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In response to the increased use of the Internet to access information and in the interest of publishing on a timely basis, beginning in 2006 the content of the *Federal Reserve Bulletin* will only be available on the Federal Reserve Board's public web site (www.federalreserve.gov). Publishing articles on the web as they are released will allow the more timely introduction of research and information to the public as topics are relevant to current economic conditions and useful to our readers.

The online version of the *Bulletin* will continue to include topical research articles, the Board's semiannual Monetary Policy Reports, Reports on the Condition of the U.S. Banking Industry, Legal Developments, and links to other features such as lists of advisory councils, committees, and maps of the Federal Reserve Districts.

Online access to the *Bulletin* will continue to be free of charge. A free e-mail notification service is available to alert subscribers to new articles and reports as they are released. Subscribe to the e-mail notification service on the Board's web site at www.federalreserve.gov/generalinfo/subscribe/notification.htm.

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This article argues that three important developments in the credit card market over the period account for most of the rise in credit card payments relative to income and played a strong role in the rise of the total financial obligations ratio (FOR). First, improvements in credit scoring technology and the advent of risk based pricing of credit card debt have increased the share of households particularly lower income households with a credit card. Second, in the 1990s, credit card interest rates began to vary with changes in broader market interest rates, which in turn led to an especially pronounced decline in credit card interest rates when, beginning in 2001, market rates turned sharply lower; the decline in credit card rates raised the demand for credit card debt. Finally, households have increased their use of credit cards as a convenient means of paying for daily purchases.

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487 *REPORT ON THE CONDITION OF THE U.S. BANKING INDUSTRY: SECOND QUARTER, 2005*

Assets of reporting bank holding companies rose $235 billion in the second quarter, to $10.9 trillion, 2.2 percent higher than in the first quarter, with loan growth accounting for almost 70 percent of this expansion. The strong increase in loans occurred mainly in mortgage-related categories, both residential and commercial, and in commercial and industrial loans. A sizable portion of the growth in residential mortgage loans at some institutions was in adjustable-rate mortgages (ARMs), especially nontraditional products such as option-ARMs. Securities and money market assets increased 0.8 percent, much less rapidly than loans. Borrowings funded a large portion of the growth in total assets.

Shareholders' equity at reporting bank holding companies rose 3.3 percent ($29.5 billion), outpacing the rate of growth in total assets. Notwithstanding small changes during the quarter, regulatory capital ratios overall remained strong for the industry. Credit quality continued to improve, as nonperforming assets fell to a remarkably low 0.71 percent of loans and related assets, a reduction of 5 basis points from the first quarter. Earnings totaled $32.7 billion for the second quarter, a little lower than in the previous period despite an increase of $1.2 billion in investment securities gains.

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Recent Developments in the Credit Card Market and the Financial Obligations Ratio

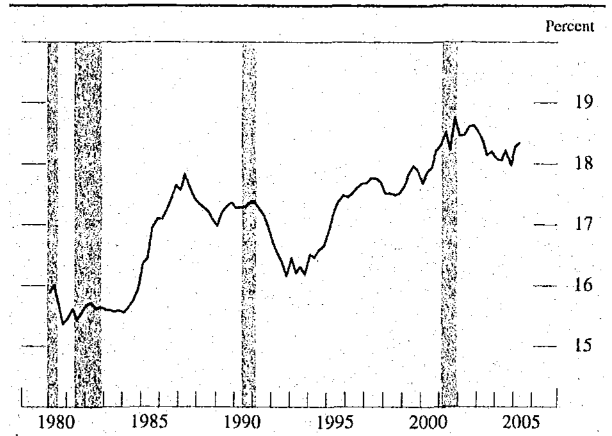
Kathleen W. Johnson, of the Board's Division of Research and Statistics, prepared this article. Tsz-Yan Doris Sum provided research assistance.

Over the past fifteen years, U.S. households in the aggregate have devoted an increasing share of their after-tax income to the payment of financial obligations. Much of the increase is attributable to a rise in the level of credit card debt, which has raised the share of households' aggregate after-tax income that is devoted to credit card payments. In turn, the rising share of credit card debt in overall financial obligations may stem from several notable changes in the credit card market over this period.

Financial obligations such as credit card debt and housing costs require monthly payments whose level relative to income is, of course, a vital concern to the individual household. A household's choice to take on obligations that increase these payments may represent an accurate assessment by the household of its ability to make payments on its obligations. However, devoting more income to required debt payments and other obligations will make the household more likely to default in the event of job loss or illness.

Likewise, an aggregate measure of payments on household financial obligations relative to income is of interest to economic policy makers because of potential concerns about the vulnerability of the household sector as a whole. In 1980, the Federal Reserve Board began calculating and tracking the ratio of households' aggregate required monthly payments on mortgage and consumer debt to their aggregate after-tax (that is, disposable) income, a measure called the debt service ratio (DSR). To gain a broader picture of households' financial position, the Federal Reserve Board in 2003 introduced a new measure, called the financial obligations ratio (FOR).[1] The new measure added other types of obligations to those of the DSR, namely payments on auto leases and housing expenses for rent, homeowner's insurance, and real estate taxes. As with the DSR, the obligations in

1. Household financial obligations ratio (FOR), 1980–2005:Q2



NOTE: The data are quarterly. Shaded bars are periods of recession as defined by the National Bureau of Economic Research. The FOR consists of the aggregate required monthly payments of the household sector on consumer debt, mortgages, homeowner's insurance, real estate taxes, rent, and auto leases as a percent of aggregate after-tax personal income.

SOURCE: Federal Reserve Board (www.federalreserve.gov/releases/housedebt).

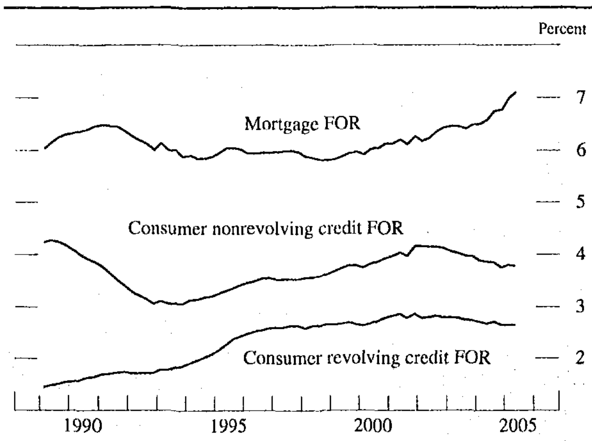
the FOR are presented as a share of aggregate, after-tax income.

For a given level of aggregate income, no clear line separates an appropriate level of payments on financial obligations from an excessive one, but the current level of the FOR is elevated relative to historical experience. It stood at 18⅓ percent in the second quarter of 2005, a level noticeably above its value fifteen years earlier (chart 1). Of the major components of the FOR, the ratio of credit card payments to disposable income rose the most over this period. Mortgage payments also rose significantly as a share of income, but payments on other types of debt obligations fell (chart 2).

This article argues that three important developments in the credit card market over the past fifteen years account for most of the rise in credit card payments relative to income. First, improvements in credit-scoring technology and the advent of risk-based pricing of credit card debt have increased the share of households—particularly lower-income households—with a credit card. Second, in the 1990s, credit card interest rates began to vary with changes

1. For a discussion of the DSR and FOR, see Dynan, Johnson, and Pence (2003).

2. Selected components of the financial obligations ratio, 1989–2005:Q2



NOTE: The data are quarterly. For a description of consumer revolving credit, see text note 2. Nonrevolving debt consists of credit accounts that terminate when the balances are paid off; such accounts include loans for motor vehicles, household goods, and education. Data shown for each type of debt are the aggregate required monthly payments for that type as a percent of aggregate after-tax income. See also note to chart 1.

SOURCE: Federal Reserve Board.

in broader market interest rates. In turn, this co-movement led to an especially pronounced decline in credit card interest rates when, beginning in 2001, market rates turned sharply lower; the decline in credit card rates raised the demand for credit card debt. Finally, households have increased their use of credit cards as a convenient means of paying for daily purchases.

The article estimates the quantitative effect of each of these three developments on the revolving consumer (that is, nonmortgage) credit portion of the FOR—the ratio of required minimum payments on revolving consumer credit relative to disposable income.[2] The analysis indicates that these three developments in the credit card market together accounted for most of the rise of the revolving credit FOR and played a strong role in the rise of the total FOR.

In a concluding section, the article considers these findings in relation to the possible economic implications of the rise in the revolving credit FOR. For example, a rise in required credit card payments stemming from a greater use of credit cards to pay for day-to-day purchases may not signal greater financial vulnerability if households are willing and able to pay off these card charges each month. In addition, the rise in payments associated with the increase in credit availability due to credit scoring may be accompanied by some benefits: More widespread access to credit may help more households maintain their consumption during temporary income disruptions and in turn contribute to the stability of the macroeconomy.

Developments in the Credit Card Market

Three developments in the credit card market likely accounted for much of the rise in household financial obligations over the past fifteen years: an expansion in the prevalence of credit cards among lower-income households, the widespread adoption of variable-rate cards, and a greater willingness of households to use their credit cards for day-to-day purchases of goods and services. The available data—from the Federal Reserve Board's triennial Survey of Consumer Finances—allow a comprehensive analysis of the importance of each development for the period. The survey conducted nearest the beginning of the fifteen-year period was in 1989, and the survey for which the most recent data are available was conducted in 2001.

The Expansion of the Credit Card Market

More and more households have gained access to credit cards over the past decade and a half. The share of households with at least one credit card rose from 70 percent in 1989 to 76 percent in 2001 (table 1). Determining which group of cardholders in 2001 would not have been cardholders in 1989 will help us estimate the effect that the expansion in cardholding had on household financial obligations. Broadly speaking, an expansion of cardholding could arise through two channels. First, changes in supply or demand conditions in the credit card market, holding the characteristics of households fixed, could increase the share of households with credit cards. Such developments may include changes in credit card underwriting standards or a general increase in households' desire for credit cards. Second, changes in household characteristics may increase the percentage of households who qualify for a credit card under a given set of underwriting standards.

The analysis presented below suggests that much if not most of the rise in cardholding over the 1989–2001 period came from an expansion of supply to riskier households—those that would not have quali-

2. A credit card account is a type of consumer (that is, nonmortgage) revolving credit. Generally, revolving credit extensions can be made at the customer's discretion, provided that they do not cause the outstanding balance of the account to exceed a prearranged credit limit. Revolving credit repayments are also at the customer's discretion, subject to a prearranged minimum, and may be made in one or more installments. More than 90 percent of consumer revolving debt is credit card debt.

1. Proportion of households with at least one credit card, by income quintile, selected years, 1989–2001

Percent

Income quintile	1989	1992	1995	1998	2001	Percent increase, 1989–2001[1]
All	**69.5**	**71.9**	**74.4**	**72.7**	**76.3**	**9.8**
Lowest	29.3	33.0	38.2	34.7	42.9	46.5
Second lowest	57.1	66.9	63.9	64.4	67.4	18.1
Middle	75.9	74.2	78.3	77.7	82.1	8.3
Second highest	87.1	88.8	91.5	88.5	88.5	1.7
Highest	95.5	94.6	98.0	96.6	97.1	1.7

NOTE: For types of credit cards considered and definition of concepts of household and head of household used in the tables, see text note 3.

1. Computed from unrounded data.

SOURCE: Here and in the following tables, Federal Reserve Board's Survey of Consumer Finances and author's calculations.

fied for a card in 1989. In the mid-1990s, card issuers began ranking applicants according to their probability of default; instead of denying cards to all those who posed too great a risk for a given interest rate on the card, they began issuing cards to some of the higher-risk applicants and set the interest rate on these riskier accounts high enough to compensate the lenders for the greater risk (Edelberg, 2003). The practice of issuing cards to higher-risk household was a significant change in the supply conditions in the credit card market.

Credit Scoring and Risk-Based Pricing

Lenders can rank applicants according to their likelihood of default through a measure called a credit score, which aggregates the factors in a potential borrower's credit history that are associated with a willingness and ability to pay. The higher the credit score, the more likely is the applicant to pay as agreed on a new credit account. The adoption of flexible, or risk-based, pricing allows creditors to issue cards to less-qualified applicants in exchange for a higher interest rate on the card. Credit scoring was considered by providers of consumer credit as early as the late 1930s, but the practice did not become widespread until the 1990s, when computers capable of processing large amounts of data became widely used (McCorkell, 2002).

Risk-based pricing has increased the availability of credit cards for all households, but its effect has been the greatest among riskier households. In particular, the rate of cardholding among households in the lowest quintile of the income distribution rose about half, from 29 percent to 43 percent, between 1989 and 2001 (table 1), whereas the rate of cardholding rose only 10 percent in the general population, from 70 percent to 76 percent. Among households in the lowest income decile (not shown in the table), the rate of cardholding about doubled over the period, from 18 percent to 35 percent. The rate among households who reported having been previously denied credit also rose more than did the overall rate.

These patterns are consistent with an expansion of cardholding through the first channel—in this case, a higher supply of cards through the use of credit scoring. The possibility remains, however, that the increase in cardholding may have also arisen, at least in part, through the second channel—that is, the characteristics of these new cardholders may have improved over the period. For example, they may have demonstrated a better employment history or a better record of paying rent and utility bills; in this case, a rise in creditworthiness could have produced more widespread cardholding among lower-income households rather than a change in underwriting standards. We can sort out the relative influence of the two channels with a statistical model.

Who Are the New Cardholders?

I apply a statistical model to data from the Federal Reserve Board's triennial Survey of Consumer Finances (SCF). Each SCF obtains detailed demographic and financial information from a statistically representative national sample of approximately 3,000 households. The model used here links the characteristics of households in the survey to the probability that they hold at least one credit card.

The characteristics used to predict cardholding were income, wealth, number of children, the age of the household head, and indicators for the sex, marital status, and education of the household head.[3] The predictors also included an indicator for whether a

3. See Aizcorbe, Kennickell, and Moore (2003) for a presentation of results of the 2001 SCF (the most recent survey for which data are available); see p. 30 of that work for a definition of the terms *household* and *head of household* used here. The types of cards considered in the surveys include bank-issued cards, store cards and charge accounts, gasoline company cards, and so-called travel and entertainment cards such as American Express and Diners' Club (p. 24, note 27).

2. Selected characteristics of households, by whether they hold a credit card, 1989

Percent except as noted

Characteristic	Mean	
	Holds a credit card	Does not hold a credit card
Income (thousands of dollars)	63.2	20.0
Wealth (thousands of dollars)	315.9	60.4
Number of children	.7	.8
Recently delinquent[1]	3.3	10.0
Head of household		
Age (years)	48.4	46.9
No high school degree	15.7	44.4
College degree	36.5	8.1
Married	64.0	35.0
Male	77.3	59.2

1. Delinquent sixty days or more in the past year.

household was two months or more behind in debt payments in the past year (table 2).

These characteristics differ significantly between those households with credit cards and those without and thus serve as good predictors of cardholding. For example, in the 1989 SCF, households that held credit cards had significantly higher wealth and income than non-cardholders (table 2, first and second columns). In addition, the heads of cardholding households were more often college-educated, married, or male. Finally, cardholding households were less likely to have been behind on a loan payment in the preceding year.

The statistical model can focus on the effect that each characteristic has on the probability of cardholding by keeping the other characteristics constant.[4] Estimates suggest that all the selected characteristics except the age and marital status of the household head had a large and statistically significant influence on the probability that a household held a credit card in 1989.

The model can also shed light on the extent to which changes in supply factors (lenders' willingness to issue a card to a given household) and demand factors (a given household's interest in holding one) together contributed to the rise in cardholding between 1989 and 2001.[5] Any portion of the rise in credit card availability not attributable to supply and demand factors may be attributable to changes in the financial characteristics that have increased the creditworthiness of households.

To separate these effects, I estimated the model first with data from the 1989 SCF and then with data from the 2001 SCF. Using the two sets of estimates and the characteristics of households in the two years, I first calculated the overall change in the estimated probability of cardholding between 1989 and 2001 (table 3, first column). To isolate the effect of changes in supply and demand conditions between these years, I calculated a hypothetical probability of cardholding in 2001 based on the 1989 household characteristics and the 2001 estimation results. In other words, I predicted which households in 2001 would have been holding cards if there had been no changes in the characteristics of households since 1989. The difference between this hypothetical probability for 2001 and the estimated probability for 1989 corresponds to the effect of changes in supply and demand conditions from 1989 to 2001 (table 3, second column). The part of the overall change in the estimated probability not explained by changes in supply and demand is that associated with changes in household characteristics (table 3, third column).

For the general population, the results imply that changes in supply and demand conditions account for only 2 percentage points of a 7 percentage point *overall* rise in the estimated probability of cardholding. But, in the lowest quintile of income, where the estimated probability of cardholding rose far more than the average, more than half of the effect—9 of the 16 percentage points of gain in the probability—is attributable to supply and demand factors. Although the model cannot distinguish changes in supply from changes in demand, the result is certainly consistent with an increase in the supply of credit cards for the lowest-income households (see also Bostic, 2002).

3. Change in the estimated probability that a household holds a credit card, and source of change, by income quintile, selected years, 1989–2001

Percent except as noted

Income quintile	Change in probability	Source of change	
		Change in supply and demand conditions	Change in household characteristics
All	**7**	**2**	**5**
Lowest	16	9	7
Second lowest	10	4	6
Middle	7	1	6
Second highest	3	−1	4
Highest	0	−2	2

NOTE: For details, see text.

4. This technique, called a probit model, has been used by Klee (2004) and Duca and Whitesell (1995). The model does a fairly accurate job of predicting whether each household in the 1989 data set held a credit card. It correctly predicts actual cardholding for 91 percent of households with at least one card and 56 percent of households with no card, for an overall correct prediction rate of 81 percent.

5. The model cannot identify supply factors separately from demand factors.

The model can also be used to identify the likely households in each survey who acquired cards most recently. Such households are termed here as "new cardholders" and are defined as those households with the lowest estimated probability of holding a credit card. An examination of changes in the characteristics of new cardholders over time also suggests an increase in the supply of credit cards to riskier households (table 4). New cardholders in surveys after 1989 are more likely to have been delinquent on a loan in the preceding six months and are also younger and have more children; these patterns suggest that new cardholders now are likely less creditworthy than those in the past. Work by other researchers, who examined the 1989–95 period, corroborates the view that the average cardholder has become riskier over that period—the average cardholder had less job seniority, had lower income, had lower liquid assets, was more willing to use debt to finance consumption (an attitude considered to be a "riskier" view of credit), and was more likely to be single and be a renter (Black and Morgan, 1998).

The credit card debt taken on by these new cardholders probably raises the ratio of aggregate measured revolving credit payments to aggregate income. The effect on the overall FOR may be damped, however, if these households substituted credit card debt for other measured forms of credit, such as personal loans and installment loans. But given that access to these forms of credit for these new cardholders was likely limited in the past, substitution (to the degree it occurred) was probably out of unmeasured forms of debt. For example, in a survey of households in low- and moderate-income areas of Los Angeles, Chicago, and Washington, 53 percent of respondents said they would rely on friends or family to borrow $500 for three months, and 15 percent said they had obtained financing from institutions not captured by aggregate statistics, such as pawn shops, payday lenders, and rent-to-own establishments.[6]

4. Financial and demographic characteristics of existing and new cardholders, selected years, 1992–2001

Percent except as noted

Cardholder and characteristic	1992	1995	1998	2001
Estimated existing cardholders				
Income (thousands of dollars)	56.8	61.4	69.7	85.3
Wealth (thousands of dollars)	288.5	318.9	394.4	532.2
Number of children	.7	.7	.7	.7
Recently delinquent[1]	3.0	3.0	4.0	2.0
Head of household				
Age (years)	48.7	48.7	49.3	49.7
No high school degree	10.0	9.0	7.0	6.0
College degree	42.0	40.0	44.0	45.0
Married	64.0	62.0	62.0	63.0
Male	78.0	78.0	78.0	79.0
Estimated new cardholders				
Income (thousands of dollars)	8.6	11.4	12.5	16.0
Wealth (thousands of dollars)	21.0	24.2	7.7	24.2
Number of children	.7	.7	1.2	1.0
Recently delinquent[1]	9.0	13.0	24.0	19.0
Head of household				
Age (years)	50.8	52.1	44.6	46.1
No high school degree	54.0	53.0	51.0	43.0
College degree	.3	5.0	6.0	2.0
Married	19.0	24.0	16.0	21.0
Male	63.0	54.0	66.0	61.0

NOTE: For calculation of existing and new cardholders, see text.

1. Delinquent sixty days or more in the past year.

Closer Relation of Credit Card Interest Rates to Broader Market Rates

The second important development in the credit card market is the closer relation of credit card interest rates to broader market rates. In particular, this development allowed credit card interest rates to move down when market rates began to fall in 2001, which in turn significantly boosted the demand for credit card debt and the payments required to service this debt.

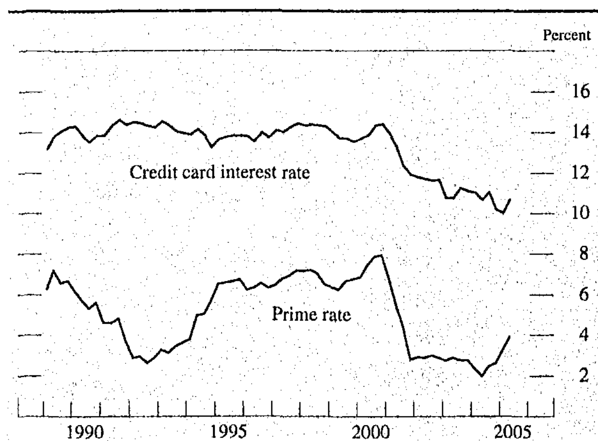
One might expect credit card interest rates to vary with the cost of funds, given the important role of these costs in lenders' credit card expenses.[7] But, in the 1980s and early 1990s, credit card interest rates changed little, showing a correlation with the prime rate (a good measure of the cost of funds) of only about 0.09 (see box "Theories of Credit Card Interest Rate 'Stickiness'" for a discussion of some possible reasons for this early unresponsiveness). The correlation subsequently rose sharply, and it has averaged 0.90 during the past ten years. Notably, the average credit card interest rate in real terms (that is, adjusted for inflation) declined in tandem with the real prime rate from the first quarter of 2001 to the second quarter of 2004, when the real prime rate hit its most recent low (chart 3).

The rapid growth of variable-rate cards since 1989 materially contributed to the increase in the flexibility in interest rates on credit cards. A variable-rate credit card carries an interest rate that maintains a constant margin, or spread, over a stated market reference rate such as the prime rate or the LIBOR (the London interbank offered rate). In 1989, variable-rate credit cards accounted for only about 3 percent of credit card accounts. By 1994, this share had grown

6. Siedman, Hababou, and Kramer (2005). Rent-to-own establishments offer consumers the option to acquire the ownership of merchandise by renting it for a specified period of time.

7. One industry source found that the cost of funds accounted for 43 percent of the cost of credit extended through credit cards between 1990 and 1993 (*Credit Card News*, May issue of various years).

3. Average real credit card interest rate and the real prime rate, 1989–2005:Q2



NOTE: The data are quarterly.
SOURCE: Federal Reserve Board.

to about 60 percent; it is now probably close to 75 percent.[8]

A key to the lender's choice of variable-rate versus fixed-rate pricing lies in the behavior of cardholders who are the most profitable to card issuers.[9] In general, the most profitable cardholders are those who carry large amounts of debt on their cards because they pay more interest than other cardholders (although this benefit is offset by the fact that some high-debt cardholders may have a higher likelihood of default). Several factors have increased the odds that profitable cardholders will switch to lower-rate cards; these factors have thus increased the incentive for lenders to lower credit card interest rates when their cost of funds allows it.

The first of these factors is that households may have become better able to predict how much credit card debt they will carry from month to month in the future and how much in interest costs they will incur. According to recent research, most consumers who were presented with a choice between two credit card contracts chose the contract that was optimal given their actual future borrowing.[10] This realistic assessment by cardholders of their borrowing needs implies that a large proportion of borrowers who carry debt will respond to an offer of a card with a lower rate.

A second reason that consumers with relatively large amounts of credit card debt may be more responsive to changes in credit card interest rates is that the cost of searching for a lower-rate card has declined. For example, a dramatic increase in advertising by credit card companies may have made it easier to compare rates across cards. The number of credit card solicitations jumped from about ten per U.S. household in 1992 to more than forty in 2004.[11] In addition, the Internet has become a potent source of information about credit card terms; a recent online search of the term "compare credit card interest rates" yielded about 1,000 results. Changes in federal law have probably also made it easier for households to compare credit card terms. In 1988, the Congress amended the Truth in Lending Act to require that all credit card solicitations include information about the annual percentage rate, annual fee, minimum finance charge, transaction charge, grace period, balance computation method, cash advance fee, late payment fee, over-the-limit fee, and balance transfer fee.[12]

Lastly, credit card lenders have invested in information technology that allows them to better identify the least risky households with high levels of credit card debt. As a result, lenders can make offers to only those high-debt consumers who are expected to be profitable. Thus, although consumers with high levels of credit card debt are more likely than others to be turned down for a credit card, the gap in probabilities is narrowing.[13] All told, these developments have likely increased the share of switching done by profitable households with high levels of credit card debt and in turn increased the incentive for lenders to adjust credit card interest rates.

Credit Cards as a Payment Method

A third important development in the credit card market is an increase in the transactions demand for credit cards. Such demand harks back to the purpose

8. Stango (2000) and author's calculations.

9. The greater prevalence of variable-rate cards can also be explained by an increase in market concentration (see Stango, 2000), and, indeed, the ten largest card issuers doubled their market share from 40 percent in 1989 to about 80 percent in 2004.

10. Agarwal and others (2005); the data in that work cannot demonstrate a change from the early to late 1990s in households' ability to assess their borrowing needs

11. http://core.synovate.com/mailvol.asp; and www.census.gov/population/www/index.html (under "Population Data by Subject" select "Families" and then scroll to "Table HH-1").

12. Even with a decline in search costs, credit card interest rates may remain sticky if profitable, high-debt consumers remain less likely to search than other households. Analyses of SCF data by Calem and Mester (1995) do show a negative relationship between high credit card debt and willingness to shop for better credit card terms; however, work by Calem, Gordy, and Mester (2005), Crook (2002), and the present author indicate that the relationship has weakened since then.

13. This assertion is based on an analysis of 1989 and 2001 SCF data by the present author that builds on work by Calem and Mester (1995).

Theories of Credit Card Interest Rate "Stickiness"

Credit card interest rates did not respond to changes in the cost of funds before the mid-1990s. The causes of this interest rate "stickiness" have been debated in the economics literature. Many authors have asserted that when the cost of funds declined, credit card lenders did not reduce their interest rates because doing so seemed likely to attract borrowers who were less profitable.[1]

One theory posited the existence of three types of credit card consumer to explain why only less profitable consumers were likely to switch to cards with lower interest rates (Ausubel, 1991). The first type used a credit card only to transact (make day-day-purchases) and did not carry a balance. The second type used a card to borrow and planned to carry a balance. The third type did not plan on borrowing for the long term but ultimately was likely to carry a balance. The first and third types would not switch cards when a lower interest rate alternative was presented because they did not think they would borrow and pay interest; only consumers who knew they would borrow would decide to switch. If those who planned to carry a balance are less profitable than other consumers (perhaps because they have higher default rates) firms would be reluctant to reduce their interest rates.

Another theory explained sticky interest rates by asserting that the most profitable customers had higher costs both of searching for a new card and of switching to that card (Calem and Mester, 1995). In this argument, consumers with high amounts of debt were the most profitable for the credit card lenders.[2] But these consumers were also the least likely to search for a card with a lower interest rate because they were more impatient (which is why they borrowed so much) and because they were more likely to be turned down for a new card owing to their high debt. All told, these factors implied that a firm that lowered its rates would have its pool of borrowers shift toward less profitable ones (those with less debt) because they were the most likely to switch to a lower-rate card.

