

Part IV

Office of the Comptroller of the Currency

A. Overview

The OCC charters, regulates, and supervises national banks to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. In order to carry out this mission, the OCC seeks to promote an environment where risk is prudently managed by banks and appropriately monitored by the OCC, without imposing unnecessary regulatory burdens that undermine the ability of banks to operate efficiently, compete vigorously, and provide credit and other financial products and services to the public.

Eliminating unnecessary regulatory burdens on banks has been one of Comptroller Ludwig's, and the agency's top priorities since mid-1993. The OCC has dedicated significant staff resources toward the goal of efficient, risk-focused regulation.¹

Since mid-1993, the OCC has been reviewing from top-to-bottom the way it conducts its business. Two principal components of the OCC's effort are the Regulation Review Program (Program) and the Bank Supervision Review Project (Project). The Program involves a thorough review of all OCC regulations. These regulations directly shape how banks conduct their businesses. The Project entails a comprehensive review and restructuring of the way the OCC supervises national banks, including review and revision of the Comptroller's Handbook for National Bank Examiners (Handbook) which contains the OCC's policies effecting the operations of national banks.

¹ May 18, 1995 Testimony of Eugene A. Ludwig, Comptroller of the Currency, Before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Banking and Financial Services of the U.S. House of Representatives.

Both the Program and the Project proceed from the premise that bank regulation cannot eliminate all risk, and that a regulatory or supervisory approach that tries to do so is not only unrealistic, but unwise. Risk-taking is inherent in the business of banking. The OCC's goal is to ensure that significant risk areas are recognized and managed through appropriate controls. Accordingly, both programs seek to ensure that OCC regulations and supervisory resources are focused on those activities and products that present the greatest risks to safety and soundness, the payments system, or the general economic stability of the nation. A critical element of both programs therefore is to eliminate only those rules and procedures that impose burdens on banks, and are not necessary to maintain bank safety and soundness or support equitable access to banking services for consumers or accomplish other statutory responsibilities of the OCC.

B. Scope and Methodology

The purposes and objectives of the OCC's review of its regulations and written policies accord precisely with Congress's directive to the Federal banking agencies to review their rules with the overall objective of reducing regulatory burden. Section 303(a)(1) of CDRI generally requires each Federal banking agency individually to review its regulations and written policies in order to:

- Streamline and modify the regulations and written policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit; and
- Remove inconsistencies and outmoded and duplicative requirements.

Thus, the OCC's accomplishments under the Program and its rewriting of the Handbook as part of the Project satisfy the requirement in Section 303 that the OCC review, streamline, and update its rules and written policies.

In deciding how its regulations should be changed, the OCC has been guided by the four organizing principles that support its mission. Accordingly, under the Program, the OCC reviewed each of its regulations with the following standards in mind:

- The OCC's regulations should help *ensure safety and soundness* by establishing legally binding standards that set the limits of acceptable conduct for national banks.
- Regulations influence how banks do business and serve their customers. The OCC's regulations should *promote competitiveness* by facilitating a national bank's ability to develop new lines of business subject to any safeguards that are necessary to ensure that the bank has the expertise to manage risk effectively and adapt its business practices to deal responsibly with its customers.
- Regulations can also affect national banks' ability to compete by contributing significantly to their costs. The OCC's goal is to *improve efficiency and reduce burden* by updating and streamlining its regulations and eliminating those that no longer contribute significantly to the fulfillment of its mission.
- National banks are the principal users of the OCC's regulatory product, but the agency's regulations can also have a substantial effect on individuals, businesses, and communities. The OCC's regulations should help *assure fair access to financial services for all Americans* by removing unnecessary impediments to the flow of credit to consumers and small businesses, by encouraging national banks' involvement in community development activities, and by implementing Federal laws designed to protect consumers of financial services.

The methodology that the OCC has used in conducting its Program is straightforward. As is detailed in the material that follows, the OCC has

carefully reviewed each one of its rules with a view toward eliminating any that do not contribute significantly to maintaining the safety and soundness of national banks or accomplishing the OCC's other statutory responsibilities. Another important purpose of the OCC's review is to ensure that rules are written in a way that clearly and effectively communicate the standards that they are intended to embody.

The OCC is nearing completion of its Regulation Review Program and thus of its achievement of the goal established by section 303 of CDRI. To date, the OCC has:

- Reviewed each one of its regulations under the Program -- a total of 29 regulations, each one comprising multiple provisions;
- Published 18 final rules resulting from review under the Program; and
- Published 8 proposed rules resulting from review under the Program.

The OCC expects to complete its Regulation Review Program by the end of calendar year 1996.²

One important aspect of the Project has also contributed to the results the OCC has achieved in complying with CDRI Section 303. The Project comprises a fundamental reorientation of the OCC's approach to the bank examination process. This scope of this Project, which adopts a supervision-by-risk approach to focus supervisory resources on those banks and areas of activity that pose the most likely risk to the safety and soundness of the national banking system, goes well beyond the review of regulations and written policies that is contemplated in Section 303. A comprehensive

² The OCC has also published 8 final revisions to various parts of its risk-based capital rules, as well as 5 proposals and 1 interim rule. The OCC's risk-based capital rules are found at 12 CFR Part 3.

discussion of the Project is therefore beyond the scope of this progress report. The Project, however, includes a complete revision of the format and content of the Handbook. As a result of this effort, the OCC has streamlined and updated the guidance it provides to examiners and bankers and has eliminated multiple issuances by either incorporating them into the Handbook or rescinding them as obsolete.

The OCC's progress in reviewing and revising its rules and written policies is detailed in the next three sections of this Report to Congress. The first section describes the OCC's Regulation Review Program in greater detail and provides background on the Bank Supervision Review Project. The second section highlights a number of the OCC's significant accomplishments under both the Program and the Project. The final section provides an item-by-item summary of the regulations reviewed under the Program and lists the OCC issuances that have been rescinded as a result of the Project.

C. The OCC Programs

1. Regulation Review Program

The Program embodies a fundamental rethinking of the OCC's approach to regulation, designed to better tailor the rules we impose to the goals we seek to achieve. Failure to focus regulations on the safety and soundness of institutions can lead to an overemphasis on compliance with detailed rules rather than, and potentially at the expense of, achievement of fundamental agency goals.

Under the Program, rules are examined to determine if they achieve their purpose at the least possible cost to national banks. The cost of regulations is measured against the risks they are intended to address. The Program involves looking at both substantive and procedural provisions, and, where appropriate, comparing how national banks' nonbank competitors are regulated, and the effectiveness of alternative regulatory approaches. Filing and paperwork requirements can be just as burdensome, and overbroad, as substantive

standards. The approach of the Program is to determine how much -- not how little -- can be changed to reduce regulatory burden.

The Program also is implementing other important goals of bank regulation, such as ensuring that the regulatory framework encourages competition, market efficiencies, and the equitable distribution of banking services. Consistent with applicable statutory restrictions, banks must be able to develop and offer the range of products and services that their customers seek and to make those products and services available to new customers in new localities. The Program is thus making more than mere procedural or marginal substantive modifications to existing regulations. This is not a redrafting exercise for OCC lawyers, but a policy-making process involving all the supervisory and policy departments at the OCC.

Another source of regulatory cost is the failure of regulations to provide clear guidance simply because they are difficult to understand. Rules should be written so that a reasonably knowledgeable person can understand them. For too long, too many regulations have been unclear or confusing, wasting the time and energy of bank managers, retarding innovation in the marketplace, and diverting resources to banking attorneys and compliance officers. Thus, an important component of the Program that parallels the goals of CDRI Section 303 is to revise the OCC regulations, where appropriate, to improve clarity and better communicate the standards the rules are intended to embody. Clear, concise, and well organized regulations not only can reduce banks' regulatory burdens, but also can improve the quality and consistency of the OCC's bank supervision and the level of bank customer service.

