banks' level of contributions to nonprofits and community organizations had increased in 2000 over 1999 levels.

3. Conclusion Regarding Record of CRA Performance

Accordingly, based on the banks' records of CRA performance, we find that approval of the merger is consistent with the Community Reinvestment Act.

Retention of Subsidiaries and Nonconforming Assets

As part of the merger application, Fleet has represented that the Summit Banks hold various assets, including certain subsidiaries engaged in insurance agency activities, and certain other equity interests, that are impermissible for national banks.

Fleet has proposed that it retain certain existing Summit Bank insurance agencies as financial subsidiaries. Therefore, pursuant to section 121 of the Gramm–Leach–Bliley Act, Pub. Law No. 106–102, 113 Stat. 1338 (1999) (the GLB Act) and the procedures set forth in the OCC's re-

[19] It is important to note that HMDA data alone are inadequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations.

[20] Fleet Mortgage Corporation generates the bulk of Fleet's home purchase and refinance loans.

[21] The Federal Reserve Bank of Boston also received a comment expressing concerns with the level of lending in Asbury Park, New Jersey. Summit Banks' response disputed certain lending data cited by the commenter. In any event, Asbury Park comprises a very small portion of the New York–Northern New Jersey–Long Island, New York–New Jersey–Connecticut–Pennsylvania Consolidated Metropolitan Statistical Area (CMSA). The CRA evaluation of Summit Bank, Hackensack, New Jersey, dated October 4, 1999, found no weaknesses in performance within this CMSA.

vised regulation on financial subsidiaries (12 CFR 5.39), Fleet provided formal notice of its intent to acquire and hold as financial subsidiaries of Fleet, Summit Insurance Advisors, LLC, and its affiliate, Philadelphia Benefits, LLC. Fleet has previously obtained approval of its financial subsidiary certification in connection with its conversion of FCCS Insurance Agency.[22] Both entities are currently subsidiaries of Summit–NJ and offer insurance products and insurance brokerage services to individuals and businesses.

Financial subsidiaries may engage in activities that are "financial in nature." The OCC's regulations governing financial subsidiary activities provide that financial subsidiaries may "[e]ngag[e] as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, defects in title, or providing annuities as agent or broker."[23] Fleet has represented that the activities of these subsidiaries are authorized for financial subsidiaries of national banks by the OCC. In addition, Fleet represents that it meets the qualification standards for owning a financial subsidiary under 12 USC 24a(a)(2)(C)(D) and (E), and 12 CFR 5.39(g).

Fleet has represented the following: (1) Fleet and its depository institution affiliates are well capitalized and well managed and will continue to be so following the proposed transaction; (2) Fleet and its depository institution affiliates each received a rating of "satisfactory or better" in their most recent examination under the CRA; (3) the aggregate consolidated total assets of all financial subsidiaries do not exceed 45 percent of the bank's consolidated total assets or $50 billion; and (4) Fleet is one of the 100 largest insured banks and has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating agency. *See* 12 USC 24a(a)(4) and 12 CFR 5.39(g)(3). Therefore, Fleet may hold an interest in the subsidiaries currently held by Summit–NJ.

With respect to other equity interests held by Summit Banks that are impermissible for national banks, Fleet has committed that it will divest any marketable securities within 30 days of the consummation of the merger and will divest any other equity securities currently held by Summit Banks, but not permissible for national banks, within two years of the date of consummation of the merger.

Conclusion and Approval

For the reasons set forth above, including the representations and commitments of the applicants, we find that the proposed merger between Fleet and the Summit Banks is authorized as an interstate merger transaction under the Riegle–Neal Act, 12 USC 215a–1 and 1831u(a); that Fleet, as the resulting bank after the merger, is authorized to retain and operate the Providence, Rhode Island, office as its main office and the other offices as branches, under 12 USC 36(d) and 1831u(d)(1); Fleet is in satisfactory condition; and the proposal is consistent with the Community Reinvestment Act.

Accordingly, the merger application is hereby approved subject to the following conditions:

1) Fleet shall comply with the divestiture agreement between Fleet and the Department of Justice dated January 25, 2001.

2) Within 30 days of the consummation, Fleet shall divest of all marketable securities. Within two years of consummation, Fleet shall divest or bring into conformance, all remaining nonconforming Summit Banks assets.

These conditions to the approval are conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818.

[Application Control Number: 2000–ML–02–0032]

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[22] *See* OCC approval letter dated April 26, 2000 (2000–ML–08–015).

[23] 12 CFR 5.39(e)(1)(ii).

Nonaffiliated mergers (continued)

Title and location (charter number)	Total assets
South Carolina	
The National Bank of South Carolina, Sumter (010660)	1,860,708,000
and Carolina Southern Bank, Spartanburg	212,410,000
merged on February 16, 2001 under the title of The National Bank of South Carolina, Sumter (010660)	2,073,118,000
Texas	
First National Bank, Alpine (024185)	43,338,000
and West Texas National Bank, Apline (014643)	228,985,000
merged on January 19, 2001 under the title of West Texas National Bank, Alpine (024185)	275,943,000

Comptroller's Decision

Introduction

On October 16, 2000, application was made to the Office of the Comptroller of the Currency (OCC), pursuant to the Bank Merger Act, 12 USC 1828(c), for prior authorization for West Texas National Bank, Alpine, Texas (WTNB), to consolidate with First National Bank, Alpine, Texas (FNB), under the title of West Texas National Bank, Charter Number 24185.

The Financial Institutions Involved

As of September 30, 2000, WTNB, located in Alpine, Texas, had total assets of $229 million and total deposits of $202 million. On the same date, FNB, located in Seminole, Texas, had total assets of $43 million and total deposits of $36 million. FNB is currently a state bank, FNB Bank, located in Seminole, Texas. FNB Bank has applied to the Texas Department of Banking to relocate its head office from Seminole, Texas, to Alpine, Texas, prior to the consolidation with WTNB.

Competitive Analysis

The relevant geographic market for this proposal consists of the area including and immediately surrounding the community of Seminole, Texas. This is the area from which FNB and WTNB's Seminole branch derive the bulk of their deposits. The area has a population of approximately 6,500. The OCC considers an area with such a small population to be economically insignificant from a competitive standpoint. (*See* Decision of the Comptroller of the Currency on the application to merge The National Bank and Trust Company of Norwich, Norwich, New York, with National Bank of Oxford, Oxford, New York, dated April 8, 1983.) Because the OCC does not recognize the market as being economically significant, any anticompetitive effects resulting from this transaction are considered de minimis.

Banking Factors

The Bank Merger Act requires this office to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served." We find that the financial and managerial resources of both institutions do not raise concerns that would cause the application to be disapproved. The future prospects of the combined entity are considered favorable and the resulting bank is expected to meet the convenience and needs of the community to be served.

Community Reinvestment Act (CRA)

A review of the record of this application and other information available to this office as a result of its regulatory responsibilities has revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. Neither bank has entered into any commitments with community organizations, civic associations, or other entities regarding providing banking services to the relevant community. No change in community services is planned.

FNB has only one banking office. As a state bank, FNB will relocate its head office 239 miles to the head office of WTNB prior to the bank conversion and bank consolidation. The current head office of FNB in Seminole, Texas, will be consolidated with an existing branch of WTNB in Seminole, Texas (within the same market area), shortly after the consolidation is consummated. The CRA area will not be expanded.

Conclusion

We have analyzed this proposal pursuant to the Bank Merger Act (12 USC 1828) and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

[Application control number 2000-SW-02-0035]

Nonaffiliated mergers (continued)

Title and location (charter number)	Total assets
Southwest Bank of Texas National Association, Houston (017479)	3,260,427,000
and Citizens Bank and Trust Company of Baytown, Texas, Bayton	285,451,000
and Baytown State Bank, Baytown	83,922,000
and Pasadena State Bank, Pasadena	34,491,000
merged on December 29, 2000 under the title of Southwest Bank of Texas National Association, Houston (017479)	3,665,521,000
First National Bank in Munday, Munday (013593)	26,397,000
and Home State Bank, Rochester	24,753,000
merged on December 29, 2000 under the title of First National Bank in Munday, Munday (013593)	49,958,000
Wisconsin	
The First National Bank and Trust Company of Beloit, Beloit (002725)	266,660,000
and Macktown State Bank, Rockton	80,896,000
merged on February 23, 2001 under the title of The First National Bank and Trust Company of Beloit, Beloit (002725)	340,061,000

Nonaffiliated mergers—thrift (mergers consummated involving nonaffiliated national banks and savings and loan associations), from January 1 to March 31, 2001

Title and location (charter number)	Total assets
Missouri	
Bank Midwest, National Association, Kansas City (022015)	2,260,200,000
and The Cameron Savings and Loan Association, A FSB, Cameron	267,077,000
merged on January 12, 2001 under the title of Bank Midwest, National Association, Kansas City (022015)	2,527,277,000

Comptroller's Decision

Introduction

On October 26, 2000, application was made to the Comptroller of the Currency for prior authorization to merge The Cameron Savings & Loan Association, Cameron, Missouri 64429 (hereinafter Cameron S&L), into Bank Midwest, National Association, Kansas City, Missouri 64105 (hereinafter Bank Midwest), under the charter and the title of Bank Midwest. This application was based on an agreement entered into between the proponents on October 26, 2000.

Participating Financial Institutions

As of June 30, 2000, Cameron S&L, a federal savings and loan, had total deposits of $147.7 million and operated four offices. On the same date, Bank Midwest had total deposits of $1.3 billion and operated multiple offices in both Missouri and Kansas. Bank Midwest is 100 percent-owned and -controlled by Dickinson Financial Corporation, a multi-bank holding company.

Competitive Analysis

The relevant geographic markets for this proposal include the Kansas City and Nodaway County banking markets (as defined by the Federal Reserve Bank of Kansas City). Each relevant geographic market consists of an area surrounding one or more branches to be acquired. These are the two areas where competition between Bank Midwest and Cameron is direct and immediate.

Kansas City Banking Market. The OCC reviewed the competitive effects of the proposed merger in the Kansas City market by using its standard procedures for determining whether a business combination clearly has minimal or no adverse competitive effects. For this market, the OCC finds that the proposal satisfies the criteria for a merger that clearly has no or minimal adverse competitive effects.

Nodaway County Banking Market. Six banks currently compete for approximately $430 million in deposits in the Nodaway County banking market, which consist of Nodaway County and the town of Stanberry in Gentry County. As of June 30, 1999, Bank Midwest was the second largest depository institution in the Nodaway County banking market with $96 million in deposits (or a 22 percent market share of deposits). Cameron S&L was the sixth largest depository institution with $20 million in deposits (or a 5 percent market share of deposits). After the transaction, Bank Midwest will remain the second largest depository institution in the market with a 27 percent market share. Nodaway Valley Bancshares, Inc., will remain the market's largest competitor with approximately $169 million in deposits (or a 39 percent market share of deposits). While the resulting bank eliminates one competitor in the Nodaway County banking market, any adverse effects would be mitigated by the presence of four other banking alternatives. Therefore, consummation of this proposal would not have a significantly adverse effect on competition in this relevant geographic market.

Banking Factors

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served." We find that the financial and managerial resources of Cameron S&L and Bank Midwest do not raise concerns that would cause the application to be disapproved. The future prospects of the proponents, individually and combined, are considered favorable. Both banks have facilities in Marysville, and after merger, Cameron S&L's facility will consolidate into Bank Midwest's. As the facilities are only one-half block apart, there is minimal disruption to Cameron S&L's customers. The resulting bank will continue to offer a wide variety of products and services and it is expected to meet the convenience and needs of the community to be served.

