CAUSES OF BESTBANK'S FAILURE AND THE RESULTING MATERIAL LOSS TO THE BANK INSURANCE FUND

BestBank's demise was attributable to bank management's failure to operate the institution in a safe and sound manner, which led to substantial losses sustained in the high-risk unsecured credit card travel program.[1] These losses were exacerbated by Century's apparent actions to make delinquent accounts appear current, which delayed the recognition of losses in the portfolio. The bank relied substantially on Century, a non-affiliated third party, to administer the unsecured credit card portfolio. In conjunction with Century, BestBank established a market niche issuing credit cards to subprime borrowers with tarnished credit histories. The liberal underwriting standards coupled with the opportunity to gain access to a credit card appealed to many subprime borrowers as evidenced by the rapid growth of the bank's unsecured credit card receivables. As of May 29, 1998, the concentration in this type of lending amounted to more than 71 percent of the bank's total assets and 971 percent of Tier 1 Capital (see Glossary). The rapid growth of the credit card portfolio resulted in diminished capital protection and liquidity constraints from high-interest deposits. According to examiners, bank management failed to establish appropriate internal controls, policies, and procedures to control the asset growth, prevent the erosion of the capital base, and provide for stable funding sources.

BestBank reported substantial financial gains from the subprime credit card travel program in the form of fee income. With such high revenues, the bank was able to provide the executive officers with substantial bonuses totaling more than $17 million over a 3-year period, with $9.5 million paid in the first 6 months of 1998. However, despite the increase in income, the bank's rapid growth in assets far outpaced the ability of the bank to generate capital to support this high volume of assets. BestBank turned to a new source of funding to provide the financial resources or liquidity to continue with the program. The bank attracted new deposits through Internet advertisements for certificates of deposit with higher interest rates than other such offerings. In 1998, when the regulators discovered the application of $20 credits in lieu of actual borrower payments, the inability of Century to indemnify for the loss accounts, and the bank's lack of capital to absorb the loss accounts, the regulators declared the bank insolvent. On July 23, 1998, the Colorado State Banking Board closed BestBank.

The events and principal conditions that led to BestBank's failure and resulted in a material loss to the BIF include: (1) management's failure to adhere to safe and sound banking principles and (2) significant losses sustained in the unsecured credit card travel program. The failure of BestBank has resulted in estimated losses of $171.6 million to the BIF sustained largely from the operation of the unsecured credit card travel program. In connection with that program, there are allegations of potential fraudulent activities involving BestBank and Century. These allegations are beyond the scope of this material loss review and are currently being pursued by the FDIC and federal law enforcement agencies.

BestBank Management Initiated Unsecured Credit Card Travel Program and Targeted Subprime Borrowers

In 1996, a new opportunity to enhance the bank's earnings materialized and BestBank entered into an arrangement with Century to fund an unsecured credit card program designed to target subprime borrowers. As explained in the Background section of this report, according to FDIC and State examiners, BestBank had a history of engaging in unconventional banking activities to achieve a more lucrative income stream. BestBank management jeopardized the program by loosening underwriting standards and subrogating their responsibilities to Century. As a result, all of the credit origination and administration responsibilities, except for the funding of the program, resided with Century and its affiliated companies.

---

[1] The degree to which these causes were related to or affected by possible criminal misconduct is not addressed by this audit. That matter is being addressed by appropriate federal law enforcement authorities.

Relationships of Principal Program Participants

The principal participants in the unsecured credit card travel program were BestBank, Century, Berwyn Holdings, Inc. (Berwyn), and All Around Travel Club (AATC). The latter two entities were affiliates of Century. Berwyn processed the borrowers' applications and transferred the application fees to Century. AATC issued the travel packages associated with the travel club membership. Century was responsible for most of the activities of the program including issuing the cards, maintaining the accounts, billing the customers, and collecting payments. BestBank only funded the program.

Marketing, Processing and Consulting Agreement Was Foundation for Processing and Funding of Travel Program

BestBank and Century entered into a written Marketing, Processing and Consulting Agreement identifying the terms, conditions, and fees to process and fund the unsecured credit card travel program. BestBank established the underwriting criteria and funded the credit cards if the borrowers met the unsecured credit card underwriting criteria. Initially, the bank listed several criteria consisting of items such as minimum income levels, age restrictions, and credit requirements. The underwriting criteria were soon relaxed. In late 1997 and early 1998, the credit underwriting standards were reduced to the single requirement that an applicant had no more than one 90-day delinquent account within the prior 6-month period.