Any modification of bank regulations raises the issue of flexibility versus certainty in identifying acceptable risk. Bright lines can be simple to administer and reduce compliance uncertainty for banks. On the other hand, a bright line test may not recognize that different types of banks present different levels of risk or that some banks have a greater capacity to manage risks than other banks.

Some regulatory approaches address this issue by allowing tailoring requirements to the circumstances of each particular institution. But taken to the extreme, such approaches may not sufficiently delineate what is, and is not, acceptable risk management. The Program recognizes this balance between the need to devise standards that are sufficiently definite to provide banks with sufficient guidance as to the boundaries of acceptable risk management, and the risk of creating a system that imposes on many institutions regulatory burdens that are not commensurate with the risks they present. The Program retains and enhances regulatory flexibility by acknowledging that risk levels often are dependent upon differences in banks' capital levels, CAMEL ratings, size or other objective factors. Therefore, many of the new and revised OCC regulations are incorporating approaches that combine bright lines with discretionary authority within those lines. Of course, changing regulations in and of itself can temporarily impose burdens while the industry adjusts to the changes. It takes time and energy for banks to assimilate new substantive or procedural requirements. Thus, the long-term benefits of every proposed rule change must be balanced against its short-term disruptive effects. The OCC has not, and will not rewrite regulations simply for the sake of making them different.

The methods used in the Program involve the combination of continuous outreach to banks and their customers for their views on the value and effectiveness of OCC rules, and multi-disciplinary OCC staff working groups conducting line by line reviews of each one of the OCC's regulations. Because it is comprehensive in scope, the Program requires a substantial allocation of staff resources. The OCC's ability to manage the challenge to complete the Program by year-end 1996 derives from a strong commitment at the top of the agency to complete the Program. The Comptroller has placed the Program high on the OCC's agenda and ultimate accountability for its completion rests with the Chief Counsel who reports directly to the Comptroller. Managers and staff responsible for day-to-day work on the Program schedule and complete work in accordance with this high level of priority.

The OCC will develop a method for evaluating the changes brought about by the Program. As part of this evaluation, the OCC will review whether the changes are effective in minimizing burden in a manner that is consistent with safe and sound banking, whether further changes are appropriate to the regulations, and whether changes to other OCC materials (such as interpretative letters or banking circulars) are required to conform those materials to the amended regulations.

2. Bank Supervision Review Project

Like the Regulation Review Program, the Bank Supervision Review Project is designed to fundamentally reorient the agency's approach to the bank examination process. Specifically, the Project adopts a supervision-by-risk approach. That is, the OCC supervises all national banks according to a philosophy based on providing high-quality bank supervision directed at identifying material problems, or emerging problems, in individual banks or the banking system, and ensuring that such problems are appropriately corrected. Because banking is essentially a business of accepting risk, that philosophy is centered on evaluating risks. The OCC applies that philosophy in all supervisory activities that it conducts.

At the OCC, high-quality bank supervision:

- Is a non-intrusive, cooperative process between bankers and examiners which adds value to the supervised institution.
- Is based on clear communication of the responsibilities of bankers and examiners.
- Is tailored to the characteristics of each bank, such as size, complexity, and risk profile.
- Ensures supervision is dynamic and responsive to changing risks at individual institutions and to evolving market conditions.

- Focuses on ensuring that banks have established and are following appropriate risk management systems.
- Does not substitute examiners' judgement for bankers' if the bank is:
 - Following sound fundamental principles.
 - Appropriately managing and controlling risk.
 - Taking action to correct problems.
 - Cooperative in correcting violations of law or regulation.
- Ensures banks comply with laws and regulations by focusing on substantive compliance and using testing to verify compliance.
- Uses OCC resources efficiently and effectively by allocating the greatest resources to those areas of greatest risk.

Because banks operate differently, no single program or approach to risk management can be appropriate for all banks. The level of sophistication needed to adequately supervise a bank's risk management practices will vary depending on the size of the bank, the products offered by the bank, the markets served by the bank, and the bank's management tolerance for risk.

Under the OCC's supervision by risk approach, examiners are required to determine how certain existing or emerging issues facing a bank or the banking industry affect the nature and extent of risks in that institution. Based on that risk evaluation, examiners then structure regulatory supervisory plans and actions. Supervision by risk builds upon the risk-based supervisory philosophy historically used by the OCC. This enhancement provides consistent definitions of risk, a structure for assessing these risks, and a more integrated use of risk assessment in the supervisory process.

Supervision by risk allocates greater resources to those areas with higher risks. The OCC accomplishes this by:

- Identifying risks using common definitions. This set of risks forms the basis for supervisory assessments and actions.
- Measuring risk based on common evaluation factors. Risk measurement is not always quantified in dollar terms; it is sometimes a relative assessment of exposure. For example, numerous internal control deficiencies may indicate a bank has an excessive amount of transaction risk.
- Evaluating risk management to determine if bank systems adequately manage and control the identified risk levels. The sophistication of the systems will vary based on the level of risk present and the size and/or complexity of the institution.
- Assigning greater resources to areas of higher or increasing risk, both within an individual institution and among banks in general. This is done through the supervisory strategy.
- Performing examinations based on the risks, reaching conclusions on risk profile and condition, and following up on areas of concern.

The OCC has defined nine categories of risk for bank supervision purposes. These risks are: Credit, Interest Rate, Liquidity, Price, Foreign Exchange, Transaction, Compliance, Strategic, and Reputation. These categories are not mutually exclusive, any product or service may expose the bank to multiple risks. For analysis and discussion purposes, however, the OCC identifies and assesses the risks separately.

The Project is developing programs that address the needs of specific industry segments. New examination procedures for small, traditional, community-based banks are in place. These banks share a similar risk profile,

so the supervisory procedures can be standardized. Rather than focusing on risk control systems and policies, examiners of small, noncomplex institutions use standard procedures that focus on banks' actual performance. Using standardized procedures promotes consistent treatment of similar banks and reduces regulatory burden. The examiners look at each bank's results of operations (i.e., sample transactions) to confirm that the bank follows sound banking principles. They do not focus on the methods small banks use to achieve their results.

The OCC also has a new large bank supervision program. The large bank supervision program is designed to monitor the complete risk position of every large bank. Under the program, the OCC will develop a risk profile for each institution based on a compilation of the individual risks in the bank. OCC examiners then will determine whether the risks are appropriate given the institution's resources, and whether the controls the institution has in place are sufficient to control the risks. Thus, large banks that fall within this program generally will have a unique supervisory program that is specifically tailored to monitor their particular risk profile.

As part of the Project, the OCC is completely revising the Handbook. The Handbook serves as a centralized source of OCC policies and reference materials. Objectives in revising the Handbook include the following CDRI Section 303 directives: streamline and modify written policies to improve efficiency and reduce unnecessary costs; and remove inconsistencies and outmoded and duplicative requirements. As part of the effort to reduce burden and increase efficiency, existing OCC issuances are incorporated into the text of the booklets.

The OCC has published and distributed seventeen sections of the new Handbook to all national banks. The sections published to date are:

- Bank Supervision Process, April, 1996;
- Large Bank Supervision, December, 1995;
- Community Bank Examination Procedures for Noncomplex Banks, October, 1995;

- Community Bank Risk Assessment System, April, 1996;
- Insider Activities, March, 1995;
- Consigned Items and Other Customer Services, June, 1996;
- Mortgage Banking, March, 1996;
- Emerging Market Country Products and Trading Activities, December, 1995;
- Commercial Real Estate and Construction Lending, November, 1995;
- Allowance for Loan and Lease Losses, June, 1996;
- Community Bank Consumer Compliance, August, 1995;
- Consumer Compliance Overview, August, 1996;
- Compliance Management System, August, 1996;
- Community Reinvestment Act Examination Procedures, May, 1996;
- Flood Disaster Protection, August, 1996;
- Real Estate Settlement Procedures, August, 1996; and
- Home Mortgage Disclosure, August, 1996;

Providing bankers and examiners with clear guidance that directly reflects and supports the OCC's supervision-by-risk is one of the Comptroller's stated Objectives for 1997. The Handbook revision effort is a key component of the Objective.