Community Reinvestment Act

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities has revealed no evidence that the applicants' records of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

Conclusion

We have analyzed this proposal pursuant to the Bank Merger Act (12 USC 1828(c)) and/or 12 CFR 5.33, and find that it will not lessen significantly competition in any relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

[Application control number: 2000-MW-020048]

Affiliated mergers (mergers consummated involving affiliated banks), from January 1 to March 31, 2001

Title and location (charter number)	Total assets
California	
Valley Merchants Bank, National Association, Hemet (022078)	61,588,000
and BBOC Interim Bank, San Bernardino	240,000
merged on August 31, 2000 under the title of Valley Merchants Bank, National Association, Hemet (022078)	61,588,000
Florida	
First National Bank of Naples, Naples (021830)	814,525,000
and Cape Coral National Bank, Cape Coral (022723)	373,945,000
and First National Bank of Fort Myers, Fort Myers (021643)	107,391,000
merged on February 16, 2001 under the title of First National Bank of Naples, Naples (021830)	1,295,861,000
West Coast Guaranty Bank, National Association, Sarasota (023829)	281,138,000
and First National Bank of Florida, Clearwater (023498)	350,021,000
merged on February 16, 2001 under the title of West Coast Guaranty Bank, National Association, Sarasota (023829)	631,159,000
Illinois	
First National Bank of Blue Island, Blue Island (012779)	251,472,000
and Bank of Homewood, National Association, Homewood (024145)	330,405,000
merged on February 16, 2001 under the title of Great Lakes Bank, National Association, Blue Island (012779)	581,877,000
Bank One, National Association, Chicago (000008)	98,120,032,000
and Bank One, Louisiana, National Association, Baton Rouge (013655)	11,427,48?,000
and Bank One, Texas, National Association, Dallas (021969)	31,319,925,000
merged on February 8, 2001 under the title of Bank One, National Association, Chicago (000008)	140,810,579,000
Indiana	
Old National Trust Company, Terre Haute (022729)	2,888,000
and Old National Trust Company—Illinois, Mt. Carmel (022809)	975,000
and Old National Trust Company—Kentucky, Morganfield (022810)	687,000
merged on December 31, 2000 under the title of Old National Trust Company, Terre Haute (022729)	4,212,000
Old National Banks, Evansville (008846)	8,536,949,000
and Orange County Bank, Paoli	112,827,000
merged on March 8, 2001 under the title of Old National Bank Evansville (008846)	8,649,776,000
Iowa	
The National Bank, Bettendorf (024171)	5,000,000
and First Illinois National Bank, Savanna (013886)	83,000,000
merged on January 22, 2001 under the title of The National Bank, Bettendorf (024171)	88,000,000
Kansas	
Community National Bank, Chanute (021389)	129,026,000
and First State Bank, Edna	71,346,000
merged on December 31, 2000 under the title of Community National Bank, Chanute (021389)	200,372,000
Teambank, National Association, Paola (003350)	369,896,000
and Iola Bank and Trust Company, Iola	85,992,000
merged on February 24, 2001 under the title of TeamBank, National Association, Paola (003350)	465,006,000
Louisiana	
Whitney National Bank, New Orleans (014977)	5,811,000,000
and First National Bank of Gonzales, Gonzales (015041)	89,000,000
merged on February 9, 2001 under the title of Whitney National Bank, New Orleans (014977)	5,900,000,000
Whitney National Bank, New Orleans (014977)	6,240,312,000
and American Bank, Houston	274,930,000
merged on March 9, 2001 under the title of Whitney National Bank, New Orleans (014977)	6,517,092,000
Missouri	
Commerce Bank, National Association, Kansas City (018112)	9,139,975,000
and The Centennial Bank, Breckenridge Hills	272,232,000
merged on March 1, 2001 under the title of Commerce Bank, National Association, Kansas City (018112)	9,411,956,000

Affiliated mergers (continued)

Title and location (charter number)	Total assets
New York	
NBT Bank, National Association, Norwich (001354)	1,495,971,000
and PennStar Bank, National Association, Scranton (009886)	1,020,841,000
merged on March 16, 2001 under the title of NBT Bank, National Association, Norwich (001354)	2,516,812,000
North Dakota	
Community First National Bank, Fargo (005087)	5,782,671,000
and Community First State Bank, Vermillion	269,090,000
merged on March 22, 2001 under the title of Community First National Bank, Fargo (005087)	6,020,760,000
Oklahoma	
The American National Bank and Trust Company of Sapulpa, Oklahoma, Sapulpa (007788)	272,564,000
and Heritage Bank, Mannford	80,254,000
merged on March 2, 2001 under the title of The American National Bank and Trust Company of Sapulpa, Oklahoma, Sapulpa (007788)	352,763,000
Pennsylvania	
National Penn Bank, Boyertown (002137)	2,264,162,000
and Bernville Bank, National Association, Bernville (017721)	105,281,000
merged on January 4, 2001 under the title of National Penn Bank, Boyertown (002137)	2,369,443,000
First National Trust Company, Hermitage (023778)	904,000
and First National Interim Trust Company, Hermitage (023211)	240,000
merged on February 16, 2001 under the title of FIrst National Trust Company, Hermitage (023778)	904,000
First National Bank of Pennsylvania, Greenville (000249)	1,325,149,000
and Reeves Bank, Beaver Falls	176,282,000
merged on March 16, 2001 under the title of First National Bank of Pennsylvania, Greenville (000249)	1,491,431,000
Tennessee	
First Tennessee Bank National Association, Memphis (000336)	18,293,677,000
and Cleveland Bank and Trust Company, Cleveland	267,186,000
merged on March 23, 2001 under the title of First Tennessee Bank, National Association, Memphis (000336)	18,547,805,000
Texas	
Bank of Texas, National Association, Dallas (024082)	1,095,482,000
and Citizens National Bank of Texas, Bellaire (017954)	424,483,000
merged on January 5, 2001 under the title of Bank of Texas, National Association, Dallas (024082)	1,567,438,000
State National Bank of West Texas, Lubbock (023117)	216,836,000
and State National Bank of West Texas, Abilene (017614)	478,071,000
merged on March 9, 2001 under the title of State National Bank of West Texas, Lubbock (023117)	694,907,000
Utah	
Zions First National Bank, Salt Lake City (004341)	8,080,294,000
and Draper Bank, Draper	260,597,000
merged on January 26, 2001 under the title of Zions First National Bank, Salt Lake City (004341)	8,340,891,000

Affiliated mergers—thrift (mergers consummated involving affiliated national banks and savings and loan associations), from January 1 to March 31, 2001

Title and location (charter number)	Total assets
Iowa	
Wells Fargo Bank Iowa, National Association, Des Moines (002307)	6,100,550,000
and Brenton Bank, Des Moines	1,954,495,000
and Brenton Savings Banks, FSB, Ames	219,368,000
merged on March 24, 2001 under the title of Wells Fargo Bank Iowa, National Association, Des Moines (002307)	8,069,987,000
Kentucky	
Community Trust Bank, National Association, Pikeville (007030)	2,066,478,000
and Community Trust Bank FSB, Campbellsville	180,095,000
merged on December 29, 2000 under the title of Community Trust Bank, National Association, Pikeville (007030)	2,212,715,000
Missouri	
Bank Midwest, National Association, Kansas City (022015)	2,260,200,000
and Hardin Federal Savings and Loan Association, Hardin	134,059,000
merged on February 16, 2001 under the title of Bank Midwest, National Association, Kansas City (022015)	2,394,259,000

Tables on the Financial Performance of National Banks

Assets, liabilities, and capital accounts of national banks
March 31, 2000 and March 31, 2001
(Dollar figures in millions)

	March 31, 2000	March 31, 2001	Change March 31, 2000– March 31, 2001 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,327	2,201	(126)	(5.41)
Total assets	$3,301,903	$3,440,218	$138,315	4.19
Cash and balances due from depositories	180,855	186,080	5,225	2.89
Noninterest-bearing balances, currency and coin	136,015	136,866	850	0.63
Interest bearing balances	44,839	49,214	4,375	9.76
Securities	533,927	487,081	(46,847)	(8.77)
Held-to-maturity securities, amortized cost	48,077	30,476	(17,601)	(36.61)
Available-for-sale securities, fair value	485,850	456,604	(29,246)	(6.02)
Federal funds sold and securities purchased	109,446	130,353	20,906	19.10
Net loans and leases	2,103,406	2,210,892	107,486	5.11
Total loans and leases	2,141,396	2,251,533	110,138	5.14
Loans and leases, gross	2,143,095	2,253,069	109,975	5.13
Less: Unearned income	1,699	1,536	(163)	(9.59)
Less: Reserve for losses	37,989	40,641	2,651	6.98
Assets held in trading account	102,612	117,761	15,149	14.76
Other real estate owned	1,533	1,639	106	6.90
Intangible assets	77,993	76,643	(1,349)	(1.73)
All other assets	192,131	229,769	37,638	19.59
Total liabilities and equity capital	3,301,903	3,440,218	138,315	4.19
Deposits in domestic offices	1,785,434	1,871,693	86,258	4.83
Deposits in foreign offices	381,183	390,533	9,350	2.45
Total deposits	2,166,617	2,262,226	95,609	4.41
Noninterest-bearing deposits	417,018	428,145	11,127	2.67
Interest-bearing deposits	1,749,599	1,834,081	84,482	4.83
Federal funds purchased and securities sold	266,506	228,825	(37,680)	(14.14)
Other borrowed money	331,342	360,811	29,469	8.89
Trading liabilities less revaluation losses	16,690	27,421	10,731	64.30
Subordinated notes and debentures	57,034	65,850	8,815	15.46
All other liabilities	160,511	188,910	28,399	17.69
Trading liabilities revaluation losses	59,167	64,116	4,949	8.36
Other	101,344	124,794	23,450	23.14
Total equity capital	281,214	306,175	24,961	8.88
Perpetual preferred stock	924	583	(341)	(36.87)
Common stock	14,692	13,370	(1,323)	(9.00)
Surplus	150,959	159,976	9,017	5.97
Retained earnings and other comprehensive income	115,606	134,506	18,899	16.35
Other equity capital components	0	33	33	NM

NM indicates calculated percent change is not meaningful.