As required by the agreement, Century established a loss reserve at BestBank consisting of incremental percentages based on the delinquency of the receivables. There was also an indemnification clause requiring Century to repurchase any accounts that were considered losses based on their delinquency status. The initial agreement stated that Century would repurchase accounts once they were 120 days delinquent. Subsequent amendments to the agreements required Century to repurchase any accounts that were 60 days delinquent. BestBank documents indicated that Century indemnified the bank for all accounts that were 30 days or more delinquent since September 1996. However, Century itself reported whether or not an account was delinquent.

The October 1996 and 1997 examinations indicate that the examiners requested audited financial statements for Century. This information was needed to determine whether Century was capable of and able to continue purchasing the loss accounts. Although the bank requested the audited financial statements from Century on behalf of the examiners, bank management did not promptly follow-up on these requests and BestBank continued to do business with Century. Although the examiners received financial statements on Century that had been compiled or reviewed (unaudited) by a CPA, bank management was unable to offer satisfactory explanations for several inconsistencies contained in the financial statements. We address these inconsistencies in the Assessment of DOS's Supervision of BestBank on page 19 of this report. Of special concern to the examiners was the status of Century as a Subchapter S Corporation whereby earnings could be distributed at year-end, which would have left Century's capital stock of only $1,000 to serve as equity. The business structure of Century (Subchapter S status), coupled with the lack of audited financial statements, concerned the regulators regarding Century's ability to continue to comply with the terms of the credit card program.

Travel Program Funds Flow from Borrowers to Principal Participants

The process of establishing and funding each new credit card account required several steps. First, telemarketers made calls soliciting interest in the credit card travel program. If interested, the prospective cardholder was asked to send in an application and a $20 application fee. When Berwyn received the application and the $20 fee, the fee was transferred to Century. BestBank funded each request for borrowers meeting the minimum requirements. This included the total up-front charges of $543, which included a travel package of $498 and the annual fee of $45. Century received these funds and transferred $498 to AATC. AATC then transferred $398 to Century. Century paid BestBank a $25 booking fee, and AATC transferred a $30 merchant fee to BestBank. The total receipts to each entity for each card is shown in table 3.

Table 3: Distribution of All Around Travel Club
Credit Card Proceeds

Participant	*Share of Proceeds*
BestBank	$ 55
Century Financial Group	438
All Around Travel Club	70
TOTAL	**$563**

Sources: OIG Analysis and June 1998 Joint Examination Report

Each borrower was initially liable for charges of $543 on a $600 line of credit. This left an unsecured available balance to each borrower of only $57. A detailed diagram illustrating the flow of funds between BestBank, Century, Berwyn, and AATC is included in appendix B.

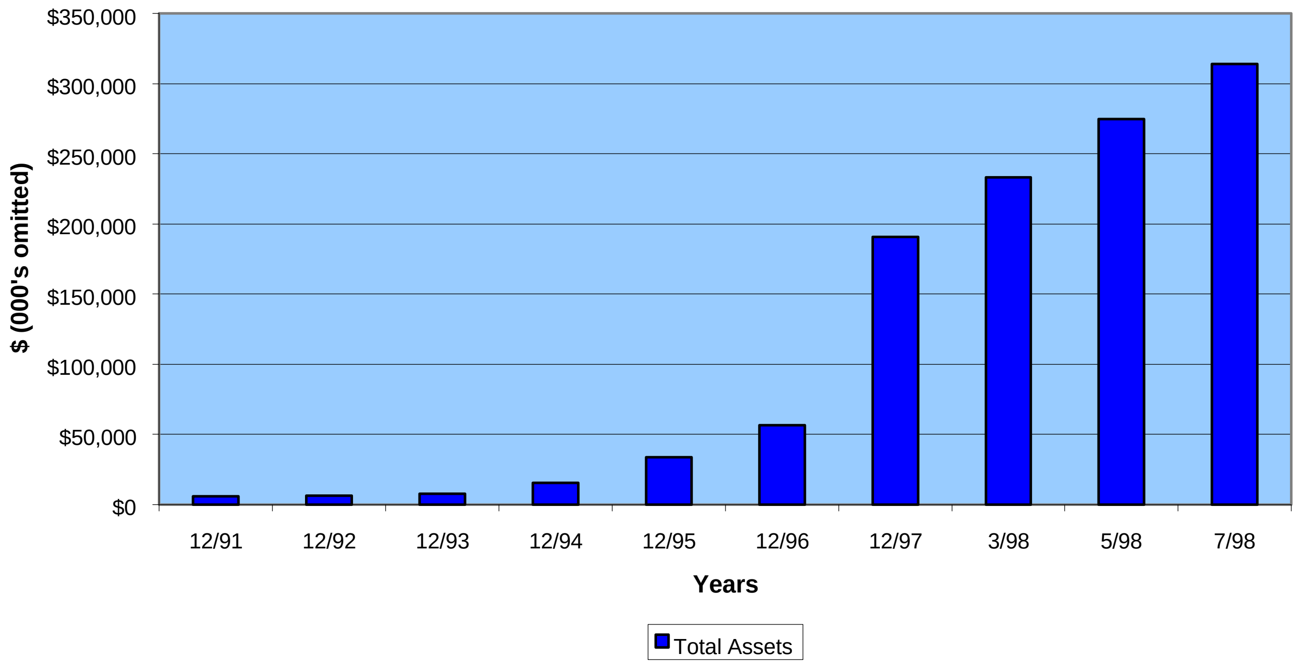
Concentration in High Risk Unsecured Credit Card Travel Program Led to BestBank's Insolvency