A third theory asserted that credit card interest rates appeared sticky because borrowers switched from credit cards to other forms of financing when the cost of funds declined (Brito and Hartley, 1995). In response to the loss of borrowers, credit card lenders lent to riskier households and charged them higher interest rates to compensate for their higher probability of default. This change in the composition of credit card borrowers offset the effect of a lower cost of funds; thus, credit card interest rates did not decline with the cost of funds.

1. Because they were written at a time when general market rates were declining, these papers do not address the causes of upward stickiness, that is, the reasons why credit card interest rates did not rise with general market rates.

2. This assertion is plausible: According to *Credit Card News* (May issue, various years) interest charges on borrowing accounted for an average of 73 percent of the revenue of credit card lenders between 1990 and 1993. However, some portion of the profits from interest charges levied on high-debt consumers would be offset by their greater propensity to default.

of the original third-party charge card, which was issued in 1950 by Diners' Club for use in restaurants (Evans and Schmalensee, 2005, p. 4). Charges had to paid in full each month, so the card represented only a convenient payment method rather than a way to obtain longer-term financing. American Express cards were launched in 1958, also as transaction cards, but Bank of America followed in the same year with the first general-purpose credit card on which only a portion of the balance needed to be paid each month.

Over time, many financial institutions began offering cards that offered the option of paying only a portion of the balance each month. Although the long-term-loan component of credit card debt came to exceed the transactions component, the transactions demand for credit cards has nonetheless continued to grow. For transactions, credit cards have several advantages over cash. First, unlike cash, a credit card may offer consumers protection when it is lost or stolen. Second, credit cards permit households to earn interest on their funds during the period between the transaction and the payment of the credit card bill (the interest earned in this way is known as "float"). Indeed, researchers have found that households with credit cards tend to have lower balances in their transactions accounts than do households without credit cards, which suggests that households may be holding funds in accounts that offer higher yields until they need to pay off their credit cards.[14] Credit cards also offer the consumer an advantage over checks in that it is faster to swipe a card through a terminal than to write a check.

In more recent years, transactions demand for credit cards has been spurred by card issuers that have responded to increasingly intense competition by offering rewards for heavy credit card use. Such rewards include cash-back rebates on purchases, discounts on merchandise, and "mileage" programs that cover travel expenses. These programs, which add to

14. See, for example, Duca and Whitesell (1995), White (1976), and Mandell (1972). Transactions accounts are checking, savings, and money market accounts as well as cash accounts at brokerages.

the benefits of using cards over cash, encourage the transactions use of cards because they generally do not require the cardholder to carry the balance from month to month to receive the rewards.[15]

Transactions demand has also grown because opportunities for credit card transactions have risen in the past decade.[16] According to the Census Bureau, sales over the Internet and by mail order have increased considerably in recent years, and credit cards likely are used for many of these transactions. Sales in these categories have increased close to 15 percent per year since 1999, the first year for which e-commerce data were collected.[17] Even traditional brick-and-mortar stores have increased their acceptance of credit cards. In 1989, about 2¾ million merchants accepted Visa cards; by 2000, that number had reached 4¼ million.[18]

Increased transactions demand raises the aggregate level of credit card debt outstanding as currently measured. Suppose, for example, that a consumer charges $500 on the fifteenth day of one month and pays it off on the fifteenth day of the next month. Aggregate credit is measured as the stock of debt at the end of each month, so the measured estimates will capture the $500 owed at the end of the month in which the charge was made. Thus, measured aggregate credit includes debt that will be paid off in the next month (transactions demand) as well as debt that will be paid off over a longer period. If transactions demand rises more rapidly than the demand for longer-term debt, then measured aggregate debt will also grow faster than the demand for debt.

According to recent research, transactions demand as a share of measured revolving debt rose from about 6 percent in 1992 to 11 percent in 2001 (Johnson, 2004). That analysis also suggests that the growth in transactions demand was particularly rapid in the latter part of the 1990s. Had transactions demand remained constant from 1992 to 2001, the growth of measured credit card debt during that period would have been slower by about 1 percentage point per year, and the level of credit card debt in 2001 would have been 7½ percent lower than it actually was. These results are roughly consistent with data suggesting that transactions demand accounted for about 10 percent of measured credit card debt over the past decade and a half.[19]

Developments in the Credit Card Market and the Revolving Credit FOR

The 1¼ percentage point rise in the revolving consumer credit portion of the financial obligations ratio over the past decade and half is almost as large as the rise in the total FOR over that period.[20] How much of the increase in the revolving credit FOR is attributable to the developments in the credit card market discussed above? One can estimate the contribution by comparing actual financial obligations with those associated with "counterfactual" scenarios in which the effect of changes in the credit card market are removed from the data. The following sections present a counterfactual scenario for each of the three credit card market developments and one for all three together.

The Effect of the Increase in Cardholding

The effect of new cardholders on the revolving credit FOR can be estimated by calculating the ratio under the counterfactual scenario in which the proportion of households holding at least one card remained at its

15. Card issuers can benefit from an increase in transactions demand because they receive revenue from the fees they levy on the merchant for each transaction.

16. However, the increase in these opportunities has also enabled the growth of a substitute for the transaction demand for credit cards—the use of debit cards. Zinman (2005) provides evidence that households that cannot take advantage of float because they carry a balance on their credit cards tend to use debit cards. Klee (2004) identifies several factors that may have led to an increase in debit card use, perhaps at the expense of credit cards.

17. The Census Bureau defines e-commerce sales as "sales of goods and services where an order is placed by the buyer or price and terms of sale are negotiated over an Internet, extranet, Electronic Data Interchange (EDI) network, electronic mail, or other online system. Payment may or may not be online" (U.S. Department of Commerce, 2005).

18. www.usa.visa.com/about_visa/newsroom/statistics/acceptance.html.

19. Data from the Federal Reserve's Quarterly Report of Credit Card Interest Rates (FR 2835a), www.federalreserve.gov/boarddocs/reportforms/ReportDetail.cfm (under "Categories of forms" select "Business/consumer credit") and author's calculations.

20. The revolving consumer credit portion of the FOR—the level of monthly payments on such credit relative to disposable income—is calculated from the level of revolving credit balances. Payments on revolving credit balances—the numerator of the revolving credit FOR—are assumed to be 2½ percent of those balances. This assumption corresponds to the average minimum required payment implied by responses to the Federal Reserve System's January 1999 Senior Loan Officer Survey on Bank Lending Practices. In that survey, loan officers also indicated that minimums had not changed substantially over the previous decade. Responses to the 2003 Consumer Action survey of banks also implied an average minimum payment of between 2 percent and 3 percent (*Consumer Action News*, "Annual Credit Card Survey 2003").

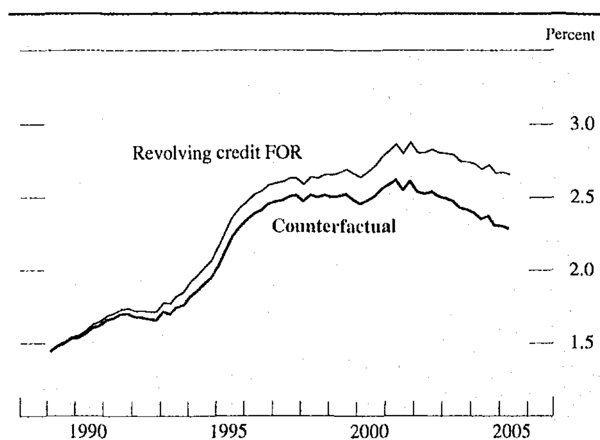
More recently, some lenders have changed their payment formula so that minimum payments equal current finance charges and fees plus some small amount of the outstanding balance (*Consumer Action News*, "Annual Credit Card Survey 2005"). This new formula could raise or lower required payments, depending on the interest rate and the amount of balance repaid. (For the *Consumer Action News* surveys, see www.consumer-action.org/English/library/credit_cards/index.php.)

1989 level. Using the statistical model described above, cardholders were divided into one group that probably acquired cards after 1989, called new cardholders, and another group that probably had credit cards before 1989, called existing cardholders. The counterfactual revolving credit FOR was based on the debt of only the latter group, and the difference between the counterfactual and actual revolving credit FOR represents the effect of new cardholders.

New cardholders are defined as those households with the lowest probability of holding a credit card (see also table 2). For each triennial SCF from 1992 to 2001, enough new cardholders were removed from the group of cardholders to reduce the share of households with cards to its 1989 value.[21] The growth in credit card debt associated with the households who acquired cards after 1989 accounted for about 9 percent of the growth in total credit card debt between 1989 and the second quarter of 2005.[22]

The counterfactual revolving credit FOR with the debt of the new cardholders removed is below the actual level (chart 4). The results imply that had the share of households with credit cards remained at its 1989 level, the rise in the FOR would have been about ⅓ percentage point smaller than it actually was. A general substitution toward credit cards from other types of consumer loans and, more recently, away from credit cards toward mortgages also affected the amount of credit card debt, although the effect on overall household financial obligations is ambiguous (see box "Substitution between Credit Cards and Other Forms of Credit").

4. Effect on the revolving credit FOR of an increasing share of households that own credit cards, 1989–2005:Q2



NOTE: The data are quarterly. The counterfactual data consist of the consumer revolving credit FOR only for households that had a credit card in 1989. For details, see text; see also note to chart 2.
SOURCE: Federal Reserve Board and author's calculations.

The Effect of Variable Interest Rates

The greater responsiveness of credit card interest rates to market rates, combined with a significant change in market rates in the early part of this decade, had a substantial effect on household financial obligations. The average real credit card interest rate fell more than 3 percentage points from the fourth quarter of 2001 to the second quarter of 2004, when it reached its low point, about 11¼ percent. When credit card interest rates fall, households demand significantly more credit card debt. For example, researchers have estimated that a 1 percent decline in interest rates on bank-issued credit cards leads to a 1⅓ percent rise in the demand for credit card debt.[23]

A decline in credit card interest rates that leads to a smaller margin over the cost of funds could also cause lenders to reduce their supply of credit card debt, which in turn could damp the amount of credit card debt outstanding. However, in the short run, the effect seems unlikely to be large because credit cards are open-ended credit contracts that specify only a credit limit. Most lenders are unwilling to reduce the credit line extended to existing customers in good standing. In a recent survey, 53 percent of banks reported reducing cardholder credit limits but usually only because the borrower had become riskier in some way.[24] Hence, the responsiveness of demand to a change in rates would likely be the dominant determinant of the response of revolving debt outstanding to such a change.

To gauge the effect of changes in credit card interest rates on the revolving credit FOR, a counterfactual level of revolving credit was estimated under the assumption that interest rates on credit cards remained at their level in the first quarter of 1989. In particular, the change in real credit card debt predicted by the change in real credit card interest rates was subtracted from the actual level of debt.

21. About 3¼ percent of cardholders were removed in 1992, 6½ percent in 1995, 4⅓ percent in 1998, and almost 9 percent in 2001. To extend the analysis through the second quarter of 2005, the share of credit card debt held by new cardholders was kept constant at its 2001 value.

22. This estimated effect is slightly smaller than that calculated by Yoo (1997, 1998), who assumes that new cardholders have the same amount of debt as existing holders. However, new cardholders appear to have a bit less debt than existing holders; for example, in 2001, the average credit card balance of a new cardholder was about $2,180, whereas the average balance of an existing cardholder was $2,332.

23. Gross and Souleles (2002). This effect was estimated without accounting for households switching balances between cards as interest rates change. Accounting for this switching reduces the rise in demand to about 1 percent.

24. *Consumer Action News*, "Annual Credit Card Survey 2005."

Substitution between Credit Cards and Other Forms of Credit

Over the past fifteen years, households appear to have substituted some forms of credit for others. In the early part of this period, the rise in the share of household debt associated with credit card loans mirrored a decline in so-called "personal loans" and loans tied specifically to the purchase of durable goods other than vehicles. Trends in more recent years suggest that households may have been using mortgage loans as an alternative to credit card debt. The effect of this substitution on household financial obligations depends on the different terms associated with the different forms of debt.

Credit card loans have, in some respects, a significant advantage over personal loans (defined as unsecured, closed-end loans used to finance unspecified expenditures) as well as over the installment loans from department stores and finance companies that traditionally have been used to purchase large durable goods other than vehicles. In particular, the open-ended nature of credit card loans implies a lower fixed cost of borrowing: Households may draw on their credit card accounts to obtain needed funds (as long as borrowing remains below a pre-set limit) as opposed to taking out an entirely new loan.

In deciding what form of credit to use, households weigh this cost advantage of credit cards against other traits of alternative loan types. One important feature is the interest rate. Because neither credit card loans nor personal loans are backed by collateral, interest rates are relatively high on both types of credit. All else equal, interest rates on installment loans backed by nonvehicle durable goods tend to be lower because they are secured. On balance, households appear to find the convenience of credit card loans to be appealing, as the ratio of nonvehicle nonrevolving loans to consumer loans dropped from 12 percent in 1989 to 6 percent in 2001.

The substitution of credit cards for other types of consumer loans may not have a large effect on the amount of consumer debt outstanding if households are simply replacing one form of credit for an equal amount of credit card debt. However, substitution can affect households' debt-related financial obligations if the terms of credit card debt are different than the terms of the debt it replaced. For example, at current interest rates, the minimum required payment on a credit card loan would be 13 percent less than the payment on a personal loan of the same size. Even though the interest rates are similar, the credit card loan has a payment equivalent to a personal loan with a maturity almost one year longer than that of the typical personal loan.

In the past couple of years, households may have been substituting mortgage debt for credit card debt. For example, in 2004, outstanding mortgage debt increased about 14 percent while credit card loans grew only about 4 percent. Mortgage loans can be an attractive alternative to credit card borrowing because they have lower interest rates and because mortgage interest payments are tax deductible. Indeed, in surveys, households report using a significant share of the proceeds from cash-out mortgage refinancing transactions—which involve liquidating home equity by taking out a larger mortgage loan—to pay down credit card loans (Canner, Dynan, and Passmore, 2002).

All told, substitution toward first-lien mortgages tends to lower required payments on financial obligations because they have lower interest rates and longer maturities. However, substitution toward mortgage debt does not always reduce required debt payments; for example, the terms on home equity lines of credit (generally a junior lien) are usually similar to those on credit card debt. The transfer of consumer debt to mortgage debt may be limited by the higher costs of defaulting on a mortgage (which could involve loss of the home) and the fact that only homeowners have access to mortgage credit.

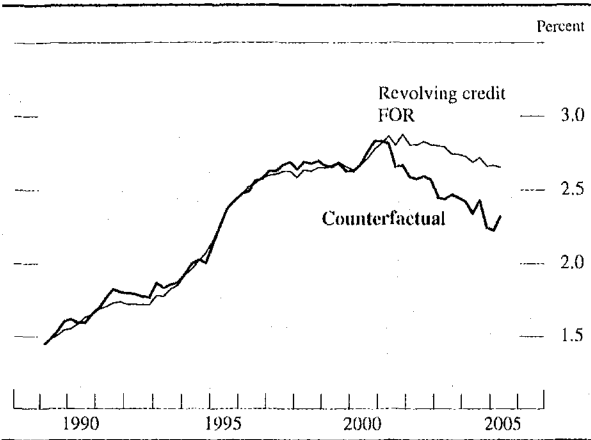
From 1989 to 2000, the counterfactual revolving credit FOR follows the actual revolving credit FOR fairly closely (chart 5); this tracking is not surprising given that the real interest rate moved little over this period. Beginning in 2001, when the real credit card interest rate began to decline, the counterfactual revolving credit FOR began to lag the actual. By mid-2004, the counterfactual series was about ⅓ percentage point below the actual. This gap implies that the decline in real credit card interest rates in the early part of this decade accounts for a material part of the rise in the revolving credit FOR between 1989 and the second quarter of 2005.[25]

The Effect of Transactions Demand

As noted above, transactions-related credit card balances as a share of measured revolving debt rose from about 6 percent in 1992 to 11 percent in 2001. To estimate the effect of this increase in transactions demand on the revolving credit FOR, a counterfactual ratio was calculated under the assumption that the transactions demand for credit cards did not grow as a fraction of total revolving credit after 1989. In the second quarter of 2005, the counterfactual level of the revolving credit FOR was a little more than

25. This analysis ignores the point that interest rates on mortgages fell as well over this period, a development that likely induced households to borrow more against their homes and use the proceeds to pay down credit card debt, which is more costly. See box "Substitution between Credit Cards and Other Forms of Credit" for further discussion of this potential effect.

5. Effect on the revolving credit FOR of a falling real interest rate, 1989–2005:Q2



NOTE: The data are quarterly. The counterfactual data consist of the consumer revolving credit FOR predicted if the average real credit card interest rate had remained at its 1989:Q1 level. For details, see text; see also note to chart 2.
SOURCE: Federal Reserve Board and author's calculations.

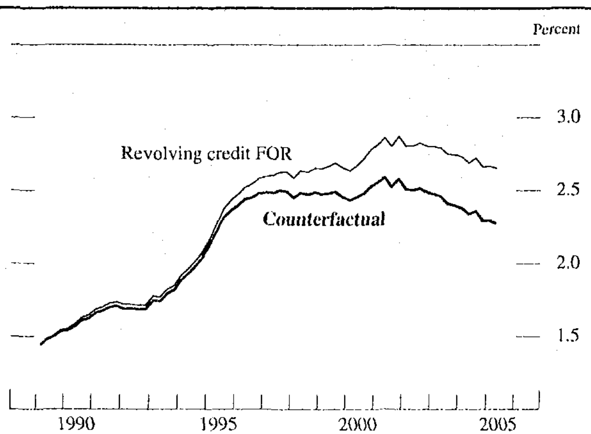
⅓ percentage point lower than the actual revolving credit FOR (chart 6); this gap represents the cumulative effect of the rise in transactions demand since 1989.

The Combined Effect of the Three Credit Card Market Developments

A simple combination of the estimated effects of the increase in the share of households that hold credit cards, the fall in real credit card interest rates, and the rise in transactions demand explains virtually all of the net increase in the overall revolving credit FOR since 1989 (chart 7). However, these effects may not be entirely independent of one another; as a result, the sum of the three effects should be considered an upper bound. For example, a decline in the interest rate may cause an increase in debt partly because it may prompt households to apply for a first credit card; in this case, the sum of the influences captures the interest rate effect twice. Yet, the overlap may be limited by the fact that these effects, to some degree, pertain to different segments of the credit card market. For example, transactions demand has grown mainly among upper-income households that have held credit cards for a long time and are not sensitive to interest rates because they pay off their credit card balances each month.

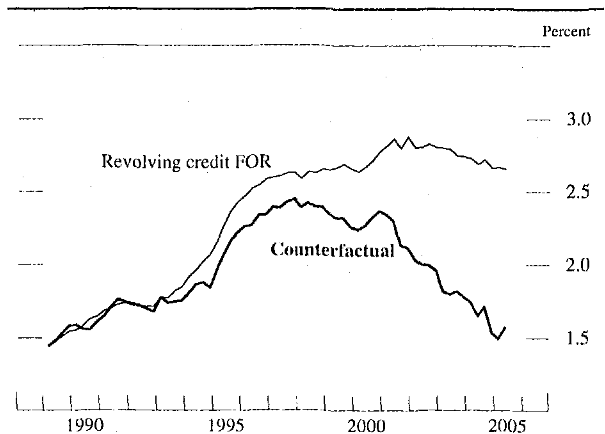
The counterfactual revolving credit FOR rose significantly through 1997, but it has since reversed about all of the increase. This evolution raises a question about the determinants of revolving credit card debt apart from the three credit card developments analyzed above. One possible determinant is consumer confidence: The counterfactual revolving credit FOR seems to move broadly with consumer sentiment (chart 8; the counterfactual FOR here is the same as shown in chart 7). The co-movement hints, perhaps, that when households become more confident, holding other market developments constant, they may choose to increase their revolving debt faster than their disposable personal income increases; conversely, when confidence declines, such revolving debt increases more slowly than does disposable personal income.

6. Effect on the revolving credit FOR of rising transactions-related use of credit cards, 1989–2005:Q2



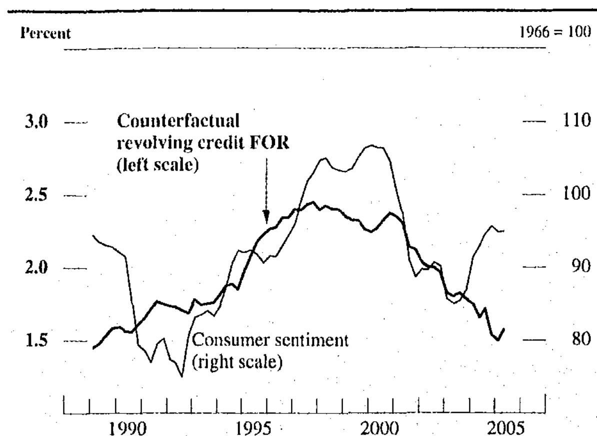
NOTE: The data are quarterly. The counterfactual data consist of the consumer revolving credit FOR predicted if the proportion of credit card debt arising from transactions-related use had remained at its 1989 level. For details, see text; see also note to chart 2.
SOURCE: Federal Reserve Board and author's calculations.

7. Combined effects on the revolving credit FOR of developments in the credit card market, 1989–2005:Q2



NOTE: The data are quarterly. The counterfactual data combine the effects of the developments shown in charts 4–6. For details, see text; see also note to chart 2.
SOURCE: Federal Reserve Board and author's calculations.

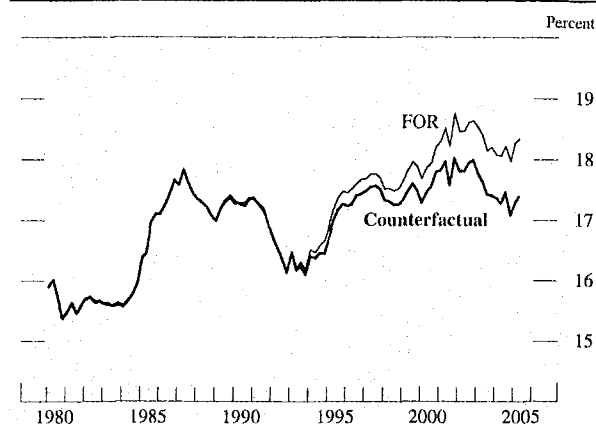
8. Counterfactual revolving credit FOR and consumer sentiment, 1989–2005:Q2



NOTE: The data are quarterly. For definition of the counterfactual revolving credit FOR, see note to chart 7.

SOURCE: For counterfactual data, Federal Reserve Board and author's calculations; for consumer sentiment, the University of Michigan Survey Research Center.

9. Household financial obligations ratio, 1980–2005:Q2



NOTE: The data are quarterly. The counterfactual series assumes that the level of revolving debt equals the level used to calculate the counterfactual revolving credit FOR. For details, see text; see also note to chart 7.

SOURCE: Federal Reserve Board and author's calculations.

CONCLUSION

Three developments in the credit card market contributed to the rise in the overall household FOR during the past fifteen years. Had the share of households with credit cards, the level of credit card interest rates, and the transactions-related demand for credit cards all remained at their 1989 levels, credit card debt outstanding in 2005 would have been significantly lower. In the absence of other changes, the rise in the total FOR over the past fifteen years would have been as much as 1 percentage point smaller than it actually was, a reduction that would have left the the 2005 FOR well in line with levels that existed earlier (chart 9).

The various sources of the rise in the revolving credit FOR have differing implications for the health of the household sector and the broader financial system. For example, the part of the rise stemming from a greater use of credit cards to pay for day-to-day purchases will not necessarily signal greater financial vulnerability among households if they are willing and able to pay off these card charges each month. As a related matter, the growth of transactions demand as a share of new borrowing may lessen the exposure of credit card issuers to defaults if households are more likely to pay off transaction balances than they are longer-term balances.

However, the implications of the rise in financial obligations associated with the decline in credit card interest rates in the early part of this decade are more complicated. A key issue would be the effect on households as interest rates rise. An increase in interest rates would likely damp demand for credit card debt and thus lead to a partial reversal of the rise in the revolving credit FOR. At the same time, rising rates could make it more difficult for some households to repay their existing debt.

Whether the rise in the share of households with a credit card is a cause for concern at the aggregate level depends on whether the benefits to the macroeconomy of the expansion of credit card availability outweigh the risks. New cardholders may be less adept at managing their credit than existing cardholders, and ready access to credit may make them more prone to taking on unmanageable levels of financial obligations. However, this ready access to credit may also help them maintain their consumption during temporary income disruptions, which could help smooth macroeconomic fluctuations.[26]

All told, an important implication of the analysis here is that researchers should exercise caution when comparing levels of the financial obligations ratio over long periods. Specifically, the factors behind an increase in the FOR should be identified and evaluated before one concludes that the increase implies greater financial fragility for the U.S. household sector or for the macroeconomy more broadly.

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26. See Dynan, Elmendorf, and Sichel (forthcoming).

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Report on the Condition of the U.S. Banking Industry: Second Quarter, 2005

Assets at reporting bank holding companies rose $234.6 billion in the second quarter, with loan growth accounting for $163.5 billion, or almost 70 percent of the increase in assets over the period. Aggregate assets of reporting bank holding companies reached $10.9 trillion, 2.2 percent higher than in the first quarter. Figures for the second quarter do not reflect any possible repercussions of the summer Gulf Coast hurricanes, which occurred after June 2005.

The strong 3.2 percent increase in loans occurred mostly in mortgage-related categories, both residential and commercial, and in commercial and industrial loans. A sizable portion of the growth in residential mortgage loans at some institutions was reportedly in adjustable-rate mortgages (ARMs). A significant portion of the growth in residential mortgages reportedly included conventional ARMs and such nontraditional products as "option ARMs" (which allow the borrower to select from a range of payment amounts each month) as well as fixed-rate interest-only loans. To some extent, the recently heightened prominence of these nontraditional types of mortgage loans has been associated with recent and significant increases in home values coupled with efforts by lenders and marginally qualified households to arrange financing for home purchases. Bank holding companies continued to favor these adjustable-rate loans amid market expectations of future increases in interest rates. The growth in commercial real estate lending included substantial increases in construction and land development loans, some of which were used to finance the construction of new homes. Unused commitments to lend rose somewhat more slowly, at 2.6 percent.

Securities and money market assets increased $31.0 billion, or 0.8 percent, much less rapidly than loans. At the fifty large bank holding companies, holdings of these assets rose $66.7 billion (2.2 percent), with much of the increase occurring in short-term instruments. Securities and money market assets declined at all other reporting bank holding companies (down $7.5 billion, or 1.6 percent). Most of the decline occurred in mortgage-related securities as these institutions reduced their holdings of fixed-rate securities and used the proceeds of sold and maturing securities to fund loan growth. Declines were also evident at five large bank holding companies for which banking operations represent only a small component of the consolidated entity (not shown separately), and were accompanied by a comparable decrease in borrowings.[1]

A large portion of the growth in total assets at reporting bank holding companies was funded by borrowings rather than deposits, although the pattern of funding growth differed markedly across industry segments. At the fifty large bank holding companies, nondeposit borrowings rose some $128.3 billion, roughly twice as much as deposits ($62.9 billion). In contrast, at all other bank holding companies, which are predominantly smaller firms, deposits rose about $29.7 billion, but borrowings rose only $5.2 billion. These smaller firms appeared to be more willing to reduce their securities holdings than to seek significantly more nondeposit funding to accommodate their asset growth.

Shareholders' equity at reporting bank holding companies rose 3.3 percent ($29.5 billion), outpacing the rate of growth in total assets. Accordingly, regulatory leverage capital ratios improved a few basis points. Total risk-based capital ratios declined, however, as the mix of assets shifted slightly toward loans and away from mortgage securities that are assigned low risk weights in bank capital regulations. Notwithstanding these small changes, regulatory capital ratios overall remained strong for the industry.