D. Significant Accomplishments

Three final rules and four proposed rules that were published as part of the OCC's Regulation Review Program, and four sections of the new Comptroller's Handbook for National Bank Examiners are highlighted below.

1. Investment Securities - 12 CFR Part 1 - Proposed Rule

In late December, 1995, the OCC published a notice of proposed rulemaking on investment securities.³ This proposal modernizes the rules in Part 1 and

³ 60 Federal Register 66,152 (1995).

further the goals of the OCC's Regulation Review Program. In order to make Part 1 more accessible and comprehensive, the proposal restructures many sections of the rule. The proposal also updates the rule to incorporate statutory changes to 12 U.S.C. 24 (Seventh), judicial decisions, and long-standing OCC interpretations.

The proposal substantially revises the definitions section to add several definitions, update others, and bring the definitions that currently appear in various places in the regulation into a single section. Many definitions are revised to clarify their meaning and to incorporate the results of statutory changes, judicial decisions, and established OCC interpretations.

The proposal consolidates into one section the provisions regarding limitations on dealing in, underwriting, purchasing, and selling different types of securities.

The proposal also reflects OCC interpretations concerning the authority of a national bank to deal in obligations that are fully secured by those securities in which national banks may deal. These interpretations reflect the OCC's consistent approach of looking to the substance of an instrument, and not just its form, to determine the activities a bank may conduct in connection with the instrument.

A proposed new section reflects the OCC's established position that national banks may securitize and sell their loan assets. The ability of banks to sell conventional bank assets through the issuance and sale of certificates evidencing interests in pools of the assets provides flexibility that can enhance banks' safety and soundness. Asset securitization provides an important source of liquidity by allowing banks to convert relatively illiquid assets into instruments with maturities and other features that investors are readily willing to purchase. Another important benefit is the increased credit available, due to the fact that a bank may make more loans with a given level of capital (when the assets are removed from the bank's balance sheet) and may diversify its lending into new markets without incurring undue risk. Also, a bank is less dependent on deposits to fund its loans, improving bank profitability, with

positive implications for reducing bank failure rates and minimizing draws on the deposit insurance funds. The treatment described in the proposal reflects the OCC's long-standing treatment of national banks' asset sales activities as affirmed by case law.

The proposal implements the small business loan and commercial real estate securitization provisions of CDRI. When fully implemented, these changes should increase the credit available for small business loans.

The proposed rule includes a diversification requirement to ensure that this new investment authority does not impair the safety and soundness of the banking system. The collateral backing investments in securitized loans must be composed of homogeneous loans of numerous obligors, and no one obligor may represent more than five percent of the total collateral. In addition, a bank may not invest an amount more than 15 percent of its capital and surplus in securities of any one obligor. A bank's calculation of investment limits is based on calculations already used for call reports.

The proposal retains the flexibility contained in the current rule for a bank to treat certain debt securities as investment securities when the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to meet its obligations under that security. This approach is modeled upon the OCC's current rule, which allows banks an additional degree of flexibility to determine the quality of debt obligations for a limited portion of the bank's investment portfolio. The OCC notes that securities representing interests in loans made for community development purposes are one type of security that could, depending upon their characteristics, be eligible for investment by national banks under this standard.

The proposal includes a new approach to investment securities limitations designed to address situations where a bank's investments in securities of different issuers present similar sources of risk, and, therefore, warrant aggregation. These aggregation rules, which result in a bank being treated as if it has a greater investment in the securities of one obligor than would otherwise be the case, apply separately to different types of securities held by

a bank. The proposal would give national banks more investment flexibility with certain types of securities, but the flexibility is balanced by explicit safeguards to address risk concentrations.

2. Rules, Policies and Procedures for Corporate Activities - 12 CFR Part 5 - Proposed Rule

In late 1994, the OCC published a notice of proposed rulemaking to its corporate regulations.⁴

The proposed rule establishes an expedited, streamlined approval process for most corporate filings submitted by "eligible banks." A bank is "eligible" if it is: (1) well capitalized, (2) rated CAMEL 1 or 2, (3) rated "Outstanding" or "Satisfactory" for CRA purposes, and (4) not currently subject to certain enforcement orders issued by the OCC.

The proposed rule eliminates paperwork burden by reducing the information required in certain applications, permitting applicants to incorporate by reference information already submitted to the OCC or to another Federal agency, and permitting applicants to rely on public notice required by another Federal agency to satisfy the OCC's public notice requirements.

The proposed rule substantially revises the OCC's operating subsidiary rules by:

- Grouping permissible operating subsidiary activities into three categories based on novelty and complexity and provides different levels of expedited treatment for applications, depending upon the group in which the activity falls.
- Reducing the level of voting interest required for a national bank to own an operating subsidiary from 80 percent to a majority interest.

⁴ 59 Federal Register 61,034 (1994).

- Providing a more flexible standard for determining whether activities are permissible for operating subsidiaries and coupling the availability of new activities with safety and soundness requirements.
- Eliminating unneeded application and approval requirements for certain types of bank facilities -- including, potentially, ATMs -- that do not provide a competitive advantage to the owner bank because the facility is generally available to customers of other banks who receive similar services pertaining to their accounts at other banks on substantially similar terms and conditions.

3. Interpretive Rulings - 12 CFR Part 7 - Final Rule

In March, 1995, the OCC published a notice of proposed rulemaking to revise 12 CFR Part 7 -- the OCC's interpretive rulings.⁵ Part 7 serves as a repository of interpretive rulings applicable to national banks that generally are not related to the subject matter contained in other parts of chapter I of title 12. The proposal sought to implement the goals of the Regulation Review Program by updating and streamlining the regulation and eliminating requirements that imposed inefficient and costly regulatory burdens on national banks.

In February, 1996, the OCC published its final rule.⁶ The final rule clarifies, revises, and reorganizes existing interpretive rulings, eliminates rulings that are obsolete, adds interpretive rulings to address new issues, relocates some interpretive rulings to another part of title 12, and retains certain sections pending the issuance of final rules for 12 CFR parts 1 and 5. The final rule adopts the proposal's structural format and reorganizes part 7 into four topic areas: Subpart A--Bank Powers, Subpart B--Corporate Practices, Subpart C--

⁵ 60 Federal Register 11,924 (1995).

⁶ 61 Federal Register 4,849 (1996).

Bank Operations, and Subpart D--Preemption. Some of the significant changes to Part 7 are described below.

a. Activities, Functions, Products and Services Provided via Electronic Means and Facilities

The new Part 7 modernizes the data processing rule to recognize the emerging involvement of national banks in the area of electronic money and banking. The new Part 7 recognizes that national banks are engaging, and will engage, in an increasing range of activities through electronic means and facilities beyond simply "data processing." For this reason, the OCC has modified this ruling to refer to activities, functions, products, and services provided via electronic means and facilities, rather than "data processing."