BestBank's unsecured credit card travel program permitted the bank to report significant income. This, in turn enabled the bank to pay large bonuses to the CEO and president. The bonus compensation was tied to the volume of credit card receivables in that the increase in assets generated additional revenues, and the increased revenues resulted in larger bonuses for the executive officers. The bank's explosive growth in the unsecured credit cards to subprime borrowers led to concentrations of high-risk, poor quality assets. Insufficient capital levels and the eventual liquidity strain from this program led to BestBank's insolvency.

Asset Growth Resulted in Excessive Bonuses for BestBank Executives

Despite steady increases in assets from 1989 through 1995, the bank entered a growth spurt when the unsecured credit card travel program began in 1996. The rapid pace of the asset expansion was first noted during the October 1996 examination. Total assets as of June 30, 1996, the financial date of the examination, were $42 million. During the course of the examination, assets grew to $53.8 million as of November 19, 1996, a 28 percent increase over a period of 4 1/2 months. Each succeeding year produced an increase in asset growth of significant proportions. When the bank was closed on July 23, 1998, assets totaled $314.1 million, an increase from December 31,1997 of 65 percent in less than 7 months of operations. The main reason for the growth from 1996 until the bank closed was the investment in the unsecured credit card travel program that resulted in a concentration of credit in a highly risky business venture. Figure 1 illustrates the asset growth from December 31, 1991 until July 23, 1998.

Figure 1: BestBank's Total Assets (1991-1998)



Sources: Uniform Bank Performance Reports, June 1998 Joint Examination Report, and BestBank records.

One of the primary factors which appears to have contributed to the rapid growth of the asset structure was the payment of executive officer bonuses. By generating a voluminous amount of credit card receivables, the bank's fee income increased. This, in turn, provided increased revenues to pay bonuses. Table 4 indicates the bonuses paid to BestBank's CEO and president.

Table 4: Bonuses Paid to BestBank's CEO and President

	1996	1997	1998*
CEO	$663,666	$3,475,420	$4,743,909
President	663,666	3,475,420	4,743,909
Total Bonuses Paid	**$1,327,332**	**$6,950,840**	**$9,487,818**

*The 1996 and 1997 bonuses represent incentives for an entire year. The 1998 amounts represent bonuses for only the first 6 months of the year.
Source: OIG Analysis and BestBank records.

In addition to the bonuses, the salaries of the CEO and president were unusually large in comparison to compensation at other banks. A Certified Public Accounting firm was engaged to conduct a community bank compensation survey that compared BestBank's executive officers' compensations with other banks of comparable size and demographics. The BestBank president's annual salary and bonus in 1997 were

$157,000 and $1.5 million (estimated at the time of the CPA survey) compared to the peer average of $99,536 and $95,470, respectively.