Quarterly income and expenses of national banks
First quarter 2000 and first quarter 2001
(Dollar figures in millions)

	First quarter 2000	First quarter 2001	Change First quarter, 2000– first quarter, 2001 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,327	2,201	(126)	(5.41)
Net income	$11,536	$11,434	($101)	(0.88)
Net interest income	29,119	29,745	626	2.15
Total interest income	57,721	61,278	3,557	6.16
On loans	44,451	47,502	3,051	6.86
From lease financing receivables	1,681	2,023	342	20.35
On balances due from depositories	729	819	90	12.40
On securities	8,812	8,084	(728)	(8.26)
From assets held in trading account	677	958	281	41.54
On federal funds sold and securities repurchased	1,371	1,707	336	24.50
Less: Interest expense	28,603	31,533	2,930	10.25
On deposits	18,444	20,905	2,461	13.34
Of federal funds purchased and securities sold	3,546	3,298	(248)	(7.00)
On demand notes and other borrowed money*	5,665	6,222	556	9.82
On subordinated notes and debentures	947	1,108	161	17.01
Less: Provision for losses	4,114	5,321	1,208	29.35
Noninterest income	24,703	25,053	349	1.41
From fiduciary activities	2,580	2,131	(449)	(17.41)
Service charges on deposits	3,749	4,002	254	6.76
Trading revenue	1,809	2,153	344	19.01
From interest rate exposures	780	1,081	301	38.53
From foreign exchange exposures	733	828	95	12.92
From equity security and index exposures	282	187	(95)	NM
From commodity and other exposures	13	57	44	NM
Total other noninterest income	16,566	16,767	201	1.21
Gains/losses on securities	(701)	466	1,167	NM
Less: Noninterest expense	31,088	32,164	1,076	3.46
Salaries and employee benefits	12,524	12,657	133	1.06
Of premises and fixed assets	3,952	3,867	(85)	(2.15)
Other noninterest expense	14,613	14,354	(258)	(1.77)
Less: Taxes on income before extraordinary items	6,401	6,074	(326)	(5.10)
Income/loss from extraordinary items, net of income taxes	16	(270)	(286)	NM
Memoranda:				
Net operating income	11,978	11,393	(585)	(4.88)
Income before taxes and extraordinary items	17,920	17,779	(141)	(0.79)
Income net of taxes before extraordinary items	11,519	11,704	185	1.61
Cash dividends declared	6,723	7,042	319	4.74
Net charge-offs to loan and lease reserve	3,639	4,797	1,159	31.84
Charge-offs to loan and lease reserve	4,588	5,783	1,195	26.05
Less: Recoveries credited to loan and lease reserve	949	986	36	3.83

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

Year-to-date income and expenses of national banks
Through March 31, 2000 and through March 31, 2001

(Dollar figures in millions)

	March 31, 2000	March 31, 2001	Change March 31, 2000–March 31, 2001 fully consolidated	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Percent
Number of institutions	2,327	2,201	(126)	(5.41)
Net income	$11,536	$11,434	($101)	(0.88)
Net interest income	29,119	29,745	626	2.15
Total interest income	57,721	61,278	3,557	6.16
On loans	44,451	47,502	3,051	6.86
From lease financing receivables	1,681	2,023	342	20.35
On balances due from depositories	729	819	90	12.40
On securities	8,812	8,084	(728)	(8.26)
From assets held in trading account	677	958	281	41.54
On federal funds sold and securities repurchased	1,371	1,707	336	24.50
Less: Interest expense	28,603	31,533	2,930	10.25
On deposits	18,444	20,905	2,461	13.34
Of federal funds purchased and securities sold	3,546	3,298	(248)	(7.00)
On demand notes and other borrowed money*	5,665	6,222	556	9.82
On subordinated notes and debentures	947	1,108	161	17.01
Less: Provision for losses	4,114	5,321	1,208	29.35
Noninterest income	24,703	25,053	349	1.41
From fiduciary activities	2,580	2,131	(449)	(17.41)
Service charges on deposits	3,749	4,002	254	6.76
Trading revenue	1,809	2,153	344	19.01
From interest rate exposures	780	1,081	301	38.53
From foreign exchange exposures	733	828	95	12.92
From equity security and index exposures	282	187	(95)	(33.66)
From commodity and other exposures	13	57	44	332.79
Total other noninterest income	16,566	16,767	201	1.21
Gains/losses on securities	(701)	466	1,167	NM
Less: Noninterest expense	31,088	32,164	1,076	3.46
Salaries and employee benefits	12,524	12,657	133	1.06
Of premises and fixed assets	3,952	3,867	(85)	(2.15)
Other noninterest expense	14,613	14,354	(258)	(1.77)
Less: Taxes on income before extraordinary items	6,401	6,074	(326)	(5.10)
Income/loss from extraordinary items, net of income taxes	16	(270)	(286)	NM
Memoranda:				
Net operating income	11,978	11,393	(585)	(4.88)
Income before taxes and extraordinary items	17,920	17,779	(141)	(0.79)
Income net of taxes before extraordinary items	11,519	11,704	185	1.61
Cash dividends declared	6,723	7,042	319	4.74
Net charge-offs to loan and lease reserve	3,639	4,797	1,159	31.84
Charge-offs to loan and lease reserve	4,588	5,783	1,195	26.05
Less: Recoveries credited to loan and lease reserve	949	986	36	3.83

* Includes mortgage indebtedness

NM indicates calculated percent change is not meaningful.

Assets of national banks by asset size
March 31, 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Total assets	$3,440,218	$55,058	$249,701	$417,491	$2,717,968	$6,310,814
Cash and balances due from	186,080	2,902	10,940	19,162	153,075	361,859
Securities	487,081	13,335	59,042	86,104	328,600	1,047,974
Federal funds sold and securities purchased	130,353	3,942	12,265	18,633	95,512	327,400
Net loans and leases	2,210,892	32,217	153,939	260,904	1,763,832	3,763,480
Total loans and leases	2,251,533	32,655	156,104	266,130	1,796,644	3,828,145
Loans and leases, gross	2,253,069	32,715	156,323	266,242	1,797,790	3,830,919
Less: Unearned income	1,536	60	220	111	1,145	2,774
Less: Reserve for losses	40,641	438	2,164	5,227	32,812	64,665
Assets held in trading account	117,761	0	62	903	116,796	320,242
Other real estate owned	1,639	68	211	155	1,206	3,053
Intangible assets	76,643	153	1,461	6,029	69,000	103,545
All other assets	229,769	2,440	11,780	25,602	189,947	383,261
Gross loans and leases by type:						
Loans secured by real estate	918,720	18,912	97,455	136,952	665,401	1,699,384
1–4 family residential mortgages	457,331	8,726	41,207	62,927	344,471	795,907
Home equity loans	86,033	460	4,006	9,023	72,544	130,123
Multifamily residential mortgages	28,676	411	3,467	4,882	19,916	60,960
Commercial RE loans	223,943	5,436	35,080	42,293	141,135	469,305
Construction RE loans	82,998	1,697	9,547	15,787	55,966	173,709
Farmland loans	12,395	2,182	4,143	1,892	4,178	34,269
RE loans from foreign offices	27,344	0	5	148	27,191	35,111
Commercial and industrial loans	650,357	5,664	28,611	52,207	563,875	1,045,503
Loans to individuals	366,413	4,439	20,632	58,613	282,730	597,505
Credit cards*	152,686	160	3,346	25,801	123,378	216,527
Other revolving credit plans	19,823	102	566	1,790	17,365	26,680
Installment loans	193,904	4,178	16,720	31,021	141,986	354,299
All other loans and leases	317,580	3,700	9,625	18,470	285,784	488,527
Securities by type:						
U.S. Treasury securities	22,601	942	3,468	4,617	13,574	55,593
Mortgage-backed securities	249,056	3,183	18,951	46,022	180,900	493,838
Pass-through securities	173,390	2,176	11,658	29,491	130,065	316,638
Collateralized mortgage obligations	75,666	1,007	7,293	16,531	50,836	177,200
Other securities	186,322	9,154	36,125	32,338	108,704	427,875
Other U.S. government securities	69,540	6,369	21,272	15,287	26,612	209,415
State and local government securities	42,473	2,197	10,694	8,648	20,933	93,754
Other debt securities	66,724	445	3,105	7,588	55,586	106,607
Equity securities	7,585	144	1,053	815	5,573	18,099
Memoranda:						
Agricultural production loans	21,064	3,190	4,819	3,186	9,870	46,238
Pledged securities	229,952	5,220	27,765	44,072	152,895	510,671
Book value of securities	483,577	13,197	58,386	85,425	326,569	1,038,927
Available-for-sale securities	453,101	10,733	49,503	74,026	318,839	935,150
Held-to-maturity securities	30,476	2,465	8,882	11,399	7,730	103,777
Market value of securities	487,449	13,373	59,184	86,189	328,703	1,049,277
Available-for-sale securities	456,604	10,870	50,160	74,705	320,870	944,197
Held-to-maturity securities	30,844	2,503	9,024	11,484	7,833	105,080

*Previously banks reported "Credit card & related plans." Starting with 2001 this item will be split into separate categories, "Credit cards" and "Other revolving credit plans."

Past-due and nonaccrual loans and leases of national banks by asset size
March 31, 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Loans and leases past due 30–89 days	$27,226	$509	$2,067	$3,649	$21,001	$47,254
Loans secured by real estate	12,426	253	1,090	1,503	9,580	20,961
1–4 family residential mortgages	7,883	133	530	734	6,487	12,008
Home equity loans	754	4	31	89	630	1,112
Multifamily residential mortgages	200	3	29	41	128	391
Commercial RE loans	1,883	53	316	385	1,129	4,080
Construction RE loans	1,050	31	121	215	683	2,162
Farmland loans	215	29	64	40	82	586
RE loans from foreign offices	441	0	0	0	441	622
Commercial and industrial loans	4,692	111	441	734	3,407	9,175
Loans to individuals	7,719	90	405	1,208	6,015	12,854
Credit cards	3,759	3	106	587	3,062	5,505
Installment loans and other plans	3,960	87	299	621	2,953	7,349
All other loans and leases	2,389	55	131	205	1,999	4,265
Loans and leases past due 90+ days	7,071	101	376	1,109	5,485	11,546
Loans secured by real estate	2,071	48	179	244	1,600	3,433
1–4 family residential mortgages	1,468	26	86	132	1,225	2,208
Home equity loans	114	1	4	13	97	189
Multifamily residential mortgages	21	0	7	6	8	36
Commercial RE loans	258	12	54	59	132	549
Construction RE loans	138	3	14	29	93	280
Farmland loans	39	6	14	5	14	128
RE loans from foreign offices	32	0	0	0	32	43
Commercial and industrial loans	652	25	75	144	408	1,444
Loans to individuals	3,963	14	99	696	3,153	6,043
Credit cards	2,870	2	60	535	2,273	3,897
Installment loans and other plans	1,093	13	39	161	881	2,145
All other loans and leases	385	14	23	25	324	626
Nonaccrual loans and leases	22,266	219	967	1,618	19,462	34,446
Loans secured by real estate	7,046	109	519	786	5,632	11,377
1–4 family residential mortgages	3,643	37	164	302	3,140	5,314
Home equity loans	256	0	12	22	222	390
Multifamily residential mortgages	97	1	11	23	62	203
Commercial RE loans	1,638	41	234	293	1,070	3,157
Construction RE loans	610	9	59	118	424	1,214
Farmland loans	153	21	39	27	65	365
RE loans from foreign offices	647	0	0	0	647	735
Commercial and industrial loans	11,547	68	306	650	10,523	17,554
Loans to individuals	1,466	14	78	111	1,263	2,354
Credit cards	414	0	37	52	325	822
Installment loans and other plans	1,052	14	42	59	937	1,532
All other loans and leases	2,274	27	64	73	2,109	3,259

Liabilities of national banks by asset size
March 31, 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Total liabilities and equity capital	$3,440,218	$55,058	$249,701	$417,491	$2,717,968	$6,310,814
Deposits in domestic offices	$1,871,693	$46,354	$201,664	$267,987	$1,355,687	$3,512,628
Deposits in foreign offices	390,533	0	257	2,220	388,056	671,096
Total deposits	2,262,226	46,354	201,921	270,208	1,743,743	4,183,723
Noninterest bearing	428,145	7,043	29,903	45,376	345,823	721,932
Interest bearing	1,834,081	39,311	172,018	224,832	1,397,920	3,461,791
Other borrowed funds	360,811	1,344	11,623	51,007	296,838	568,003
Subordinated notes and debentures	65,850	10	138	2,891	62,811	90,522
All other liabilities	188,910	586	3,676	10,408	174,241	347,103
Equity capital	306,175	6,240	25,419	39,084	235,431	546,240
Total deposits by depositor:						
Individuals and corporations	1,740,962	30,219	142,728	214,013	1,354,002	3,229,877
U.S., state, and local governments	79,368	3,786	14,380	15,243	45,960	166,032
Depositories in the U.S.	49,537	374	1,354	413	47,396	82,918
Foreign banks and governments	69,952	3	365	1,030	68,555	117,881
Domestic deposits by depositor:						
Individuals and corporations	1,452,068	30,219	142,678	212,362	1,066,809	2,729,740
U.S., state, and local governments	79,368	3,786	14,380	15,243	45,960	166,032
Depositories in the U.S.	6,745	374	1,354	364	4,653	15,491
Foreign banks and governments	11,275	3	158	517	10,596	15,056
Foreign deposits by depositor:						
Individuals and corporations	288,894	0	50	1,651	287,193	500,136
Depositories in the U.S.	42,793	0	0	49	42,743	67,427
Foreign banks and governments	58,678	0	207	513	57,958	102,825
Deposits in domestic offices by type:						
Transaction deposits	347,964	13,331	47,502	42,924	244,208	638,590
Demand deposits	284,110	6,989	27,542	34,068	215,510	489,658
Savings deposits	864,506	9,376	57,446	119,926	677,759	1,504,365
Money market deposit accounts	615,730	5,220	35,330	82,240	492,940	1,056,930
Other savings deposits	248,776	4,156	22,116	37,686	184,819	447,435
Time deposits	659,222	23,648	96,717	105,137	433,720	1,369,673
Small time deposits	390,725	16,225	62,835	63,772	247,892	795,134
Large time deposits	268,497	7,422	33,882	41,365	185,828	574,540