Credit quality continued to improve in the second quarter. Nonperforming assets fell to a remarkably low 0.71 percent of loans and related assets, a reduction of 5 basis points from the first quarter. Net chargeoffs declined to 0.52 percent of average loans,

1. Three of these five large bank holding companies are insurance-oriented and two are brokerage-oriented. At the end of the second quarter these five firms had combined assets of $748.3 billion, more than half in the securities and money market assets category. Financial information for these five firms is included in the all reporting bank holding company data shown in table 1, but not in the data for the fifty large bank holding companies (table 2) or in the all other reporting bank holding companies (table 3). For further background on the institutions included in each table's data, see the "Report on the Condition of the U.S. Banking Industry: Third Quarter 2003," *Federal Reserve Bulletin* 90:1, Winter 2004.

also down 5 basis points. Spurred by these further improvements in asset quality, reporting bank holding companies reduced the size of their allowance for loan losses $493 million, or 0.7 percent.

Earnings totaled $32.7 billion for the second quarter, a little lower than in the previous period despite an increase of $1.2 billion in investment securities gains. This small decline was attributable to a 1.3 percent drop in non-interest income—primarily in trading and investment banking revenues—and a 3.6 percent increase in provisions for loan losses to a level that was still slightly below total net chargeoffs.

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1. Financial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio[1, 2]	2000	2001	2002	2003	2004	2003	2004				2005	
						Q4	Q1	Q2	Q3	Q4	Q1	Q2
Balance sheet												
Total assets	**6,745,836**	**7,486,951**	**7,990,945**	**8,880,547**	**10,339,738**	**8,880,547**	**9,358,869**	**9,712,116**	**9,960,475**	**10,339,738**	**10,709,587**	**10,944,213**
Loans	3,728,569	3,832,553	4,080,049	4,435,863	5,109,786	4,435,863	4,615,601	4,803,610	4,949,500	5,109,786	5,184,670	5,348,195
Securities and money market	2,197,434	2,568,705	2,866,857	3,302,240	3,799,442	3,302,240	3,542,873	3,580,335	3,628,275	3,803,711	4,064,142	4,095,179
Allowance for loan losses	−60,376	−68,833	−74,798	−73,835	−74,623	−73,835	−76,629	−76,416	−75,918	−74,623	−73,399	−72,905
Other	880,209	1,154,528	1,118,837	1,216,279	1,505,133	1,216,279	1,277,024	1,404,588	1,458,618	1,500,864	1,534,174	1,573,744
Total liabilities	**6,227,975**	**6,901,281**	**7,350,200**	**8,177,563**	**9,453,154**	**8,177,563**	**8,614,689**	**8,938,434**	**9,108,359**	**9,453,154**	**9,819,118**	**10,024,216**
Deposits	3,771,749	4,025,769	4,357,245	4,705,043	5,249,506	4,705,043	4,847,914	5,005,099	5,064,773	5,249,506	5,348,711	5,442,346
Borrowings	1,991,564	2,073,770	2,244,331	2,630,168	3,088,887	2,630,168	2,902,949	2,955,221	3,054,677	3,158,450	3,422,850	3,520,267
Other[3]	464,662	801,742	748,624	842,352	1,114,761	842,352	863,826	978,114	988,910	1,045,197	1,047,557	1,061,603
Total equity	**517,861**	**585,670**	**640,745**	**702,984**	**886,584**	**702,984**	**744,180**	**773,682**	**852,116**	**886,584**	**890,469**	**919,997**
Off-balance-sheet												
Unused commitments to lend[4]	3,297,511	3,481,745	3,650,669	4,097,531	4,823,334	4,097,531	4,350,963	4,420,773	4,569,881	4,823,334	4,909,895	5,039,143
Securitizations outstanding[5]	n.a.	276,717	295,001	298,348	353,978	298,348	308,543	314,258	313,436	353,978	366,430	367,755
Derivatives (notional value, billions)[6]	*43,608*	*48,276*	*57,886*	*72,914*	*89,115*	*72,914*	*79,273*	*83,109*	*84,723*	*89,115*	*92,623*	*96,656*
Income statement												
Net income[7]	73,168	66,510	85,731	107,949	113,475	29,545	30,673	25,892	29,096	28,903	32,938	32,678
Net interest income	197,695	224,470	246,048	257,537	281,434	68,072	67,441	71,815	72,426	71,482	72,990	72,894
Provisions for loan losses	27,604	40,661	45,107	33,075	28,792	8,944	7,165	6,994	7,489	7,847	6,578	6,815
Non-interest income	200,872	218,984	221,532	250,639	272,286	69,991	67,370	73,358	67,314	68,035	73,227	72,306
Non-interest expense	258,213	302,140	296,964	316,330	360,288	86,323	82,984	101,031	89,144	90,053	91,389	91,416
Security gains or losses	−606	4,338	4,598	5,771	5,521	655	1,978	1,011	1,980	480	371	1,526
Ratios (percent)												
Return on average equity	15.19	11.86	14.11	16.28	14.28	17.25	17.05	13.52	14.04	13.40	14.87	14.60
Return on average assets	1.13	.91	1.11	1.26	1.16	1.34	1.33	1.07	1.18	1.12	1.24	1.20
Net interest margin[8]	3.58	3.61	3.74	3.51	3.39	3.59	3.42	3.49	3.46	3.28	3.18	3.08
Efficiency ratio[7]	63.95	66.92	62.38	61.72	63.71	62.62	61.35	67.10	63.42	64.30	60.47	61.34
Nonperforming assets to loans and related assets	1.09	1.44	1.44	1.15	.82	1.15	1.09	.96	.89	.82	.76	.71
Net charge-offs to average loans	.64	.89	1.04	.84	.67	.98	.72	.66	.61	.71	.57	.52
Loans to deposits	98.86	95.20	93.64	94.28	97.34	94.28	95.21	95.97	97.72	97.34	96.93	98.27
Regulatory capital ratios												
Tier 1 risk-based	8.84	8.92	9.22	9.58	9.37	9.58	9.55	9.40	9.35	9.37	9.31	9.30
Total risk-based	11.80	11.92	12.28	12.60	12.24	12.60	12.47	12.26	12.18	12.24	12.18	12.06
Leverage	6.81	6.68	6.72	6.87	6.61	6.87	6.88	6.67	6.73	6.61	6.51	6.54
Number of reporting bank holding companies	1,727	1,842	1,979	2,134	2,254	2,134	2,193	2,211	2,240	2,254	2,281	2,295

Footnotes appear on p. 492.

2. Financial characteristics of fifty large bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account or ratio[2, 9]	2000	2001	2002	2003	2004	2003	2004				2005	
						Q4	Q1	Q2	Q3	Q4	Q1	Q2
Balance sheet												
Total assets	**5,509,329**	**5,883,032**	**6,244,695**	**6,903,426**	**7,940,887**	**6,903,426**	**7,348,179**	**7,539,139**	**7,741,040**	**7,940,887**	**8,206,462**	**8,417,847**
Loans	2,936,756	2,956,272	3,140,427	3,387,295	3,929,885	3,387,295	3,548,140	3,683,748	3,791,894	3,929,885	3,979,933	4,097,920
Securities and money market	1,849,393	2,053,128	2,282,894	2,629,416	2,909,296	2,629,416	2,855,674	2,841,338	2,880,574	2,909,296	3,094,734	3,161,422
Allowance for loan losses	−49,224	−56,575	−61,180	−59,343	−59,484	−59,343	−61,854	−61,434	−60,811	−59,484	−58,123	−57,422
Other	772,404	930,207	882,553	946,058	1,161,189	946,058	1,006,218	1,075,487	1,129,382	1,161,189	1,189,918	1,215,926
Total liabilities	**5,098,769**	**5,434,925**	**5,758,200**	**6,373,455**	**7,252,392**	**6,373,455**	**6,781,436**	**6,949,713**	**7,084,305**	**7,252,392**	**7,513,951**	**7,706,688**
Deposits	2,847,117	3,022,829	3,261,241	3,512,801	3,948,310	3,512,801	3,629,595	3,759,012	3,793,285	3,948,310	4,019,042	4,081,979
Borrowings	1,814,179	1,878,346	2,040,891	2,358,645	2,713,445	2,358,645	2,614,743	2,642,532	2,742,512	2,713,445	2,896,853	3,025,103
Other[3]	437,474	533,750	456,068	502,010	590,637	502,010	537,099	548,170	548,509	590,637	598,057	599,607
Total equity	**410,560**	**448,107**	**486,496**	**529,971**	**688,495**	**529,971**	**566,743**	**589,426**	**656,735**	**688,495**	**692,511**	**711,159**
Off-balance-sheet												
Unused commitments to lend[4]	3,072,864	3,235,807	3,385,143	3,800,219	4,485,138	3,800,219	4,047,520	4,104,527	4,236,822	4,485,138	4,557,059	4,672,311
Securitizations outstanding[5]	n.a.	271,825	289,905	293,046	348,986	293,046	304,545	307,878	307,325	348,986	361,524	362,973
Derivatives (notional value, billions)[6]	43,544	48,159	57,768	72,725	88,675	72,725	79,044	82,844	84,463	88,675	92,140	96,307
Income statement												
Net income[7]	60,388	52,530	68,308	87,644	90,155	24,422	25,159	19,494	22,998	23,595	26,402	24,977
Net interest income	153,455	166,652	183,796	192,298	209,097	51,232	50,689	52,809	54,067	53,262	53,632	53,316
Provisions for loan losses	24,013	35,786	39,416	28,587	25,360	7,877	6,396	6,212	6,704	6,752	5,770	6,037
Non-interest income	181,585	174,378	172,642	195,668	211,896	55,543	53,378	56,126	51,540	54,644	57,507	54,869
Non-interest expense	216,983	224,502	215,915	229,336	263,397	63,226	60,792	74,478	64,415	66,635	66,232	65,574
Security gains or losses	−603	4,319	5,039	5,186	4,626	632	1,608	697	1,723	524	174	1,470
Ratios (percent)												
Return on average equity	15.86	12.22	14.71	17.49	14.73	18.85	18.31	13.34	14.33	14.05	15.30	14.35
Return on average assets	1.14	.91	1.13	1.31	1.18	1.42	1.39	1.03	1.19	1.19	1.29	1.19
Net interest margin[8]	3.44	3.39	3.56	3.35	3.23	3.47	3.26	3.29	3.31	3.16	3.04	2.92
Efficiency ratio[7]	64.09	64.61	59.55	58.70	61.00	59.40	58.30	65.01	60.38	61.61	57.16	58.57
Nonperforming assets to loans and related assets	1.17	1.57	1.56	1.22	.84	1.22	1.14	1.00	.91	.84	.78	.72
Net charge-offs to average loans	.73	1.01	1.21	.97	.80	1.13	.88	.78	.72	.83	.70	.63
Loans to deposits	103.15	97.80	96.30	96.43	99.53	96.43	97.76	98.00	99.96	99.53	99.03	100.39
Regulatory capital ratios												
Tier 1 risk-based	8.20	8.22	8.51	8.80	8.57	8.80	8.77	8.63	8.60	8.57	8.52	8.45
Total risk-based	11.45	11.57	11.94	12.18	11.84	12.18	12.05	11.88	11.82	11.84	11.79	11.59
Leverage	6.43	6.24	6.25	6.36	6.16	6.36	6.36	6.14	6.22	6.16	6.09	6.06

Footnotes appear on p. 492.

3. Financial characteristics of all other reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account[1, 10]	2000	2001	2002	2003	2004	2003	2004				2005	
						Q4	Q1	Q2	Q3	Q4	Q1	Q2
Balance sheet												
Total assets	**1,178,273**	**1,290,686**	**1,414,391**	**1,549,979**	**1,709,090**	**1,549,979**	**1,590,705**	**1,636,305**	**1,674,215**	**1,709,090**	**1,738,128**	**1,778,206**
Loans	767,464	822,127	885,466	969,249	1,097,600	969,249	996,874	1,034,676	1,069,967	1,097,600	1,123,765	1,164,103
Securities and money market	319,514	359,293	408,750	449,241	474,035	449,241	465,449	463,381	465,577	474,035	471,150	463,669
Allowance for loan losses	−10,884	−11,894	−13,181	−14,075	−14,740	−14,075	−14,383	−14,628	−14,800	−14,740	−14,851	−15,030
Other	102,179	121,160	133,355	145,565	152,194	145,565	142,766	152,875	153,471	152,194	158,065	165,463
Total liabilities	**1,076,381**	**1,174,315**	**1,283,635**	**1,407,777**	**1,550,889**	**1,407,777**	**1,444,384**	**1,490,587**	**1,519,327**	**1,550,889**	**1,580,087**	**1,614,877**
Deposits	912,804	988,825	1,078,022	1,169,677	1,281,284	1,169,677	1,202,669	1,228,499	1,253,522	1,281,284	1,310,496	1,340,212
Borrowings	142,782	159,804	174,398	203,755	228,930	203,755	201,409	223,675	224,912	228,930	227,218	232,457
Other[3]	20,794	25,687	31,214	34,345	40,675	34,345	40,306	38,413	40,893	40,675	42,373	42,208
Total equity	**101,892**	**116,371**	**130,756**	**142,202**	**158,201**	**142,202**	**146,321**	**145,718**	**154,888**	**158,201**	**158,041**	**163,328**
Off-balance-sheet												
Unused commitments to lend[4]	215,583	235,764	253,620	284,399	324,825	284,399	290,060	301,229	315,742	324,825	338,581	351,250
Securitizations outstanding[5]	n.a.	4,567	4,358	4,159	2,877	4,159	2,875	3,000	2,757	2,877	2,792	2,667
Derivatives (notional value, billions)[6]	47	87	86	92	140	92	118	109	117	140	95	95
Income statement												
Net income[7]	12,485	13,841	16,634	17,904	19,654	4,220	4,826	4,846	5,042	4,941	5,260	5,389
Net interest income	43,509	46,215	51,029	53,139	57,386	13,639	13,867	14,014	14,539	14,965	15,268	15,576
Provisions for loan losses	3,420	4,438	5,059	4,271	3,200	1,127	802	786	798	813	678	724
Non-interest income	16,181	22,434	24,591	27,754	26,650	6,754	6,768	6,707	6,615	6,560	6,708	6,664
Non-interest expense	38,118	44,389	46,957	51,486	53,586	13,440	13,159	13,145	13,319	13,962	13,998	13,947
Security gains or losses	−9	729	639	993	558	187	310	111	133	5	105	64
Ratios (percent)												
Return on average equity	13.09	12.53	13.53	13.10	13.23	12.06	13.52	13.28	13.45	12.69	13.31	13.45
Return on average assets	1.12	1.13	1.25	1.21	1.21	1.10	1.24	1.21	1.22	1.17	1.23	1.23
Net interest margin[8]	4.31	4.20	4.26	4.00	3.93	3.97	3.97	3.89	3.92	3.95	3.97	3.97
Efficiency ratio[7]	62.24	63.80	61.12	62.94	62.68	65.72	63.02	62.81	62.91	63.88	62.57	61.97
Nonperforming assets to loans and related assets	.77	.97	1.02	.98	.76	.98	.96	.87	.84	.76	.74	.70
Net charge-offs to average loans	.32	.43	.46	.39	.25	.51	.23	.25	.23	.31	.17	.18
Loans to deposits	84.08	83.14	82.14	82.86	85.66	82.86	82.89	84.22	85.36	85.66	85.75	86.86
Regulatory capital ratios												
Tier 1 risk-based	11.83	12.27	12.50	12.59	12.45	12.59	12.62	12.48	12.46	12.45	12.33	12.15
Total risk-based	13.29	13.83	14.11	14.30	14.09	14.30	14.31	14.15	14.11	14.09	13.95	13.75
Leverage	8.52	8.81	8.93	9.06	9.16	9.06	9.12	9.10	9.15	9.16	9.14	9.13
Number of other reporting bank holding companies	1,652	1,779	1,916	2,071	2,199	2,071	2,131	2,149	2,182	2,199	2,227	2,240

Footnotes appear on p. 492.

4. Nonfinancial characteristics of all reporting bank holding companies in the United States

Millions of dollars except as noted, not seasonally adjusted

Account	2000	2001	2002	2003	2004	2003	2004				2005	
						Q4	Q1	Q2	Q3	Q4	Q1	Q2
Bank holding companies that qualify as financial holding companies [11, 12]												
Domestic												
Number	300	389	435	452	474	452	465	471	477	474	472	469
Total assets	4,497,781	5,440,842	5,921,277	6,610,314	7,462,507	6,610,314	6,856,173	7,082,367	7,279,238	7,462,507	7,650,556	7,893,437
Foreign-owned [13]												
Number	9	10	11	12	14	12	13	14	14	14	15	15
Total assets	502,506	621,442	616,254	710,441	1,376,333	710,441	994,672	1,117,266	1,193,984	1,376,333	1,526,168	1,516,573
Total U.S. commercial bank assets [14]	**6,130,086**	**6,416,080**	**6,897,142**	**7,397,839**	**8,207,673**	**7,397,839**	**7,614,478**	**7,850,587**	**8,041,198**	**8,207,673**	**8,403,885**	**8,534,505**
By ownership												
Reporting bank holding companies	5,657,210	5,942,670	6,429,158	6,941,042	7,785,991	6,941,042	7,173,463	7,409,187	7,599,697	7,785,991	7,991,901	8,119,047
Other bank holding companies	229,274	230,467	227,016	219,223	209,177	219,223	205,391	211,725	208,696	209,177	204,795	206,259
Independent banks	243,603	242,944	240,968	237,575	212,505	237,575	235,623	229,675	232,805	212,505	207,189	209,200
Assets associated with nonbanking activities [12, 15]												
Insurance	n.a.	426,462	372,405	437,503	579,111	437,503	468,168	583,073	579,785	579,111	574,466	582,023
Securities broker–dealers	n.a.	n.a.	630,851	656,775	719,242	656,775	713,794	710,485	756,869	892,571	1,168,482	1,165,603
Thrift institutions	102,218	91,170	107,422	133,056	191,201	133,056	139,713	156,033	162,396	191,201	194,267	198,290
Foreign nonbank institutions	132,629	138,977	145,344	170,630	216,758	170,630	184,366	226,094	230,569	216,758	219,828	231,564
Other nonbank institutions	1,234,714	1,674,267	561,712	678,088	1,128,179	678,088	844,638	862,230	887,848	1,128,179	1,045,116	836,733
Number of bank holding companies engaged in nonbanking activities [12, 15]												
Insurance	n.a.	143	96	102	97	102	100	101	98	97	97	99
Securities broker–dealers	n.a.	n.a.	47	50	44	50	49	48	45	44	43	45
Thrift institutions	50	38	32	27	27	27	29	27	25	27	27	26
Foreign nonbank institutions	25	32	37	42	39	42	42	41	40	39	38	37
Other nonbank institutions	633	743	880	1,042	1,026	1,042	1,010	1,030	1,050	1,026	926	886
Foreign-owned bank holding companies [13]												
Number	21	23	26	27	29	27	27	28	28	29	29	30
Total assets	636,669	764,411	762,901	934,085	1,537,208	934,085	1,145,476	1,271,378	1,349,900	1,537,208	1,690,119	1,698,361
Employees of reporting bank holding companies (full-time equivalent)	1,859,930	1,985,981	1,992,559	2,034,358	2,162,179	2,034,358	2,099,126	2,085,733	2,133,299	2,162,179	2,168,024	2,196,793
Assets of fifty large bank holding companies [9, 17]												
Fixed panel (from table 2)	5,509,329	5,883,032	6,244,695	6,903,426	7,940,887	6,903,426	7,348,179	7,539,139	7,741,040	7,940,887	8,206,462	8,417,847
Fifty large as of reporting date	5,319,129	5,732,621	6,032,000	6,666,488	7,940,955	6,666,488	7,045,844	7,385,384	7,644,504	7,940,955	8,206,462	8,417,847
Percent of all reporting bank holding companies	78.90	76.60	75.50	75.10	76.80	75.10	75.30	76.00	76.70	76.80	76.60	76.90

NOTE: All data are as of the most recent period shown. The historical figures may not match those in earlier versions of this table because of mergers, significant acquisitions or divestitures, or revisions or restatements to bank holding company financial reports. Data for the most recent period may not include all late-filing institutions.

1. Covers top-tier bank holding companies except (1) those with consolidated assets of less than $150 million and with only one subsidiary bank and (2) multibank holding companies with consolidated assets of less than $150 million, with no debt outstanding to the general public and not engaged in certain nonbanking activities.

2. Data for all reporting bank holding companies and the fifty large bank holding companies reflect merger adjustments to the fifty large bank holding companies. Merger adjustments account for mergers, acquisitions, other business combinations and large divestitures that occurred during the time period covered in the tables so that the historical information on each of the fifty underlying institutions depicts, to the greatest extent possible, the institutions as they exist in the most recent period. In general, adjustments for mergers among bank holding companies reflect the combination of historical data from predecessor bank holding companies.

The data for the fifty large bank holding companies have also been adjusted as necessary to match the historical figures in each company's most recently available financial statement.

In general, the data are not adjusted for changes in generally accepted accounting principles.

3. Includes minority interests in consolidated subsidiaries.

4. Includes credit card lines of credit as well as commercial lines of credit.

5. Includes loans sold to securitization vehicles in which bank holding companies retain some interest, whether through recourse or seller-provided credit enhancements or by servicing the underlying assets. Securitization data were first collected on the FR Y-9C report for June 2001.

6. The notional value of a derivative is the reference amount of an asset on which an interest rate or price differential is calculated. The total notional value of a bank holding company's derivatives holdings is the sum of the notional values of each derivative contract regardless of whether the bank holding company is a payor or recipient of payments under the contract. The actual cash flows and fair market values associated with these derivative contracts are generally only a small fraction of the contract's notional value.

7. Income statement subtotals for all reporting bank holding companies and the fifty large bank holding companies exclude extraordinary items, the cumulative effects of changes in accounting principles, and discontinued operations at the fifty large institutions and therefore will not sum to Net income. The efficiency ratio is calculated excluding nonrecurring income and expenses.

8. Calculated on a fully-taxable-equivalent basis.

9. In general, the fifty large bank holding companies are the fifty largest bank holding companies as measured by total consolidated assets for the latest period shown. Excludes a few large bank holding companies whose commercial banking operations account for only a small portion of assets and earnings.

10. Excludes predecessor bank holding companies that were subsequently merged into other bank holding companies in the panel of fifty large bank holding companies. Also excludes those bank holding companies excluded from the panel of fifty large bank holding companies because commercial banking operations represent only a small part of their consolidated operations.

11. Exclude qualifying institutions that are not reporting bank holding companies.

12. No data related to financial holding companies and only some data on nonbanking activities were collected on the FR Y-9C report before implementation of the Gramm–Leach–Bliley Act in 2000.

13. A bank holding company is considered "foreign-owned" if it is majority-owned by a foreign entity. Data for foreign-owned companies do not include data for branches and agencies of foreign banks operating in the United States.

14. Total assets of insured commercial banks in the United States as reported in the commercial bank Call Report (FFIEC 031 or 041, Reports of Condition and Income). Excludes data for a small number of commercial banks owned by other commercial banks that file separate call reports yet are also covered by the reports filed by their parent banks. Also excludes data for mutual savings banks.

15. Data for thrift, foreign nonbank, and other nonbank institutions are total assets of each type of subsidiary as reported in the FR Y-9LP report. Data cover those subsidiaries in which the top-tier bank holding company directly or indirectly owns or controls more than 50 percent of the outstanding voting stock and that has been consolidated using generally accepted accounting principles. Data for securities broker–dealers are net assets (that is, total assets, excluding intercompany transactions) of broker–dealer subsidiaries engaged in activities pursuant to the Gramm–Leach–Bliley Act, as reported on schedule HC-M of the FR Y-9C report. Data for insurance activities are all insurance-related assets held by the bank holding company as reported on schedule HC-I of the FR Y-9C report.

Beginning in 2002:Q1, insurance totals exclude intercompany transactions and subsidiaries engaged in credit-related insurance or those engaged principally in insurance agency activities. Beginning in 2002:Q2, insurance totals include only newly authorized insurance activities under the Gramm–Leach–Bliley Act.

16. Aggregate assets of thrift subsidiaries were affected significantly by the conversion of Charter One's thrift subsidiary (with assets of $37 billion) to a commercial bank in the second quarter of 2002 and the acquisition by Citigroup of Golden State Bancorp (a thrift institution with assets of $55 billion) in the fourth quarter of 2002.

17. Changes over time in the total assets of the time-varying panel of fifty large bank holding companies are attributable to (1) changes in the companies that make up the panel and (2) to a small extent, restatements of financial reports between periods.

n.a. Not available

SOURCE: Federal Reserve Reports FRY-9C and FR Y-9LP, Federal Reserve National Information Center, and published financial reports.

Announcements

Chairman Alan Greenspan Names Governor Donald L. Kohn as Designee

Federal Reserve Board Chairman Alan Greenspan named on August 17, 2005, Governor Donald L. Kohn to replace Governor Edward M. Gramlich as the Chairman's designee on four federal loan guarantee boards, effective September 1, 2005. Governor Gramlich's resignation from the Board of Governors of the Federal Reserve System, became effective August 31, 2005.

Governor Kohn will serve as chairman of the Air Transportation Stabilization Board, the Emergency Steel Loan Guarantee Board, and the Emergency Oil and Gas Loan Guarantee Board, and as a member of the LOCAL Television Loan Guarantee Board.

Statement by Chairman Alan Greenspan on the Appointment of Ben S. Bernanke

"The President has made a distinguished appointment in Ben Bernanke. Ben comes with superb academic credentials and important insights into the ways our economy functions. I have no doubt that he will be a credit to the nation as Chairman of the Federal Reserve Board."

Change in Tentative Federal Open Market Committee Meeting Schedule for 2006

The Federal Open Market Committee announced on September 9, 2005, a change in its tentative meeting schedule for 2006.

The Committee plans to hold its first scheduled meeting of the year on Tuesday, January 31, 2006. It had previously planned to meet for two days: January 31 and February 1. This schedule change avoids a meeting that spans the terms of two Chairmen.

In keeping with past practice, Chairman Greenspan plans to attend this meeting.

Federal Open Market Committee Statements

The Federal Open Market Committee decided on September 20, 2005, to raise its target for the federal funds rate 25 basis points, to 3¾ percent.

Output appeared poised to continue growing at a good pace before the tragic toll of Hurricane Katrina. The widespread devastation in the Gulf region, the associated dislocation of economic activity, and the boost to energy prices imply that spending, production, and employment will be set back in the near term. In addition to elevating premiums for some energy products, the disruption to the production and refining infrastructure may add to energy price volatility.

While these unfortunate developments have increased uncertainty about near-term economic performance, it is the Committee's view that they do not pose a more persistent threat. Rather, monetary policy accommodation, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. Higher energy and other costs have the potential to add to inflation pressures. However, core inflation has been relatively low in recent months and longer-term inflation expectations remain contained.

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Voting for the FOMC monetary policy action were: Alan Greenspan, Chairman; Timothy F. Geithner, Vice Chairman; Susan S. Bies; Roger W. Ferguson, Jr.; Richard W. Fisher; Donald L. Kohn; Michael H. Moskow; Anthony M. Santomero; and Gary H. Stern. Voting against was Mark W. Olson, who preferred no change in the federal funds rate target at this meeting.

In a related action, the Board of Governors unanimously approved a 25-basis-point increase in the discount rate, to 4¾ percent. In taking this action, the Board approved the requests submitted by the Boards of Directors of the Federal Reserve Banks of Boston, New York, Philadelphia, Richmond, Chicago, Minneapolis, and Kansas City.

The Federal Open Market Committee decided on November 1, 2005, to raise its target for the federal funds rate 25 basis points, to 4 percent.

Elevated energy prices and hurricane-related disruptions in economic activity have temporarily depressed output and employment. However, monetary policy accommodation, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity that will likely be augmented by planned rebuilding in the hurricane-affected areas. The cumulative rise in energy and other costs have the potential to add to inflation pressures; however, core inflation has been relatively low in recent months and longer-term inflation expectations remain contained.

The Committee perceives that, with appropriate monetary policy action, the upside and downside risks to the attainment of both sustainable growth and price stability should be kept roughly equal. With underlying inflation expected to be contained, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

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In a related action, the Board of Governors unanimously approved a 25-basis point increase in the discount rate, to 5 percent. In taking this action, the Board approved the requests submitted by the Boards of Directors of the Federal Reserve Banks of Boston, New York, Philadelphia, Cleveland, Richmond, Atlanta, Chicago, St. Louis, Minneapolis, Kansas City, Dallas, and San Francisco.