A national bank may use data processing equipment to perform for itself and others "all services expressly or incidentally authorized under the statutes applicable to national banks." The new rule incorporates the OCC's position that a national bank using data processing equipment or technology to perform authorized services may market and sell excess capacity in that equipment or technology to third parties for uses not necessarily related to financial services. The final ruling, which expressly states that these sales are an appropriate way for a bank to optimize the use of the bank's resources, closely parallels the standard the OCC applies when national banks utilize their excess physical space for non-bank uses. The scope of a national bank's permissible sales of excess electronic capacities is subject to a "good faith" standard which provides an important safeguard against potential abuse of this authority.

b. Interest Charges

The revised rule defines the types of charges that are included in the term "interest" as used in Federal banking law. Under 12 U.S.C. 85, a national bank may charge interest at the highest rate allowed to competing lenders by the state where the bank is located without regard to the location of the borrower. Thus, the statute permits a national bank to "export" to customers in other states the rate of "interest" allowed by the state in which the bank is

located. The definition reflects current case law. The definition also reflects OCC interpretive opinions on the types of fees and charges that are included and not included in the meaning of the term. The rule provides non-exclusive lists of specific fees that are “interest” (for example, numerical periodic rates, late fees, not sufficient funds fees, overlimit fees, annual fees, cash advance fees, and membership fees) and that ordinarily are not “interest” (for example, appraisal fees, premiums and commissions on insurance guaranteeing repayment, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports). The Federal definition of “interest” and the components of interest are consistent with law and beneficial to national banks and their customers with respect to interstate lending operations. The ruling is not, however, intended to be a comprehensive treatment of the issue, and other fees or charges may also be found to be components of interest.

Charges that fall within the Federal definition of “interest” are subject to 12 U.S.C. 85 and its “most favored lender” and exportation rules. The fact that a charge is not labeled “interest” under a particular state law does not necessarily mean that it is impermissible, however. The rule clarifies that one looks to state law to determine what lending charges are permitted for the most favored lender, and thus, also for national banks under 12 U.S.C. 85. However, the Federal definition of “interest” generally does not affect state law definitions of “interest” or the manner in which state law calculates the amount of interest being charged. For example, if late fees are not interest under state law where the national bank is located but state law allows late fees, then a national bank located in that state may charge late fees to its intrastate customers. The national bank could also charge the fees to its interstate customers because the fees are “interest” under the Federal definition and an allowable charge under state law where the national bank is located. However, the late fees would not be treated as interest for purposes of evaluating compliance with state usury limitations because state law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

The final ruling adds a new paragraph confirming that the Federal definition of the term “interest” does not change a state's definition of interest (nor how the state definition of interest is used) solely for purposes of state law.

c. Leasing Excess Space

The new rule codifies the OCC's interpretive position regarding the ability of a national bank to lease excess space, share space, and share employees with businesses other than financial institutions. The final rule describes certain supervisory and legal considerations that apply -- for example, these other businesses and their employees should be conspicuously and separately identified and must be appropriately licensed. The OCC believes that the importance of maintaining a safe and sound national bank system requires banks to ensure that the activities of businesses with which they share premises will not adversely affect bank safety and soundness. The final rule clarifies that while a national bank is not required to monitor compliance on an ongoing basis with all applicable laws affecting broker-dealers or other entities with which the bank shares space or employees, a national bank should take steps to ensure that shared employees, or the entity for which they perform services, are duly licensed or meet applicable qualification requirements for the activities in question.

d. Location of Lending Activities

The new Part 7 provides additional flexibility for national banks to structure their loan business by clarifying the circumstances under which a national bank's lending activities must be undertaken at an approved main office or a branch office of the bank. Disbursal of bank funds representing loan proceeds at bank-established facilities or by bank employees to bank borrowers must generally be undertaken only at the bank's main office or at one of its authorized branch offices. However, loan origination, loan approval, and disbursal of loan proceeds to borrowers by third parties need not be done at a bank's main office or branch office. This rule provides added corporate flexibility by permitting a national bank to rely on recognized, complete bodies

of corporate law, including the law of the state where the bank's main office is located or where its holding company is incorporated.

4. Fiduciary Activities - 12 CFR Part 9 - Proposed Rule

In late December, 1995, the OCC published a notice proposing to revise 12 CFR Part 9, which governs the fiduciary activities of national banks, as a component of its Regulation Review Program.⁷ This rulemaking is the OCC's first comprehensive revision of the rule since 1963. Much about national banks' fiduciary business has changed since that time, including the nature and scope of the fiduciary services that banks offer and the structures and operational methods that banks use to deliver those services. The OCC's particular goal in revising Part 9 is to accommodate those changes by eliminating unnecessary regulatory burden and facilitating the continued development of national banks' fiduciary business consistent with safe and sound banking practices and national banks' fiduciary obligations.

The proposal revises Part 9 in its entirety. The proposal updates, clarifies, and streamlines Part 9, incorporates significant interpretive positions, and eliminates unnecessary regulatory burden wherever possible to promote more efficient operation and supervision of national banks' fiduciary activities. The proposal adds headings for ease of reference, but, for the most part, retains the numbering system used in the current regulation.

Three principal themes have emerged from the OCC's review of Part 9.

- First, bank organizational structures, particularly with respect to the geographic structure of banking organizations, have changed significantly since Congress created the basic framework for national banks' fiduciary operations. These changes strongly suggest that Part 9 should be adjusted so that its requirements are more workable for both large, multistate fiduciary banking

⁷ 60 Federal Register 66,163 (1995).

organizations and small banks that conduct fiduciary activities primarily on a local basis.

- Second, while national banks' fiduciary activities are in many respects, are subject to state law, the OCC has the flexibility in some cases either to prescribe a uniform Federal standard or to direct national banks to follow state law.
- Third, over the years, Part 9 has been applied to a wide variety of investment advisory activities and related services, not all of which involve the bank's exercise of investment discretion. In some cases, banks engaged in these activities are subject to different standards than other types of entities that conduct the same type of business.

The proposal clarifies a national bank's ability to conduct multistate fiduciary operations. A national bank with fiduciary powers may exercise those powers in one state to the same extent as may in-state, state-chartered institutions. This proposed change will enable a national bank to compete for fiduciary business in each state on par with state institutions.

The proposed rule allows a national bank that accepts a deposit of fiduciary cash from an affiliated bank to pledge assets to secure the deposit, if consistent with applicable law (including state laws). This proposed change will facilitate more efficient fiduciary operations in multi-bank holding companies.

The proposal amends the exclusive management requirement for collective investment funds to allow a national bank to delegate responsibilities, including investment responsibilities. The proposal reflects the revised prudent investor rule, as set out in the American Law Institute's Third Restatement of Trusts (1992). This proposed change will allow a national bank to administer its collective investment funds more efficiently.

The proposed rule defines the types of investment advisory activities that the OCC considers to be fiduciary and, thus, subject to Part 9. The proposal uses investment discretion as the dividing line between activities that are regulated under Part 9 and those that are not. If a national bank has investment discretion with respect to an investment advisory activity, then that activity will be regulated under Part 9. In the absence of investment discretion, the investment advisory activity will not be subject to Part 9, unless the bank is also acting in a traditional fiduciary capacity (e.g., trustee, executor, administrator, guardian, etc.) for the same accounts. This proposal will clarify the reach of OCC regulations with respect to an important and growing area of national bank activities.

5. International Banking Activities - 12 CFR Parts 20 and 28 - Final Rule

In July, 1995, the OCC proposed comprehensive revisions to its regulations governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States.⁸ The final rule, which became effective July 1, 1996, streamlines and consolidates into one part of the Code of Federal Regulations substantially all provisions relating to international banking, and clarifies and simplifies their various requirements.⁹ The OCC's International Banking rules were in two separate parts of the Code of Federal Regulations, Parts 20 and 28. Now the OCC's rules on international banking are in Part 28, and Part 20 is reserved for future use.

The final rule implements provisions of the Foreign Bank Supervisory Enhancement Act of 1991 (FBSEA) and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) relating to Federal branches and agencies.

⁸ 60 Federal Register 34,907 (1995).

⁹ 61 Federal Register 19,524 (1996).

The final rule reduces the complexity of the existing regulatory framework for international banking by referencing provisions in the regulations of the Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC), and, where possible, using terms and procedures consistent with the provisions in the other agencies' regulations dealing with comparable situations. The final rule includes new and updated definitions to assist in the implementation of new statutory requirements and to make the definitions more consistent with those of the FRB and FDIC.