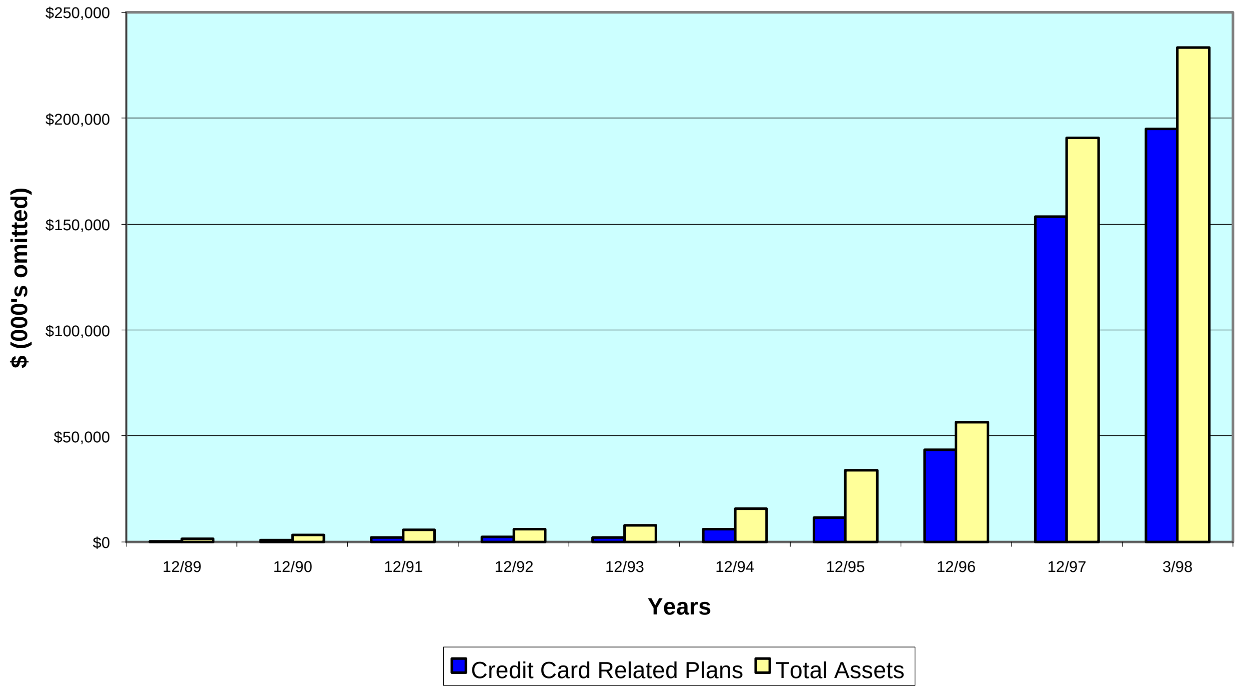
The February and October 1996 examinations questioned the generous amount of the executive bonuses and the negative effect the payments had on the bank's capital structure. Despite repeated comments by the examiners, the bonuses, fueled by the rapid growth, continued.

Asset Quality Impacted by Unsecured Loans to Subprime Borrowers

The rapid expansion in the unsecured credit card program resulted in a concentration of the bank's assets in a highly risky endeavor. This produced criticisms at the joint examinations conducted by the regulatory authorities in 1997 and 1998. The bank could not produce adequate evidence, such as audited financial statements, proving that Century had the financial capability to repurchase or continue to repurchase the loss accounts in the credit card portfolio. The sizeable increase in the unsecured credit cards and the nature of the credits, which were unsecured loans to subprime borrowers, resulted in a lack of diversity and high risk in the loan portfolio. Figure 2 compares the bank's credit card related plans in relation to its total assets. Although all of the bank's credit card plans are included in the graph, the unsecured credit card travel program comprises the largest percentage.

Figure 2: Comparison of BestBank's Credit Card Related Plans to Total Assets (1989-1998)[2]

[2] Technically, the Uniform Bank Performance Report shows an amount for individual loans, a category largely comprised of credit card related plans. For purposes of this report, we refer to this amount as credit card related plans.