Off-balance-sheet items of national banks by asset size
March 31, 2001
(Dollar figures in millions)

	All national banks	National banks				Memoranda: All commercial banks
		Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Unused commitments	$3,194,703	$82,649	$326,106	$271,995	$2,513,952	$4,553,287
Home equity lines	139,833	367	3,842	9,952	125,673	187,465
Credit card lines	1,937,573	78,321	298,070	211,285	1,349,897	2,600,749
Commercial RE, construction and land	77,438	988	6,979	12,584	56,886	151,217
All other unused commitments	1,039,859	2,974	17,216	38,173	981,496	1,613,857
Letters of credit:						
Standby letters of credit	150,777	138	1,440	5,632	143,567	251,311
Financial letters of credit	120,920	90	893	4,112	115,825	206,504
Performance letters of credit	29,857	48	548	1,520	27,741	44,807
Commercial letters of credit	16,319	24	503	554	15,237	23,902
Securities lent	83,147	14	135	5,929	77,069	535,095
Spot foreign exchange contracts	190,545	0	18	35	190,493	410,135
Credit derivatives (notional value)						
Reporting bank is the guarantor	42,143	0	20	7	42,116	166,799
Reporting bank is the beneficiary	78,363	0	0	0	78,363	185,655
Derivative contracts (notional value)	16,521,375	62	2,106	39,578	16,479,628	43,921,632
Futures and forward contracts	4,889,948	47	131	3,593	4,886,177	10,651,750
Interest rate contracts	2,426,718	47	92	3,149	2,423,430	5,611,946
Foreign exchange contracts	2,388,241	0	39	444	2,387,758	4,886,072
All other futures and forwards	74,990	0	0	0	74,990	153,731
Option contracts	3,537,286	10	1,336	10,441	3,525,499	9,277,683
Interest rate contracts	2,929,147	10	1,336	10,412	2,917,389	7,583,758
Foreign exchange contracts	414,088	0	0	2	414,086	893,477
All other options	194,050	0	0	28	194,023	800,448
Swaps	7,973,635	5	619	25,538	7,947,473	23,639,745
Interest rate contracts	7,578,372	5	617	20,494	7,557,256	22,526,952
Foreign exchange contracts	343,160	0	2	4,941	338,217	971,472
All other swaps	52,103	0	0	103	51,999	141,320
Memoranda: Derivatives by purpose						
Contracts held for trading	15,551,237	0	0	9,225	15,542,012	42,392,131
Contracts not held for trading	849,632	62	2,086	30,346	817,137	1,177,047
Memoranda: Derivatives by position						
Held for trading—positive fair value	213,218	0	1	86	213,132	588,328
Held for trading—negative fair value	207,878	0	0	80	207,797	578,277
Not for trading—positive fair value	10,527	0	13	401	10,113	14,027
Not for trading—negative fair value	5,129	0	11	199	4,919	8,176

Quarterly income and expenses of national banks by asset size
First quarter 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	National banks: $100 million to $1 billion	National banks: $1 billion to $10 billion	National banks: Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Net income	$11,434	$146	$817	$1,499	$8,973	$19,878
Net interest income	29,745	545	2,416	4,116	22,668	51,813
Total interest income	61,278	1,033	4,670	8,002	47,573	109,606
On loans	47,502	757	3,546	6,188	37,011	81,035
From lease financing receivables	2,023	3	28	82	1,910	2,919
On balances due from depositories	819	12	30	42	735	1,910
On securities	8,084	208	908	1,398	5,569	16,743
From assets held in trading account	958	0	1	16	941	2,571
On fed. funds sold & securities repurchased	1,707	49	137	230	1,291	4,049
Less: Interest expense	31,533	487	2,255	3,886	24,905	57,793
On deposits	20,905	460	1,991	2,431	16,024	39,862
Of federal funds purchased & securities sold	3,298	8	90	602	2,597	6,519
On demand notes & other borrowed money*	6,222	19	171	806	5,226	9,885
On subordinated notes and debentures	1,108	0	3	47	1,058	1,527
Less: Provision for losses	5,321	30	171	562	4,558	7,938
Noninterest income	25,053	231	1,348	2,798	20,676	40,150
From fiduciary activities	2,131	17	145	403	1,566	4,991
Service charges on deposits	4,002	67	262	402	3,271	6,165
Trading revenue	2,153	0	2	62	2,089	3,985
From interest rate exposures	1,081	0	2	51	1,028	1,876
From foreign exchange exposures	828	0	0	2	825	1,329
From equity security and index exposures	187	0	0	9	178	705
From commodity and other exposures	57	0	0	0	57	71
Total other noninterest income	16,767	146	939	1,931	13,750	25,009
Gains/losses on securities	466	5	25	71	365	1,171
Less: Noninterest expense	32,164	553	2,439	4,122	25,050	54,991
Salaries and employee benefits	12,657	267	1,032	1,452	9,906	23,086
Of premises and fixed assets	3,867	70	296	436	3,064	6,842
Other noninterest expense	14,354	212	1,073	2,041	11,028	23,342
Less: Taxes on income before extraord. items	6,074	51	364	794	4,865	9,990
Income/loss from extraord. items, net of taxes	(270)	0	2	(8)	(264)	(335)
Memoranda:						
Net operating income	11,393	143	797	1,459	8,994	19,379
Income before taxes and extraordinary items	17,779	197	1,179	2,301	14,102	30,204
Income net of taxes before extraordinary items	11,704	146	815	1,507	9,236	20,214
Cash dividends declared	7,042	86	354	1,124	5,478	13,450
Net loan and lease losses	4,797	16	120	508	4,152	6,968
Charge-offs to loan and lease reserve	5,783	24	167	629	4,962	8,459
Less: Recoveries credited to loan & lease resv.	986	8	47	121	810	1,491

*Includes mortgage indebtedness

Year-to-date income and expenses of national banks by asset size
Through March 31, 2001
(Dollar figures in millions)

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Less: Recoveries credited to loan & lease resv.	986	8	47	121	810	1,491

*Includes mortgage indebtedness

Quarterly net loan and lease losses of national banks by asset size
First quarter 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Net charge-offs to loan and lease reserve	$4,797	$16	$120	$508	$4,152	$6,968
Loans secured by real estate	361	1	12	48	299	489
1–4 family residential mortgages	157	1	6	17	132	207
Home equity loans	71	0	1	21	50	81
Multifamily residential mortgages	4	(0)	(0)	0	4	5
Commercial RE loans	79	0	4	6	68	120
Construction RE loans	24	0	1	5	19	44
Farmland loans	9	0	(0)	0	9	10
RE loans from foreign offices	18	0	0	0	18	21
Commercial and industrial loans	1,623	6	24	82	1,511	2,346
Loans to individuals	2,489	8	80	363	2,039	3,668
Credit cards	1,743	1	50	280	1,413	2,588
Installment loans and other plans	746	7	30	84	626	1,080
All other loans and leases	324	1	5	14	303	466
Charge-offs to loan and lease reserve	5,783	24	167	629	4,962	8,459
Loans secured by real estate	461	2	18	60	381	630
1–4 family residential mortgages	208	1	9	22	176	275
Home equity loans	80	0	1	22	57	94
Multifamily residential mortgages	5	0	0	0	4	7
Commercial RE loans	105	1	7	9	88	158
Construction RE loans	32	0	1	6	24	56
Farmland loans	10	0	0	0	9	13
RE loans from foreign offices	23	0	0	0	23	26
Commercial and industrial loans	1,840	9	34	100	1,698	2,686
Loans to individuals	3,077	11	107	448	2,510	4,557
Credit cards	2,020	1	63	328	1,628	3,034
Installment loans and other plans	1,057	10	44	120	882	1,523
All other loans and leases	404	2	9	20	373	587
Recoveries credited to loan and lease reserve	986	8	47	121	810	1,491
Loans secured by real estate	100	1	6	12	81	141
1–4 family residential mortgages	51	0	2	5	43	68
Home equity loans	9	0	0	1	7	13
Multifamily residential mortgages	1	0	0	0	1	3
Commercial RE loans	26	0	3	4	19	38
Construction RE loans	8	0	0	2	6	12
Farmland loans	1	0	0	0	0	3
RE loans from foreign offices	5	0	0	0	5	5
Commercial and industrial loans	217	2	10	18	187	340
Loans to individuals	587	4	27	85	472	888
Credit cards	277	0	13	48	216	445
Installment loans and other plans	310	3	14	37	256	443
All other loans and leases	81	1	4	6	70	122

Year-to-date net loan and lease losses of national banks by asset size
Through March 31, 2001
(Dollar figures in millions)

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
Number of institutions reporting	2,201	1,071	955	134	41	8,237
Net charge-offs to loan and lease reserve	4,797	16	120	508	4,152	6,968
Loans secured by real estate	361	1	12	48	299	489
1–4 family residential mortgages	157	1	6	17	132	207
Home equity loans	71	0	1	21	50	81
Multifamily residential mortgages	4	(0)	(0)	0	4	5
Commercial RE loans	79	0	4	6	68	120
Construction RE loans	24	0	1	5	19	44
Farmland loans	9	0	(0)	0	9	10
RE loans from foreign offices	18	0	0	0	18	21
Commercial and industrial loans	1,623	6	24	82	1,511	2,346
Loans to individuals	2,489	8	80	363	2,039	3,668
Credit cards	1,743	1	50	280	1,413	2,588
Installment loans and other plans	746	7	30	84	626	1,080
All other loans and leases	324	1	5	14	303	466
Charge-offs to loan and lease reserve	5,783	24	167	629	4,962	8,459
Loans secured by real estate	461	2	18	60	381	630
1–4 family residential mortgages	208	1	9	22	176	275
Home equity loans	80	0	1	22	57	94
Multifamily residential mortgages	5	0	0	0	4	7
Commercial RE loans	105	1	7	9	88	158
Construction RE loans	32	0	1	6	24	56
Farmland loans	10	0	0	0	9	13
RE loans from foreign offices	23	0	0	0	23	26
Commercial and industrial loans	1,840	9	34	100	1,698	2,686
Loans to individuals	3,077	11	107	448	2,510	4,557
Credit cards	2,020	1	63	328	1,628	3,034
Installment loans and other plans	1,057	10	44	120	882	1,523
All other loans and leases	404	2	9	20	373	587
Recoveries credited to loan and lease reserve	986	8	47	121	810	1,491
Loans secured by real estate	100	1	6	12	81	141
1–4 family residential mortgages	51	0	2	5	43	68
Home equity loans	9	0	0	1	7	13
Multifamily residential mortgages	1	0	0	0	1	3
Commercial RE loans	26	0	3	4	19	38
Construction RE loans	8	0	0	2	6	12
Farmland loans	1	0	0	0	0	3
RE loans from foreign offices	5	0	0	0	5	5
Commercial and industrial loans	217	2	10	18	187	340
Loans to individuals	587	4	27	85	472	888
Credit cards	277	0	13	48	216	445
Installment loans and other plans	310	3	14	37	256	443
All other loans and leases	81	1	4	6	70	122