The final rule adds a mechanism for the OCC to obtain information on foreign banking organizations to improve the OCC's safety and soundness oversight of Federal branches and agencies.

The final rule makes it clear that, whenever a national bank is required to make a filing with the FRB under Regulation K, it must also provide a copy of that filing or a notice of that filing to the OCC. However, even if a notice is not required by the FRB, the final rule requires a national bank to provide a simple notice to the OCC of the opening, closing, or relocation of a foreign branch. As the primary supervisor of the national bank and its consolidated global operations, it is necessary for the OCC to know the basic structure and location of the national bank's operations in order to effectively supervise the consolidated operations of the bank.

The final rule updates and clarifies the criteria for OCC approval of applications to establish a Federal branch or agency or a limited Federal branch. It also streamlines the procedures and provides for expedited review for certain corporate applications by eligible foreign banks. The final rule expands the types of change of status that may be granted expedited review by including the conversion of a state branch or agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch, limited Federal branch, or Federal agency. The OCC will not provide expedited review if it concludes, and advises the applicant in writing, that the filing presents significant supervisory or compliance concerns, or raises significant legal or policy issues.

6. Lending Limits - 12 CFR Part 32 - Final Rule, 1995 and Proposed Rule, 1996

The efforts to modify this regulation predate CDRI. In 1995 the OCC comprehensively revised its lending limits regulation.¹⁰ The revision to Part 32, achieved the burden reduction and simplification goals of CDRI by:

- Reducing burden by revising the definition of the term "capital and surplus" to mean the sum of a bank's Tier 1 and Tier 2 capital (as reported on the Call Report), plus the balance of allowance for loan and lease losses not already included in Tier 2 capital for the bank's risk-based capital calculation. For lending limit purposes, capital is now calculated quarterly as a general rule, and is based on the most recent Call Report numbers.
- Amending the definition of the term "loan or extension of credit" to permit banks to advance funds to a troubled borrower, subject to safety and soundness considerations, for taxes, insurance, utilities, security, maintenance, and operating expenses to the extent necessary to preserve the bank's interest in real property collateral securing a loan to that borrower.
- Providing that a loan that is legal when made, will be treated as nonconforming and not a violation if the loan is no longer in conformity with the lending limit because of events beyond the bank's control, such as declining capital, merging borrowers or lenders, changes in the lending limits or capital rules, or a decrease in the value of collateral securing a loan.

After these changes were implemented, the OCC received requests to: (a) extend the exemption for funds advanced to preserve and maintain collateral to loans secured by personal property as well as to loans secured by real

¹⁰ 60 Federal Register 8,537 (1995).

property; and (b) clarify the date on which a national bank must recalculate its capital and surplus.

In July, 1996, the OCC proposed additional revisions to its lending limits regulation in order to provide additional flexibility for a national bank to preserve personal property securing a loan, consistent with safe and sound banking practices.¹¹ The proposal reflects the OCC's continuing commitment to assess the effectiveness of the rules it has revised under the Program and to make further changes where necessary to improve a regulation.

The proposal amends the current exemption to the lending limit by treating an advance to protect personal property collateral the same as an advance to protect real property collateral. The reasoning underlying both types of advances is identical, namely, to protect the position of the lending bank by preserving collateral prior to foreclosure in order to avoid greater expenses later. For example, advancing funds for the purpose of preserving the condition of equipment or getting perishable crops to market may protect the bank's condition more effectively than waiting until after foreclosure to take the steps necessary to protect the bank's interest.

Under the proposal, an advance to protect personal property collateral is subject to the same safeguards that currently apply to an advance to protect real property. Thus, the advance must be for maintenance and operating expenses only to the extent necessary to preserve the collateral, and must be consistent with safe and sound banking practices. These advances are permitted only for the purpose of protecting a bank's interest in the collateral. Moreover, a bank must treat any amount so advanced as an extension of credit if the bank makes a new loan to the borrower.

The proposal also clarifies that a national bank is to calculate its lending limit based on the bank's capital and surplus as of the end of a calendar quarter, and that the new limit becomes effective on the date a bank submits its Call Report.

¹¹ 61 Federal Register 37,227 (1996).

7. Comptroller's Handbook for National Bank Examiners

As part of the Project, the OCC is revising the Handbook. The Handbook serves as a centralized source of OCC policies and reference materials for each topic. The new Handbook is organized in eight main groups (Capital, Assets, Management, Earnings, Liquidity, Bank Supervision and Examination Process, Other Areas of Examination Interest, and Other Income-Producing Activities). Each group is divided into one or more sections. Sections are published separately, and are color-coded for easy reference. In an effort to reduce burden and increase efficiency, existing OCC issuances¹² are either incorporated into the text or rescinded if they are no longer necessary.

The revised Handbook incorporates the supervision by risk approach. The sections focus on the potential that events, expected or unexpected, may have an adverse impact on the bank's capital or earnings. The Handbook does not add requirements or impose burdens on banks, but does provide background and guidance the potential risks associated with activities and products.

Because the Handbook is being revised and published section-by-section, examiners and bankers can easily identify and use only those sections that are relevant.

As of August, 1996, the OCC has published and distributed to national banks 17 sections for the new Handbook. More than 60 OCC issuances have been incorporated into the Handbook or rescinded as obsolete.

Four of the published sections describe in detail the OCC's philosophical and practical approach to supervision-by-risk. Descriptions of these four sections, Bank Supervision Process, Community Bank Risk Assessment System, Large Bank Supervision and Noncomplex Community Banks follow.

¹² OCC issuances that convey examination and supervisory guidance or policy include: Banking Bulletins, Banking Circulars, Examining Bulletins, Examining Circulars, OCC Advisory Letters, and OCC Bulletins.

a. Bank Supervision Process

This section presents the OCC’s supervisory policy for all national banks, regardless of size or complexity. That is, the OCC supervises all national banks according to a philosophy based on providing high-quality bank supervision directed at identifying material problems, or emerging problems, in individual banks or the banking system, and ensuring that such problems are appropriately corrected. Bankers and examiners can consult the section as a single reference source for OCC’s supervisory policy. This section of the Handbook clearly outlines the responsibilities of bankers, examiners, and supervisory managers, and does not impose any new requirements on banks or bankers.

b. Community Bank Risk Assessment System

This section describes the methods the OCC uses to assess risks in community banks. It is an internal OCC process; banks are not required to adjust their own risk management processes to coincide with this methodology. The OCC has adopted this approach to ensure greater consistency and efficiency in examinations. The methods described in the section are fundamental to the OCC’s supervisory philosophy described in the “Bank Supervision Process” section.

c. Large Bank Supervision

This section explains the philosophy and methods used by the OCC in the supervision of large national banks. Generally, a large national bank is either a national bank with total assets of one billion dollars or more, or a national bank that is part of a multibank holding company that includes at least one national bank with assets of one billion dollars or more. The OCC’s approach to supervising these banks is to promote a sound risk management process, centered on the evaluation and management of risks. The OCC’s objectives in supervising large banks are to:

- Assess the condition of the bank and the risks associated with current and planned activities.
- Evaluate the integrity and effectiveness of risk management systems.
- Communicate supervisory findings and plans with management and directors in a clear and timely manner.
- Seek commitments from management to correct significant deficiencies in a timely manner.
- Verify that significant deficiencies have been corrected.

d. Community Bank Examination Procedures for Noncomplex Banks

The OCC has, since the 1970s analyzed the systems that banks used to manage and control significant risk. As that analysis was refined the OCC urged bank management to establish more formal policies, procedures, and internal controls. Many banks responded by putting their policies, procedures and internal controls in writing. The simple effort of recording them often led to improvements because written objectives were clearer.

The OCC did not distinguish among banks based on size and complexity in urging that formalization. Reasonably, the sophistication of the systems, controls and policies needed relates to the complexity and risk profile of an institution. Because many community banks operate soundly with less formal policies and processes, the OCC now distinguishes between complex and noncomplex banks in examining them.