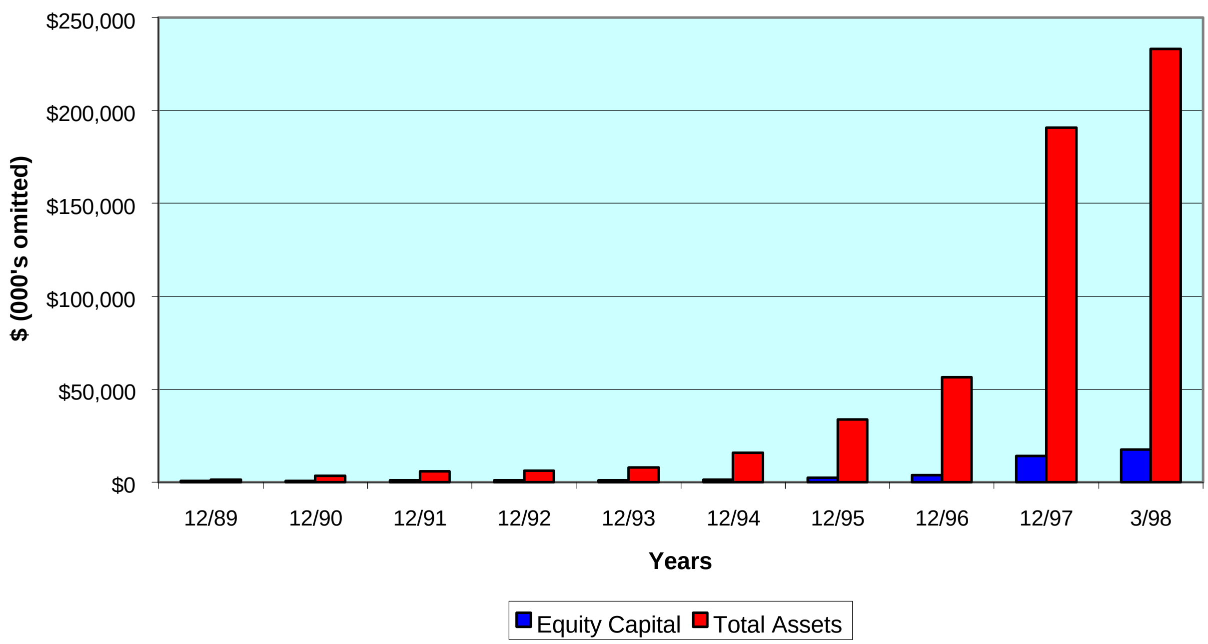


Source: Uniform Bank Performance Reports

Capital Ratios Reduced by Unrestrained Growth

Unrestrained growth in assets without a commensurate increase in capital has a detrimental impact on a financial institution because of the potential decrease in the capital ratios. The bank's capital formation was able to sustain the degree of asset growth from 1989 through 1994; however, beginning in 1995 and continuing through the bank's failure, the Tier 1 Capital Ratios began to falter. Although the ratios were mathematically in line with regulatory standards, they were not sufficient to mitigate the level of risk in the bank's asset structure. Figure 3 illustrates the relationship between the bank's equity capital and total assets.

Figure 3: Comparison of BestBank's Equity Capital to Total Assets (1989-1998)



Source: Uniform Bank Performance Reports

Largely because of the increasing growth in assets and the continuing bonuses paid to executive management, BestBank's capital level began to raise serious concerns to the regulatory agencies in 1996. The bank attempted to increase capital through a sale of a portfolio of secured credit card receivables, with recourse, to a national bank. However, this effort was unsuccessful at first, because the recourse provisions in the agreement precluded the bank's recognition of the gain on the sale of the credit cards. The transaction would have to be booked on the bank's records as a borrowing rather than a bona fide sale. The agreement was modified so that the gain could be recognized as income. The bank also amended the processing agreement with Century. In addition to Century's other requirements, the indemnification clause was modified to require Century to provide a portion of the funding of new accounts representing 25 percent of the balances funded. Century's participation in the portfolio of newly issued credit cards was designed to ensure a minimum level of Tier 1 Capital to support additional growth in the credit card portfolio.

Century's assistance, however, was not limited to the participation in newly issued cards. The participation agreement also provided for additional fees to be paid to BestBank to maintain capital levels in conformity with regulatory requirements. Also, Century purchased $2.5 million in non-voting preferred stock in BestBank in March 1997 to bolster the bank's capital. However, disagreements between the bank and the regulators arose concerning the qualification of the stock as Tier 1 Capital since the stock's waived dividends were payable upon liquidation or dissolution of the bank. This dispute was not resolved until later in the year. Ultimately, the stock was included in Tier 1 Capital. In September 1997, in an effort to increase capital, an additional $500,000 in preferred stock was issued to the Student Finance Corporation, a licensed lender that originates, purchases, and services student loans.

Due to losses in the credit card portfolio, the June 1998 joint examination report concluded that an immediate and sizeable capital injection was required to maintain BestBank as a going concern.

Bank's Need for Liquidity Led to Advertising Above-Market Interest Rates on Internet

In order to continue to expand the asset base, the bank required a consistent source of funding. The bank elected to fund the asset growth through increases in the deposit base. To attract time deposits, the bank relied on advertising its certificate of deposit rates on the bank's Internet web-site.[3] Because the bank was offering above-market interest rates, the influx of rate-seeking depositors enabled the bank to fund the asset growth.

In 1996 and 1997, FDIC and State examiners continued to criticize the liquidity component for the following reasons:

- The limited amount of assets that could be quickly converted to cash;
- The composition of the deposit base, which consisted primarily of out-of-territory certificates of deposit; and
- The reliance on the sale of credit cards should additional liquidity be required.