Number of national banks by state and asset size
March 31, 2001

	All national banks	National banks: Less than $100 million	$100 million to $1 billion	$1 billion to $10 billion	Greater than $10 billion	Memoranda: All commercial banks
All institutions	2,201	1,071	955	134	41	8,237
Alabama	23	12	10	1	0	158
Alaska	3	1	0	2	0	6
Arizona	18	6	7	2	3	44
Arkansas	40	12	27	1	0	185
California	81	31	40	8	2	302
Colorado	56	34	19	2	1	181
Connecticut	8	3	5	0	0	25
Delaware	16	2	9	2	3	32
District of Columbia	5	2	3	0	0	6
Florida	77	28	41	8	0	263
Georgia	67	33	32	1	1	337
Hawaii	1	0	1	0	0	8
Idaho	1	0	1	0	0	16
Illinois	191	80	99	8	4	708
Indiana	31	8	16	5	2	153
Iowa	46	26	18	2	0	428
Kansas	107	77	27	3	0	375
Kentucky	51	25	23	3	0	229
Louisiana	16	8	6	1	1	144
Maine	6	1	4	1	0	15
Maryland	15	6	7	2	0	72
Massachusetts	12	4	6	2	0	43
Michigan	28	11	15	1	1	165
Minnesota	127	80	43	1	3	491
Mississippi	20	8	10	2	0	101
Missouri	47	26	18	3	0	360
Montana	18	14	2	2	0	84
Nebraska	78	57	19	2	0	277
Nevada	8	2	2	4	0	32
New Hampshire	6	2	2	1	1	15
New Jersey	26	3	15	8	0	80
New Mexico	15	6	7	2	0	53
New York	61	12	40	8	1	145
North Carolina	9	2	3	1	3	76
North Dakota	16	7	6	3	0	109
Ohio	90	41	35	8	6	208
Oklahoma	101	62	35	4	0	285
Oregon	4	1	2	1	0	42
Pennsylvania	88	23	56	6	3	184
Rhode Island	3	1	0	1	1	7
South Carolina	24	15	8	1	0	75
South Dakota	18	9	7	1	1	93
Tennessee	29	8	18	1	2	196
Texas	351	210	133	7	1	698
Utah	8	2	3	2	1	57
Vermont	11	3	7	1	0	18
Virginia	35	13	20	2	0	144
Washington	15	11	4	0	0	74
West Virginia	23	9	11	3	0	70
Wisconsin	51	23	25	3	0	304
Wyoming	20	11	8	1	0	46
U.S. territories	0	0	0	0	0	18

Total assets of national banks by state and asset size
March 31, 2001
(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
All institutions	$3,440,218	$55,058	$249,701	$417,491	$2,717,968	$6,310,814
Alabama	3,836	744	2,057	1,035	0	184,871
Alaska	5,043	59	0	4,984	0	6,020
Arizona	59,696	186	2,813	4,770	51,927	63,035
Arkansas	7,619	665	5,952	1,001	0	26,343
California	194,214	1,580	11,373	21,657	159,604	331,690
Colorado	27,127	1,727	4,550	4,806	16,044	46,933
Connecticut	1,229	238	991	0	0	3,581
Delaware	106,862	161	3,061	4,143	99,498	151,644
District of Columbia	675	74	601	0	0	754
Florida	26,683	1,693	9,645	15,346	0	61,158
Georgia	27,059	1,795	7,425	4,996	12,843	169,967
Hawaii	301	0	301	0	0	23,995
Idaho	233	0	233	0	0	2,567
Illinois	273,982	3,997	24,559	22,339	223,087	402,643
Indiana	61,012	436	5,920	16,966	37,690	86,510
Iowa	16,205	1,475	4,476	10,253	0	45,608
Kansas	19,324	3,678	7,722	7,924	0	38,261
Kentucky	22,974	1,651	4,335	16,988	0	51,999
Louisiana	24,939	468	1,212	6,630	16,629	40,983
Maine	5,915	27	1,496	4,391	0	7,781
Maryland	5,853	377	2,056	3,419	0	46,035
Massachusetts	9,394	263	1,380	7,751	0	109,436
Michigan	17,043	469	3,612	1,214	11,746	143,804
Minnesota	158,214	3,732	11,690	2,379	140,413	181,212
Mississippi	10,358	389	2,087	7,882	0	35,109
Missouri	25,826	1,372	5,849	18,605	0	65,227
Montana	3,631	601	432	2,598	0	11,045
Nebraska	16,123	2,640	4,545	8,938	0	29,662
Nevada	22,660	62	355	22,244	0	34,501
New Hampshire	21,797	58	370	4,813	16,556	23,981
New Jersey	31,935	199	4,763	26,973	0	70,109
New Mexico	10,451	325	2,825	7,301	0	14,742
New York	424,797	757	11,572	16,598	395,869	1,366,069
North Carolina	858,850	132	1,255	3,061	854,402	954,394
North Dakota	12,021	302	1,754	9,965	0	17,906
Ohio	289,654	2,076	10,236	16,315	261,027	361,920
Oklahoma	25,462	3,136	7,020	15,305	0	44,242
Oregon	9,602	5	531	9,066	0	17,107
Pennsylvania	142,145	1,407	16,644	9,342	114,752	182,464
Rhode Island	206,472	8	0	5,577	200,887	216,118
South Carolina	5,212	775	2,286	2,151	0	24,398
South Dakota	28,308	328	2,447	8,393	17,140	36,464
Tennessee	65,883	591	5,457	7,328	52,506	87,935
Texas	81,742	10,323	31,831	18,494	21,094	136,216
Utah	25,114	58	818	9,984	14,254	110,447
Vermont	3,269	188	2,072	1,009	0	7,511
Virginia	12,465	795	5,370	6,299	0	63,295
Washington	1,782	547	1,235	0	0	15,529
West Virginia	10,373	482	2,132	7,758	0	17,570
Wisconsin	14,635	1,453	6,990	6,192	0	79,523
Wyoming	4,221	552	1,364	2,305	0	7,571
U.S. territories	0	0	0	0	0	52,930

Chief Financial Officer's Annual Report—2000

Chief Financial Officer's Message

I am pleased to present the Office of the Comptroller of the Currency's Annual Report for the year ending December 31, 2000. The Annual Report provides a discussion of OCC's program and financial activities for the year as well as our financial statements and related independent auditors' report.

Financial management initiatives implemented during 2000 resulted in significant improvements in managing our resources and in strengthening our internal controls:

- Our financial statements received an unqualified "clean" opinion with no material weaknesses;
- Accounting principles generally accepted for federal entities and standard federal budget object class codes were adopted to ensure compliance with reporting requirements for government agencies;
- Funds control processes provide management with more accurate, reliable, and timely financial information;
- Expanded reporting processes strengthen management accountability over budget execution; and
- New revenue forecasting techniques provide more accurate revenue projections and more detailed accounting of actual versus projected revenues.

During 2001 we will be implementing phase I of the OCC's management accountability reporting tool ("$MART"). $MART is an integrated financial management system designed to support management by providing users with accurate, reliable, and timely financial information.

We are proud of our accomplishments to date and will continue our efforts to strengthen controls and modernize processes to better serve our customers and provide accurate and reliable information to our stakeholders.

Edward J. Hanley
Senior Deputy Comptroller and
Chief Financial Officer

Contents

I. Management's Discussion and Analysis

1. Mission and Organization Structure

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive banking system that supports the citizens, communities, and economy of the Untied States.

The Comptroller's office manages a nationwide staff of bank examiners and other professional and support personnel who examine and supervise federally chartered national banks and federally licensed branches and agencies of foreign banks. The Comptroller receives advice on policy and operational issues from an Executive Committee that consists of the First Senior Deputy Comptroller and Chief Counsel, Chief of Staff, the Ombudsman, and the senior executives of Bank Supervision Operations, Bank Supervision Policy, International and Economic Affairs, Public Affairs, Management, and Information Technology. The OCC mission is supported with the following programs:

- *The OCC's licensing process* involves ongoing activities that result in the chartering or liquidation of national banks as well as evaluation of the permissibility of structures and activities of national banks and their subsidiaries.
- *The OCC's rulemaking process* consists of ongoing activities that result in the establishment of regulations, policies, operating guidance, and interpretations of general applicability to national banks.
- *The OCC's bank supervision process* consists of ongoing supervision and enforcement activities undertaken to ensure each national bank is operating in a safe and sound manner and is complying with applicable laws, rules and regulations relative to the bank and the customers and communities it serves.
- *The OCC's analysis process* consists of ongoing activities that identify, analyze, and respond to emerging systemic risks and market trends that could impact the safety and soundness of national banks; the national banking system or groups of national banks; the financial services industry; or the economic and regulatory environment in which banks operate.
- *The OCC's resource management process* consists of those ongoing activities related to prudently managing OCC's human, financial, physical, and technology resources in a manner designed to ensure that OCC programs achieve their intended results in an efficient and effective manner.
- *The OCC's external relations process* consists of the activities of discrete organizational functions that educate key agency stakeholders, facilitate their interactions with the OCC or its national bank clientele, or advance specific OCC policy interests to targeted external audiences.

2. Performance Goals, Objectives, and Results

Strategic Goal: A Safe and Sound National Banking System

The OCC maintains a proactive focus to identify potential problems in banking. Our supervisory practices are both up-to-date and adaptable to the rapid evolution of highly complex new products and services being offered by the banking industry. Delivery of information tools and resources to our examination staff continues to improve, including ongoing implementation of the Large Bank Information System (LBIS) and the OCC's early warning, "Canary" system. This system brings together an array of supervisory and economic predictive tools to help identify potential risks to the national banking system as a whole as well as to individual banks. Examiners participate in a wide range of training initiatives to enhance their examining skills, including training in problem bank supervision, internet banking, credit, liquidity/interest rate risk, etc.

Our Ombudsman's findings on supervisory appeals along with information from banker and bank customer feedback are communicated throughout the agency.

Within the context of the economic environment, the OCC continues to minimize the impact and/or number of bank failures with prompt supervisory action including timely enforcement actions and coordination of failure resolution policies and procedures with the Federal Deposit Insurance Corporation (FDIC).

The OCC measures performance as follows:

Performance measure	2000 target	2000 actual
Percentage of bank examinations conducted on schedule (FDICIA examination exceptions after 6/30/00 limited to those related to conversions, mergers, system conversions, etc.)	100%	98%[a]
Percentage of critical work completed on large-bank, mid-size bank, and federal branch and agency strategies	100%	100%
Percentage of enforcement actions against banks that meet policy time frames; i.e. the time frame from the date the supervisory office initiates the recommendation for action to the date the action is completed (signed by the bank)	90%	72%[b]

Performance measure	2000 target	2000 actual
Percentage of 4- and 5-rated banks with enforcement actions (formal and informal) in place or pending	100%	100%
Percentage of quarterly reviews completed for year 2000 conversion	100%	100%
Percent of examination questionnaires submitted by bankers that are analyzed within 90 days of the close of the evaluation period and disseminated throughout the agency	100%	100%
Supervision 2000 project plan met	Develop project plan, 100% of milestones met	100% of milestones met[c]
Perform quality assurance reviews of the effectiveness of training related to structurally weak loans	Complete	Complete
Provide shared credit training to examiners per schedule	Provide training	Training provided

Notes:
[a] Examination guidelines that allowed examiners to delay community bank safety and soundness exams for up to 90 days in low risk banks were in effect until 6/30/00. During 2000, 98% of exams were conducted within time frames of examination guidelines.
[b] The current policy time frames measure action dates that are not within OCC control. For example, the current time frames say that enforcement actions will be completed within 45 days of the date they are initiated. OCC controls when the action is presented to the bank for signature, but OCC does not control when the bank signs the action (completion of the action). OCC is currently rewriting the guidelines so that they will apply to actions within the control of the OCC.
[c] On target to complete implementation of Examiner View and the digital examination process.