The approach to examining noncomplex community banks, that is banks that offer limited products and services and serve few markets, was redesigned and

standardized. The approach is aimed at analyzing the results of operations rather than the methods used to achieve them.

The objectives in supervising noncomplex community banks are:

- To identify individual bank risk.
- To apply consistent core strategies to these banks that evaluate operational results and adherence to sound fundamental banking principles.
- To promote safety and soundness and compliance with laws and regulations.
- To identify problems (matters requiring board attention) and require the bank to take corrective action.

D. Summary Status Reports

Summaries of the status of the OCC's Program and CDRI Section 303 review of its regulations follow. The OCC's regulations are found at Chapter I of CFR Title 12.

The OCC issuances that have been rescinded as a result of the Project and CDRI Section 303 review are listed, by issuance type, after the regulation summaries.

Title: 12 CFR Part 1 - Investment Securities

Subject Matter: This part sets forth the OCC's rules that prescribe the standards under which national banks may purchase, sell, deal in, and underwrite securities.

Action/Status: As described above beginning on page IV-12, the OCC published a notice of proposed rulemaking in December, 1995. 60 Federal Register 66,152 (1995).

Title: 12 CFR Part 2 - Disposition of Credit Life Insurance Income

Subject Matter: In 1977, the OCC issued a final rule to regulate the disposition of income from the sale of credit life insurance by national banks to loan customers of the bank. 42 Federal Register 48,518 (1977). The regulation addressed the practice where employees, officers, directors, and principal shareholders, or their related interests, diverted income from the sale of credit life insurance to their benefit rather than to the bank. The OCC noted at the time that "[T]he proposal was premised on the judgment that income earned from credit life insurance sales to bank customers by bank officers using bank premises and goodwill in the creation of bank assets (loans) should be credited to bank earnings rather than be paid directly to and retained by officers, directors or selected stockholders."

Action/Status: In September, 1995, the OCC issued a notice of proposed rulemaking. 60 Federal Register 47,498. The OCC is committed to safeguarding national banks from the inappropriate practices that gave rise to the promulgation of Part 2, and is not proposing to diminish the fundamental standards reflected in the current rule. Rather, the proposal reduces the overly detailed format of the current rule, seeks comment on additional streamlining, and reorganizes the rule into more readable and understandable provisions that focus on the safety and soundness concerns and fiduciary principles that are the objectives of the regulation.

The OCC is mindful of not placing impediments to multi-product arrangements that are beneficial to banks and bank customers and have not been the source of problems or abuses. However, the OCC also must exercise effective oversight where legitimate safety and soundness concerns may arise. The Notice of Proposed Rulemaking therefore requests comment on the treatment and compensation of employees shared with a non-bank entity that sells credit life insurance to the bank's customers.

The proposal also adds a new provision that requires the bank not to structure its bonus or incentive plans in a manner that could create incentives for persons selling credit life insurance to provide inappropriate recommendations or sales of credit life insurance to customers of the bank. This provision is intended to protect consumers by requiring banks to address potential conflicts of interest that arise when loan officers also sell credit life insurance.

Title: 12 CFR Part 3 - Capital

Subject Matter: This Part sets forth the OCC's rules that prescribe minimum capital ratios.

Action/Status: The review of risk-based and leverage capital adequacy standards are described in detail in Part I of this Report. The OCC has published 8 final revisions to various parts of its risk-based capital rules, 5 proposed revisions, and 1 interim rule.

Title: 12 CFR Part 4 - Organization and Functions, Availability and Release of Information, Contracting Outreach Program

Subject Matter: Description of office procedures and public information.

Action/Status: The OCC published a final rule in November, 1995. 60 Federal Register 57,315 (1995).

Title: 12 CFR Part 5 - Rules, Policies, and Procedures for Corporate Activities

Subject Matter: This Part sets forth the OCC's rules, policies and procedures for corporate activities.

Action/Status: As described above beginning on page IV-15, the OCC published a notice of proposed rulemaking in late 1994. 59 Federal Register 61,034 (1994).

Title: 12 CFR Part 6 - Prompt Corrective Action

Subject Matter: This Part sets forth the framework of supervisory actions for institutions that are not adequately capitalized.

Action/Status: As described in Part I of this report, the agencies adopted uniform rules implementing the provisions of Section 131 of FDICIA (the Federal Deposit Insurance Corporation Improvement Act of 1991). The OCC does not propose any revisions to this Part at this time.

Title: 12 CFR Part 7 - Interpretative Rulings

Subject Matter: This Part serves as a repository of interpretative rulings applicable to national banks that generally are not related to the subject matter contained in other parts of Chapter I of Title 12.

Action/Status: As described above beginning on page IV-16, the OCC revised this Part and published a final rule in February, 1996. 61 Federal Register 4,849 (1996).

Title: 12 CFR Part 8 - Assessment of Fees

Subject Matter: This Part sets forth the assessment of fees that national banks and banks in the District of Columbia must pay the Comptroller of the Currency.

Action/Status: In November, 1994, the OCC published an interim final rule reducing the assessments charged national banks and amending the formula for calculating fees for trust and other special examinations. 59 Federal Register 59,640 (1994). As a result of the changes to the supervisory assessment structure, national banks have realized savings of 68 million dollars.

Title: 12 CFR Part 9 - Fiduciary Activities

Subject Matter: This Part sets forth the OCC's rules that govern the fiduciary activities of national banks.

Action/Status: As described above beginning on page IV-20, the OCC published a notice of proposed rulemaking in December, 1995. 60 Federal Register 66,163 (1995).

Title: 12 CFR Part 10 - Municipal Securities Dealers

Subject Matter: This Part sets forth the OCC's rules on the qualifications national bank municipal securities representatives must possess.

Action/Status: As described in Part I of this Report, the OCC published a final rule in November, 1995. 60 Federal Register 57,315 (1995).

Title: 12 CFR Part 11 - Securities Exchange Act Disclosure Rules

Subject Matter: This Part sets forth the OCC's rules for national banks that have a class of securities registered under the Securities Exchange Act of 1934.

Action/Status: As described in Part I of this Report, the OCC published a final rule in November, 1995. 60 Federal Register 57,315 (1995).

Title: 12 CFR Part 12 - Securities Recordkeeping and Confirmation Requirements

Subject Matter: This Part sets forth the OCC's requirements applicable to national banks effecting securities transactions for customers, including recordkeeping and confirmation requirements.

Action/Status: As described in Part I of this Report, the OCC published a notice of proposed rulemaking in December, 1995. 60 Federal Register 66,517 (1995).

Title: 12 CFR Parts 13 - Government Securities Sales Practices

Subject Matter: This Part addresses the responsibilities of banks that are government securities brokers or dealers with respect to sales practices concerning government securities.

Action/Status: Along with the FRB and FDIC, the OCC issued a notice of proposed rulemaking in April, 1996. 61 Federal Register 18,470 (1996). The agencies are requesting comment on whether they should adopt rules substantially similar to the NASD Business Conduct Rule and Suitability Rule and the NASD Suitability Interpretation for banks that are government securities brokers or dealers in order to provide standards with respect to government securities sales practices by such banks.

Title: 12 CFR 14 - Reserved for Future Use

Title: 12 CFR 15 - Reserved for Future Use

Title: 12 CFR Part 16 - Securities Offering Disclosure Rules

Subject Matter: This Part sets forth the OCC's disclosure requirements that apply to offers and sales of securities issued by national banks.

Action/Status: In November, 1994, the OCC issued a revised final rule that reduces burden on national banks by incorporating and cross-referencing provisions of the Securities Act of 1933 as well as provisions in a number of the SEC's rules. 59 Federal Register 54,789 (1994). The rule requires that offering documents for public offerings of securities generally contain the same information as would be required by the appropriate SEC registration form.