Despite the bank's disagreement with regulators over their liquidity position, bank management established a borrowing line with another bank in Colorado. Efforts were also increased to sell a portion of the credit card portfolio to other financial institutions; however, the sales never materialized. Liquidity concerns escalated, and the June 1998 joint examination determined that the bank had insufficient assets to meet depositor and creditor obligations.

The continued expansion in the unsecured credit card portfolio concerned the regulators because of the concentration in high-risk assets. Bank management contended that the indemnification agreement obligated Century to absorb losses, and therefore the bank was protected. The examiners requested audited financial statements for Century from the bank; however, the examiners received only CPA compilations and reviews until 1998. According to an FDIC examiner, Century's unaudited March 31, 1998 financial statements indicated that Century was not financially able to absorb the losses detailed in the June 1998 joint examination report.

Bank management's assertion that the bank could survive without Century prompted an FDIC and State joint visitation in May 1998. After the examiners reviewed the assumptions in the bank's cash flow projections, they concluded that the assumptions were erroneous. A full scope examination was slated for June 1998. The examination revealed that the low delinquency rates on the travel credit card portfolio were artificially achieved by Century's application of $20 "credits" in lieu of actual payments from the borrowers. According to the June 1998 joint examination report, the application of the $20 credits by Century was an apparent attempt to keep delinquent accounts current and preclude Century's obligation to repurchase the loss accounts as detailed in the participation agreement. The examination revealed losses in the credit card portfolio of $134 million. Century did not have the financial capability to purchase loss accounts of this magnitude, and the bank's capital was insufficient to absorb the losses. On July 23, 1998, the Colorado State Banking Board closed BestBank, and the FDIC was appointed receiver for the disposition of the bank's assets.

ASSESSMENT OF DOS'S SUPERVISION OF BESTBANK

We concluded that the FDIC Division of Supervision's supervisory oversight could have been more effective in controlling BestBank's undisciplined growth, concentration in unsecured subprime lending, and poor underwriting practices, which represented a significant risk to the BIF.

---

[3] For more information on the use of the Internet by weak banks to raise volatile funds, see OIG's *Audit of the Effectiveness of Deposit Restrictions on Institutions That Are Not Well Capitalized* (Audit Report no. 96-083); August 6, 1996.

DOS's supervisory oversight was severely hampered by the examiners' restricted access to the records supporting Century's financial statements even though Century (and its affiliated entities) completely managed and monitored the BestBank/Century credit card programs.[4] DOS's supervisory oversight also was hindered when bank management impeded the examiners' access to bank employees and records.

While DOS conducted timely examinations and appropriately applied Prompt Corrective Action provisions, we concluded that DOS missed opportunities to take more timely and effective supervisory actions at critical junctures in BestBank's history. Our recommendations in this section of the report address these issues, as well as methods to improve DOS's communication and coordination within the Corporation and with State banking agencies.

FDIC's Restricted Access to Century, BestBank's Third-Party Servicer, Impeded Examinations

DOS examiners were severely hampered by restricted access to records supporting Century's financial statements even though Century (and its affiliated entities) completely managed and monitored the BestBank/Century credit card programs. While Century contractually agreed to indemnify the bank for losses associated with the related credit card programs, Century also had control over identifying and reporting past due accounts to the bank. This control was significant considering that the BestBank/Century subprime credit card receivables represented 71 percent of the bank's total assets as of May 29, 1998. These receivables comprised the majority of the bank's total credit card receivables, which had grown from $42 million in December 1996 to approximately $236.8 million in July 1998.

Although Century exercised substantial control over the BestBank/Century credit card programs, DOS Dallas believed, after consulting counsel, that Century was not an affiliate of the bank and, therefore, the FDIC lacked statutory authority to examine Century. When the FDIC finally gained access to Century's data processor in June 1998, the examiners determined that Century had not accurately identified and reported the past due credit card accounts. In addition, Century did not have the financial capability to indemnify the bank for losses associated with the related credit card programs. We believe FDIC examiners need to have prompt, unrestricted access to organizations that exercise significant control over an insured institution's loan portfolio, particularly when the institution is relying on the servicer to indemnify the bank for any losses in the loan portfolio and to provide information to the bank regarding the status of the portfolio. Without this access, the examiners cannot determine the insured institution's true financial condition and potential risk to the BIF.

[4] While FDIC and State examiners reviewed credit files at Century's Bank Card Center in Thornton, Colorado, during the October 1996 and 1997 examinations and spoke with one of Century's principals and a CPA who worked for Century, the examiners did not obtain the access they needed to evaluate the records supporting Century's financial statements.