Increase in Discount Rate

The Federal Reserve Board approved on September 20, 2005, an action by the Board of Directors of the Federal Reserve Bank of San Francisco, increasing the discount rate at the Bank from 4½ percent to 4¾ percent.

The Board also approved an action by the Board of Directors of the Federal Reserve Bank of St. Louis, increasing the discount rate at the Bank from 4½ percent to 4¾ percent, effective September 21, 2005.

On September 22, 2005, the Federal Reserve Board approved actions by the Boards of Directors of the Federal Reserve Banks of Cleveland, Atlanta, and Dallas, increasing the discount rate at the Banks from 4½ percent to 4¾ percent.

Proposed Amendments to Regulation E

The Federal Reserve Board published on August 19, 2005, proposed amendments to Regulation E (Electronic Fund Transfers), which implements the Electronic Fund Transfer Act, and to the regulation's official staff commentary that clarify the disclosure obligations of automated teller machine (ATM) operators with respect to fees imposed on a consumer for initiating an electronic fund transfer or a balance inquiry at an ATM. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions that offer electronic fund transfer services to consumers.

The regulation provides that an ATM operator that charges a fee for initiating an electronic fund transfer or balance inquiry must post notices at ATMs that a fee will be imposed. The proposed revisions would clarify the intent of the rule that ATM operators can satisfy the requirement by providing a notice that a fee "may" be imposed if there are circumstances under which some consumers would not be charged for services. ATM operators must continue to provide the consumer with a separate notice, either on the screen of the ATM or on paper, that a fee will be imposed and the amount of the fee, before the consumer is committed to paying a fee.

The Board is continuing to consider other issues that were addressed in its proposed September 2004 update to Regulation E.

Comments were due on or before October 7, 2005.

Request for Comment on Regulation Z

The Federal Reserve Board, on October 11, 2005, issued for public comment a second advance notice of proposed rulemaking (ANPR) concerning the open-end (revolving) credit rules of the Board's Regulation Z (Truth in Lending), which implements

the Truth in Lending Act (TILA). The second ANPR solicits public comments on ways the Board should implement amendments to TILA made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act). The amendments principally deal with open-end credit accounts and require new disclosures on periodic statements and on credit card applications and solicitations.

The Board periodically reviews each of its regulations to update them, if necessary. In December 2004 the Board published an initial ANPR to commence a comprehensive review of the open-end credit rules and to solicit comment on a variety of issues relating to the format of open-end credit disclosures, the content of disclosures, and the substantive protections provided under the regulation. The comment period closed in March 2005.

In April 2005 the Bankruptcy Act was enacted, which contains several amendments to TILA, including provisions requiring new disclosures for open-end credit accounts. The Board plans to implement the amendments as part of its review of Regulation Z and is publishing this second ANPR to reopen and extend the public comment period. Combining the two rulemakings will allow the Board to coordinate the changes to the TILA disclosures and should impose less regulatory burden on creditors.

Comments were to be received on or before December 16, 2005.

AMENDMENT TO REGULATION CC, APPENDIX A

The Federal Reserve Board announced on October 12, 2005, amendments to appendix A of Regulation CC (Availability of Funds and Collection of Checks) that reflect the restructuring of the Federal Reserve's check-processing operations in the Fourth, Tenth, and Eleventh Districts. These amendments are part of a series of amendments to appendix A that will take place through the first quarter of 2006, associated with the previously announced restructuring of the Reserve Banks' check-processing operations.

Appendix A provides a routing symbol guide that helps depository institutions determine the maximum permissible hold periods for most deposited checks. As of December 10, 2005, the Oklahoma City Branch office of the Federal Reserve Bank of Kansas City will no longer process checks, and depository institutions that were assigned to that office have been reassigned to the head office of the Federal Reserve Bank of Dallas. As of January 21, 2006, banks with 0442 and 2442 routing symbols, currently assigned to the Columbus office of the Federal Reserve Bank of Cleveland, will be reassigned to that Reserve Bank's Cincinnati Branch office. As of February 11, 2006, banks with 0440, 2440, 0441, and 2441 routing symbols, also currently assigned to the Columbus office, will be reassigned to the Cleveland Reserve Bank's head office and the Columbus office will cease processing checks. The Federal Reserve Banks' transfer of the Columbus office's check-processing operations to both the Cincinnati Branch office and the Cleveland head office differs from earlier announcements indicating that the entirety of the Columbus office's operations would be transferred to the Cleveland head office. The Reserve Banks believe that this arrangement will better serve the needs of affected depository institutions.

To ensure that the information in appendix A accurately describes the structure of check-processing operations within the Federal Reserve System, the final rule revises the lists of routing symbols associated with Federal Reserve offices to reflect the reassignments discussed above. Each appendix A revision will be effective on the date of the underlying check-processing change. The Board is providing earlier-than-usual notice of the amendments to the appendix A routing symbol lists under the Federal Reserve Bank of Cleveland because these amendments differ from earlier announcements.

PROPOSAL TO EXPAND THE DEFINITION OF A SMALL BANK HOLDING COMPANY

The Federal Reserve Board proposed on September 7, 2005, expanding the definition of a small bank holding company (BHC) under the Board's Small Bank Holding Company Policy and the Board's risk-based and leverage capital guidelines for bank holding companies. The policy statement facilitates the transfer of ownership of small community banks by permitting debt levels at small BHCs that are higher than what would be permitted for larger BHCs. Because small BHCs may, consistent with the policy statement, operate at a level of leverage that generally is inconsistent with the capital guidelines, the capital guidelines provide an exemption for small BHCs.

The policy statement and the capital guidelines define a small BHC as one with consolidated assets of less than $150 million. However, a small BHC with consolidated assets of less than $150 million can be ineligible for treatment under the policy statement if it meets certain qualitative criteria.

The Board is proposing to raise the small BHC asset-size threshold from $150 million to $500 million and to amend the related qualitative criteria for determining eligibility as a small BHC for the purposes of the policy statement and the capital guidelines. The proposed amendments to the threshold and the qualitative criteria are designed to reflect changes in the industry since the initial issuance of the policy statement in 1980.

The Board is also proposing changes to the policy statement that would clarify the treatment of subordinated debt associated with issuances of trust preferred securities.

The proposal indicates that such subordinated debt would be considered debt for most purposes under the policy statement, subject to a transition period.

In the near term, the Board anticipates issuing a separate request for public comment on a proposal that would make related changes in regulatory financial reporting requirements. Under that proposal, qualifying small BHCs would only be required to file parent-only financial data on a semiannual basis (FR Y-9SP).

Board Statement on Supervisory Practices for Financial Institutions and Borrowers Affected by Hurricane Katrina

The Federal Reserve Board on September 15, 2005, encouraged banking organizations to work with borrowers and other customers in communities affected by Hurricane Katrina. Additionally, the Board reminded banking organizations that regulatory flexibility is available to facilitate recovery in areas affected by this disaster.

Orders Exempting Bank Transfer Agents Affected by Hurricane Katrina

The federal banking agencies announced on September 28, 2005, the issuance of orders granting emergency relief to bank transfer agents affected by Hurricane Katrina. The orders cover national banks, state member banks, state nonmember banks, bank holding companies, and bank subsidiaries. The relief applies retroactively for the period beginning August 29, 2005, through October 17, 2005.

Transfer agents maintain records related to the issuance and transfer of securities and provide operational assistance in the sale and transfer of ownership of securities. These agents also may disburse dividends and send corporate information, including proxies, to holders of securities. The storm and its aftermath have resulted in a lack of communications, facilities, and available staff, that could hamper the efforts of transfer agents to access securities, records, and funds, and to process securities transactions.

To address compliance issues caused by Hurricane Katrina and its aftermath, the orders conditionally exempt banks, bank holding companies, and bank subsidiaries acting as transfer agents from compliance with section 17A of the Securities Exchange Act of 1934. These orders, which are being issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, complement an order issued by the Securities and Exchange Commission on September 15, 2005, that exempts transfer agents under the SEC's jurisdiction from the requirements of section 17A of the Securities Exchange Act of 1934.

Any transfer agents or other persons requiring additional assistance are encouraged to contact staff at the agencies for individual relief or interpretive guidance.

Waiver of Appraisal Requirements for Financial Institutions Affected by Hurricanes Katrina and Rita

The Federal Reserve Board announced its approval on October 6, 2005, of an order waiving its appraisal requirements for three years for regulated financial institutions affected by Hurricanes Katrina and Rita. This action was coordinated with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration, collectively referred to as "the agencies."

The waiver covers transactions involving real estate located in certain Alabama, Mississippi, and Texas counties and Louisiana parishes that have been designated by the Federal Emergency Management Agency as qualifying for "Individual and Public Assistance" (all categories) and "Individual and Public Assistance" (Categories A and B) as a result of Hurricanes Katrina and Rita. A listing of the designated disaster areas is on the Board's web site at www.federalreserve.gov/boarddocs/press/bcreg/2005/200510062/attachment.pdf. Exceptions for the major disaster declared due to Hurricane Katrina will expire on August 29, 2008, in Alabama, Mississippi, and Louisiana, and for Hurricane Rita on September 24, 2008, in Louisiana and Texas.

To qualify for the waiver, a financial institution needs to document that: (1) the transaction involves real property located in the designated disaster areas; (2) the property involved was directly affected by the major disaster or the transaction would facilitate recovery from the disaster(s); (3) there is a binding commitment to fund the transaction that is made within three years after the date the major disaster was declared; and (4) the value of the real property supports the institution's decision to enter into the transaction.

This waiver is being issued pursuant to the authority granted to the agencies under the Depository Institutions Disaster Relief Act of 1992. The act allows for the appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act and the agencies' appraisal regulations to be waived for up to thirty-six months when the President of the United States determines that a major disaster exists and the agencies determine that such waiver would both facilitate recovery in the disaster area and be consistent with safety and soundness.

Annual Adjustments for Reserve Calculations and Deposit Reporting

The Federal Reserve Board announced on October 4, 2005, the annual indexing of the low reserve tranche and of the reserve requirement exemption amount for 2006. These amounts are used in the calculation of reserve requirements of depository institutions. The Board also announced the annual indexing of the cutoff level for nonexempt deposit and the reduced reporting limit that will be used to determine deposit reporting panels, effective September 2006.

All depository institutions must hold a percentage of certain types of deposits as reserves in the form of vault cash, as a deposit in a Federal Reserve Bank, or as a deposit in a pass-through account at a correspondent institution. Reserve requirements currently are assessed on the depository institution's net transaction accounts (mostly checking accounts). Depository institutions must also regularly submit reports of their deposits and other reservable liabilities.

For reserve requirements in 2006, the first $7.8 million of net transaction accounts (up from $7.0 million in 2005), will be exempt from reserve requirements. A 3 percent reserve ratio will be assessed on net transaction accounts more than $7.8 million up to and including $48.3 million (up from $47.6 million in 2005). A 10 percent reserve ratio will be assessed on net transaction accounts in excess of $48.3 million.

The annual indexing of the low reserve tranche and the reserve requirement exemption amount is based on growth in net transaction accounts and total reservable liabilities, respectively, at all depository institutions between June 30, 2004, and June 30, 2005.

For depository institutions that report weekly, the low reserve tranche and the reserve requirement exemption amount for 2006 will first apply to the fourteen-day reserve computation period that began Tuesday, November 22, 2005, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 22, 2005.

For depository institutions that report quarterly, the low reserve tranche and the reserve requirement exemption amount for 2006 will first apply to the seven-day reserve computation period that begins Tuesday, December 20, 2005, and the corresponding seven-day reserve maintenance period that begins Thursday, January 19, 2006.

The Board also announced increases in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency with which depository institutions must submit deposit reports. The *Federal Register* notice containing a description of the new boundaries for deposit reporting that will be effective September 2006 is on the Board's web site at www.federalreserve.gov/boarddocs/press/bcreg/2005/20051004/attachment.pdf.

Proposed Revisions to 1998 Basel Capital Accord (Basel I)

The Federal Reserve Board decided on October 6, 2005, to request public comment on proposed revisions to the U.S. risk-based capital standards for banking organizations. These current standards are based upon the 1988 Basel Capital Accord, also known as Basel I.

The proposed revisions should more closely align risk-based capital requirements with the risk inherent in various exposures and could mitigate competitive inequalities that may arise as new capital rules, known as Basel II, are implemented for the most complex internationally active banking organizations.

The modifications that the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision are considering would apply to banks, bank holding companies, and savings associations. The modifications will be set forth in an advanced

notice of proposed rulemaking to be published shortly in the *Federal Register*.

In considering possible revisions, the agencies are seeking to enhance risk sensitivity without undue complexity or regulatory burden.

Specifically, the agencies are soliciting comment on:

- increasing the number of risk-weight categories,
- permitting greater use of external ratings as an indicator of credit risk for exposures for purposes of determining the appropriate risk weight,
- expanding the types of guarantees and collateral that may be recognized,
- modifying the risk weights associated with one-to-four family residential mortgages,
- applying credit conversion factors to certain types of commitments, as well as the appropriate risk-based capital treatment of certain securitizations with early-amortization provisions, and
- modifying the risk weights for loans that are ninety days or more past due or in non-accrual status, as well as for certain commercial real estate exposures, and other retail and commercial exposures.

Modifications to Methodology Used to Calculate Private-Sector Adjustment Factor

The Federal Reserve Board announced on October 12, 2005, modifications to the methodology used to calculate the private-sector adjustment factor (PSAF), which is used in setting fees for certain payment services provided to depository institutions.

The Monetary Control Act of 1980 requires that the Board establish fees for priced services provided to depository institutions to recover, over the long run, all direct and indirect costs actually incurred as well as imputed costs that would have been incurred, including financing costs, taxes, and certain other expenses, and the return on equity (profit) that would have been earned if a private business firm provided the services. The methodology underlying the PSAF is reviewed periodically to ensure that it is appropriate and relevant in light of changes that may have occurred in Reserve Bank priced-services activities, accounting standards, finance theory, and regulatory and business practices.

Beginning with the 2006 price setting, the Board will use only a capital asset pricing model (CAPM) to determine a return on equity (ROE) that reflects the return earned by private-sector service providers. Previously the ROE was calculated by averaging the results of three analytical models, including the CAPM. The CAPM ROE will be based on the rate of return of the overall market, as opposed to the long-standing practice of identifying a priced-services peer group.

Fee Schedules for Federal Reserve Bank Priced Services

The Federal Reserve Board approved fee schedules on November 2, 2005, for Federal Reserve Bank payment services for depository institutions (priced services), effective January 3, 2006.

The Reserve Banks project that they will recover 102.5 percent of all their priced services costs in 2006 and estimate that they will recover 103.6 percent of these costs in 2005.

From 1995 to 2004 the Reserve Banks recovered 97.5 percent of priced services costs, including operating costs, imputed costs, and targeted return on equity (or net income), which amounts to a ten-year total net income of slightly less than $550 million.

Since the mid-1990s there has been a national trend away from the use of checks and toward the use of more efficient electronic payment alternatives. In response to this trend, the Reserve Banks have undertaken several initiatives to improve operational efficiencies and reduce costs. In particular, as part of their check-restructuring initiative, the Reserve Banks have reduced the number of Federal Reserve check-processing locations from forty-five in 2003 to twenty-seven and have announced plans to further reduce the number to twenty-two sites by the end of 2006. In 2006 the Reserve Banks are expected to realize full-year operational efficiencies and cost savings associated with the check restructurings that have already occurred and partial-year savings associated with the restructurings in 2006. In addition, the Reserve Banks have reduced costs in a variety of support and overhead areas and, as a result, the Reserve Banks expect to fully recover the costs of providing priced services in 2006.

Overall, the price level for Federal Reserve priced services will increase about 3 percent in 2006 from 2005. This increase reflects an approximately 5 percent rise in paper check service fees combined with a 1 percent decrease in fees for the Reserve Banks' electronic payment services. The 2006 fee schedule for each of the priced services, except the check service, which is more complex, is on the Board's web site at www.federalreserve.gov/paymentsystems/pricing/2006repricingfedreg.pdf. Fee schedules for all priced services are available on the Federal

Reserve Banks' financial services web site at www.frbservices.org.

In addition the Board approved the 2006 private-sector adjustment factor (PSAF) for Reserve Bank priced services of $117.7 million. The PSAF is an allowance for income taxes and other imputed expenses that would have to be paid and profits that would have to be earned if the Reserve Banks' priced services were provided by a private business. The Monetary Control Act of 1980 requires that the Federal Reserve establish fees to recover the costs of providing priced services, including the PSAF, over the long run, to promote competition between the Reserve Banks and private-sector service providers.

List of Distressed and Underserved Nonmetropolitan Middle-Income Geographies

The federal banking agencies announced on August 30, 2005, the availability of the list of distressed and underserved nonmetropolitan middle-income geographies in which bank revitalization or stabilization activities will receive consideration under the Community Reinvestment Act (CRA) as "community development" pursuant to the revised CRA rules issued by the agencies on August 2, 2005. The list is available on the Federal Financial Institutions Examination Council (FFIEC) web site (www.FFIEC.gov/cra).

"Distressed nonmetropolitan middle-income" geographies are those located in counties that meet one or more triggers that generally reflect the "distress criteria" used by the Community Development Financial Institutions Fund. The distress triggers are: (1) an unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; and (3) a population loss of 10 percent or more between the previous and most recent decennial census, or a net migration loss of 5 percent or more over the five-year period preceding the most recent census. The agencies will utilize annual information where possible.

"Underserved nonmetropolitan middle-income geographies" must meet criteria for population size, density, and dispersion that indicate that an area's population is sufficiently small, thin, and distant from a population center such that the geography is likely to have difficulty in financing the fixed costs of essential community needs. The agencies will use as the basis for these designations the "urban influence codes" numbered 7, 10, 11, and 12 that are maintained by the Economic Research Service of the United States Department of Agriculture.

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency will update the list of distressed and underserved nonmetropolitan middle-income geographies annually, and will post updates on the FFIEC web site by April 1 of each year. To the extent that changes occur, the agencies are proposing adoption of a one-year lag period, which would be in effect for the calendar year following the date when a census tract designated as distressed or underserved is removed from the list. Revitalization or stabilization activities undertaken during the lag period would still be considered as community development activities if they meet the primary purpose of community development.

Insured Depository Institutions Encouraged to Assist Displaced Customers

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (the agencies), and the Conference of State Bank Supervisors asked insured depository institutions on September 1, 2005, to consider all reasonable and prudent steps to assist customers' and credit union members' cash and financial needs in areas affected by Hurricane Katrina. The agencies are working with state regulatory agencies, financial industry trade groups, and affected financial institutions to identify customer needs and monitor institutions' restoration of services.

The agencies remind the public that deposit insurance is in full force and that money in FDIC- or NCUA-insured accounts is protected by federal deposit insurance. The agencies also note that a priority is to provide customer access to deposit accounts and other financial assets. Many financial institutions are implementing contingency plans, including procedures for consumers to have access to ATMs and use of their debit cards.

The financial services community through its various trade associations is working together to assist affected institutions. The agencies encourage financial institutions to assist affected institutions and consider all reasonable and prudent actions that could help meet the critical financial needs of their customers and their communities. To the extent consistent

with safe and sound banking practices, such actions may include the following:

- waiving ATM fees for customers and noncustomers
- increasing ATM daily cash withdrawal limits
- easing restrictions on cashing out-of-state and noncustomer checks
- waiving overdraft fees as a result of paycheck interruption
- waiving early withdrawal penalties on time deposits
- waiving availability restrictions on insurance checks
- allowing loan customers to defer or skip some payments
- waiving late fees for credit card and other loan balances due to interruption of mail and, or billing statements or the customer's inability to access funds
- easing credit card limits and credit terms for new loans
- delaying delinquency notices to the credit bureaus

The agencies, in consultation with FinCEN, also encourage depository institutions to be reasonable in their approach to verifying the identity of individuals temporarily displaced by Hurricane Katrina. Under the Customer Identification Program requirement of the Bank Secrecy Act, depository institutions must obtain, at a minimum, an individual's name, address, date of birth, and taxpayer identification number or other acceptable identification number before opening an account. The Customer Identification Program requirement provides depository institutions with flexibility to design a program that uses documents, nondocumentary methods, or a combination to verify a customer's identity. Moreover, the regulation provides that verification of identity may be completed within a reasonable time after the account is opened. Recognizing the urgency of this situation, the agencies encourage depository institutions to use nondocumentary verification methods for affected customers that may not be able to provide standard identification documents, as permitted under the regulation. A depository institution in the affected area, or dealing with new customers from the affected area, may amend its Customer Identification Program immediately and obtain required board approval for program changes as soon as practicable.

The agencies note that these measures could help customers recover their financial strength and contribute to the health of the local community and the long-term interest of financial institutions and their customers when undertaken in a prudent manner. The agencies recognize that the needs and situation of each financial institution and its community and customers are unique. The actions above may not be feasible or desirable for all institutions and many institutions may provide additional services from those identified.

The agencies will continue to closely monitor the situations and needs of insured depository institutions and their customers and will provide additional guidance, as required, to help address those needs. Institutions needing assistance in dealing with customers affected by the hurricane should contact their primary supervisors.

Data Show Continued Improvement in Credit Quality

The quality of syndicated bank credits showed continued improvement this year, according to the Shared National Credit (SNC) review released on September 15, 2005, by federal bank and thrift institution regulators. The review, which encompassed credits of at least $20 million that are shared by three or more financial institutions, also found that most industries exhibit much improved credit quality from peak problem levels experienced only a few years ago.

The results—reported by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision—are based on analyses prepared in the second quarter of 2005 and reflect business and economic conditions at that time.

Total classified credit commitments (those rated as either substandard, doubtful, or loss) fell $21.5 billion, or 29 percent, from the previous year, compared with a net decrease of $78.2 billion, or 51 percent, the year before. Commitments rated special mention decreased $7.0 billion, or 21 percent, in contrast to 2004 when they fell $22.4 billion, or 41 percent. None of these figures includes the effects of hedging or other techniques that organizations often employ to mitigate risk.

The ratio of classified credit commitments to total commitments fell to 3.2 percent, the lowest level since 1999. Total adversely rated credits (classified and special mention combined) also fell considerably to 4.8 percent of total commitments.

Revised Plan for Implementation of Basel II Framework

The four federal banking agencies (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision) announced on September 30, 2005, their revised plans for the U.S. implementation of the "International Convergence of Capital Measurement and Capital Standards: A Revised Framework," otherwise known as Basel II. The agencies previously announced on April 29, 2005, that they were delaying issuance of a notice of proposed rulemaking (NPR), pending additional analysis of the quantitative impact study (QIS4) submissions. The agencies intend to move forward with an NPR for domestic implementation of Basel II, but plan to introduce additional prudential safeguards in the NPR to address concerns identified in the analysis of the results of the QIS4 conducted with the industry. The agencies expect that the U.S. Basel II proposal will be available in the first quarter of 2006.

The agencies' Basel II implementation plan includes the following elements:

- The agencies expect to propose a revised implementation timeline for Basel II. Under this revised timeline, the first opportunity for a U.S. banking institution to conduct a parallel run would be January 2008. In addition, U.S. institutions adopting the Basel II-based capital rules would be subject to a minimum three-year transition period during which the agencies would apply limits on the amount by which each institution's risk-based capital could decline with the application of Basel II. These limits would be implemented through floors that are intended to be simpler in design and more conservative in effect than those set forth in Basel II.

For institutions that plan to implement the Basel II framework at the earliest possible implementation date, the following timetable and transitional arrangements would be proposed in the NPR:

Year	Transitional Arrangements
2008	Parallel Run
2009	95% floor
2010	90% floor
2011	85% floor

- An institution's primary federal supervisor would assess that institution's readiness to operate under the Basel II-based capital rules consistent with the above schedule. As part of this assessment, the primary federal supervisor will make a decision on the termination of the floors after 2011 on an institution-by-institution basis.
- Using information received during the U.S. Basel II implementation process (including the transition period), the agencies will continue to evaluate the effectiveness of the Basel II-based capital rules. The agencies anticipate that there will be further revisions to the U.S. Basel II-based capital rules before the termination of the floors.
- The agencies will retain both the existing Prompt Corrective Action and leverage capital requirements in the proposed domestic implementation of Basel II.

The agencies expect to publish an advance notice of proposed rulemaking for notice and comment on possible modifications to the risk-based capital rules for banks that do not become subject to Basel II-based capital rules. The revised transition schedule for the domestic implementation of the Basel II framework will permit industry consideration of and public comment on these two rulemaking initiatives along similar timeframes.

Comment Requested on Suggested Domestic Risk-Based Capital Modifications

The four federal banking agencies—the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision—published on October 20, 2005, an interagency advance notice of proposed rulemaking (ANPR) regarding potential revisions to the existing risk-based capital framework. These changes would apply to banks, bank holding companies, and savings associations.

The ANPR document discusses various modifications to the U.S. risk-based capital standards including:

- increasing the number of risk-weight categories to which credit exposures may be assigned;
- expanding the use of external credit ratings as an indicator of credit risk for externally rated exposures;
- expanding the range of collateral and guarantors that may qualify an exposure for lower risk weights;

• using loan-to-value ratios, credit assessments, and other broad measures of credit risk for assigning risk weights to residential mortgages;
• modifying the credit conversion factor for various commitments, including those with an original maturity of less than one year;
• requiring that certain loans ninety days or more past due or in a non-accrual status be assigned to a higher risk-weight category;
• modifying the risk-based capital requirements for certain commercial real estate exposures;
• increasing the risk sensitivity of capital requirements for other types of retail, multifamily, small business, and commercial exposures; and
• assessing a risk-based capital charge to reflect the risks in securitizations with early amortization provisions that are backed by revolving retail exposures.

Comments must be received on or before January 18, 2006.

JULY 2005 UPDATE TO THE *BANK HOLDING COMPANY SUPERVISION MANUAL*

The July 2005 update to *the Bank Holding Company Supervision Manual* has been published (supplement no. 28). The *Manual* comprises the Federal Reserve System's regulatory, supervisory, and inspection guidance for bank holding companies (BHCs). The new supplement includes guidance on the following subjects:

1. *Interagency Credit Risk Management Guidance for Home-Equity Lending.* The section on "Supervision of Subsidiaries—Loan Administration and Lending Standards" has been revised to include this May 16, 2005, guidance that was issued by the federal supervisory agencies to promote greater focus on sound risk-management practices at banking organizations that have home-equity lending programs. The guidance highlights the sound risk-management practices that a banking organization should follow to align the growth and risk within its home-equity portfolio. See SR letter 05-11 and its attachment. The inspection objectives and procedures were revised to incorporate the interagency guidance.

2. *Continued Limited Inclusion of Trust Preferred Securities in the Tier 1 Capital of Bank Holding Companies.* The section "Consolidated Capital—Examiner's Guidelines for Assessing the Capital Adequacy of BHCs" and the section "Consolidated Capital—Leverage Measure" were revised to incorporate the February 28, 2005 (published March 10, 2005), revision of the definition of tier 1 capital under the Board's risk-based and leverage capital rules for BHCs. The revised rules allow the continued inclusion of outstanding and prospective issuances of trust preferred securities in BHCs' tier 1 capital and impose new quantitative limits and qualitative standards on the components of tier 1 capital. The Board adopted revised quantitative limits on the aggregate amount of cumulative perpetual preferred and trust preferred securities, and minority interests in the equity accounts of most consolidated subsidiaries (collectively, restricted core capital elements) included in BHCs' tier 1 capital. The revised rule limits restricted core capital elements as of March 31, 2009, to 25 percent of all core capital elements, net of goodwill less any associated deferred tax liability. Internationally active BHCs, defined as those with consolidated assets greater than $250 billion or on-balance-sheet foreign exposure greater than $10 billion, will be subject to a 15 percent limit. They may, however, include qualifying mandatory convertible preferred securities up to the generally applicable 25 percent limit. Amounts of restricted core capital elements in excess of these limits generally may be included in tier 2 capital, subject to the limit that the aggregate amount of subordinated debt and restricted core capital elements (other than cumulative perpetual preferred securities) included in tier 2 capital may not exceed 50 percent of tier 1 capital. A transition period, ending March 31, 2009, is provided for the application of the quantitative limits.