Strategic Goal: A Flexible, Regulatory Framework that Enables the National Banking System to Provide a Full Competitive Array of Financial Services

The OCC fosters competition by allowing banks to offer new products and services to their customers so long as banks have the expertise to manage the risks effectively and to provide the necessary consumer protections. Our legal and licensing analyses of new products and services (considering appropriate legal and policy factors) are timely and allow for appropriate flexibility. Bank safety and soundness concerns are addressed in the consideration of new products, activities, corporate structures, and delivery systems.

Training for new products and services is ongoing. We continue to develop and implement functional supervision for new lines of business.

The OCC measures performance as follows:

Performance measure	2000 target	2000 actual
Percentage of on-time performance for non-protested applications	95%	96%
Percentage of instances where supervisory concerns are addressed before new initiatives, products, or powers are approved	100%	99%
BSOP tracking system will develop baseline data to gauge participant satisfaction with outreach programs	Report on participant satisfaction	Complete
Project plan for community bank initiatives finalized, 100% of milestones met, recommendation implemented	100%	100% of milestones had action taken*

Note:
* One item is 90% complete and all others are 100% complete. Recommendations are in various states of review and implementation.

Strategic Goal: Fair Access to Financial Services and Fair Treatment of Bank Customers

The OCC ensures fair access to financial services for all Americans by enforcing the Community Reinvestment Act (CRA) and fair lending laws, encouraging national bank involvement in community development activities, and assuring fair treatment of bank customers and compliance with the consumer protection laws. We pursue initiatives that eliminate impediments to access to banking services for certain segments of the population, especially small businesses, low-income individuals, rural individuals and businesses, and victims of illegal discrimination.

Our efforts to ensure fair access to banking services have reduced impediments that deny customers fair access. OCC plans to proceed with outreach programs that develop awareness and improve fair access to banking services. We provide information and analysis to banks to increase their knowledge and awareness of available community development activities. Information is provided to banks on affordable housing, financing for minority small businesses, Native American initiatives, and other community and economic development activities.

Customer complaints and Customer Assistance Group data are monitored and analyzed to identify trends that are used in developing OCC policies and positions. We continue efforts to lead financial institutions in the development of sound procedures and processes in the arena of customer information privacy.

The OCC measures performance as follows:

Performance measure	2000 target	2000 actual
Average number of days to process consumer complaints	45	51
Percentage of requests for consumer complaint information provided within 30 days of the request, or by the requested date if longer than 30 days, with copies of the information to the bank and appropriate bank supervision operations office	95% within time frame	90% within time frame
Publish final privacy regulations as required by new legislation	Complete	Complete
Complete the proposal for consortium-owned bank pilot	Complete	Complete
Percentage of time that follow-up actions are identified and implementation begins within 60 days of access meetings	100% within 60 days	100% within 60 days

Strategic Goal: An Expert, Highly Motivated, and Diverse Work Force and Efficient Utilization of Other OCC Resources

The quality of our work environment enables us to retain a highly motivated workforce. Plans to implement a new compensation system were finalized signifying our efforts to ensure employees are compensated commensurate with their contributions to the agency. The OCC provides effective training opportunities to OCC personnel to ensure staff experience and expertise is sufficient to carry out our mission. We continue to monitor and take steps to address various work-life issues raised by OCC employees and have formed a committee to develop and implement a strategic plan for active recruitment, retention, and career development.

Our information technology was expanded and upgraded to ensure that financial and supervisory data are available and easier to access agency wide through the implementation of customized data marts and improved analysis tools. A long-term plan will be developed for modernizing and integrating all major OCC administrative transaction processing and information systems, including an integrated planning and budgeting process with automated tools to facilitate annual performance planning and budget development.

The OCC maintains and reviews internal controls to comply with federal standards and to ensure ongoing financial integrity. Approval of a formal capital budgeting process is the first step in a lengthy process to improve financial integrity. Senior management is dedicated to ensure the ongoing effectiveness of internal financial controls, continued compliance with accounting standards, and effective budgeting and reporting.

The OCC measures performance as follows:

Performance measure	2000 target	2000 actual
Conduct two surveys of Bank Supervision Operations employees where results indicate increased employee satisfaction level	Increase in satisfaction	Employee satisfaction level decreased slightly*
Install financial system compliant with federal financial management system requirements in year 2001	Procurement started	Procurement completed
Receive an unqualified audit opinion with no material weaknesses	Completed	Completed
ITS operations maintain server availability to increase access to OCC data	99.5% availability	99.8% availability
Note: * Employee satisfaction decreased slightly as a result of identified areas of employee concern. The OCC formed Task Force teams which analyzed these concerns and developed action plans to address the issues. The action plans were communicated to employees and implemented during 2000. A subsequent survey taken in January 2001 reflected the results of these actions with improvement noted in all survey categories.		

3. Financial Management Discussion

Financial Management Initiatives

The OCC implemented several financial management initiatives and improvements during 2000. Accounting principles generally accepted within the United States of America for Federal reporting entities were adopted to ensure compliance with reporting requirements for government agencies. In addition, the OCC implemented the use of standard federal budget object class (BOC) codes.

New funds control processes provide management with more accurate, timely, and reliable financial information. Open obligations and commitments are now included as components to determine fund availability. Financial data is tracked at the BOC level, providing detailed information to help ensure the budget is executed as planned.

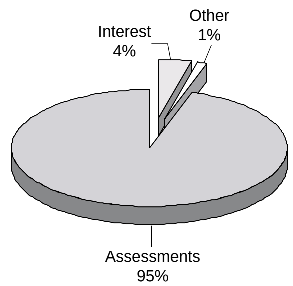
New processes were established to enhance management accountability over budget execution. Organizations are required to review and reconcile system budget reports with individual unit records monthly to ensure the accuracy of financial information used by management to make decisions. A financial performance status report is presented to the Executive Committee each month for review.

The OCC also instituted revised revenue forecasting techniques. These new techniques have resulted in a more accurate revenue projection and a more detailed accounting of actual versus projected revenues.

Funding Sources and Uses

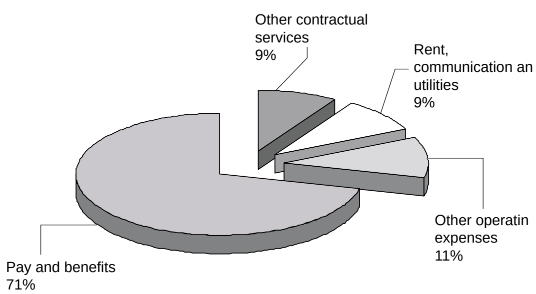
The revenue of the OCC is derived primarily from assessments and fees paid by the national banks and from income on investments in U.S. government securities. The OCC does not receive congressional appropriations to fund any of its operations. Funding sources are as follows:

Figure 1—Budget resources collected



The OCC uses revenues to cover operating costs to support its mission. Uses of funds are as follows:

Figure 2—Budget resources used



Limitations of the Financial Statements

The financial statements have been prepared to report the financial position of the OCC and its net costs, changes in net positions, budgetary resources, and reconciliation of net costs to budgetary obligations, pursuant to the requirements of 31 USC 3535(b). While the statements have been prepared from the books and records of the OCC in accordance with the format prescribed by the Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources that are prepared from the same books and records.

The statements should be read with the realization that they are for the components of the U.S. Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without authorization that provides resources to do so.

4. Systems, Controls, and Legal Compliance

The OCC evaluated its system of management control during 2000. The results indicate that the OCC's system of internal management, accounting, and administrative control, taken as a whole, are sufficient and effective except for the matter noted below.

Financial Management Systems

The OCC's financial management systems currently do not comply with Federal financial management systems requirements and the United States Government Standard General Ledger at the transaction level. This instance of nonconformance will be eliminated with the implementation of a new financial management system scheduled for October 1, 2001. The OCC has taken temporary steps to compensate for the limitations of the current system and to ensure that the information reported is accurate, reliable, and timely, and that it is in accordance with accounting principles generally accepted in the United States of America for Federal reporting entities and the United States Government Standard General Ledger.

This was also reported in OCC's Annual Assurance Statement for the year 2000, which was signed by the Comptroller of the Currency in January 2001.

5. Annual Assurance Statement—2000

Department of the Treasury
Office of the Comptroller of the Currency

Annual Assurance Statement
2000

As the Comptroller of the Currency, I recognize the importance of management controls. I have taken the necessary measures to ensure that the evaluation of the system of management control of the OCC has been conducted in a conscientious and thorough manner during 2000. The results indicate that the OCC's system of internal management, accounting and administrative control, taken as a whole, are sufficient and effective. As a result, I can provide a reasonable assurance that FMFIA Section 2 objectives are being achieved and a qualified assurance that FMFIA Section 4 objectives have been met. Although at the present time, OCC's financial management systems do not comply with Federal financial management systems requirements and the United States Government Standard General Ledger (SGL) at the transaction level, this situation should be remedied when our new financial management system is fully operational, which is scheduled to occur October 1, 2001.

John D. Hawke, Jr.
Comptroller of the Currency

II. Auditor's Report

KPMG

2001 M Street, N.W.
Washington, D.C. 20036

Independent Auditors' Report on Financial Statements

The Comptroller of the Currency:

We have audited the accompanying balance sheet of the Office of the Comptroller of the Currency (OCC) as of December 31, 2000, and the related statements of net cost, changes in net position, budgetary resources and financing (hereafter collectively referred to as "financial statements") for the year then ended. These financial statements are the responsibility of the OCC's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the OCC as of December 31, 2000, and its net costs, changes in net position, budgetary resources, and reconciliation of net costs to budgetary obligations, for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued reports dated March 30, 2001, on our consideration of the OCC's internal control over financial reporting and on its compliance with certain provisions of laws and regulations. Those reports are an integral part of an audit performed in accordance with *Government Auditing Standards*, and should be read in conjunction with this report in considering the results of our audit.

The information in the Management's Discussion and Analysis section is not a required part of the financial statements but is supplementary information required by the Federal Accounting Standards Advisory Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of this information. However, we did not audit this information, and, accordingly, we express no opinion on it.

KPMG LLP

March 30, 2001

KPMG

2001 M Street, N.W.
Washington, D.C. 20036

Independent Auditors' Report on Internal Control over Financial Reporting

The Comptroller of the Currency:

We have audited the balance sheet of the Office of the Comptroller of the Currency (OCC) as of December 31, 2000, and the related statements of net cost, changes in net position, budgetary resources, and financing, for the year then ended, and have issued our report thereon dated March 30, 2001. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

In planning and performing our audit, we considered the OCC's internal control over financial reporting by obtaining an understanding of the OCC's internal control, determining whether internal controls had been placed in operation, assessing control risk, and performing tests of controls in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements. We limited our internal control testing to those controls necessary to achieve the objectives described in *Government Auditing Standards*. We did not test all internal controls as defined by the Federal Managers' Financial Integrity Act of 1982. The objective of our audit was not to provide assurance on the OCC's internal control. Consequently, we do not provide an opinion on internal control over financial reporting.