As we discussed earlier in this report, BestBank and Century signed a Marketing, Processing and Consulting Agreement in February 1994 whereby Century would indemnify the bank against losses on related credit card accounts delinquent more than 120 days. The delinquency period was subsequently reduced to 60 days. The agreement also included a statement that "Century agrees to submit to any examination which may be required by any regulatory agency with audit and examination authority over Bank, to the fullest extent of such regulatory authority." Although this clause appeared to provide the banking regulators access to records supporting the financial statements for Century, DOS Dallas believed, after consulting counsel, that Century was not an affiliate of the bank and, therefore, the FDIC did not have access to Century. Federal Reserve Act section 23A, which defines an "affiliate," does not specifically address entities whose business relationship with the bank has the ability to significantly affect the safety and soundness of the insured financial institution. In addition, the Federal Reserve Board's interpretations under section 23A do not specifically address a relationship like that of BestBank and Century.

In 1996, DOS Dallas believed, after consulting counsel, that the FDIC did not have access to records supporting Century's financial statements through the Bank Service Corporation Act because Century's stock was not owned by one or more insured banks. While the Dallas Regional Counsel considered other remedies available to the FDIC, none provided the immediate, unrestricted access the examiners required with regard to Century.

The FDIC also missed subsequent opportunities to gain access to records supporting the financial statements for Century. In January 1997 and in March 1998, the FDIC received allegations of wrongdoing related to the BestBank/Century credit card programs. According to the Dallas Regional Counsel, the FDIC may have had the opportunity to gain access to records supporting the financial statements for Century by initiating a section 10(c) investigation based on the January 1997 allegations.

During our audit, the Dallas Regional Counsel told us that she believed that the FDIC may have gained this access to Century in October 1997. At that time, the examiners became aware of a January 1997 revised marketing agreement that the Dallas Regional Counsel considered to be broader language related to the examination of Century. Through this agreement, the FDIC eventually gained access to records supporting the financial statements for Century in June 1998.

In each of the preceding opportunities, we found no evidence that DOS notified the Dallas Regional Counsel. According to the DOS Dallas Regional Director, the Dallas Regional Counsel had previously determined that the FDIC did not have access to Century. Apparently the allegations and revised marketing agreement were not brought to the Dallas Regional Director's attention until early 1998.

The October 1996 and 1997 examination reports reflect the examiners' compelling need to gain prompt, unrestricted access to records supporting Century's financial statements. According to the October 1996 examination report, the bank's assets grew by $11.7 million in approximately 4 1/2 months, from $42.1 million at the end of June 1996 to

$53.8 million by the middle of November 1996. Credit card receivables represented 79 percent of the bank's loan portfolio at September 30, 1996. While the bank relied entirely on Century to indemnify losses in the subprime credit card portfolio, bank management had only limited financial information on Century. The examiners questioned the reliability of this information and would have liked to review Century's support for several changes in the financial statements. Specifically, the examiners identified a $1.6 million reduction in Century's gross revenue from November to December 1995 that neither Century nor BestBank could reasonably explain. In addition, the examiners questioned a $2.7 million and a $1.4 million increase in two of Century's expense accounts that seemed to warrant further investigation.

According to the October 1997 joint examination report, the bank's assets grew 164 percent in one year, from $42 million at the end of June 1996 to $111 million at the end of June 1997. Century-related credit card receivables represented 92 percent of the bank's loans. The examiners observed that "without Century's indemnification, virtually the entire credit card portfolio of subprime borrowers would be classified, the bank's capital position would immediately deteriorate, losses would quickly escalate as the accounts on the books past six months would be largely uncollectible, and income would decline without a constant influx of new receivables." The examiners noted that while the evaluation of Century had become the crux of the examination, the examiners were "largely handcuffed by the apparent lack of demonstrable affiliation between the two entities."

We believe DOS and the Dallas Regional Counsel should have worked more diligently to find alternative ways to gain access to records supporting Century's financial statements. The bank's credit card programs grew exponentially from $42 million in December 1996 to approximately $236.8 million in July 1998 and made it all the more important for examiners to confirm Century's ability to continue indemnifying the bank's losses. The Legal Division has indicated to us that it is evaluating the full scope of examiners' authority and procedures that could be used with a recalcitrant institution.