The revised rule addresses supervisory concerns, competitive equity considerations, and the changes in the treatment of trust preferred securities under generally accepted accounting principles. In addition, it strengthens the definition of regulatory capital by incorporating longstanding Board policies regarding the acceptable terms of capital instruments included in BHCs' tier 1 or tier 2 capital. These strengthened standards include a requirement that junior subordinated notes underlying trust preferred securities generally comply with the Board's subordinated debt policy statement. See 12 CFR 250.166. Updated inspection objectives and procedures are also included. The Board's Regulation Y, appendix A (12 CFR 225, appendix A) includes the risk-based capital rule and the rule's appendix D (12 CFR 225, appendix D) sets forth the tier 1 leverage measure rule.

3. *The Bank Holding Company RFI/C (D) Rating System.* The "BHC Rating System" section has been updated to replace the BOPEC bank holding company rating system with the RFI/C (D) rating system that was approved by the Board on December 1, 2004 (effective January 1, 2005), and described in SR letter 04-18. Under this new system, each BHC is assigned a "C" composite rating, which is based on an evaluation and rating of the BHC's managerial and financial condition and an assessment of future potential risk to its subsidiary depository institution(s). The other main components of the rating system are: Risk management (R); Financial condition (F); and potential Impact (I) of the parent company and nondepository subsidiaries (collectively, nondepository entities) on the subsidiary depository institution(s). The Depository institution(s) (D), will generally mirror the primary regulator's assessment of the subsidiary depository institution(s). Several component ratings have subcomponent ratings. The composite, component, and subcomponent ratings are assigned to BHCs on the basis of a numeric scale. A "1" is

the highest rating; a "5" is the lowest. All of the BHC's numeric ratings, including the composite, component, and subcomponent ratings, should be presented in the inspection report in accordance with Federal Reserve supervisory practices. Many of the *manual's* sections that involve supervisory risk-management-assessments during a BHC inspection have been revised to incorporate, or reference, the RFI/C (D) rating system.

4. *Interagency Advisory on the Confidentiality of the Supervisory Rating and Other Non-Public Supervisory Information.* A new section incorporates the February 28, 2005, interagency advisory that reminds banking organizations of the statutory prohibitions on the disclosure of supervisory ratings and other confidential supervisory ratings to third parties. See SR letter 05-4.

5. *Board Orders and Board Staff Interpretations Involving Nonbanking Activities.* A new section, "Credit Card Bank Exemption from the Definition of Bank," discusses the February 18, 2005, Board staff interpretation involving the credit card bank exemption under section 2(c)(2)(F) of the BHC Act. This statutory provision and the interpretation set forth the criteria that an institution must meet to qualify for the so-called credit card bank exemption.

The section for "Section 4(c)(4) of the BHC Act—Interests in Nonbanking Organizations" has been revised to include a qualifying foreign banking organization's (FBO's) November 24, 2004, request for a Board staff determination, which is based on section 4(c)(4) of the BHC Act and on the availability of a fiduciary exemption that is found in the Board's Regulation K, section 211.23(f)(4) (12 CFR 211.23(f)(4)) and in Regulation Y, section 225.22(d)(3) (12 CFR 225.22(d)(3)). Two of the FBO's asset-management subsidiaries proposed to serve as trustee for foreign-based investment trusts that would invest in U.S. real estate. As part of this asset-management activity, the two subsidiaries would take title to U.S. real estate on behalf of the investment trusts and for the benefit of the investors in the trusts.

The section "Permissible Activities for FHCs (section 4(k) of the BHC Act)" and the section "Limited Physical-Commodity Trading Activities (section 4(k) of the BHC Act)" were revised for additional Board orders (see 2004 *Federal Reserve Bulletin*, pp. 215 and 511) that authorized engaging in limited amounts and types of commodity trading activities that complement the financial activity of acting regularly as principal in BHC-permissible commodity derivatives based on a particular commodity. A financial holding company must submit, through the filing of a notice under section 4 of the BHC Act, a written request to the Federal Reserve Board to engage in a complementary activity.

A more detailed summary of changes is included with the update package. Copies of the new supplement were shipped directly by the publisher to the Reserve Banks for their distribution to examiners and other System staff. The public may obtain the *Manual* and the updates (including pricing information) from Publications Fulfillment, Mail Stop 127, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; telephone (202) 452-3244; or send a facsimile to (202) 728-5886. The *Manual* is also available on the Board's public web site at www.federalreserve.gov/boarddocs/supmanual/.

Changes in Publishing Format of the *Federal Reserve Bulletin*

The Federal Reserve Board announced on September 22, 2005, that beginning in 2006, the content of the *Federal Reserve Bulletin* will be published on the Board's public web site (www.federalreserve.gov) on a continuing basis, as it becomes available. The quarterly paper version of the *Bulletin* will no longer be published. However, the Board will print an annual compendium.

The online version of the *Bulletin* responds to the increased use of the Internet to access information and will make the planning and production of the *Bulletin* more efficient. Publishing articles and reports on the web as they become available will allow for the more timely introduction of research and information.

The online version of the *Bulletin* will continue to include topical research articles, Legal Developments, Report on the Condition of the U.S. Banking Industry, and links to other features.

Online access to the *Bulletin* will be free. A free e-mail notification service will be available to alert subscribers to new articles as they are released.

Articles published in the *Bulletin* can currently be found online at www.federalreserve.gov/pubs/bulletin.

Minutes of the Federal Open Market Committee

The Federal Reserve Board and the Federal Open Market Committee released on August 30, 2005, the minutes of the Committee meeting held on August 9, 2005.

On October 11, 2005, the Federal Reserve Board and the Federal Open Market Committee released the minutes of the Committee meeting held on September 20, 2005.

The minutes for each regularly scheduled meeting of the Committee are made available three weeks after the day of the policy decision and subsequently are published in the Board's *Annual Report.* The summary descriptions of economic and financial conditions contained in the minutes are based solely on

the information available to the Committee at the time of the meetings.

FOMC minutes can be viewed on the Board's web site at www.federalreserve.gov/fomc.

MINUTES OF BOARD DISCOUNT RATE MEETINGS

The Federal Reserve Board released on September 6, 2005, the minutes of its discount rate meetings from July 18, 2005, through August 9, 2005.

On October 18, 2005, the Board released the minutes of its discount rate meetings from August 22, 2005, through September 20, 2005.

MEETING OF THE CONSUMER ADVISORY COUNCIL

The Federal Reserve Board announced on September 29, 2005, that the Consumer Advisory Council would hold its next meeting on Thursday, October 27, 2005. The meeting, which was open to public observation, took place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E, Terrace level in the Board's Martin Building.

The Council's function is to advise the Board on the exercise of its responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council planned to discuss the following topics:

- Home Mortgage Disclosure Act
- Economic Growth and Regulatory Paperwork Reduction Act
- Nontraditional Mortgage Loans
- Hurricane Katrina

ENFORCEMENT ACTIONS

Final Decisions and Orders of Prohibition

The Federal Reserve Board announced on August 17, 2005, the issuance of a final decision and order of prohibition against Walter C. Cleveland, a former employee of First National Bank, Lubbock, Texas. The order, the result of an action brought by the Office of the Comptroller of the Currency, prohibits Mr. Cleveland from participating in the conduct of the affairs of any financial institution or holding company.

The Federal Reserve Board announced on September 15, 2005, the issuance of an order of prohibition against Hanspeter Walder, a former employee and officer of the New York Branch of UBS AG, Zurich, Switzerland. The order was issued relating to Mr. Walder's violations of law, unsafe and unsound banking practices, and breaches of fiduciary duties to UBS and its customers in connection with his embezzlement of funds for personal use.

Mr. Walder, a private banker, embezzled more than $70 million from at least twenty-two UBS private client accounts under his responsibility. Mr. Walder pleaded guilty to sixteen counts of embezzlement and misapplication by a bank officer or employee and is currently serving a ninety-seven month prison sentence. Mr. Walder was ordered to make restitution of $70 million and to pay a fine of $1 million. As required by the court at sentencing, Mr. Walder has consented to the issuance of the order of prohibition.

The Federal Reserve Board announced on September 20, 2005, the issuance of a final decision and order of prohibition against Brian Bonetti, a former employee of National City Bank, Cleveland, Ohio. The order, the result of an action brought by the Office of the Comptroller of the Currency, prohibits Mr. Bonetti from participating in the conduct of the affairs of any financial institution or holding company.

The Federal Reserve Board announced on September 28, 2005, the issuance of an order of prohibition against Jessica Faris, a former employee and institution-affiliated party of SunTrust Bank, Atlanta, Georgia.

Ms. Faris, without admitting to any allegations, consented to the issuance of the order based on her alleged violations of law and breaches of fiduciary duty to SunTrust Bank and its customers in connection with embezzlement of funds and falsification of the bank's books and records at a cash vault processing center.

The Federal Reserve Board announced on October 24, 2005, the issuance of a consent notice of suspension and prohibition against William R. Kahler, an officer of Primebank, LeMars, Iowa, a state member bank.

A notice of suspension and prohibition was issued under a provision of the Federal Deposit Insurance Act that authorizes the Federal Reserve Board and other bank regulators to limit the activities of bank officials who have been charged with certain criminal offenses pending the resolution of the charges.

Written Agreements

The Federal Reserve Board and the New York State Banking Department announced on October 14, 2005, the execution of a written agreement by and among the Deutsche Bank Trust Company Americas, New York, New York, the Federal Reserve Bank of New York, and the New York State Banking Department.

The written agreement addresses Bank Secrecy Act and anti-money-laundering compliance at Deutsche Bank Trust Company Americas, including policies and practices relating to the provision of correspondent banking services.

The Federal Reserve Board announced on October 14, 2005, the execution of a written agreement by and between Surety Capital Corporation, Fort Worth, Texas, and the Federal Reserve Bank of Dallas.

Termination of Enforcement Actions

The Federal Reserve Board announced on September 26, 2005, the termination of the enforcement actions listed below.

- First State Bank of Warner, Warner, South Dakota
  Written agreement dated December 11, 2001
  Terminated September 20, 2005

- Midwest Banc Holdings, Inc., Melrose Park, Illinois, and Midwest Bank and Trust Company, Elmwood Park, Illinois
  Written agreement dated March 15, 2004
  Terminated September 16, 2005

On October 5, 2005, the Federal Reserve Board announced the termination of the following enforcement action.

- First Midwest Bank, Itasca, Illinois
  Written agreement dated July 9, 2004
  Terminated September 30, 2005

On October 25, 2005, the Federal Reserve Board announced the termination of the following enforcement action.

- Ridgedale State Bank, Minnetonka, Minnesota
  Written agreement dated July 29, 2004
  Terminated October 25, 2005

On October 26, 2005, the Federal Reserve Board announced the termination of the following enforcement action.

- AmericasBank Corporation and AmericasBank, Towson, Maryland
  Written agreement dated August 3, 2001
  Terminated October 12, 2005

The Federal Reserve's enforcement action web site, www.federalreserve.gov/boarddocs/enforcement, reports the terminations as they occur.

CHANGES IN BOARD STAFF

The Board of Governors approved on August 29, 2005, the promotion of William C. Schneider, Jr., to deputy associate director in the Division of Banking Supervision and Regulation.

Mr. Schneider was promoted to reflect the range of his continuing responsibilities for the National Information Center, which include overseeing key supervisory national applications such as BOND, NED, RSSD, and CDTR; representing the division on the interagency Call Report Modernization effort and the Information Sharing Task Force of the FFIEC; and being responsible for the division's information technology support.

Mr. Schneider joined the Board in 1976 in the Division of Information Technology. He was appointed assistant director in 1982. Mr. Schneider transferred to the Federal Reserve Bank of Cleveland as vice president in 1986. In 1990 he returned to the Board and was appointed project director for the National Information Center. He joined the Division of Banking Supervision and Regulation in 1994. Mr. Schneider holds a BS degree in business administration from Geneva College and an MBA with a concentration in information technology from George Mason University.

Joseph H. Hayes, Jr., assistant director in the Division of Reserve Bank Operations and Payment Systems, passed away on Sunday, September 4, 2005. Mr. Hayes was responsible for the Board's oversight of the Reserve Bank Human Resources programs. He joined the Board in 1985.

The Board of Governors approved on September 26, 2005, the appointment of Leonard Chanin as associate director and Sheila F. Maith as assistant director in the Division of Consumer and Community Affairs.

Leonard Chanin will have oversight responsibility for the Regulations branch, which handles the legal analysis and regulation drafting functions. He will also represent the Board in public and private forums dealing with regulatory issues related to financial services. Mr. Chanin worked as an attorney in the Board's Division of Consumer and Community Affairs from 1985 to 1999. He left the Board to join the law firm of Morrison and Foerster, where he has worked ever since. Mr. Chanin holds a BA degree from the American University and a JD from the Washington University Law School.

Sheila F. Maith will have oversight responsibility for Board and System programs in both the community affairs function and the Consumer Advisory Council. She will represent the Board at public- and private-sector meetings and in discussions dealing with policies and programs related to community and economic development and the delivery of financial services to underserved markets. Ms. Maith is employed by the Fannie Mae Foundation, where she manages the policy and leadership development program. Her responsibilities include the development and implementation of the foundation's strategy to advance affordable housing issues on the public-policy agenda, focusing on state and local government. Before her position with Fannie Mae, Ms. Maith was senior counsel to Senator Edward M. Kennedy, acting as an adviser on economic issues. She holds an MA degree from the Kennedy School of Government at Harvard University and a JD from the Harvard Law School.

The Board of Governors approved on November 1, 2005, the appointment of Brian J. Gross as special assistant to the Board in the Congressional Liaison program in the Office of Board Members.

Mr. Gross joined the Office of Board Members as congressional liaison assistant in 2003. Before joining the Board's staff, he served as chief counsel to the executive director of the Securities and Exchange Commission, as director of communications for the SEC, as the deputy staff director and chief ethics officer for the Senate Banking Committee, and as chief counsel and legislative assistant to Senator Phil Gramm. Mr. Gross holds a BA in economics and history from Texas A&M University and a JD from the Georgetown University Law Center.

The Board of Governors approved on November 2, 2005, the appointment of Jill Rosen to assistant director in the Division of Information Technology. Ms. Rosen will have oversight responsibilities for the National Information Center (NIC) Systems branch. The newly created branch includes the NIC Architecture Redesign Initiative (NARI). The NARI project will provide economists and financial analysts throughout the Federal Reserve System easier and more cost-effective access to structure, financial, and supervisory data on financial institutions.

Ms. Rosen joined the Board in 1997 and was promoted to manager in the Division of Information Technology in 2000. She has managed software development for many of the Board's key information systems. Before joining the Board, Ms. Rosen worked for Computer Business Methods as a senior management analyst and database administrator. She holds a BS in electrical engineering from George Washington University, and she will receive an MS in project management from George Washington University in December 2005. □

Legal Developments

ORDERS ISSUED UNDER BANK HOLDING COMPANY ACT

Orders Issued Under Section 3 of the Bank Holding Company Act

Associated Banc-Corp
Green Bay, Wisconsin

Order Approving the Merger of Bank Holding Companies

Associated Banc-Corp ("Associated"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to merge with State Financial Services Corporation ("State Financial"), Milwaukee, and thereby acquire its subsidiary bank, State Financial Bank, National Association ("State Bank"), Hales Corners, all of Wisconsin.

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 38,930 (2005)). The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Associated, with total consolidated assets of approximately $20.8 billion, operates one depository institution, Associated Bank, National Association ("Associated Bank"), also in Green Bay, with branches in Wisconsin, Illinois, and Minnesota.[2] Associated Bank is the third largest depository institution in Wisconsin, controlling deposits of approximately $8.4 billion, which represent 8.7 percent of the total amount of deposits of insured depository institutions in the state ("state deposits"). Associated Bank is the 23rd largest depository institution in Illinois, controlling deposits of approximately $2.2 billion, which represent less than 1 percent of the total amount of state deposits.

State Financial, with total consolidated assets of approximately $1.5 billion, operates one depository institution, State Bank, with branches in Wisconsin and Illinois. State Financial is the 24th largest insured depository organization in Wisconsin, controlling deposits of approximately $472.1 million. State Bank is the 63rd largest depository institution in Illinois, controlling deposits of approximately $595.3 million.

On consummation of the proposal, Associated would have consolidated assets of approximately $22.5 billion and would control deposits of $13.2 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. Associated would remain the third largest depository organization in Wisconsin, controlling deposits of approximately $8.9 billion, which represent 9.2 percent of state deposits. Associated would become the 19th largest depository organization in Illinois, controlling deposits of approximately $2.8 billion, which represent 1 percent of state deposits.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Associated is Wisconsin,[3] and State Financial is located in Wisconsin and Illinois.[4]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[5] In light of

1. 12 U.S.C. § 1842.

2. Associated Bank Minnesota, National Association, Minneapolis, Minnesota, and Associated Bank Chicago, Chicago, Illinois, were merged into Associated Bank on July 16, 2005. Asset, deposit, and ranking data are as of June 30, 2004, and are adjusted to reflect these mergers. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

3. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

4. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B). Associated Bank also operates branches in Minnesota and Illinois.

5. 12 U.S.C. §§ 1842(d)(1)(A)–(B), 1842(d)(2)(A)–(B). Associated is adequately capitalized and adequately managed, as defined by applicable law. Associated's proposed acquisition of State Financial's branches in Illinois is not subject to the minimum age requirement or deposit limit imposed by Illinois law. On consummation of the proposal, Associated would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of

all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[6]

Associated and State Financial compete directly in the Milwaukee and Walworth banking markets in Wisconsin and the Chicago banking market in Illinois.[7] The Board has carefully reviewed the competitive effects of the proposal in each of these banking markets in light of all the facts of record, including the number of competitors that would remain in the markets, the relative shares of total deposits in depository institutions in each market ("market deposits") controlled by Associated Bank and State Bank,[8] the concentration level of market deposits and the increase in this level as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),[9] and other characteristics of the markets.

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in each of these banking markets. After consummation, the Milwaukee banking market would remain moderately concentrated, and the Walworth and Chicago banking markets would remain unconcentrated, as measured by the HHI. In each market, the increase in concentration would be small and numerous competitors would remain.[10]

The Department of Justice also has reviewed the anticipated competitive effects of the proposal and advised the Board that consummation of the proposal would not likely have a significant adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the proposal.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in any of the banking markets in which Associated and State Financial directly compete or in any other relevant banking market. Accordingly, based on all the facts of record, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including confidential reports of examination, other supervisory information from the primary federal supervisors of the organizations involved in the proposal, publicly reported and other financial information, and information provided by the applicant.

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary banks and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Associated has sufficient financial resources to effect the proposal. The proposed transaction is structured as a share

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insured depository institutions in Illinois. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

6. 12 U.S.C. § 1842(c)(1).

7. The Milwaukee banking market is defined as Milwaukee, Waukesha, and Ozaukee Counties; East Troy township in Walworth County; Waterford, Norway, and Raymond townships in Racine County; Ixonia township in Jefferson County; and Polk, Jackson, Richfield, and Germantown townships in Washington County, all in Wisconsin. The Walworth banking market is defined as Walworth County, excluding East Troy township; Burlington township in Racine County; and Wheatland and Randall townships in Kenosha County, all in Wisconsin. The Chicago banking market is defined as Cook, DuPage, and Lake Counties, all in Illinois.

8. Deposit and market share data are as of June 30, 2004, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. *See, e.g., Midwest Financial Group*, 75 *Federal Reserve Bulletin* 386 (1989); *National City Corporation*, 70 *Federal Reserve Bulletin* 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. *See, e.g., First Hawaiian, Inc.*, 77 *Federal Reserve Bulletin* 52 (1991).

9. Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is under 1000, moderately concentrated if the postmerger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI exceeds 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher than normal HHI thresholds for screening bank mergers and acquisitions for anticompetitive effects implicitly recognize the competitive effects of limited-purpose and other nondepository financial entities.

10. The effects of the proposal on the concentration of banking resources in these banking markets are described in the appendix.

exchange and cash purchase. Associated will use existing resources to fund a cash purchase of fractional shares. Associated and Associated Bank are well capitalized and would remain so on consummation of the proposal.

The Board also has considered the managerial resources of the organizations involved and the proposed combined organization. The Board has reviewed the examination records of Associated, State Financial, and their subsidiary banks, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking supervisory agencies with the organizations and their records of compliance with applicable banking law. Associated, State Financial, and their subsidiary depository institutions are considered to be well managed. The Board also has considered Associated's plans for implementing the proposal, including its proposed management after consummation.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[11] The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.[12]

The Board has considered carefully all the facts of record, including data reported by Associated under the Home Mortgage Disclosure Act ("HMDA"),[13] reports of examination of the CRA performance records of the subsidiary banks of Associated and State Financial,[14] other information provided by Associated, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2003 HMDA data, that Associated Bank had low levels of home mortgage lending to LMI borrowers and on properties in LMI census tracts, and to minority borrowers and on properties in substantially minority census tracts, in the Milwaukee/Waukesha Metropolitan Statistical Area ("Milwaukee MSA").[15] The commenter also criticized Associated Bank's record of small business lending in LMI census tracts in the Milwaukee MSA. In addition, the commenter criticized Associated Bank's and State Bank's levels of community development investments in LMI and minority communities in that MSA.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[16]

Associated Bank received a "satisfactory" rating at its most recent CRA evaluation by the Office of the Comptroller of the Currency ("OCC"),[17] as of November 10, 2003.[18] State Bank received an overall rating of "satisfactory" at its most recent CRA performance evaluation by the OCC, as of August 26, 2002.[19] The Board also consulted with the OCC about the CRA performance of Associated Bank and State Bank since their most recent CRA

11. 12 U.S.C. § 2901 et seq.

12. 12 U.S.C. § 2903.

13. 12 U.S.C. § 2801 et seq.

14. The Board's analysis of the HMDA data of Associated Bank includes HMDA data reported by Associated Bank, Associated Bank's subsidiary mortgage lending company, and Associated's subsidiary banks that were subsequently merged into Associated Bank. The Board reviewed HMDA data for 2002 and 2003 reported by Associated Bank in the bank's primary assessment areas. Specifically, the Board reviewed HMDA data for Associated Bank in the Green Bay and Milwaukee MSAs and in the bank's assessment areas on a statewide basis in Wisconsin.

15. A substantially minority census tract means a census tract with a minority population of 50 percent or more.

16. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

17. Examiners evaluated Associated Bank's CRA performance in its twelve assessment areas in Wisconsin and took into consideration the home mortgage lending of the bank's subsidiary, Associated Mortgage, Inc., De Pere, Wisconsin. The majority of the bank's deposits, loans, and branches were in the Milwaukee and Green Bay MSAs and in the non-MSA areas of Wisconsin. The evaluation period for home mortgage loans and loans to small businesses and farms was January 1, 1999, through December 31, 2002. The evaluation period for community development loans and the investment and service tests was March 8, 1999, to November 10, 2003.

18. As noted, Associated Bank Minnesota, National Association and Associated Bank Chicago were merged into Associated Bank on July 16, 2005. The most recent CRA performance evaluation ratings for these banks are as follows: Associated Bank Chicago—"satisfactory" rating from the Federal Deposit Insurance Corporation, as of December 1, 2003; and Associated Bank Minnesota, National Association—"satisfactory" rating from the OCC, as of December 6, 2004. Associated Trust Company, National Association, Milwaukee, is a limited-purpose trust company that is not examined under the CRA. *See* 12 CFR 25.11(c)(3).

19. The evaluation period for home mortgage loans and loans to small businesses was January 1, 2000, through June 30, 2002. The evaluation period for community development loans and the investment and services tests was May 1, 2000, to August 26, 2002.

evaluations.[20] Associated has indicated that, on consummation of the proposal, it would evaluate the best practices for CRA-related lending programs of Associated Bank and State Bank, with the goal of using the institutions' combined resources to meet the credit and banking needs of LMI individuals and neighborhoods, including minority neighborhoods.[21]

Associated Bank. The November 2003 CRA evaluation of Associated Bank was discussed in the Board's order approving Associated's proposal to acquire First Federal Capital Corporation ("First Federal Capital") and its wholly owned subsidiary, First Federal Capital Bank, a federally chartered savings association, both in La Crosse, Wisconsin.[22] Based on a review of the record in this case, the Board hereby reaffirms and adopts the facts and findings detailed in the First Federal Capital Order concerning Associated Bank's CRA performance record. Associated provided the Board additional information about its CRA performance since its November 2003 evaluation.

In the November 2003 evaluation, examiners reported that the total volume of Associated Bank's housing-related and small business loans demonstrated excellent responsiveness to credit needs across the bank's assessment areas, including the Milwaukee MSA.[23] Examiners stated that the bank demonstrated good loan distribution among borrowers of different geographies and income levels and noted favorably that the bank's market share of home purchase loans to low-income areas exceeded its overall market share in the Milwaukee MSA. Examiners noted, however, that Associated Bank's opportunity to extend home finance loans in LMI areas was limited by the small number of owner-occupied units in those geographies.

Associated stated that the HMDA data did not reflect all its lending programs designed to assist LMI borrowers and small businesses. Associated represents that it participates in the home purchase and home improvement loan programs of the Wisconsin Housing and Economic Development Authority ("WHEDA"), which offer long-term, below-market, fixed-rate financing for LMI first-time homebuyers and home improvement loans at fixed interest rates with no equity requirements for LMI homeowners.[24] Associated stated that it has provided more than $93 million in funding for WHEDA loans during the years 2001 through 2004. Associated noted that it was the state's largest WHEDA loan producer in 2004 and had quadrupled its number and dollar volume of loans extended under the program from 2003 to 2004, from 147 loans totaling $13.6 million to 609 loans totaling $59.2 million.[25] In addition, Associated stated that it has further met the credit needs of its communities through participation in lending programs sponsored by the Small Business Administration ("SBA") and has extended more than $44 million in such loans during 2004.[26]

In the November 2003 evaluation, examiners reported that the bank's level of qualified investments and grants was good, considering the needs and opportunities available to the bank and its size and financial capability.[27] During the evaluation period, the bank's qualified investments in Wisconsin totaled more than $14 million. Examiners stated that Associated Bank's responsiveness to credit and community development needs in the Milwaukee MSA was excellent and that the bank was responsive to those identified needs of the community.[28]

In addition, examiners found that Associated Bank had an adequate level of community development services and that the bank's delivery systems were reasonably accessible to geographies and individuals of different income levels.[29]

20. Associated has filed an application under the Bank Merger Act (12 U.S.C. § 1828(c)) with the OCC to merge State Bank into Associated Bank, with Associated Bank as the surviving entity.

21. The commenter expressed concern that the proposed acquisition would negatively affect State Bank's CRA performance, which the commenter asserted was stronger than Associated Bank's performance.

22. The First Federal Capital proposal was approved by the Board on August 16, 2004 ("First Federal Capital Order"). *Associated BancCorp*, 90 *Federal Reserve Bulletin* 503 (2004).

23. The commenter expressed concern that Associated Bank lagged its competitors in home mortgage lending to LMI individuals and on properties in LMI census tracts in the Milwaukee MSA. The percentages of Associated Bank's total HMDA-reportable loans originated for borrowers in LMI census tracts in the Milwaukee MSA was below the percentage for the aggregate of lenders ("aggregate lenders") in 2003. However, the number of loans Associated Bank originated on properties in LMI census tracts in the Milwaukee MSA increased substantially from 2002 to 2003. In addition, other HMDA data suggest that Associated Bank's lending is more favorable. For example, the HMDA data for 2003 indicate that the percentages of Associated Bank's total HMDA-reportable loans originated to LMI borrowers in the Milwaukee MSA exceeded the percentage for the MSA's aggregate lenders. In this context, the lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported HMDA data in a particular area.