The revised rule reduces burden by making available to national banks the small issuer exemption from registration requirements. Under this exemption, banks will be able to prepare a simplified disclosure document for all offerings totaling up to \$5 million in a 12-month period.

The rule establishes an optional, abbreviated registration system for offers and sales of large denomination investment grade debt to sophisticated purchasers. This abbreviated registration system ensures that adequate disclosures are received by eligible purchasers without requirements that are not warranted based on the OCC's experience with these bank debt markets.

Title: 12 CFR Part 17 - Reserved for Future Use

Title: 12 CFR Part 18 - Disclosure of Financial and Other Information

Subject Matter: This Part requires national banks to prepare an annual financial disclosure statement and to make this statement available to depositors, shareholders and anyone who requests it.

Action/Status: As described in Part I of this Report, the OCC published a final rule in November, 1995. 60 Federal Register 57,315 (1995).

Title: 12 CFR Part 19 - Rules of Practice and Procedure

Subject Matter: This Part prescribes rules of practice and procedure for formal and informal adjudicatory proceedings.

Action/Status: As described in Part I of this Report, the OCC published a final rule in May, 1996. 61 Federal Register 20,330 (1996).

Title: 12 CFR Part 20 - International Operations

Subject Matter: As described above beginning on page IV-22, relevant portions of this regulation have been moved to 12 CFR Part 28, and the remaining portions have been rescinded.

Action/Status: 12 CFR Part 20 is now reserved for future use.

Title: 12 CFR Part 21 - Minimum Security Devices and Procedures, Reports of Crime and Suspected Crimes and BSA Compliance

Subject Matter: This Part requires national banks to: adopt appropriate security procedures; notify FinCEN when unexplained losses or known or suspected criminal acts are discovered; and maintain procedures to ensure compliance with the Bank Secrecy Act.

Action/Status: As described in detail in Part I of this Report, the OCC published a final rule in February, 1996. 61 Federal Register 4,326 (1996).

Title: 12 CFR Part 22 - Flood Insurance.

Subject Matter: This Part applies to certain loans secured by improved real estate made by national banks in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards.

Action/Status: As described in detail in Part I of this Report, the OCC published a final rule in August, 1996. 61 Federal Register 45,684 (1996).

Title: 12 CFR Part 23 - Leasing

Subject Matter: This Part sets forth the OCC's rules governing the personal property lease financing transactions of national banks.

Action/Status: A proposed rule was issued in September, 1995. 60 Federal Register 46,246 (1995). In preparing that proposal, the OCC determined that a complete, substantive rewrite of the regulation was not warranted at that time, but that revisions to improve its clarity would be useful. Accordingly, the proposal revises the regulation by shortening and streamlining its text; reorganizing many of its provisions and adding paragraph headings; and conforming its style to that of the OCC's other rules.

The proposal specifies that national banks may engage in activities incidental to leasing under either Section 12 U.S.C. 24(Seventh) or CEBA. The proposal sought comment in a number of areas where substantive revisions may be appropriate at the final rule stage, including whether the two-year holding period for off-lease property should be modified to permit national banks more time to dispose of property in depressed markets.

Title: 12 CFR Part 24 - Community Development Corporation and Project Investments

Subject Matter: This Part implements 12 U.S.C. 24 (Eleventh) which authorizes national banks to make investments that are designed primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services or jobs) consistent with safe and sound banking practices.

Action/Status: In December, 1995 the OCC issued a final rule that removed a provision that required national banks to reinvest profits, dividends and other distributions from community development investments in activities that promote the public welfare. 60 Federal Register 67,049 (1995). The revised rule provides national banks greater flexibility in exercising their authority under Part 24 and is intended to encourage public welfare investments by national banks.

Part 24 requirements included a provision that prescribed how national banks could use certain proceeds from its section 24 (Eleventh) investments. The provision required national banks to devote the profits, dividends, tax credits and other distributions from equity investments, or interest income from debt investments received by a national bank from a community development corporation (CDC) or community development (CD) project investment, to activities that primarily promote the public welfare as determined by the OCC.

The statute does not restrict an institution from earning and retaining profits on investments made pursuant to section 24 (Eleventh), as long as the investments are designed primarily to promote

the public welfare. The OCC found that reaction to the original rule indicated that in some instances, the reinvestment provision had discouraged national banks from making Part 24 investments. For example, the requirement that a bank reinvest low-income housing tax credits in restricted activities had diminished the economic incentive for national banks to participate in this type of low-income housing project.

The OCC believes that the final rule will further the basic objectives of the statute by encouraging banks to make more investments. Under the final rule, national banks are able to use profits, dividends, and other distributions from their Part 24 investments for any purpose based on an overall assessment by the bank's management of its financial needs and public welfare investment objectives. Removing the reinvestment requirement will encourage national banks to make investments that promote the public welfare. It will not, however, constrain a bank's use of investment proceeds nor hamper its ability to ensure the safe and sound operation of the bank.

On September, 16, 1996 the Comptroller announced that the OCC had finalized another rule that modified the criteria for determining whether an investment primarily promotes the public welfare and streamlined the procedures for obtaining the OCC's approval of an investment. The final rule was sent to the Federal Register and should be published September 23, 1996.

Under the new Part 24, a bank's investment must primarily benefit low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, tribal or Federal government. The new Part 24 permits a bank to benefit these individuals and areas in a variety of ways, including providing affordable housing, financing small businesses, and revitalizing communities.

The new final rule also revises the procedures for obtaining OCC's approval of investments. In order to simplify the rule and reduce the burden associated with the approval processes, the final rule permits a national bank to self-certify an investment previously approved by the OCC for another national bank.

Title: 12 CFR Part 25 - Community Reinvestment Act

Subject Matter: This Part details how national banks can comply with the Community Reinvestment Act.

Action/Status: As described in detail in Part I of this Report, the OCC published a final rule in May, 1995. 60 Federal Register 22,156 (1995).

Title: 12 CFR Part 26 - Management Official Interlocks

Subject Matter: This Part sets forth the OCC rules designed to foster competition by generally prohibiting a management official of a depository institution or holding company from also serving as a management official of another depository institution or holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area.

Action/Status: As described in detail in Part I of this Report, the OCC published a final rule in August, 1996. 61 Federal Register 40,293.

Title: 12 CFR Part 27 - Fair Housing Home Loan Data System

Subject Matter: This Part applies to the activities of national banks that make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property.

Action/Status: The OCC extensively revised this Part effective June, 1994. As detailed in Part I of this Report, the OCC and other agencies are considering further revisions to this regulation.

Title: 12 CFR Part 28 - International Banking Activities

Subject Matter: This Part sets forth the OCC's rules governing the international operations of national banks and the operation of foreign banks through Federal branches and agencies in the United States.

Action/Status: As described above beginning on page IV-22, this regulation was revised and a final rule published in May, 1996. 61 Federal Register 19,524 (1996).

Title: 12 CFR Part 29 - Reserved for Future Use

Title: 12 CFR Part 30 - Safety and Soundness Standards

Subject Matter: This Part sets forth operational and managerial standards, compensation standards, and standards relating to asset quality, earnings and stock valuation for national banks.

Action/Status: As described in detail in Part I of this Report, the OCC published a final rule in August, 1996. 61 Federal Register 35,674 (1996).

Title: 12 CFR Part 31 - Extension of Credit to National Bank Insiders

Subject Matter: Current part 31 contains two subparts. Subpart A sets a limit on the amount that a national bank may lend to any one of its executive officers other than for housing- and education-related loans and establishes a threshold above which approval of the bank's board of directors is required for any loan to an insider. Subpart B requires a national bank to disclose, upon request, the names of its executive officers and principal shareholders who borrow more than specified amounts from the bank itself or the bank's correspondent banks and to maintain records related to requests for this information. Subpart B also requires a national bank's executive officers and principal shareholders to report on loans they or their related interests receive from the bank's correspondent banks.