Recommendations

We recommend that the Director of the Division of Supervision

(1) Work with the Federal Reserve Board to expand its interpretations under section 23A of the Federal Reserve Act to include any entity whose business relationship with an insured depository institution has the ability to significantly affect the safety and soundness of the institution in the definition of "affiliate," and

(2) Work with the Legal Division to pursue alternative means of obtaining access to third party servicers.

BestBank Impeded FDIC's Access to Bank Employees and Records

BestBank's management impeded the examiners' access to bank employees and records by physically locating the examiners away from the bank and requiring them to direct all document requests and questions through an appointed contact. As a result, the examiners were provided limited access to information they needed to fully evaluate the bank's condition. Section 10(b)(6) of the FDI Act provides authority for examiners to make a thorough examination of any insured depository institution and to complete a full and detailed report of the institution's condition. However, the *DOS Manual of Examination Policies* does not address impeded access to bank employees and records during an examination, and there appears to be no clear remedy available to address this situation. We believe the FDIC needs a solution that will provide immediate, unrestricted access in such cases. Without this access, the examiners may be unable to determine the institution's true financial condition and potential risk to the BIF.

On September 17, 1996, BestBank's Board of Directors approved and adopted guidelines for the examiners to follow during their October 1996 examination (see appendix C). DOS Dallas officials reviewed the guidelines and determined that they would seriously hinder a complete examination of the bank. Accordingly, the FDIC demanded full access to the institution. When bank management refused, the examiners discontinued their examination. BestBank's Board of Directors subsequently rescinded its guidelines in October 1996 because the FDIC planned to file a Temporary Restraining Order against the bank. The examiners admitted that despite the rescission, they completed the October 1996 examination while bank management continued to implement the examiner guidelines.

Specifically, bank management located the October 1996 examination team in a vacant used car sales office across a busy six-lane intersection from the bank. The situation deteriorated further at the October 1997 joint examination when bank management again located the team across the busy intersection and a quarter mile up the street. For prior examinations, bank management had provided on-site accommodations. During both the October 1996 and 1997 examinations, examiners observed an unoccupied boardroom that could have been made available to them. In addition to the location restriction, bank management insisted the examination team direct all requests for documents and other information through the bank's risk manager, a former FDIC examiner. The examiners could not work expeditiously because they had to furnish written requests for documents to the bank's risk manager. According to the FDIC Examiner-in-Charge (EIC), bank management further slowed the process by delaying responses and providing inaccurate information or no information at all. According to the FDIC examiners, this treatment was highly unusual compared to their experience in other institutions. The FDIC EIC of both the October 1996 and 1997 examinations concluded that bank management took actions to intimidate the examiners to ensure they had limited access to bank employees and records. The EIC of the October 1992 examination stated that unsupervised access to BestBank employees was crucial because employees readily provided information without evaluating its significance. By limiting the examiners' access to bank employees and records, bank management exercised substantial control over both the October 1996 and 1997 examinations.

In an internal memorandum dated July 29, 1997, bank management recognized its success in implementing the examiner guidelines at the October 1996 examination. According to the memorandum, written guidelines were no longer necessary because the examiners were willing to work under the bank's restrictions. The State Bank Commissioner and the FDIC's Dallas Regional Director acknowledged in a letter to BestBank's Board of Directors that there was limited access to senior bank officers during the October 1997 joint examination. The regulators stated that the communication barriers imposed by bank management "inhibited the normal examination process and often made it difficult to obtain and clarify requisite information." The regulators also commented that "Free and unfettered access to the Bank officers would greatly enhance data collection and report preparation."

According to the Dallas Regional Counsel, the examiners should have had "unfettered access" to BestBank's staff and records during these examinations. After the OIG informed her that bank management continued to enforce the rescinded guidelines, she responded that the examiners should not have accepted these restrictions. On the other hand, DOS Dallas believed, after consulting counsel, that the FDIC did not have a clear remedy available to gain immediate, unfettered access to the bank. In September and October 1996, various enforcement actions to gain unfettered access to the bank were considered, including a Temporary Restraining Order and a Temporary Cease and Desist Order (section 8(c) of the FDI Act). However, these actions generally required that the FDIC demonstrate there was imminent harm to the bank. According to the Dallas Regional Counsel, examiners could not prove at the time that the bank suffered any losses related to the credit card program. Although the FDIC filed a court injunction, which was later withdrawn because bank management formally rescinded the examiner guidelines, it is clear that the Corporation needs a remedy to gain immediate, unfettered access should a similar situation arise in the future. With the rapid changes that are possible in an increasingly electronic environment, we believe it is important that bank regulators be able to gain immediate and unfettered access to bank information.