24. Associated also noted that it participates in several Federal Home Loan Affordable Housing programs that provide down-payment and closing-cost assistance to LMI borrowers. In addition, Associated Bank recently started its own Community Affordable Real Estate Mortgage Program ("CARE"). The CARE program provides low-cost loans with no down-payment requirements for qualified buyers in LMI areas, including LMI areas in the Milwaukee MSA.

25. These loans were not eligible for reporting as part of Associated Bank's HMDA data.

26. Associated Bank stated that it has Preferred Lender and Dedicated Authority Express designations from the SBA, which expedite the lending process.

27. The commenter expressed concern that Associated Bank's qualified investments in the Milwaukee MSA were primarily CRA-qualified, mortgage-backed securities and not direct grants. The CRA does not require banks to provide any particular type of qualified CRA investments to meet the credit needs of their communities.

28. Associated stated that it recently established Associated Community Development, LLC for the purpose of partnering and investing in affordable housing and commercial development principally in LMI areas, including LMI areas in the Milwaukee MSA.

29. The commenter expressed concerns about Associated Bank's and State Bank's branch distribution in LMI and predominantly minority census tracts in the Milwaukee MSA. A predominantly minority census tract means a census tract with a minority population of 80 percent or more. The OCC, as the appropriate federal supervisor of Associated's subsidiary banks, will continue to review Associated Bank's branch distribution in the course of conducting CRA performance evaluations of the bank.

State Bank. As noted, State Bank received an overall "satisfactory" rating in its August 2002 evaluation. The institution received a "high satisfactory" rating under the lending and service tests. Examiners commended the bank's home mortgage loan record among borrowers of different income levels, including LMI individuals. In particular, examiners noted that the bank originated a higher percentage of its home purchase loans in the Milwaukee MSA to LMI borrowers than both the percentage of owner-occupied units and the bank's overall market share for home purchase loans in the MSA. Examiners also noted that State Bank had a good distribution of delivery systems that were accessible to geographies and individuals of different income levels in the assessment area.

Although State Bank's overall investment test performance was rated "low satisfactory," examiners characterized the bank's performance under this test in the Milwaukee MSA as adequate. Examiners reported that the institution's qualified community development investments included grants to 15 community development organizations in its assessment area and an investment in a minority-owned bank holding company that is certified as a Community Development Financial Institution ("CDFI"). The CDFI provided development banking services to the central city of Milwaukee through traditional and nontraditional bank products and services.

B. HMDA and Fair Lending Record

The Board has carefully considered Associated's lending record and HMDA data in light of public comment about its record of lending to minorities and in predominantly minority communities. The commenter expressed concern, based on 2003 HMDA data, that Associated Bank lagged its competitors in home mortgage lending to minorities and on properties in substantially minority census tracts in the Milwaukee MSA. As noted, the Board reviewed the HMDA data for 2002 and 2003 reported by Associated Bank in its primary assessment areas, including in the Milwaukee MSA and on a statewide basis in Wisconsin.

The number of total HMDA-reportable loans originated by Associated Bank to African-American or Hispanic borrowers and on properties in predominantly minority census tracts as a percentage of the bank's total HMDA-reportable loans generally lagged the performance of the aggregate lenders in the markets reviewed. However, the data indicate that the number and percentage of loans Associated Bank originated to African Americans and Hispanics increased in those markets from 2002 to 2003. In addition, the number of HMDA-reportable loans that Associated Bank originated on properties in predominantly minority census tracts in the Milwaukee MSA and the bank's Wisconsin assessment areas more than tripled from 2002 to 2003.

Although the HMDA data may reflect certain disparities in the rates of loan applications and originations among members of different racial groups in certain local areas, the HMDA data do not indicate that Associated is excluding any racial group or geographic area on a prohibited basis. The Board nevertheless is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[30] HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide on-site evaluations of compliance by the subsidiary depository and lending institutions of Associated with fair lending laws. Examiners noted no substantive violations of applicable fair lending laws in the examinations of the depository institutions controlled by Associated or State Financial.

The record also indicates that Associated has taken steps to ensure compliance with fair lending laws and other consumer protection laws. Associated Bank represented that its fair lending compliance program covers all aspects of the bank's services and includes underwriting standards and a second review of each loan marked for denial. Exceptions to underwriting standards must be reviewed by regional bank management. The bank stated that it monitors compliance by conducting internal tests of random samples of loans. Associated Bank's program will be implemented at State Bank.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Associated and State Financial under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

Conclusion on CRA Performance Records

The Board has carefully considered all the facts of record, including reports of examination of the CRA records of the institutions involved, information provided by Associated, comments received on the proposal, and confidential supervisory information. The Board notes that the proposal would expand the availability and array of banking products and services to the customers of State Bank, including access to expanded branch and ATM networks. Based on a review of the entire record, and for the reasons discussed

30. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.[31]

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Associated with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this action, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision herein and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective September 8, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Appendix

Market Data for Banking Markets

Unconcentrated Banking Markets

Walworth, Wisconsin

Associated operates the third largest depository institution in the market, controlling deposits of $141.1 million, which represent approximately 8.7 percent of market deposits. State Financial operates the 14th largest depository institution in the market, controlling deposits of approximately $26.4 million, which represent approximately 1.6 percent of market deposits. After the proposed acquisition, Associated would remain the third largest depository institution in the market, controlling deposits of approximately $167.5 million, which represent approximately 10.3 percent of market deposits. Nineteen depository institutions would remain in the banking market. The HHI would increase 28 points, to 971.

Chicago, Illinois

Associated operates the 42nd largest depository institution in the market, controlling deposits of $484.9 million, which represent less than 1 percent of market deposits. State Financial operates the 58th largest depository institution in the market, controlling deposits of approximately $323.5 million, which represent less than 1 percent of market deposits. After the proposed acquisition, Associated would operate the 33rd largest depository institution in the market, controlling deposits of approximately $808.4 million, which represent less than 1 percent of market deposits. One hundred and eighty-seven depository institutions would remain in the banking market. The HHI would remain unchanged at 751.

Moderately Concentrated Banking Markets

Milwaukee, Wisconsin

Associated operates the fourth largest depository institution in the market, controlling deposits of $1.7 billion, which represent approximately 5.1 percent of market deposits. State Financial operates the 15th largest depository institution in the market, controlling deposits of approximately $445.7 million, which represent approximately 1.3 percent of market deposits. After the proposed acquisition, Associated would remain the fourth largest depository institution in the market, controlling deposits of approximately $2.2 billion, which represent approximately 6.4 percent of market deposits. Fifty-four depository institutions would remain in the banking market. The HHI would increase 13 points, to 1,772.

31. The commenter requested that the Board condition its approval of the proposal on Associated Bank's making certain lending, service, community reinvestment, and other commitments. As the Board previously has explained, an applicant must demonstrate a satisfactory record of performance under the CRA without reliance on plans or commitments for future actions. The Board has consistently stated that neither the CRA nor the federal banking agencies' CRA regulations require depository institutions to make pledges or enter into commitments or agreements with any organization. *See, e.g., The Toronto-Dominion Bank,* 91 *Federal Reserve Bulletin* 277 (2005); *Fifth Third Bancorp,* 91 *Federal Reserve Bulletin* 63 (2005); *Wachovia Corporation,* 91 *Federal Reserve Bulletin* 77 (2005); *J.P. Morgan Chase & Co.,* 90 *Federal Reserve Bulletin* 352 (2004). In this case, as in past cases, the Board instead has focused on the demonstrated CRA performance record of the applicant and the programs that the applicant has in place to serve the credit needs of its CRA assessment areas when the Board reviews the proposal under the convenience and needs factor. In reviewing future applications by Associated under this factor, the Board similarly will review Associated's actual CRA performance record and the programs it has in place to meet the credit needs of its communities at that time.

Capital One Financial Corporation
McLean, Virginia

Order Approving the Merger of Bank Holding Companies

Capital One Financial Corporation ("Capital One"), a financial holding company within the meaning of the Bank Holding Company Act ("BHC Act"), has requested the Board's approval under section 3 of the BHC Act[1] to acquire Hibernia Corporation ("Hibernia") and its subsidiary bank, Hibernia National Bank ("HNB"), both of New Orleans, Louisiana.[2]

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (70 *Federal Register* 24,796 (2005)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in section 3 of the BHC Act.

Capital One, with total consolidated assets of approximately $55.6 billion, is the 26th largest depository organization in the United States,[3] controlling deposits of approximately $25.9 billion. Capital One operates two subsidiary depository institutions in Virginia: Capital One Bank ("COB"), Glen Allen, and Capital One, F.S.B. ("COFSB"), McLean.

Hibernia, with total consolidated assets of approximately $22.2 billion, is the 50th largest depository organization in the United States, controlling deposits of $17.7 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States. In Louisiana, HNB is the largest depository institution, controlling deposits of $12.4 billion, which represent 22.4 percent of the total amount of deposits of insured depository institutions in the state.[4] HNB also operates branches in Texas and two mortgage loan production offices in Mississippi.

On consummation of the proposal, Capital One would become the 23rd largest depository organization in the United States, with total consolidated assets of approximately $80.1 billion (including pro forma accounting adjustments), and would control deposits of approximately $43.6 billion, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the United States.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met. For purposes of the BHC Act, the home state of Capital One is Virginia,[5] and HNB is located in Louisiana and Texas.[6]

Based on a review of the facts of record, including a review of relevant state statutes, the Board finds that all conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.[7] In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[8]

Capital One and Hibernia do not compete directly in any relevant banking market. Based on all the facts of record, the Board has concluded that consummation of the proposal would have no significant adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive factors are consistent with approval.

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1. 12 U.S.C. § 1842.

2. Hibernia is a financial holding company that offers a range of financial products and services through its bank and nonbank subsidiaries, including two subsidiaries that engage in securities underwriting and brokerage activities and insurance agency activities under section 4(k)(4) of the BHC Act. Capital One proposes to acquire those nonbanking subsidiaries and engage only in activities listed in section 4(k)(4)(A)–(H) of the BHC Act, pursuant to section 4(k) and the post-transaction notice procedures of section 225.87 of Regulation Y. 12 U.S.C. § 1843(k)(4)(A)–(H); 12 CFR 225.87. After consummation of this proposal Capital One intends to operate HNB as a subsidiary bank.

3. Asset and national ranking and deposit data are as of March 31, 2005. Asset and national ranking data are based on total assets reported by bank holding companies on Consolidated Financial Statements for Bank Holding Companies and by thrifts on Thrift Financial Reports. Deposit data reflect the total of the deposits reported by each organization's insured depository institutions in their Consolidated Reports of Condition and Income or Thrift Financial Reports.

4. State ranking and deposit data are as of June 30, 2004. In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

5. A bank holding company's home state is the state in which the total deposits of all subsidiary banks of the company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

6. For purposes of section 3(d), the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)–(7) and 1842(d)(1)(A) and (d)(2)(B).

7. 12 U.S.C. §§ 1842(d)(1)(A) and (B), 1842(d)(2)(A) and (B). Capital One is adequately capitalized and adequately managed, as defined by applicable law. HNB has been in existence and operated for the minimum period of time required by applicable state law (five years). On consummation of the proposal, Capital One would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States and less than 30 percent of the total amount of deposits of insured depository institutions in Texas and Louisiana. All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

8. 12 U.S.C. § 1842(c)(1).

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act also requires the Board to consider the financial and managerial resources and future prospects of companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential reports of examination, other confidential supervisory information from the primary federal and state supervisors of the organizations involved, publicly reported and other financial information, information provided by Capital One, and public comments received on the proposal.[9]

In evaluating financial factors in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of measures, including capital adequacy, asset quality, and earnings performance. In assessing financial factors, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Capital One has sufficient financial resources to effect the proposal. Capital One currently is well capitalized and would remain so on consummation of the proposal. The proposed transaction is structured as a partial share exchange and partial cash purchase of shares. Capital One will use existing resources to fund the cash purchase of shares.

The Board also has considered the managerial resources of Capital One and Hibernia and the managerial resources of the combined organization. The Board has reviewed the examination records of Capital One, Hibernia, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations.[10] In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with the organizations and their records of compliance with applicable banking law.[11] Capital One, Hibernia, and their subsidiary depository institutions are considered well managed. The Board also has considered Capital One's plans for implementing the proposal, including its proposed management after consummation.[12]

Based on all the facts of record, including a review of the comments received, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors under the BHC Act.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[13] The CRA requires the federal financial supervisory agencies to encourage financial institutions to help meet the credit needs of local communities in which they operate, consistent with their safe and sound opera-

9. The commenter reiterated its concern about Capital One's lobbying efforts in the Virginia legislature raised in a previous application by Capital One. *See Capital One Financial Corporation*, 90 *Federal Reserve Bulletin* 479 (2004). As the Board previously noted, such matters are outside the limited statutory factors that the Board is authorized to consider when reviewing an application under the BHC Act. *See Western Bancshares, Inc. v. Board of Governors*, 480 F.2d 749 (10th Cir. 1973).

10. The commenter criticized Capital One's and Hibernia's relationships with unaffiliated subprime lenders, payday lenders, car-title lending companies, and other nontraditional providers of financial services. As a general matter, these businesses are licensed by the states where they operate and are subject to applicable state law. Capital One stated that its business relationships with such providers are limited to business credit-card loans or loans extended under Small Business Administration ("SBA") programs. Any such extensions of credit would be in the ordinary course of Capital One's small business credit-card lending activities or in accordance with SBA requirements. HNB's Small Business Lending Division extends a limited number of loans to businesses in these industries and HNB's commercial loan division extends credit to certain subprime lenders subject to certain limits. HNB requires an opinion letter from borrowers' counsel at the closing of each of these loans concluding that the borrowers' loans comply with the Truth in Lending Act and applicable state law. In addition, the agreement HNB typically uses to document loans to consumer finance companies includes a negative covenant that the borrower will not engage in activities that would violate applicable law or regulation, including laws or regulations related to predatory lending. HNB has represented that it monitors the borrower for compliance with this covenant by reviewing the borrower's annual compliance audit. Capital One has represented that neither it nor HNB plays any role in the lending practices or credit review processes of these firms.

11. The commenter also opposed the proposal based on news reports of lawsuits and investigations undertaken by the Attorneys General of Minnesota and West Virginia in their respective states relating to Capital One's marketing of its credit cards. These investigations and lawsuits are pending and have not yet reached conclusion, and there has been no determination of liability, damage, or wrongdoing in these cases. The Board has consulted with the relevant state authorities about these matters and will continue to monitor these matters in the supervisory process. Board action under the BHC Act would not interfere with the ability of the courts to resolve any litigation pertaining to these matters.

12. The commenter also expressed concern about newspaper reports of a civil complaint filed by the Securities and Exchange Commission ("SEC"). The Board has reviewed the complaint, which alleges that a former Capital One officer engaged in insider trading and failed to report to the SEC certain of his transactions in Capital One securities. This action relates to that former officer's actions with respect to the Capital One securities owned by him and does not make allegations against Capital One as a corporate entity or any current member of management. The SEC, rather than the Board, has jurisdiction to investigate and adjudicate any violations of federal securities laws. The Board has consulted with the SEC regarding this pending complaint.

13. 12 U.S.C. § 2901 et seq.

tion, and requires the appropriate federal financial supervisory agency to take into account an institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating bank expansionary proposals.

The Board has considered carefully the convenience and needs factor and the CRA performance and mortgage lending records of Capital One's subsidiary insured depository institutions and HNB in light of all of the facts of record, including public comment on the proposal. A commenter opposed the proposal and alleged, based on data reported under the Home Mortgage Disclosure Act ("HMDA"),[14] that HNB engaged in discriminatory treatment of minority individuals in its home mortgage operations.

A. CRA Performance Evaluations

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.[15]

Capital One's lead subsidiary depository institution, COB, received an "outstanding" rating at its most recent CRA performance evaluation by the Federal Reserve Bank of Richmond ("Reserve Bank"), as of April 28, 2003. COFSB received a "satisfactory" rating at its most recent CRA performance evaluation by the Office of Thrift Supervision, as of April 28, 2003. HNB received a "satisfactory" rating from the Office of the Comptroller of the Currency, as of January 12, 2004.

In addition, Capital One has indicated that it intends to continue its level of support for community investment and development and expects that the proposed transaction would allow it to expand the services and products offered to customers in the communities served by Capital One and HNB. Capital One has also indicated that it does not expect the merger to result in the discontinuation of any products or services offered by HNB, except to the extent that Capital One offers a comparable product or service.

B. CRA Performance of Capital One

1. *Capital One Bank.* COB is engaged primarily in credit card operations and has been designated a limited purpose bank for purposes of evaluating its CRA performance. As such, it is evaluated under the community development test.[16] Because COB is designated as a limited purpose bank, in assigning a rating, examiners may consider the bank's community development investments, loans, and services nationwide rather than solely in the bank's assessment area. In rating COB "outstanding" at its April 2003 evaluation, Reserve Bank examiners noted that COB's nationwide qualified investments increased from $28.5 million to approximately $82 million during the evaluation period.[17] These investments included investments in low-income-housing tax credit projects, bonds issued by the Virginia Housing Development Authority, and entities that support microenterprise development.

During the evaluation period, COB contributed more than $5 million to a variety of organizations that primarily assist LMI individuals or areas or support microenterprise development. Examiners also noted that COB provided technical assistance and financial expertise to organizations dedicated to community development, including affordable housing, social services, and small business development.

2. *Capital One, FSB.* As noted above, COFSB received an overall "satisfactory" CRA performance rating at its April 2003 evaluation.[18] The institution received a "high satisfactory" rating under the lending and services tests and an "outstanding" rating under the investment test in this evaluation.

Examiners noted that COFSB's geographic distribution of consumer loans was reasonable in relation to demographic characteristics of its assessment area, and the geographic distribution of small loans to businesses was commensurate with both demographic and peer lending data. According to examiners, the percentage of consumer installment loans made to LMI borrowers in the institution's assessment area exceeded the percentage of LMI families residing in that area. COFSB's distribution of consumer credit cards, according to borrower income levels, was reasonable compared with the demographic data. Examiners also noted the institution's innovative special installment loan product that was primarily used by LMI borrowers.[19]

Examiners stated that COFSB's community development lending, totaling approximately $11 million for the evaluation period, was adequate and included innovative lending arrangements with community development fund initiatives, affordable housing organizations, and other nonprofit organizations that served LMI individuals.

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14. 12 U.S.C. §2801 et seq.

15. *See Interagency Questions and Answers Regarding Community Reinvestment*, 66 *Federal Register* 36,620 and 36,639 (2001).

16. *See* 12 CFR 228.25(a). If COB engages in activities that cause the bank to lose this designation, its CRA performance will be evaluated under the appropriate tests and standards. *See* 12 CFR 228.25(b).

17. The evaluation period was from May 7, 2001, to April 28, 2003.

18. The evaluation period was from January 1, 2000, to March 31, 2003, except for the lending test, which was evaluated from January 1, 2000, to December 31, 2002. COFSB is a nationwide provider of consumer and commercial lending and offers consumer deposit products.

19. This product featured low minimum loan amounts of $500 to $1000 and had no minimum income requirements. Approximately 87 percent of these loans were made to LMI borrowers.

During the evaluation period, COFSB's qualified investments totaled approximately $81.5 million and included purchases of qualified mortgage-backed securities and low-income-housing tax credits, investments in small business investment corporations, and deposits in community development fund initiatives. In addition, examiners noted that COFSB made approximately $7 million in financial grants during the assessment period.

Although COFSB has no public offices, examiners noted that it provided customer-service call centers with extended hours and had begun to issue ATM cards to allow customers to access their money market accounts. Examiners also noted COFSB's contributions in the form of technical assistance and financial expertise to a variety of nonprofit organizations in its assessment area and the communities in which COFSB operated.

C. CRA Performance of HNB

As noted, HNB received an overall "satisfactory" rating in its January 2004 evaluation.[20] The bank received a "high satisfactory" rating under the lending and investment tests and an "outstanding" rating on the service test in this evaluation.

Examiners commended HNB's responsiveness to the credit needs of its assessment areas, particularly in providing loan products to small businesses. Examiners also noted HNB's good overall distribution of loans to borrowers of different income levels and recognized HNB's use of innovative and flexible loan products designed to benefit LMI individuals and geographies. In addition, examiners characterized as significant HNB's community development lending, which consisted of approximately $140 million in loan originations in the areas receiving a full-scope review during the evaluation period.

Examiners reported that during the evaluation period, HNB had a good level of qualified community development investments in Louisiana and an adequate level in Texas in light of HNB's resources and capacity. In addition, they noted that the bank's service delivery systems were accessible to geographies and individuals of different income levels throughout its assessment areas. Examiners also reported that the bank's community development services were excellent.

D. HMDA and Fair Lending Record

The Board has carefully considered the lending record of HNB in light of public comment received on the proposal. A commenter alleged, based on a review of 2003 HMDA data, that HNB's denial disparity ratios in certain markets in Louisiana indicated that it disproportionately denied African-American applicants for home mortgage loans.[21] The commenter also contended that HNB's denial disparity ratios in the Dallas Metropolitan Statistical Area ("MSA") indicated that it disproportionately denied African-American and Hispanic applicants for home mortgage loans.[22]

The Board reviewed 2003 HMDA data reported by HNB in various MSAs and the States of Louisiana and Texas.[23] The total HMDA-reportable lending data in Louisiana and Texas indicate that HNB's denial disparity ratios for African-American applicants were higher than, and for Hispanic applicants generally comparable with, those ratios for the aggregate of lenders ("aggregate lenders") in those states.[24] The 2003 data in Louisiana also indicate that the percentages of the bank's total HMDA-reportable loans originated to African Americans were somewhat lower than, and to Hispanics were generally comparable with, the percentages for the aggregate lenders. In the Beaumont and Texarkana MSAs, the percentages of HNB's HMDA-reportable loans to African Americans exceeded the percentages for the aggregate lenders in that year.[25]

Although the HMDA data may reflect certain disparities in the rates of loan applications, originations, and denials among members of different racial groups in certain local areas, the HMDA data do not demonstrate that HNB is excluding any racial group on a prohibited basis. The Board is concerned when HMDA data for an institution indicate disparities in lending and believes that all banks are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending, but also equal access to credit by creditworthy applicants regardless of their race. The Board recognizes, however, that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.[26] HMDA data, therefore,

20. The evaluation period was from October 18, 1999, through January 12, 2004, except for the lending test, which was evaluated from January 1, 2000, through December 31, 2002.

21. The denial disparity ratio equals the denial rate for a particular racial category (*e.g.*, African American) divided by the denial rate for whites.

22. The commenter also alleged that HNB and Capital One engaged in discriminatory lending based on a review of the prices of loans extended to African-American and Hispanic borrowers as compared with white borrowers in 2004. The commenter based this allegation on 2004 HMDA data derived from loan application registers that it obtained from HNB and Capital One. These data are preliminary and 2004 data for lenders in the aggregate are not yet publicly available. *See Frequently Asked Questions About the New HMDA Data* (March 31, 2005) available at www.federalreserve.gov/boarddocs/press/bcreg/2005.

23. This review included analysis of HMDA data for HNB's combined lending activity in all the MSAs in which HNB had branches in Texas and Louisiana, and in the Beaumont, Dallas, Texarkana, New Orleans, Baton Rouge, and Shreveport MSAs. In 2003, a majority of HNB's total HMDA-reportable loans was originated to borrowers within MSAs in Louisiana.

24. The lending data of the aggregate lenders represent the cumulative lending for all financial institutions that have reported data in a particular area.

25. HNB's percentages of HMDA-reportable loans to African Americans were greater than the percentages for the aggregate lenders in the Beaumont and Texarkana MSAs. In those MSAs, HNB's percentage of loans to Hispanics was slightly lower than that for the aggregate lenders. In the Dallas MSA, HNB's percentages of loans to African Americans and Hispanics were smaller than the percentages for the aggregate lenders.

26. The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of

have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports that provide an on-site evaluation of compliance by HNB and its subsidiaries with fair lending laws. Importantly, examiners noted no fair lending issues or concerns in the performance evaluations of HNB.

The record also indicates that HNB has taken steps to help ensure compliance with fair lending laws and other consumer protection laws. HNB has a fair lending compliance program that includes a second review of each loan marked for denial and an annual fair lending review of its mortgage portfolio to determine whether there are any race- or ethnicity-based disparities in loan underwriting.

The Board also has considered the HMDA data in light of other information, including the programs described above and the overall performance records of the subsidiary banks of Capital One and HNB under the CRA. These established efforts demonstrate that the institutions are active in helping to meet the credit needs of their entire communities. Capital One has represented that it is in the process of developing a new and comprehensive enterprise-wide fair lending program and intends to implement a similar program at HNB after the merger. Capital One plans to incorporate the most effective policies and procedures of Capital One's and HNB's respective fair lending programs into its comprehensive program for the combined institution.

E. Conclusion on Convenience and Needs and CRA Performance

The Board has carefully considered all the facts of record, including reports of examination of the CRA performance records of the institutions involved, information provided by the applicant, comments on the proposal, and confidential supervisory information. The Board notes that Capital One's national presence and financial and managerial resources will enhance HNB's ability to service its customers and broaden its geographic reach and that HNB's branch banking business will allow Capital One to offer a broader variety of products to its customers. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant depository institutions are consistent with approval.

marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. Credit history problems and excessive debt levels relative to income (reasons most frequently cited for a credit denial) are not available from HMDA data.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application should be, and hereby is, approved.[27] In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Capital One with the conditions imposed in this order and the commitments made to the Board in connection with the application. For purposes of this transaction, the commitments made to the Board in the application process are deemed to be conditions imposed in writing by the Board in connection with its findings and decisions and, as such, may be enforced in proceedings under applicable law.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order unless such period is extended for good cause by the Board or the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 16, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Sixth Bancshares, Inc.
Salina, Kansas

Order Approving the Formation of a Bank Holding Company

Sixth Bancshares, Inc. ("Sixth") has requested the Board's approval under section 3 of the Bank Holding Company

27. The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities. Under its regulations, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e). The Board has considered carefully the commenter's request in light of all the facts of record. In the Board's view, the commenter had ample opportunity to submit its views, and in fact, the commenter has submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why the written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

Act ("BHC Act")[1] to become a bank holding company and to acquire all the voting shares of Geneseo Bancshares, Inc. ("Geneseo") and control of its subsidiary, The Citizens State Bank, ("CSB"), both of Geneseo, Kansas.

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (70 *Federal Register* 34,120 (2005)) and locally in accordance with the Board's Rules of Procedure.[2] The time for filing comments has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3 of the BHC Act.

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of an attempt to monopolize the business of banking. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[3]

Sixth is a newly organized corporation that does not control a depository institution and has been formed to acquire Geneseo and CSB. CSB, with total assets of approximately $5.3 million, is the 334th largest banking organization in Kansas, controlling deposits of approximately $4.9 million, which represent less than 1 percent of the total amount of deposits of insured depository institutions in the state.[4] Based on all the facts of record, the Board has concluded that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval of the proposal.

In acting on proposals under section 3 of the BHC Act, the Board is required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").[5] CSB received a "Satisfactory" rating at its most recent CRA performance evaluation by the Federal Deposit Insurance Corporation ("FDIC"), as of April 30, 2003. Sixth plans to increase CSB's products and services and expand its operations into the Salina, Kansas, banking market. Sixth also has represented that it will maintain CSB's existing CRA program for its operations in Geneseo and will institute similar programs in the future for its operations in Salina. Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance record of the relevant depository institution are consistent with approval.

Section 3 of the BHC Act also requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered these factors in light of all the facts of record, including information provided by Sixth, confidential reports of examination and other confidential supervisory information from the FDIC, the primary federal supervisor of CSB, and public comments received on the proposal.

In evaluating financial factors in proposals involving newly formed small bank holding companies, the Board reviews the financial condition of both the applicant and the target depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that Sixth has sufficient financial resources to effect the proposal. Sixth proposes to fund this transaction through an offering of equity securities. CSB is well capitalized and would remain so on consummation of this proposal.