Our consideration of internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be reportable conditions. Under standards issued by the American Institute of Certified Public Accountants, reportable conditions are matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the OCC's ability to record, process, summarize, and report financial data consistent with the assertions by management in the financial statements. Material weaknesses are reportable conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements, in amounts that would be material in relation to the financial statements being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Because of inherent limitations in any internal control, misstatements due to error or fraud may occur and not be detected.

We noted certain matters, discussed in Exhibit I, involving the internal control over financial reporting and its operation that we consider to be reportable conditions. However, none of these reportable conditions are considered to be material weaknesses. Exhibit II presents the status of prior year reportable conditions.

Additional Procedures

With respect to internal control related to performance measures determined by management to be key and reported in the Management's Discussion and Analysis section of the OCC's Annual Report, we obtained an understanding of the design of significant internal controls relating to the existence and completeness assertions. Our procedures were not designed to provide assurance on internal control over reported performance measures, and, accordingly, we do not provide an opinion on internal control related to performance measures.

We also noted other matters involving internal control and its operation that we have reported to the OCC's management in a separate letter dated March 30, 2001.

This report is intended solely for the information and use of the OCC's management, the Department of Treasury Office of Inspector General, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

March 30, 2001

Exhibit I

Office of the Comptroller of the Treasury
Reportable Conditions
For Fiscal Year Ended December 31, 2000

1. Adequate controls over Time and Travel Reports (TTRS) disbursements were not in place

We noted examples where the OCC procedures related to TTRS disbursements processing were not followed. Internal controls over the TTRS disbursements process should be properly designed to achieve desired control objectives, and subsequently placed in operation. The nature of the OCC's operations require its personnel to travel considerably. As such, the controls surrounding the TTRS process should be operating effectively. In instances where TTRS disbursements controls are not operating effectively, potential accounting misstatements, irregularities, and other errors may occur.

During our audit, we identified 15 instances, out of a sample of 45 items, where the internal controls over disbursements were not functioning as designed. The exceptions included inadequate supporting documentation, inadequate approvals, and untimely approval and submission of expense reports.

Failure to perform certain internal control functions puts the OCC at risk of failing to prevent and detect errors, fraud, omissions in travel disbursements, and misstated accounting records.

Recommendations
In order to improve internal controls over TTRS disbursements, we recommend the OCC continue to take action to improve on its performance in monitoring and enforcing time and travel expense reporting procedures. Such actions should include supervisory and quality control reviews.

2. Internal controls over timekeeping were not adequate

The OCC did not consistently follow its procedures for timekeeping functions relating to certifying rosters and applications for leave. The inadequate operation of the controls related to timekeeping and certifying rosters is a weakness that increases the risk of irregularities, fraud, and other errors. We noted 8 exceptions out of 45 sample items tested. The nature of the errors included inadequate and untimely leave slip and certifying roster approvals, and inaccurate certifying rosters.

Untimely or inadequate review of certifying rosters increases the risk that errors, fraud, or omissions in annual leave, sick leave, comp time, etc. will go undetected. In the absence of adequate review and recording of annual leave slips, the risk of employees taking leave without their annual leave balances being charged is increased. Furthermore, annual leave slips may be processed with errors if not adequately reviewed by a supervisor.

Recommendations
We recommend the OCC:

- Implement procedures to enforce controls surrounding completion, submission, and accounting for annual leave and certifying rosters.
- Develop a periodic internal audit program for current employees related to certifying rosters and annual leave processing. The audits should be performed by personnel not responsible for entering leave data into the system.

Exhibit II

OFFICE OF THE COMPTROLLER OF THE CURRENCY

Status of Prior Reportable Conditions

1999 Reportable Conditions	2000 Status
Timely reconciliation of fund balance with Treasury account with U.S. Treasury records was not performed. *(Reconciliations for May 99 not completed until Oct 99.)*	Improvements were made during calendar year 2000. The reconciliation was current for most of the year and completed upon receipt of the monthly TFS 6653, Statement of Differences from Treasury. Financial Management (FM) assigned reconciliation tasks to specific employees effective with the March 2000 reorganization. A monthly supervisory review and approval sheet was completed and implemented. Procedures for performing monthly Treasury Fund Balance reconciliations were documented. However, during the fourth quarter of the calendar year, the reconciliations were not completed and reviewed in a timely manner. Current year status: Downgraded to a management letter comment.
The OCC lacks adequate written procedures for many of its accounting and financial processes. *(Many key policies were still in draft version and OCC lacked Standard Operating Procedures.)*	Improvements to existing draft policies were noted. According to FM, draft policies and procedures will be finalized during installation of the new financial management system, and by December 31, 2001 at the latest. Current year status: Downgraded to a management letter comment.
Internal controls over timekeeping were not adequate. *(OCC did not consistently follow timekeeping procedures.)*	Although training was provided to timekeepers and some improvement was made during calendar year 2000, policies and procedures were not being adhered to consistently. Current year status: Reportable Condition.
Adequate controls over disbursements were not in place. *(OCC employees failing to follow procedures relating to processing disbursements)*	Improvements in disbursement processing were noted. Current year status: Corrected.

KPMG

2001 M Street, N.W.
Washington, D.C. 20036

Independent Auditors' Report on Compliance with Laws and Regulations

The Comptroller of the Currency:

We have audited the balance sheet of the Office of the Comptroller of the Currency (OCC) as of December 31, 2000, and the related statements of net cost, changes in net position, budgetary resources and financing, for the year then ended, and have issued our report thereon dated March 30, 2001. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

The OCC's management is responsible for complying with applicable laws and regulations. As part of obtaining reasonable assurance about whether the OCC's financial statements are free of material misstatement, we performed tests of the OCC's compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of the financial statement amounts. We limited our tests of compliance to the provisions described in the preceding sentence, and we did not test compliance with all laws and regulations applicable to the OCC. However, providing an opinion on compliance with laws and regulations was not an objective of our audit, and, accordingly, we do not express such an opinion.

The results of our tests of compliance with the laws and regulations described in the preceding paragraph of this report, exclusive of the Federal Financial Management Improvement Act (FFMIA), disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards*.

Additionally, as a bureau within the U.S. Department of the Treasury, the OCC reported two instances in which its financial management systems did not substantially comply with FFMIA in its fiscal year 2000 annual assurance statement submitted to Treasury. These instances of substantial noncompliance are related to:

- Federal financial management systems requirements, and
- The United States Government Standard General Ledger at the transaction level.

The OCC is scheduled to implement a new financial management system on October 1, 2001. The OCC's management expects the implementation of the new system to eliminate the foregoing instances of substantial noncompliance.

We also noted other matters involving compliance with laws and regulations that, under *Government Auditing Standards*, are not required to be included in this report, but that we have reported to the management of the OCC in a separate letter dated March 30, 2001.

This report is intended solely for the information and use of the OCC's management, the U.S. Department of Treasury Office of Inspector General, OMB, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

KPMG LLP

March 30, 2001

III. Financial Statements

Office of the Comptroller of the Currency
Balance Sheet
December 31, 2000

Assets	
Intra-governmental	
Fund Balance with Treasury	$ 2,260,404
Investments and Related Interest (Note 3)	236,332,424
Advances and Prepayments	610,154
Total Intra-governmental	239,202,982
With the Public	
Cash	26,092
Accounts Receivable, Net	40,354
Property and Equipment, Net (Note 4)	29,016,595
Advances and Prepayments	1,651,496
Total With the Public	30,734,537
Total Assets	$ 269,937,519
Liabilities	
Intra-governmental	
Accounts Payable	$ 1,561
Total Intra-governmental	1,561
With the Public	
Accounts Payable	13,276,851
Accrued Payroll and Benefits (Note 7)	14,335,152
Accrued Annual Leave	18,709,587
Post-Retirement Benefits (Note 7)	6,963,586
Total With the Public	53,285,176
Total Liabilities	53,286,737
Net Position	
Total Net Position (Note 6)	216,650,782
Total Liabilities and Net Position	$ 269,937,519

The accompanying notes are an integral part of these financial statements

Office of the Comptroller of the Currency
Statement of Net Cost
For the Year Ended December 31, 2000

Net Cost to Regulate and Supervise National Banks	
Program Cost	
Intra-governmental	$ 54,049,568
With the Public	337,897,970
Total Program Cost	391,947,538
Less: Earned Revenues	(403,562,470)
Net Cost of Operations	$ (11,614,932)

The accompanying notes are an integral part of these financial statements

Office of the Comptroller of the Currency
Statement of Changes in Net Position
For the Year Ended December 31, 2000

Net Cost of Operations	$ 11,614,932
Financing Source	
Imputed Financing	15,074,030
Net Results of Operations	26,688,962
Net Position, Beginning of Year	189,961,820
Net Position, End of Year	$ 216,650,782

The accompanying notes are an integral part of these financial statements

Office of the Comptroller of the Currency
Statement of Budgetary Resources
For the Year Ended December 31, 2000

Budgetary Resources	
Unobligated Balance, Beginning of Period	$ 158,895,063
Spending Authority from Offsetting Collections	403,661,502
Total Budgetary Resources	$ 562,556,565
Status of Budgetary Resources	
Obligations Incurred	$ 388,526,505
Unobligated Balance Available	174,030,060
Total Status of Budgetary Resources	$ 562,556,565
Outlays	
Obligations Incurred	$ 388,526,505
Less: Spending Authority from Offsetting Collections	(403,661,502)
Obligated Balance, Net, Beginning of Year	50,142,758
Less: Obligated Balance, Net, End of Year	(61,472,926)
Net Outlays in Excess of Collections	$ (26,465,165)

The accompanying notes are an integral part of these financial statements

Office of the Comptroller of the Currency
Statement of Financing
For the Year Ended December 31, 2000

Obligations and Nonbudgetary Resources	
Obligations Incurred	$ 388,526,505
Less: Spending Authority from Offsetting Collections	(403,661,502)
Financing Source—Inputed Financing	15,074,030
Total Obligations as Adjusted and Nonbudgetary Resources	(60,967)
Resources That Do Not Fund Net Cost of Operations	
Change in Amount of Goods, Services and Benefits Ordered But Not Yet Received	(9,495,023)
Change in Accounts Receivable	310,815
Costs Capitalized on the Balance Sheet	(6,081,245)
Total Resources That Do Not Fund Net Cost of Operations	(15,265,453)
Costs That Do Not Require Resources	
Depreciation and Amortization	3,711,488
Net Cost of Operations	$ (11,614,932)

The accompanying notes are an integral part of these financial statements

Office of the Comptroller of the Currency
Notes to the Financial Statements
As of December 31, 2000

Note 1—Organization

The Office of the Comptroller of the Currency (OCC) was created as a bureau within the U.S. Department of the Treasury (the Department) by act of Congress in 1863. The OCC was created for the purpose of establishing and regulating a system of federally chartered national banks. The National Currency Act of 1863, rewritten and reenacted as the National Bank Act of 1864, authorized the OCC to supervise national banks and to regulate the lending and investment activities of these federally chartered institutions.

The revenue of the OCC is derived primarily from assessments and fees paid by the national banks and income on investments in U.S. government securities. The OCC does not receive Congressional appropriations to fund any of its operations.

By federal statute at 12 USC § 481, the OCC's funds are maintained in a U.S. government trust revolving fund. The funds remain available to cover the annual costs of OCC operations in accordance with policies established by the Comptroller of the Currency.

The OCC collects Civil Monetary Penalties (CMP) due to the Federal government that are assessed through court enforced legal actions against a National Bank and/or its officers. CMP collections transferred to the Department's General Fund amounted to $468,976 during 2000. Current outstanding CMP amount to $739,673.