Action/Status: A notice of proposed rulemaking was published in December, 1995. 60 Federal Register 63,461 (1995). This proposal creates three exceptions to the limit on loans that a national bank may make to its executive officers for situations where the lending bank's position is clearly protected by virtue of the type of collateral involved. It also clarifies and simplifies the current rule by removing provisions that are no longer necessary. Finally, it invites comments on whether guidance would be helpful on the differences between the insider lending limits and the loans-to-one-borrower limits and, if so, the areas where clarification may be most needed.

Title: 12 CFR Part 32 - Lending Limits

Subject Matter: This Part sets forth the OCC's rules that establish limits on the amount of loans that can be outstanding to a single borrower.

Action/Status: As described above beginning on page IV-24, a revised final rule was published in February, 1995, 60 Federal Register 8,526 (1995), and a notice of proposed rulemaking was published in July, 1996, 61 Federal Register 37,227 (1996).

Title: 12 CFR Part 33 - Reserved for Future Use

Title: 12 CFR Part 34 - Real Estate Lending and Appraisals

Subject Matter: This Part sets out OCC rules governing real estate lending in general (Subpart A), adjustable-rate mortgages (ARMs) (Subpart B), appraisals (Subpart C), real estate lending standards (Subpart D) and other real estate owned (OREO) (Subpart E).

Action/Status: In March, 1996 the OCC published a final rule revising subparts A, B, and E.¹³ 61 Federal Register 11,294 (1996). The new subpart A clarifies that the OCC will apply traditional principles of Federal preemption when determining whether a state law affecting real estate lending is preempted. Under these principles, state laws apply to national banks unless the state law expressly or impliedly conflicts with Federal law, the state law stands as an obstacle to the accomplishment of the full purposes and objectives of the Federal law, or Federal law is so comprehensive as to evidence a Congressional intent to occupy a given field.

The new subpart B made only minor changes to simplify the general ARM rule, which provides that national banks and their subsidiaries may make, sell, purchase, participate, or otherwise deal in ARM loans, notwithstanding any State law to the contrary that applies to these activities. A national bank may purchase or participate in ARM loans that were not made in accordance with the OCC's regulations, except that loans purchased from an affiliate or subsidiary must comply with Part 34. The new rule clarifies that a national bank may decrease the interest rate on an ARM loan at any time and increase the rate pursuant to a formula or schedule set forth in the relevant loan documents specifying the amount of the increase and the times at which, or circumstances under which, the increase may be made.

The new subpart E made several changes to definitions and stylistic changes. The most significant change permits a national bank to enter into subleases of OREO and have the period within which the bank must divest of the OREO be suspended while the sublease is in effect.

As described in Part I of this Report, the Appraisal regulations were revised in 1994.

¹³ The OCC did not propose to amend subparts C (Appraisals) or D (Real Estate Lending Standards) because the OCC recently adopted these subparts on an interagency basis and the OCC wishes to gather additional information on their effectiveness before deciding whether to recommend an interagency effort to revise them.

Title: 12 CFR Part 35 - Agricultural Loan Loss Amortization

Subject Matter: This Part sets forth the OCC's rules for national banks to amortize certain losses arising from agricultural loans.

Action/Status: As described in Part I of this Report, the OCC published a final rule in May, 1995. 60 Federal Register 27,401 (1995).

Title: Rescinded OCC Advisory Letters

Subject Matter: As the Comptroller's Handbook for National Bank Examiners is revised, OCC issuances are either incorporated into the new booklets, or deleted as unnecessary.

Action/Status: The following OCC Advisory Letters have been rescinded.

- 88-4 Flood Insurance
 - 93-3 Mortgage Banking Advisory
-

Title: **Rescinded OCC Banking Bulletins**

Subject Matter: As the Comptroller’s Handbook for National Bank Examiners is revised, OCC issuances are either incorporated into the new booklets, or deleted as unnecessary.

Action/Status: The following OCC Banking Bulletins have been rescinded.

- 91-13 RESPA, Amendments to the Regulation
- 91-24 RESPA, Section 6 Amendments
- 91-46 HMDA, Final Rule
- 92-15 RESPA, Revised Examination Procedures
- 92-33 Compliance with Consumer Laws and Regulations
- 92-54 Disclosure of Mortgage Broker Fees under RESPA
- 92-65 RESPA, Amendments
- 92-67 RESPA, Final Rule
- 92-72 HMDA, Final Regulatory Amendments
- 93-8 HMDA, MSA Designations for 1993 Data
- 93-9 RESPA, Interpretative Rule
- 93-10 Housing Counseling Program
- 93-14 HMDA Final Rule
- 93-19 Housing Counseling Program
- 93-21 RESPA, Subordinate Liens
- 93-26 RESPA, Proposed Rule
- 93-39 A Guide to HMDA Reporting: Getting it Right!
- 93-44 RESPA, Public Comment and Informal Hearing
- 93-37 Guidance on In-Substance Foreclosures and
Nonaccrual Loans
- 93-60 Policy Statement on the Allowance for Loan and
Lease Losses

Title: Rescinded OCC Banking Circulars

Subject Matter: As the Comptroller’s Handbook for National Bank Examiners is revised, OCC issuances are either incorporated into the new booklets, or deleted as unnecessary.

Action/Status: The following OCC Banking Circulars have been rescinded.

- 115 Income Diversion through Management and Other Fees
- 115 Supplement 1, Income Diversion
- 188 Bank Bribery Statute
- 188 Supplement 1, Bank Bribery Statute
- 201 Allowance for Loan and Lease Losses
- 208 Guidelines for Troubled Real Estate
- 222 Bank Bribery Statute
- 262 RESPA, Referral Fees
- 265 Guidelines for Real Estate Lending Policies
- 265 Supplement 1, Clarification of Guidelines

Title: Rescinded OCC Examining Circulars

Subject Matter: As the Comptroller’s Handbook for National Bank Examiners is revised, OCC issuances are either incorporated into the new booklets, or deleted as unnecessary.

Action/Status: The following OCC Examining Circulars have been rescinded.

- 234 Review and Classification of Commercial Real Estate Loans
- 258 Bank Supervision Policy

Title: **Rescinded OCC Bulletins**

Subject Matter: As the Comptroller’s Handbook for National Bank Examiners is revised, OCC issuances are either incorporated into the new booklets, or deleted as unnecessary.

Action/Status: The following OCC Bulletins have been rescinded.

- 94-5 Toll Free Number of HUD Housing Counseling Program
- 94-7 HMDA, Instructions for Filing HMDA/LARS
- 94-17 HMDA, MSA Designations for 1994 Data
- 94-18 Flood Insurance
- 94-19 HUD Final Rule Revising 24 CFR 3500
- 94-40 Non-Complex Procedures
- 94-44 HMDA, Proposed Rule
- 94-55 Distribution of Appraisal and Evaluation Guidelines
- 94-60 RESPA, Escrow Disclosures and Accounting
- 94-63 HMDA, Instructions for Filing HMDA/LARS
- 95-4 12- or 18-Month Examination Cycle
- 95-6 RESPA Final Rule, Transfer of Servicing of Loans
- 95-8 HMDA, Instructions for Filing HMDA/LARS
- 95-19 RESPA, Final Rule, Escrow Accounting Procedures
- 95-22 Standard Hazard Determination Form
- 95-25 HMDA
- 95-30 Compliance Examination Cycle
- 95-31 HMDA Reporting: Getting it Right!
- 95-37 Regulation C Staff Commentary, Proposed Rule
- 95-43 Procedures for Contested Flood Determination
- 95-49 RESPA
- 95-68 HMDA, Instructions for Filing HMDA/LARS
- 96-8 Section 8 Transactions under RESPA