The Board also has considered the managerial resources of the applicant, including the proposed management of the organization. The Board has reviewed the examination record of CSB, including assessments of its current management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of the other relevant banking agencies with Geneseo, CSB, and the proposed management officials and principal shareholders of Sixth.[6] The Board also has considered Sixth's plans to implement the proposal, including its proposed expansion of CSB's operations.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of Sixth and CSB are consistent with approval, as are the other supervisory factors under the BHC Act.

Based on the foregoing and after considering all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record

1. 12 U.S.C. § 1842.
2. 12 CFR 262.3(b).
3. *See* 12 U.S.C. § 1842(c)(1).
4. Asset data are as of June 30, 2005. Deposit data and state rankings are as of June 30, 2004.
5. 12 U.S.C. § 2901 et seq.

6. The Board received more than 50 comments in support of the proposal. In addition, the Board received a comment from Security Savings Bank, F.S.B. ("Security"), Olathe, Kansas, the former employer of the organizers of Sixth, objecting to the proposal. Among other things, Security expressed concern about the managerial ability of Sixth's organizers and made certain allegations concerning their conduct before and after leaving Security. Sixth's organizers denied the allegations. The Board notes that it has reviewed confidential reports of examination of Security and consulted with the Office of Thrift Supervision, Security's primary federal supervisor, about the managerial record of Sixth's organizers at Security. In addition, the Board has consulted with the Office of the State Bank Commissioner of Kansas, which is considering an application by Sixth to acquire control of CSB. The Board also notes that, to the extent the comment reflects allegations surrounding the end of organizers' employment with Security, the Board does not have jurisdiction to adjudicate disputes about such employment matters.

in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by Sixth with the conditions imposed in this order and the commitments made to the Board in connection with the application and receipt of all other regulatory approvals. For purposes of this transaction, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The proposed transaction may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Kansas City, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 1, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

Orders Issued Under Sections 3 and 4 of the Bank Holding Company Act

iTeam Companies, Inc.
Brookfield, Wisconsin

Order Approving the Formation of a Bank Holding Company and Notice to Engage in a Nonbanking Activity

iTeam Companies, Inc. ("iTeam") has requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")[1] to become a bank holding company by acquiring all the voting shares of Bank of Kenney, Kenney, Illinois. In addition, iTeam has requested the Board's approval under sections 4(c)(8) and 4(j) of the BHC Act[2] and section 225.28(b)(14) of the Board's Regulation Y[3] to engage in permissible data processing activities through its subsidiary, iStream Imaging, Inc. ("iStream"), Brookfield, Wisconsin.

Notice of the proposal, affording interested persons an opportunity to comment, has been published in the *Federal Register* (70 *Federal Register* 13,031 (2005)). The time for filing comments has expired, and the Board has considered the application and notice and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

Applicant is a newly organized corporation formed to acquire Bank of Kenney and engage in data-processing activities through iStream. Bank of Kenney, with total assets of approximately $5.3 million, is the 658th largest insured depository institution in Illinois, controlling deposits of approximately $4 million.[4]

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or that would be in furtherance of an attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.[5]

iTeam is a newly organized corporation that does not control a depository institution. Based on all the facts of record, the Board has concluded that consummation of the proposed transaction would have no significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market and that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has considered, among other things, confidential reports of examination, other confidential supervisory information from the primary federal supervisor of Bank of Kenney, the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision, and the Illinois Department of Financial and Professional Regulation, Division of Banks and Real Estate.

In evaluating financial factors in BHC Act proposals involving newly formed small bank holding companies, the Board reviews the financial condition of both the applicant and target depository institution. The Board also evaluates the financial condition of the pro forma organization, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

Based on its review of these factors, the Board finds that iTeam has sufficient financial resources to effect the proposal. Bank of Kenney is well capitalized and would remain so on consummation of this proposal. The transaction is structured as a cash purchase. After the proposed acquisition, iTeam plans to inject capital into Bank of Kenney.

1. 12 U.S.C. § 1842.
2. 12 U.S.C. §§ 1843(c)(8) and 1843(j).
3. 12 CFR 225.28(b)(14).
4. Asset data are as of June 30, 2005. Deposit data and state ranking are as of June 30, 2004. Ranking data are adjusted to reflect mergers and acquisitions completed through July 29, 2005.
5. *See* 12 U.S.C. § 1842(c)(1).

The Board also has considered the managerial resources of the applicant, including the proposed management of the organization. The Board has reviewed the examination record of Bank of Kenney, including assessments of its current management, risk management systems, and operations. In addition, the Board has considered the supervisory experiences of the other relevant banking agencies with Bank of Kenney and the management officials and principal shareholders of iTeam. The Board also has considered iTeam's plan for the proposed acquisition, including the proposed changes in management at Bank of Kenney after the acquisition.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of iTeam and Bank of Kenney are consistent with approval, as are the other supervisory factors the Board is required to consider under the BHC Act.

Convenience and Needs Considerations

In acting on the proposal, the Board is also required to consider the effects of the proposal on the convenience and needs of the communities to be served and to take into account the records of the relevant insured depository institution under the Community Reinvestment Act ("CRA").[6] The Board has carefully considered all the facts of record, including reports of examination of the CRA performance record of Bank of Kenney, information provided by iTeam, confidential supervisory information, and public comment received on the proposal.

Bank of Kenney received a "Satisfactory" rating at its most recent CRA performance evaluation by the FDIC, as of November 29, 2001. iTeam has represented that it would maintain Bank of Kenney's CRA program after the proposed acquisition. Additionally, iTeam has represented that after consummation Bank of Kenney would offer an expanded range of mortgage products, in the Kenney area and nationwide, through a planned new mortgage subsidiary. The Board received several comments from individuals concerned that iTeam might close Bank of Kenney's office in Kenney after the acquisition, which, they asserted, could cause hardship for the community. iTeam represented that it has no current plans to close Bank of Kenney's office in Kenney.

Based on all the facts of record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance record of Bank of Kenney are consistent with approval of this proposal.

Nonbanking Activities

iTeam also has filed a notice under sections 4(c)(8) and 4(j) of the BHC Act to engage in data-processing activities through iStream. iStream intends to offer check-imaging and check-processing services to merchants. The Board has determined by regulation that financial and banking data-processing activities are permissible for a bank holding company under Regulation Y,[7] and iTeam has committed to conduct these activities in accordance with the limitations set forth in Regulation Y and the Board's orders governing these activities.

To approve the notice, the Board also must determine that the performance of the proposed activities by iTeam "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."[8] As part of its evaluation of these factors, the Board has considered the financial and managerial resources of iTeam and its subsidiaries, including the background and experience of the proposed principals and senior officers of iTeam and iStream, and the effect of the proposed transaction on those resources. For the reasons noted above, and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board also has carefully considered the competitive effects of the proposal, which involves de novo entry into the market for check-imaging and check-processing services. Commencement of nonbanking activities de novo is presumed under Regulation Y to result in benefits to the public through increased competition in the market for the relevant service.[9] Based on all the facts of record, the Board concludes that iTeam's proposed nonbanking activities are not likely to have any adverse competitive effects. The Board also has carefully reviewed the public benefits of the proposed nonbanking activities. The proposal is expected to benefit the public by providing iStream customers with a more efficient means of check collection, as well as a wider variety of check-processing services.

The Board concludes that the conduct of the proposed nonbanking activities within the framework of Regulation Y and Board precedent can reasonably be expected to produce public benefits that would outweigh any likely adverse effects. Accordingly, based on all the facts of record, the Board has determined that the balance of the public benefits factor that it must consider under section 4(j)(2) of the BHC Act is consistent with approval.

Conclusion

Based on the foregoing and all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act. The Board's approval is specifically conditioned on compliance by iTeam with the conditions imposed in this order and the commitments made to the Board in connection with the application and notice. The Board's approval of the nonbanking aspects of the proposal is also

6. 12 U.S.C. § 2901 et seq.

7. 12 CFR 225.28(b)(14).

8. *See* 12 U.S.C. § 1843(j)(2)(A).

9. *See* 12 CFR 225.26(c).

subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c),[10] and to the Board's authority to require such modification or termination of the activities of the bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with and to prevent evasion of the provisions of the BHC Act and the Board's regulations and orders issued thereunder. For purposes of these actions, the conditions and commitments are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of Bank of Kenney may not be consummated before the fifteenth calendar day after the effective date of this order, and no part of the proposal may be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or the Federal Reserve Bank of Chicago, acting pursuant to delegated authority.

By order of the Board of Governors, effective August 4, 2005.

Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Gramlich, Bies, Olson, and Kohn.

ROBERT DEV. FRIERSON
Deputy Secretary of the Board

FINAL ENFORCEMENT DECISIONS ISSUED BY THE BOARD OF GOVERNORS

In the Matter of

Brian Bonetti
Former Sales and Service Representative,
National City Bank,
Cleveland, Ohio

Docket No. OCC-AA-EC-04-68

Final Decision

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("the FDI Act") in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Brian Bonetti ("Respondent"), from further participation in the affairs of any financial institution based on actions he took while employed at National City Bank, Cleveland, Ohio (the "Bank"). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition. 12 U.S.C. § 1818(e)(4).

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision of Administrative Law Judge Ann Z. Cook (the "ALJ"), and orders the issuance of the attached Order of Prohibition.

I. Statement of the Case

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified *misconduct*, including a violation of law or regulation, an unsafe or unsound practice, or a breach of fiduciary duty; (2) that the conduct had a specified *effect*, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)–(C).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intention to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice. 12 CFR 19.19(a) and 263.19(a). If the respondent does not file an answer within the time provided, the respondent waives his or her right to appear and contest the allegations in the notice, and Enforcement Counsel may file a motion for entry of an order of default. *See* 12 CFR 19.19(c)(1) and 263.19(c)(1). Upon a finding that no good cause has been shown for the failure to file a timely answer, the ALJ shall file with the Comptroller and the Board a recommended decision containing the findings and the relief sought in the notice. *Id.*

B. Procedural History

On February 3, 2005, the OCC served upon Respondent a Notice of Intention to Prohibit Further Participation, Notice of Charges for Issuance of an Order to Cease and Desist for Restitution and Notice of Assessment of a Civil Money Penalty ("Notice") that sought, inter alia, an order of prohibition against Respondent based on his conduct while employed at the Bank. Specifically, the Notice alleged that Respondent, as a sales and service representative for the Bank, diverted portions of customer loan pro-

10. 12 CFR 225.7 and 225.25(c).

ceeds on thirteen home-equity loans that Respondent made, authorized and/or booked, by issuing checks from the loan proceeds to make payments on his own credit card accounts (or accounts for which he was an authorized user) and payments on a loan in the name of related persons, or by depositing checks into accounts that were owned or controlled by Respondent. The Notice further alleges that Respondent falsified internal loan documents to hide from the Bank the fact that he was charging customers broker fees that exceeded the Bank's broker fee cap and gave customers misleading HUD-1 Settlement Statements that masked the broker fees charged. In addition, the Notice alleged that Respondent's violations caused loss to the Bank in the approximate amount of $84,970.00

The Notice directed Respondent to file a written answer within 20 days from the date of service of the Notice in accordance with 12 CFR 19.19(a) and (b), and that failure to answer within this time period "shall constitute a waiver of the right to appear and contest the allegations contained in the Notice, and shall, upon the OCC's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged." The Notice was served in accordance with OCC rules, via overnight delivery and first class U.S. mail. The record shows that Respondent was also personally served on February 26, 2005. Nonetheless, Respondent failed to file an answer within the 20-day period or thereafter.

On June 3, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On the same day, the ALJ issued an Order to Show Cause, providing Respondent until June 20, 2005, to file an answer to the Notice and to show good cause for having failed to do so previously. The Order to Show Cause, which was served upon Respondent by Federal Express and first class mail, also provides that if Respondent fails to submit an answer and to show good cause by the June 20 deadline, "the relief requested in the Notice will be recommended." To date, Respondent has not filed any reply to the Order to Show Cause or answered the Notice.

II. Discussion

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice." 12 CFR 19.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In the instant matter, Respondent failed to file an answer to the Notice despite notice to him of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the allegations in the Notice as uncontested. The allegations in the Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It was a breach of fiduciary duty, conflict of interest, unsafe and unsound practice, and violation of law, for Respondent to divert portions of customer loan proceeds on 13 home equity loans without the customers' knowledge, consent, or approval; falsify internal loan documents in order to hide from the Bank the fact that he was charging customers broker fees that exceeded the Bank's broker fee cap; and give customers misleading HUD-1 Settlement Statements that masked the broker fees charged. Respondent's actions also resulted in loss to the bank in the amount of approximately $89,740.00 and financial gain to Respondent, in that he diverted loan proceeds by issuing checks to make payment on his own credit card accounts or to be deposited into his own accounts. Finally, such actions also exhibit personal dishonesty and willful disregard for the safety and soundness of the Bank. Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order.

Conclusion

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By order of the Board of Governors, this 20th day of September 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

Order of Prohibition

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against BRIAN BONETTI ("Bonetti"), a former employee and institution-affiliated party, as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), of National City Bank, Cleveland, Ohio.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. § 1818(e)(7)(B)), Bonetti is hereby prohibited:

(a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

(b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act;

(c) from violating any voting agreement previously approved by any federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act.

2. Any violation of this Order shall separately subject Bonetti to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order shall become effective at the expiration of 30 days after service is made.

By order of the Board of Governors, this 20th day of September 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

In the Matter of

Walter C. "Charlie" Cleveland,
Former Director and Senior Vice President,
First National Bank,
Lubbock, Texas

Docket No. OCC-AA-EC-04-47

Final Decision

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("the FDI Act") in which the Office of the Comptroller of the Currency of the United States of America ("OCC") seeks to prohibit the Respondent, Walter C. "Charlie" Cleveland ("Respondent"), from further participation in the affairs of any financial institution based on actions he took while employed at First National Bank, Lubbock, Texas (the "Bank"). Under the FDI Act, the OCC may initiate a prohibition proceeding against a former employee of a national bank, but the Board must make the final determination whether to issue an order of prohibition.

Upon review of the administrative record, the Board issues this Final Decision adopting the Recommended Decision of Administrative Law Judge Ann Z. Cook (the "ALJ"), and orders the issuance of the attached Order of Prohibition.

I. Statement of the Case

A. Statutory and Regulatory Framework

Under the FDI Act and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges. 12 U.S.C. § 1818(e)(4). The ALJ issues a recommended decision that is referred to the deciding agency together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue an order of prohibition in the case of prohibition orders sought by the OCC. *Id.*; 12 CFR 263.40.

The FDI Act sets forth the substantive basis upon which a federal banking agency may issue against a bank official or employee an order of prohibition from further participation in banking. To issue such an order, the Board must make each of three findings: (1) that the respondent engaged in identified *misconduct*, including a violation of law or regulation, an unsafe or unsound practice, or a breach of fiduciary duty; (2) that the conduct had a specified *effect*, including financial loss to the institution or gain to the respondent; and (3) that the respondent's conduct involved either personal dishonesty or a willful or continuing disregard for the safety or soundness of the institution. 12 U.S.C. § 1818(e)(1)(A)–(C).

An enforcement proceeding is initiated by filing and serving on the respondent a notice of intent to prohibit. Under the OCC's and the Board's regulations, the respondent must file an answer within 20 days of service of the notice. 12 CFR 19.19(a) and 263.19(a). Failure to file an answer constitutes a waiver of the respondent's right to contest the allegations in the notice, and a final order may be entered unless good cause is shown for failure to file a timely answer. 12 CFR 19.19(c)(1) and 263.19(c)(1).

B. Procedural History

On September 16, 2004, the OCC served upon Respondent[1] a Notice of Charges for Issuance of an Order to

1. Service of the initial Notice and every other document served on Respondent by the ALJ or OCC Enforcement Counsel was effected by service on Respondent's counsel rather than on Respondent personally. Contrary to OCC rules, Respondent's counsel did not file a notice of appearance pursuant to 12 CFR 19.6(a)(3). Accordingly, at least the initial Notice should have been served on Respondent himself, rather than his counsel. *See* 12 CFR 19.11(c)(2). In cases of default, it is particularly important to ensure that service of papers meets the minimum standards of due process. While the Board is concerned

Cease and Desist and Notice of Assessment of a Civil Monetary Penalty ("Notice") against Respondent based on his conduct while employed at the Bank. On October 15, 2004, Respondent through counsel filed an answer to the original Notice ("Answer"), along with a timely request for a hearing on the civil money penalty.

On February 28, 2005, the OCC served the First Amended Notice of Charges for Issuance of an Order for Prohibition and Notice of Assessment of a Civil Money Penalty ("Amended Notice") upon Respondent. The Amended Notice repeated allegations made in the original Notice,[2] added new, substantive allegations relating to a loan made to Raintree Investment, Inc. (the "Raintree Loan"), and sought an order of prohibition. Amended Notice, Article III. The Amended Notice directed Respondent to file an answer within 20 days and warned that failure to do so would constitute a waiver of his right to appear and contest the allegations. The Amended Notice was served in accordance with the OCC rules by overnight delivery, signature requested, in care of Respondent's counsel. Respondent failed to file an answer within the 20-day period.

On March 31, 2005, Enforcement Counsel filed a Motion for Entry of an Order of Default against Respondent. On April 6, 2005, the ALJ issued an Order to Show Cause, noting that although Respondent was not in default as to the Original Notice, since he had filed an answer to it, the new allegations could be the basis for a default granting the relief sought. The Order provided Respondent until April 22, 2005, to file an answer to the Amended Notice and to show good cause for having failed to do so previously. To date, Respondent has not filed any reply to the Order to Show Cause or answered the Amended Notice.

C. The Raintree Loan

The Amended Notice alleges that Respondent, as a senior loan officer for Bank, caused the Bank to loan $53,000 to Raintree Investment, Inc. ("Raintree"). The President of Raintree is Russell Baxter, Respondent's father-in-law; Respondent also served as trustee of the Deed of Trust for the property securing the loan. Respondent failed to disclose his interest in the Raintree Loan (an insider-related loan) to Bank's Board of Directors or to OCC examiners. Respondent also received two cashier's checks from the proceeds of the loan, totaling $14,892, which he converted to his personal use, applying the bulk of the proceeds toward the closing costs on his personal residence. Respondent made cash payments on the loan until his departure from the Bank, thereby concealing the loan from the named borrower. Respondent additionally instructed Bank personnel not to send letters regarding the loan to Raintree, and on at least one occasion personally removed mail addressed to Raintree from the Bank's outgoing mail.

Over a month after Respondent left his position with the Bank in June 2004, Mr. Baxter responded to a Bank communication regarding the Raintree loan stating that he was unaware he had a loan at the Bank any longer. A survey ordered by the Bank determined that some of the property securing the loan had been sold, with no record of the sale in the Bank's loan file.[3]

II. Discussion

The OCC's Rules of Practice and Procedure set forth the requirements of an answer and the consequences of a failure to file an answer to a Notice. Under the Rules, failure to file a timely answer "constitutes a waiver of [a respondent's] right to appear and contest the allegations in the notice." 12 CFR 19.19(c). If the ALJ finds that no good cause has been shown for the failure to file, the judge "shall file . . . a recommended decision containing the findings and the relief sought in the notice." *Id.* An order based on a failure to file a timely answer is deemed to be issued by consent. *Id.*

In this case, Respondent failed to file an answer to the Amended Notice despite notice to him of the consequences of such failure, and also failed to respond to the ALJ's Order to Show Cause. Respondent's failure to file an answer constitutes a default.

Respondent's default requires the Board to consider the new allegations in the Amended Notice as uncontested. The new allegations in the Amended Notice, described above, meet all the criteria for entry of an order of prohibition under 12 U.S.C. § 1818(e). It was a breach of fiduciary duty, conflict of interest, unsafe and unsound practice, and violation of law, for Respondent to: fail to remove himself from approving the Raintree loan made to a family member; administer the loan while acting as trustee for its collateral; and fail to disclose his interest in the insider loan to the Bank and to OCC examiners. He received financial benefit from the loan by using proceeds of the loan for closing costs on his own personal residence. He demonstrated both personal dishonesty and willful disregard for the safety and soundness of the Bank by purposefully withholding information about the Raintree loan from the named borrower's principal, with the effect of hiding from Mr. Baxter the fact that Baxter had an outstanding loan at the Bank; and willfully interfering with the Bank's communications with a borrower regarding the borrower's obligation to the Bank.

about the notice procedures followed in this case, it concludes that in light of Respondent's counsel's participation in the case on behalf of his client, the minimum requirements of the Rules and of due process have been met. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections); 12 CFR 19.11(c)(2)(v) (permitting service "by any other method reasonably calculated to give actual notice"). The Board will, however, direct that OCC Enforcement Counsel serve a copy of the Order of Prohibition on the Respondent by various means, including by certified mail to his last known address, which does not appear in the current record.

2. Because the motion for default is based solely on the allegations newly made in the Amended Notice, the Board does not consider any of the allegations in the original Notice in its determination.

3. Mr. Baxter subsequently paid the balance of the loan.

Accordingly, the requirements for an order of prohibition have been met and the Board hereby issues such an order. As noted above,[4] the Board directs OCC Enforcement Counsel to serve the order of prohibition on Respondent personally, by delivering to his last known address, in addition to service on his counsel.

Conclusion

For these reasons, the Board orders the issuance of the attached Order of Prohibition.

By order of the Board of Governors, this 17th day of August 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

Order of Prohibition

WHEREAS, pursuant to section 8(e) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(e)), the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order of Prohibition should issue against WALTER C. "CHARLIE" CLEVELAND ("CLEVELAND"), a former employee and institution-affiliated party, as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), of First National Bank, Lubbock, Texas.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(e) of the FDI Act, 12 U.S.C. § 1818(e), that:

1. In the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the Act (12 U.S.C. § 1818(e)(7)(B)), Cleveland is hereby prohibited:

(a) from participating in any manner in the conduct of the affairs of any institution or agency specified in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)), including, but not limited to, any insured depository institution, any insured depository institution holding company or any U.S. branch or agency of a foreign banking organization;

(b) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(c) from violating any voting agreement previously approved by any federal banking agency; or

(d) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), such as an officer, director, or employee in any institution described in section 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A)).

2. Any violation of this Order shall separately subject Cleveland to appropriate civil or criminal penalties or both under section 8 of the FDI Act (12 U.S.C. § 1818).

3. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board.

This Order shall become effective at the expiration of thirty days after service is made.

By order of the Board of Governors, this 17th day of August 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

In the Matter of

Jean Peyrelevade,
A former institution-affiliated party of Credit Lyonnais

03-041-CMP-I
03-041-B-I
03-041-E-I

Determination on Motion for Interlocutory Review

Background

This issue arises out of an enforcement proceeding brought by the Board of Governors of the Federal Reserve System (the "Board") against Jean Peyrelevade (the "Respondent"), the former chief executive officer of Credit Lyonnais. In a Notice of Charges against Respondent, the Board alleged that Respondent engaged in violations of the Bank Holding Company Act in connection with Credit Lyonnais's ownership and control over a California insurance company, Executive Life, in the early 1990s, and that Respondent made false representations to the Board in 2001 and 2002 concerning the knowledge of Credit Lyonnais's then senior management (including Respondent) relating to these activities.

At the request of Board Enforcement Counsel, the Administrative Law Judge ("ALJ") overseeing this proceeding issued a subpoena to Cleary Gottlieb Steen & Hamilton ("Cleary Gottlieb"), attorneys for Credit Lyonnais, seeking notes taken by Cleary Gottlieb attorneys at interviews conducted as part of an internal investigation of the Executive Life matter. Among the documents requested were notes taken during two interviews of

4. *See* footnote 1.

Dominique Bazy ("Bazy"), a former Credit Lyonnais executive, that took place in May and September 1999. Bazy asserted that both sets of interview notes were subject to the attorney–client privilege and that the September 1999 interviews were protected by the joint defense or common interest privilege. At Bazy's request, Cleary Gottlieb declined to produce the notes of these interviews.

After Board Enforcement Counsel filed a motion with the ALJ to overrule these, and other, privilege objections, Bazy filed an opposition to Enforcement Counsel's motion and a sur-reply to its reply brief. Cleary Gottlieb represented that it and its client Credit Lyonnais do not object to producing the internal interview notes. On June 21, 2005, the ALJ issued an Order rejecting Bazy's privilege claims and ordering Cleary Gottlieb to produce the requested interview notes within 20 days. On July 1, 2005, Bazy filed with the ALJ a motion for interlocutory review of the June 21, 2005, Order, and requested the ALJ to stay the production of the disputed documents pending the interlocutory review request. In his motion, Bazy contends that the ALJ ignored evidence demonstrating that he had an objectively reasonable belief that his May 1999 and September 1999 meetings with Cleary Gottlieb lawyers were subject to attorney–client privilege; applied an inappropriate standard in determining the attorney–client privilege issue given Bazy's circumstance; and improperly held that Cleary Gottlieb could unilaterally waive the joint defense agreement privilege with respect to the content of the September 1999 meetings. Board Enforcement Counsel filed a response to Bazy's motion, arguing that the Board's Rules of Practice ("Rules") do not allow a nonparty such as Bazy to seek interlocutory review by the Board. In a reply to Enforcement Counsel's response, Bazy argued that he is an interested party to the proceeding as it relates to the enforcement of the subpoena served on Cleary Gottlieb and that the Board's Rules of practice merely failed to contemplate his particular circumstance. On July 11, 2005, the ALJ granted a stay of the order requiring Cleary Gottlieb to produce the documents, and, pursuant to Uniform Practice Rule 263.28(c), referred Bazy's motion to the Board for final disposition.

Discussion

A. Availability of Interlocutory Review

The Board's Rules of Practice provide that "[a]ny request for interlocutory review shall be *filed by a party* with the administrative law judge within 10 days of his or her ruling . . ." 12 CFR 263.28(c) (emphasis added). The Rules also specifically define "party" to include only "the Board and any person named as a party in any notice." 12 CFR 263.3(j). Thus, under this definition, the only "party" in this proceeding, other than the Board, is Jean Peyrelevade, and Bazy, as a nonparty, is not entitled to interlocutory review under the Board's rules.

Bazy's arguments to the contrary are not persuasive. Bazy first argues that he is plainly "an interested party to the action as it relates to Enforcement Counsel's attempt to obtain production of the meeting notes" based upon his substantial participation in the proceedings relating to the notes. While Bazy obviously has an interest in the outcome of the production issue, the Board's rules are clear that interlocutory review is available only to a "person named as a party in [the] notice."

Bazy also argues that the Rules "do not appear to contemplate the unique procedural posture of his present circumstance." The lack of an available administrative remedy for Bazy's circumstance does not, in and of itself, demonstrate a failure to contemplate the existence of such a circumstance, nor does it leave Bazy without a remedy. In fact, the Rules contemplate allowing a party to seek interlocutory review of an ALJ discovery order that requires the production of allegedly privileged materials, while including no comparable provision for nonparty subpoenas, such as the subpoena at issue here. *Compare* 12 CFR 263.25 (document requests to parties) *with* 12 CFR 263.26 (document subpoenas to nonparties).

This distinction in the Rules pertaining to remedies available in party and nonparty discovery is logical. If a party fails to comply with a discovery order, the Board can review the discovery orders at the end of the proceeding or on an interlocutory basis under Rule 263.28 and impose effective relief. If a nonparty fails to comply with a discovery order, however, the remedy is court enforcement. *See* 12 CFR 263.26(c). Administrative subpoenas are not otherwise self-enforcing. *See generally, Government of the Territory of Guam v. SeaLand Service, Inc.* 958 F.2d 1150, 1153–54 (D.C. Cir. 1992) (noting that party to administrative proceeding may apply to district court to enforce subpoena issued by ALJ under agency procedures). Thus, if Cleary Gottlieb declined to produce the documents in violation of the ALJ's Order, Enforcement Counsel could seek to enforce the subpoena in district court. 12 CFR 263.26(c). Similarly, in the event that Cleary Gottlieb decides to produce the documents pursuant to the ALJ's Order, Bazy could initiate a court action and assert any alleged privilege claims in an attempt to enjoin Cleary Gottlieb from complying with the Order. Thus, the Board's discovery rules reflect a conscious decision to distinguish between party and nonparty discovery, as demonstrated by the enactment of separate rules setting forth distinct procedures to be applied with regard to each category of discovery requests.