Departmental Offices (DO), another entity of the Department, provides certain administrative services to the OCC. The OCC pays the Department for services rendered pursuant to established interagency agreements. Administrative services provided by DO totaled $1,965,260 for the year ended December 31, 2000.

Note 2—Significant Accounting Policies

Basis of Accounting

The accounting policies of the OCC conform to accounting principles generally accepted in the United States of America for Federal reporting entities (GAAP). Accordingly, the financial statements are presented on the accrual basis of accounting. Under the accrual method, revenues are recognized when earned and expenses are recognized when a liability is incurred, without regard to cash receipt or payment.

Fund Balance with Treasury

Cash receipts and disbursements are processed primarily by the U.S. Treasury. The funds are maintained in a U.S. government trust revolving fund and are available to pay entity current liabilities.

Accounts Receivable

Accounts receivable represent monies owed to the OCC for services or goods provided. At year-end accounts receivable amounted to $156,729 less an allowance for doubtful accounts of $116,375.

Advances and Prepayments

Advances and prepayments to other government agencies represent advance payment to the DO for services and goods not yet received. Advances and prepayments to the public represent rent and insurance paid in advance.

Liabilities

Liabilities represent the amount of monies that are likely to be paid by the OCC as the result of a transaction or event that has already occurred. Liabilities represent the amounts owing or accruing under contractual or other arrangements governing the transactions, including operating expenses incurred but not yet paid. Payments are made in a timely manner in accordance with the Prompt Payment Act. Interest penalties are paid when payments are late. Discounts are taken when cost effective and the invoice is paid by the discount date.

Annual, Sick, and Other Leave

Annual leave is accrued as earned, and the accrual is reduced as leave is taken or paid. Each year, the balance in the accrued annual leave account is adjusted to reflect current pay rates. Sick leave and other types of leave are expended as taken.

Use of Estimates

The preparation of financial statements, in accordance with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates.

Note 3—Investments and Related Interest

Investments and related interest are U.S. Government securities stated at amortized cost and related interest accrued on investments. The OCC plans to hold these investments to maturity. Discounts are amortized over the term of the investment using the straight-line method, which approximates the effective yield method. The fair market value of investment securities amounted to $238,832,500 at December 31, 2000. Investments and related interest as of December 31, 2000, are as follows:

Cost	$ 235,926,000
Unamortized Discount	(353,842)
Net Amortized Value	235,572,158
Interest Receivable	760,266
Investments and Related Interest	$ 236,332,424

Maturity	Par Value	Interest Rate
Overnight	$100,926,000	5.990%
During 2001	$ 30,000,000	5.875%
During 2002	$ 80,000,000	5.750%
During 2006	$ 25,000,000	6.875%

Note 4—Property and Equipment, Net

Property and equipment purchased with a cost greater than or equal to the thresholds below and useful lives of two years or more are capitalized at cost and depreciated or amortized, as applicable.

Leasehold improvements are amortized on a straight-line basis over the lesser of the terms of the related leases or their estimated useful lives. All other property and equipment are depreciated or amortized, as applicable, on a straight-line basis over their estimated useful lives. The following table summarizes property and equipment balances as of December 31, 2000.

Class of Asset	Capitalization Threshold*	Life	Cost	Accumulated Depreciation	Net Book Value
Leasehold Improvements	$ 50,000	5–20	$ 30,848,817	$ 19,149,097	$ 11,699,720
ADP Software	$ 50,000	5–10	2,021,763	2,020,938	825
Equipment	$ 50,000	3–10	11,950,010	7,954,865	3,995,145
Furniture and Fixtures	$ 50,000	5–10	1,672,111	1,132,977	539,134
Internal Use Software	$500,000	5	12,781,771	—	12,781,771
Total			$ 59,274,472	$ 30,257,877	$ 29,016,595

* Bulk Purchase Threshold is $250,000

Note 5—Leases

The OCC leases office space for headquarters operations in Washington, D.C., and for the district and field operations throughout the United States. The lease agreements expire at various dates through 2008. These leases are treated as operating leases. Future lease payments are as follows:

Year	Amount
2001	$ 23,178,464
2002	21,375,838
2003	19,088,042
2004	15,685,159
2005	14,174,336
2006 and beyond	6,293,098
Total	$ 99,794,937

Note 6—Net Position

The OCC sets aside a portion of its Net Position as Special and Contingency Reserves to be used at the discretion of the Comptroller.

The Special Reserve supplements revenue from assessments and other sources that are made available to fund the OCC's annual budget. The Special Reserve serves to reduce the impact on operations of unforecasted revenue shortfalls or unbudgeted and unanticipated requirements or opportunities.

The Contingency Reserve supports OCC's ability to accomplish its mission in the case of unforeseeable but rare events. Unforeseeable but rare events are beyond the control of the OCC such as a major change in the National Bank System or a disaster such as a fire, flood, or significant impairment of its information technology systems. Net Position availability as of December 31, 2000, is as follows:

Contingency Reserve	$ 159,030,060
Special Reserve	15,000,000
Available to Cover Consumption of Assets	31,530,383
Available to Cover Undelivered Orders	11,090,339
Net Position	$ 216,650,782

Note 7—Retirement Plans and Other Benefits

Retirement

The OCC employees are eligible to participate in one of two retirement plans. Employees hired prior to January 1, 1984 are covered by the Civil Service Retirement System (CSRS) unless they elected to join the Federal Employees Retirement System (FERS) and Social Security during the election period. Employees hired after December 31, 1983, are automatically covered by FERS and Social Security. For employees covered by CSRS, the OCC contributes 8.51 percent of their gross pay to the plan. For employees covered by FERS, the OCC contributes 10.7 percent of their gross pay. The OCC contributions totaled $19,930,333 in 2000.

The OCC does not report in its financial statements information pertaining to the retirement plans covering its employees. Reporting amounts such as plan assets, accumulated plan benefits, or unfunded liabilities, if any, are the responsibility of the Office of Personnel Management (OPM).

Other Benefits

The OCC employees are eligible to participate in the Federal Thrift Savings Plan (TSP). For those employees under FERS, a TSP account is automatically established, and the OCC contributes a mandatory 1 percent of basic pay to this account. In addition, the OCC matches employee contributions up to an additional 4 percent of pay, for a maximum OCC contribution amounting to 5 percent of pay. Employees under CSRS may participate in the TSP, but do not receive the OCC automatic (1 percent) and matching contributions. The OCC contributions for the TSP totaled $5,034,632 in 2000. The OCC also contributes for Social Security and Medicare benefits for all eligible employees.

Employees can elect to contribute up to 10 percent of their adjusted base salary in the OCC 401(K) Plan, subject to Internal Revenue regulations. Prudential Securities Incorporated currently administers the plan. The OCC contributes 1 per cent of adjusted base salary to the OCC 401(K) Plan accounts of participating employees. Approximately 2,300 employees are enrolled in the plan; the OCC 1 per cent matching contribution amounted to $869,707 during 2000.

The OCC sponsors a life insurance benefit plan for current and former employees. This plan is a defined benefit plan. Premium payments made during 2000 totaled $117,460. The following shows the accrued post-retirement benefit cost for this plan at December 31, 2000, and the net periodic post-retirement benefit cost for 2000:

Accumulated Post-Retirement Benefit Obligation	$ (6,736,388)
Unrecognized Transition Obligation	2,074,056
Unrecognized Net Gain	(2,301,254)
Accrued Post-Retirement Benefits	$ (6,963,586)
Service Cost	$ 269,441
Interest cost	488,270
Amortization of Gain	(135,072)
Amortization of Transition Obligation	172,837
Net Periodic Post-Retirement Benefit Cost	$ 795,476

The weighted-average discount rate used in determining the accumulated post-retirement benefit obligation was 7.5 percent. Gains or losses due to changes in actuarial assumptions are amortized over the service life of the plan.

Employees and retirees of the OCC are eligible to participate in the Federal Employees Health Benefits (FEHB) plans and Federal Employees Group Life Insurance (FEGLI) plan, which are cost sharing employee benefit plans administered by the OPM. The OCC contributions for active employees who participate in the FEHB plans were $9,591,175 for 2000. The OCC contributions for active employees who participate in the FEGLI plan were $175,039 for 2000.

The Federal Employees' Compensation Act (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, employees who have incurred a work-related occupational disease, and beneficiaries of employees whose death is attributable to a job-related injury or occupational disease. Claims incurred for benefits for OCC employees under FECA are administered by the Department of Labor (DOL) and later billed to the OCC. The OCC accrued $4,140,400 of workers' compensation costs as of December 31, 2000. This amount includes unpaid costs and an actuarial estimated liability for unbilled costs incurred as of year-end calculated by DOL.

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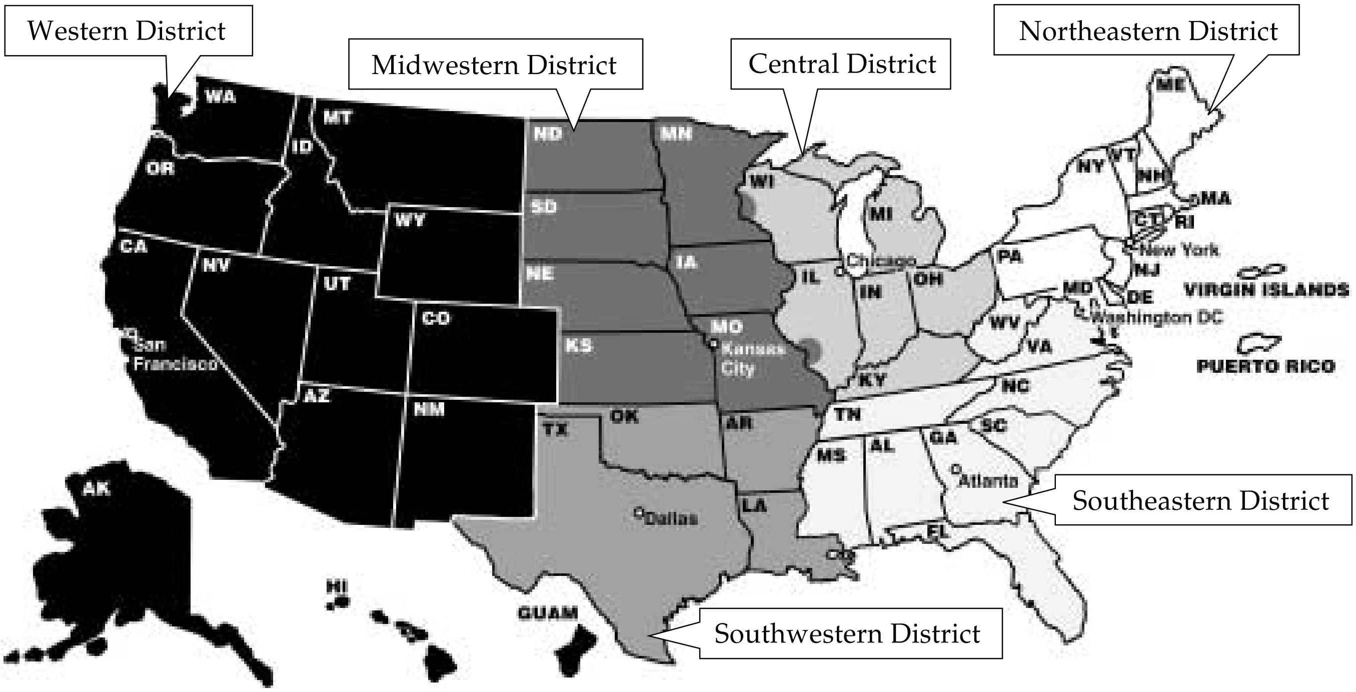

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