Interlocutory appeals are generally disfavored because they interrupt the main proceeding and distract from the completion of the case. They present the decisionmaker with small and often disjointed parts of the underlying case, often out of context, prior to the development of the entire case. Accordingly, federal court rules and practice evince a "firm congressional policy against interlocutory or 'piecemeal' appeals, and courts have consistently given effect to that policy." *Abney v. United States*, 431 U.S. 651, 656 (1976).

The Board's rules and prior decisions reflect the same policy against interlocutory review. Interlocutory review is always discretionary even when the rules permit it, *see*

12 CFR 263.28(b) (the Board "may exercise interlocutory review" under specified circumstances), and in prior cases the Board has noted that "the scope within which such discretion should be exercised is extremely narrow," reflecting "a strong and longstanding policy against piecemeal appeals before a final judgment." *In the Matter of Incus Co.*, 86 *Federal Reserve Bulletin* 246 (2000). In that light, the Board's rules limiting interlocutory review to a party are consistent with other aspects of the rules relating to such reviews.

In short, because the Board's Rules expressly reserve interlocutory review to parties, Bazy is not entitled to interlocutory review of the ALJ's June 21, 2005, Order.

B. Bazy's Privilege Claims

In the alternative, given the deferential standard with which the Board treats an ALJ's discovery decisions, even if the Board were to grant interlocutory review, it would affirm the ALJ's Order with respect to Bazy's privilege claims.

1. Attorney–Client Privilege Claim

Using the widely adopted five-factor test set forth by the Third Circuit in *Bevill, Bresler & Schulman Asset Management Corp.*, 805 F.2d 120, 125 (3d Cir. 1986) to determine whether a corporation's attorney is separately representing a corporate employee, the ALJ properly determined that Cleary Gottlieb represented only Credit Lyonnais and not Bazy during the interviews conducted by the firm in May 1999 and September 1999 as part of Credit Lyonnais's internal investigation. Under settled law, corporate employees seeking to establish the existence of a separate attorney–client privilege with corporate counsel must show, among other things, that "the substance of their conversations with [counsel] did not concern matters within the company or the general affairs of the company." *Id.*, 805 F.2d at 123. Here, it is undisputed that Bazy's interview related specifically to "matters within the company"; he does not claim that he was seeking advice from Cleary Gottlieb in his individual capacity. Thus, the conflicting record evidence regarding Bazy's asserted belief that the interviews were confidential is immaterial to the determination regarding privilege. Moreover, by the time of the September 1999 interview, Bazy had retained his own counsel at the request of Credit Lyonnais. This refutes any reasonable argument that Bazy believed Cleary Gottlieb was acting as his attorney during the September 1999 meeting.

2. Joint Defense Privilege Claim

Finally, Bazy has failed to demonstrate that a joint defense privilege applies to the content of his September 1999 interviews. Although Bazy cites case law noting that a joint defense privilege protects communications between an individual and an attorney for another when the communications are part of an ongoing and joint effort to set up a common defense strategy, he has failed to present any evidence demonstrating the existence of a joint defense agreement between himself and Credit Lyonnais. While a written agreement is not required to establish the existence of a joint defense privilege, a party must show, among other things, that "the parties had agreed to pursue a joint defense strategy." *Bevill, Bresler, supra*, 805 F.2d at 126; *see also U.S. v. Weissman*, 195 F.3d 96, 100 (2d Cir. 1999) (noting that in order to demonstrate the existence of a joint defense privilege, a showing of some form of joint strategy is necessary, "rather than merely the impression of one side").

Bazy's only support for his joint defense privilege claim is his stated belief that it was "[his] understanding that the Cleary Gottlieb attorneys would maintain the confidentiality of [his] statements during [the September 1999] meeting." Bazy Declaration, ¶7. Bazy has made no assertion that Cleary Gottlieb or Credit Lyonnais directly or indirectly communicated to him an agreement to pursue a joint defense strategy. Bazy's unilateral belief is plainly insufficient to establish the existence of a joint agreement, as noted in the cases cited above. Accordingly, Bazy has failed to establish that a joint defense privilege exists with respect to his September 1999 interview.

As set forth herein, the arguments advanced by Bazy fail to demonstrate an appropriate basis upon which the Board may grant interlocutory review of the ALJ's Order given his nonparty status. In the alternative, even if the Board were to grant interlocutory review, it would affirm the ALJ's June 21, 2005, Order with regard to Bazy's privilege claims. Accordingly, the Board declines Bazy's request for interlocutory review of the ALJ's June 21, 2005, Order.

By order of the Board of Governors, this 5th day of August, 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

In the Matter of

Jean Peyrelevade,
A former institution-affiliated party of Credit Lyonnais

03-041-CMP-I
03-041-B-I
03-041-E-I

Determination on Motion for Interlocutory Review

Background

On December 18, 2003, Board Enforcement Counsel initiated this proceeding against Respondent Jean Peyrelevade ("Peyrelevade"). In the Notice of Charges, Enforcement Counsel alleged that Peyrelevade participated in alleged

violations of the Bank Holding Company Act of 1956 in his role as chairman of Credit Lyonnais, specifically with respect to Credit Lyonnais's ownership and control over a California insurance business, Executive Life, and that Peyrelevade made false representations to the Federal Reserve Board in 2001 and 2002 regarding his knowledge of these alleged violations. Peyrelevade, who resides in France, is also currently under indictment in the United States District Court for the Central District of California for alleged conduct relating to the Executive Life matter, but has not appeared in the United States to defend the pending charges. France's extradition treaty with the United States does not permit French nationals to be extradited to the United States. *See* Article 3, Paragraph 1, 1996 U.S.T. LEXIS 53 (entered into force February 1, 2002, www.state.gov/documents/organization/38535.pdf).

On February 1, 2005, in response to the parties' Joint Motion for the Issuance of Requests for International Judicial Assistance ("the Joint Motion"), the Administrative Law Judge ("ALJ") issued Letters of Request and Commissions to a consular official under the Hague Convention for the Taking of Evidence Abroad authorizing testimony to be taken in Paris of 13 French national witnesses proposed by the parties, including Peyrelevade. The Joint Motion noted that the parties were not asking the ALJ to determine at that point whether particular depositions were for discovery purposes or for preservation of testimony purposes. In fact, the Joint Motion specifically indicated Enforcement Counsel's intention to file a motion with the ALJ regarding the proposed testimony of Respondent (as well as two other French witnesses of Respondent who were also named in the indictment charges in California), but that because of the lead time necessary to schedule the depositions in France, the parties agreed to submit their request to the ALJ, pending the outcome of Enforcement Counsel's anticipated motion.[1]

Accordingly, on February 18, 2005, Board Enforcement Counsel filed a Motion in Limine, requesting, among other things, that the ALJ rule that Peyrelevade be permitted to testify only by appearing in person at the hearing in the United States, rather than by a deposition to be taken in France. In its Motion in Limine, Enforcement Counsel argued that Peyrelevade should not be considered "unavailable" under the Board's Rules of Practice ("the Rules") merely because he was residing overseas, given that he would be using the deposition testimony to substitute for live testimony in order to avoid arrest for the pending criminal indictment in California, and that in-person testimony is necessary to enable the ALJ to properly assess Peyrelevade's credibility. After extensive briefing from Peyrelevade and Enforcement Counsel, on June 6, 2005, the ALJ issued an Order ("the June 6 Order") finding that Peyrelevade's residence abroad "does not . . . meet the standards of 'unavailable'" and accordingly, that Peyrelevade's deposition could not be taken to preserve his testimony under Rule 263.27 of the Board's Rules or offered into evidence at the hearing under Rule 263.36 of the Board's Rules.

On July 1, 2005, Peyrelevade filed with the ALJ a Request for Interlocutory Review of the June 6 Order ("the Request"). In the Request, Peyrelevade contends that interlocutory review is appropriate and necessary in this case because the ALJ's ruling improperly resolves a controlling issue of law by denying consideration of Peyrelevade's deposition testimony and by barring Peyrelevade from preserving his testimony by way of a testimonial deposition pursuant to Rule 263.27 of the Board's Rules, thereby eliminating his ability to "preserve a full and accurate record for the Board's consideration." Peyrelevade also contends that interlocutory review is appropriate in order to avoid the additional delay and expense of reinitiating the lengthy process of arranging and taking Peyrelevade's deposition in France, which would be required in the event that the Board later modifies the ALJ's June 6 Order.

Board Enforcement Counsel filed a response to Peyrelevade's Request for Interlocutory Review, arguing that the Board has previously denied an almost identical request for interlocutory review in an earlier enforcement action and that Peyrelevade has failed to satisfy any of the elements necessary for the Board to find that the circumstances "are extraordinary enough" to merit interlocutory review. On July 22, 2005, the ALJ, pursuant to Rule 263.28(c) of the Board's Rules, referred Peyrelevade's Request for Interlocutory Review to the Board for final disposition.[2]

Discussion

I. Applicable Standard

Rule 263.28 of the Board's Rules provides that the Board may exercise interlocutory review of an ALJ's ruling if the Board finds that:

(1) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;
(2) immediate review of the ruling may materially advance the ultimate termination of the proceeding;
(3) subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or
(4) subsequent modification of the ruling would cause unusual delay or expense.

12 CFR 263.28(b). These provisions are similar to 28 U.S.C. § 1292(b), which sets forth the circumstances under which federal appellate courts may exercise jurisdiction over interlocutory appeals. Thus, the Board has previously observed that "[w]hile section 1292(b) and case law governing interlocutory review in civil proceedings are not

1. Notably, on August 26, 2005, the French Ministry of Justice authorized the requested depositions.

2. On August 15, 2005, the ALJ granted a request by Peyrelevade for leave to file an additional reply in support of his Request for Interlocutory Review. Accordingly, Peyrelevade's additional reply was transmitted to the Board on August 15, 2005.

binding in this administrative proceeding, they provide useful guidance to the [agencies] in deciding procedural issues such as the one presented here." *In re Incus Co. Ltd*, 86 *Federal Reserve Bulletin* 246 (2000) (citations omitted).

The Board has also repeatedly emphasized that interlocutory review is discretionary, and that "the scope within which such discretion should be exercised is extremely narrow." *Id.* (citations omitted). The Board's limitation on interlocutory review reflects a strong and longstanding federal policy against piecemeal appeals before a final judgment. *Id.* (citing *Switzerland Cheese Ass'n, Inc. v. E. Horne's Market, Inc.*, 385 U.S. 23, 24–25 (1966)). Accordingly, while a finding of one of the four circumstances set forth in Rule 263.28(b) is a necessary precondition to interlocutory review by the Board, it is not alone sufficient to require that the Board grant such review." *Id.* All four of the prerequisites are to be used to guide the Board in the exercise of its discretion. *Id.* at 246.

Interlocutory appeals are generally disfavored because they undermine the independence of the trial judge, expose the parties to harassment and the burdensome costs of a succession of separate appeals, promote delay, and require the unnecessary expenditure of scare judicial resources. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981); *Catlin v. United States*, 324 U.S. 229, 233-34 (1945). Thus, the Board has stated that a party seeking interlocutory review "has the burden of persuading the Board that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of final judgment." *Incus*, at 246–47, (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978)).

For the reasons set forth below, the Board determines that Peyrelevade has failed to meet that burden, and his request for interlocutory review is denied.

II. Analysis of June 6 Order Under Standard of Rule 263.28(b)

A. Existence of Controlling Question of Law or Policy

Peyrelevade contends that the June 6 Order involves a "controlling question of law or policy as to which substantial grounds exist for a difference of opinion." The Board has previously noted that "[p]retrial rulings on the admissibility of evidence are not ordinarily subject to interlocutory review." *In re Pharaon, Order Denying Motion for Interlocutory Review*, Docket Nos. 91-037-E-I7 and 91-043-E-I7, p. 3 (Sept. 12, 1995) (citing *Coursen v. A.H. Robins Co., Inc.*, 764 F.2d 1329, 1342 (9th Cir. 1985)). More specifically, the Board has determined, on nearly identical facts, that no controlling question of law or policy existed, where the ALJ issued a prehearing order ruling that a foreign national respondent subject to a related pending criminal indictment may not present his testimony at the hearing via a deposition taken abroad. *Pharaon, Order Denying Motion for Interlocutory Review*, at p. 4. In denying the motion for interlocutory review in *Pharaon*, the Board observed that "[i]t is impossible to know whether and to what extent an in limine ruling on the admissibility of evidence would control the outcome of a proceeding absent the holding of the hearing, a ruling in the context of that hearing, and the issuance of a recommended decision." *Id.*

Peyrelevade contends that the instant matter is distinguishable from *Pharaon* and does involve a controlling issue of law in that the ALJ has ruled not only that Peyrelevade may not introduce his deposition as testimony at the hearing, but also that his deposition cannot be taken to preserve his testimony pursuant to Rule 263.27, thereby eliminating his ability to "preserve a full and accurate record for the Board's consideration."[3] The Board finds, however, that the ultimate impact of the ALJ's ruling on the outcome of this case is still entirely speculative. For instance, Peyrelevade may ultimately decide to testify in person at the hearing despite his current position; or he could prevail in the hearing without recourse to his testimony. Either one of these outcomes would moot the questions presented at this stage. Moreover, it is entirely unclear at this stage what impact his deposition testimony, even if permitted, would have on the outcome of the hearing. As the Ninth Circuit noted in *Coursen*, "[i]n limine rulings are by their very nature preliminary. It is impossible to determine whether the movant will be prejudiced by such ruling absent a trial, a ruling in the context of trial, and the return of a verdict." *Coursen* 764 F.2d at 1342.

Even if the ALJ's June 6 ruling did involve a "controlling question of law or policy," Peyrelevade has failed to establish that "substantial grounds exist for a difference of opinion" on the issue of whether he has a right under these circumstances to testify at the hearing by deposition.[4] To the contrary, the D.C. Circuit Court of Appeals upheld the ALJ's decision in *Pharaon*, on nearly identical facts, that a foreign respondent was required to testify in person if he wanted his testimony considered at the hearing.

In his June 6 Order, the ALJ ruled that because Peyrelevade's testimony will involve "significant determinations regarding credibility," it is "both important and proper that [Peyrelevade] be required to appear in person at hearing if he intends to testify." The D.C. Circuit, in explaining its conclusions with respect to the ALJ's ruling in *Pharaon*, noted that "[g]iven the significance of personal observation to credibility determinations, we cannot say that [the ALJ's] ruling amounted to an abuse of discretion." *Pharaon v. Board of Governors of the Federal Reserve System*, 135 F.3d 148 (D.C. Cir. 1998), *cert. denied*, 525 U.S. 947 (1998). Particularly in absence of authority to the contrary, this opinion demonstrates that no substantial grounds exist for a difference of opinion with regard to the June 6 Order.

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3. Peyrelevade is listed on his own witness list but not on Enforcement Counsel's. While Enforcement Counsel could take Peyrelevade's deposition under the Board's discovery rules, 12 CFR 263.53, Enforcement Counsel have indicated that they do not intend to do so.

4. Unless he has that right, the issue of whether he is "unavailable" within the meaning of the Board's rules is ultimately unimportant.

B. Other Rule 263.28(b) Criteria

Additionally, the Board does not find that immediate review of the June 6 Order would materially advance the ultimate termination of the proceeding or that subsequent modification of the Order would be an inadequate remedy or cause unusual delay or expense. Peyrelevade combines his arguments with respect to these three criteria, contending only that because the June 6 Order precludes the taking of Peyrelevade's deposition for the purpose of preserving testimony, unusual and unnecessary delay and expense will result if review and modification of the June 6 Order are deferred until the conclusion of the proceedings before the ALJ. Peyrelevade argues that because such delay and expense can be avoided through the Board's exercise of interlocutory review, the ultimate termination of this proceeding would be materially advanced by the Board's decision to exercise review.

In *Pharaon*, the Board determined that immediate review of the ALJ's similar in limine ruling would not materially advance the ultimate termination of the proceeding and, moreover, that subsequent modification of the ALJ's ruling would not lead to unusual expense or delay. The Board specifically rejected Pharaon's argument that the entire proceeding would have to be repeated if the Board subsequently decided that Pharaon should have been permitted to testify by deposition. *See In re Pharaon, Order Denying Motion for Interlocutory Review*, Docket Nos. 1-037-E-I7 and 91-043-E-I7, p. 4 (Sept. 12, 1995). Peyrelevade points out that the Board's decision denying interlocutory review in *Pharaon* assumed that Enforcement Counsel in that proceeding would take Pharaon's deposition for discovery purposes and expressly anticipated that the ALJ would transmit the deposition transcript to the Board along with any other rejected exhibits. This was not, however, the controlling basis for the Board's denial of interlocutory review in *Pharaon* and does not warrant a different outcome with respect to the ALJ's June 6 Order in this matter.[5] Even if the Board ultimately determines that the June 6 Order is improper and that Peyrelevade should be permitted to testify by deposition, the Board can simply remand the matter for consideration of a deposition of Peyrelevade by the ALJ. While Peyrelevade and Enforcement Counsel disagree on the amount of delay that would be caused by rescheduling Peyrelevade's deposition, it seems unlikely at this point that any substantial delay or expense would result even if it is ultimately necessary to re-request authorization for Peyrelevade's deposition, given that the French Ministry of Justice authorized the requested depositions (including Peyrelevade's) on August 26, 2005. Therefore, as the Board noted in *Pharaon*, "the extent to which subsequent modification would result in any delay and expense, let alone unusual delay and expense, is wholly speculative." *Id.* (emphasis in original).

As set forth herein, the arguments advanced by Peyrelevade fail to provide an appropriate basis upon which the Board may grant interlocutory review of the ALJ's Order. Peyrelevade has not demonstrated the *exceptional* circumstances necessary to justify a departure from the Board's basic policy of postponing review until the conclusion of the hearing and the close of the record. Accordingly, the Board declines Peyrelevade's request for interlocutory review of the ALJ's June 6, 2005 Order.

By order of the Board of Governors, this 16th day of September, 2005.

Board of Governors of the
Federal Reserve System

JENNIFER J. JOHNSON
Secretary of the Board

5. The Board notes that Pharaon ultimately declined to appear for a deposition in that matter.

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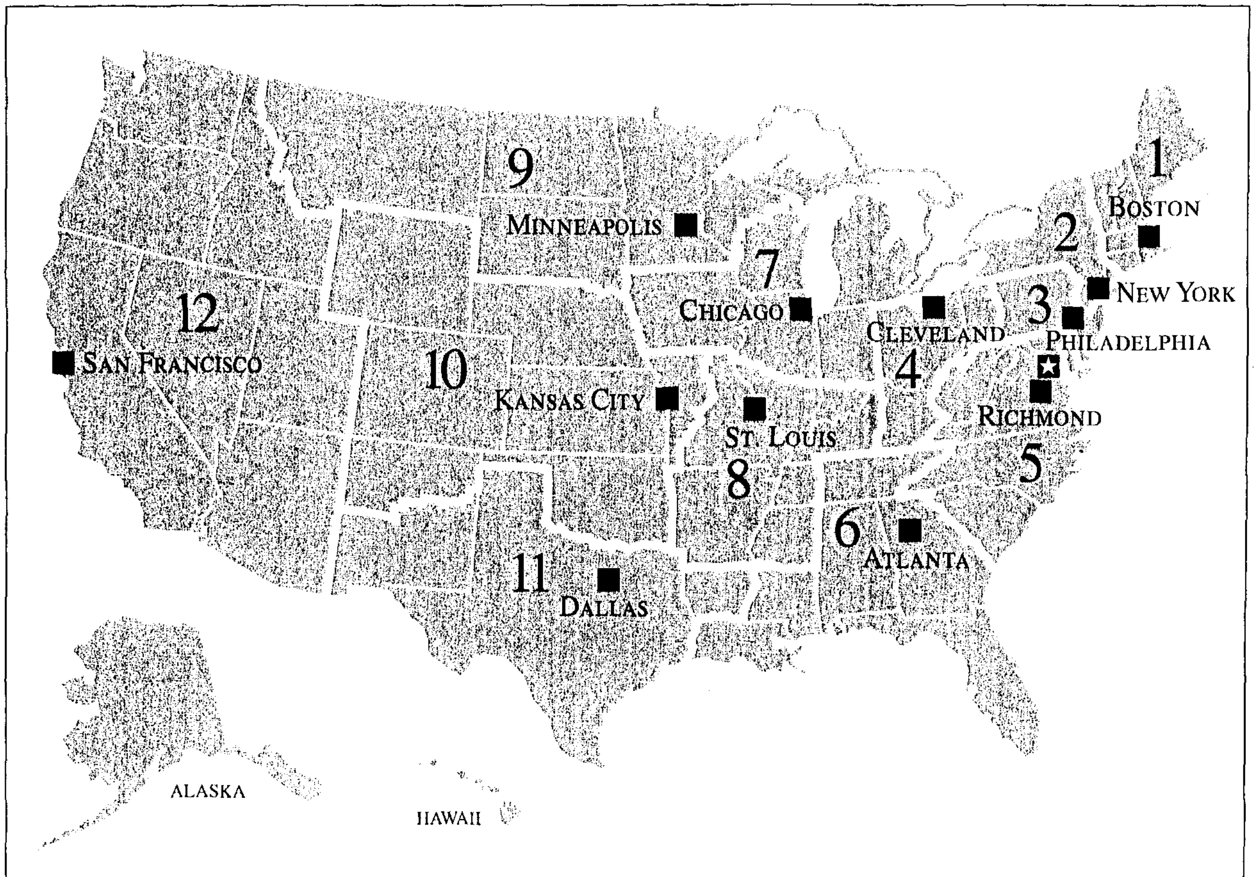

LEGEND

Both pages

■ Federal Reserve Bank city

☒ Board of Governors of the Federal Reserve System, Washington, D.C.

Facing page

• Federal Reserve Branch city

— Branch boundary

NOTE

The Federal Reserve officially identifies Districts by number and Reserve Bank city (shown on both pages) and by letter (shown on the facing page).

In the 12th District, the Seattle Branch serves Alaska, and the San Francisco Bank serves Hawaii.

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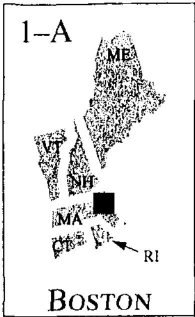
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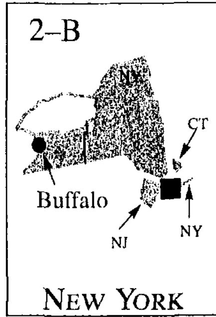
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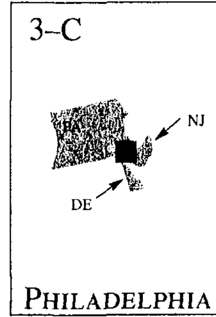
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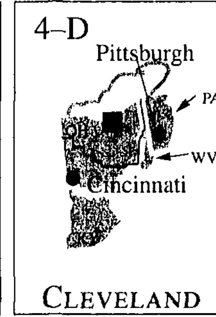
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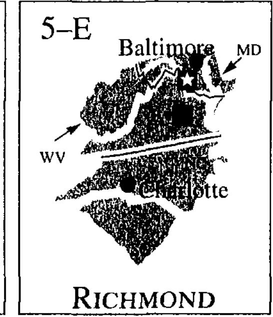
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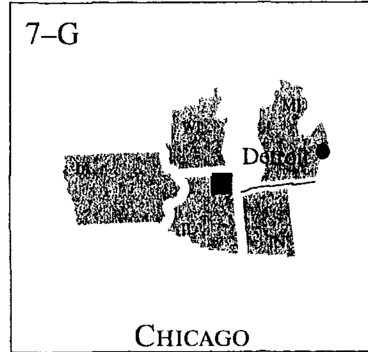
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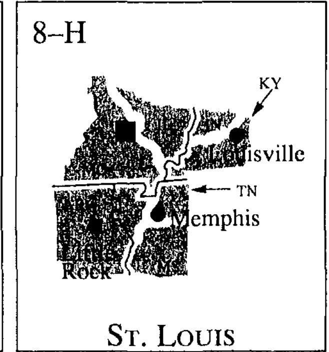
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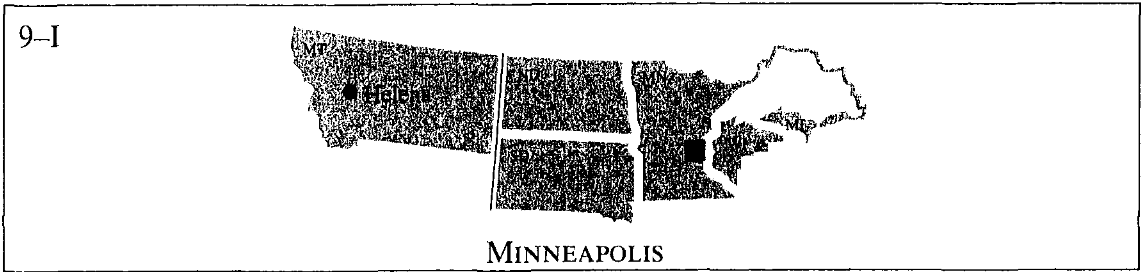
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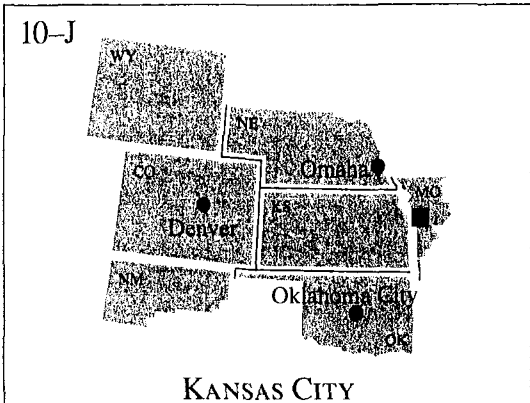
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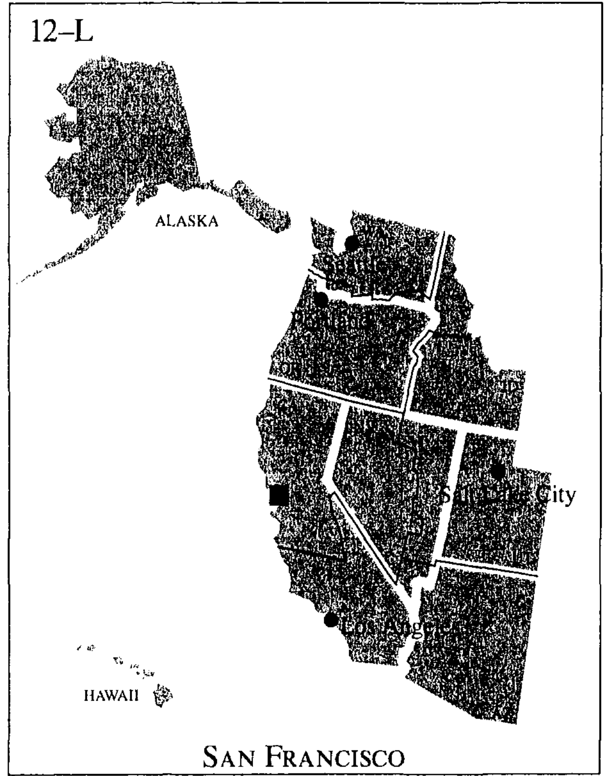
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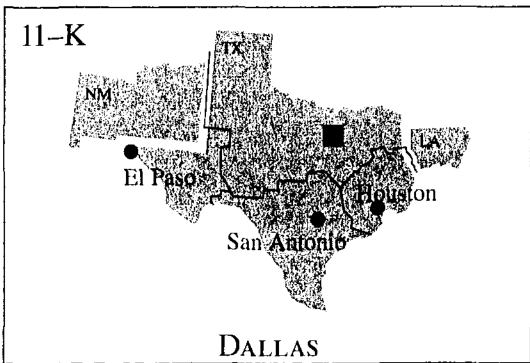
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