Special Supervision and Enforcement Activities

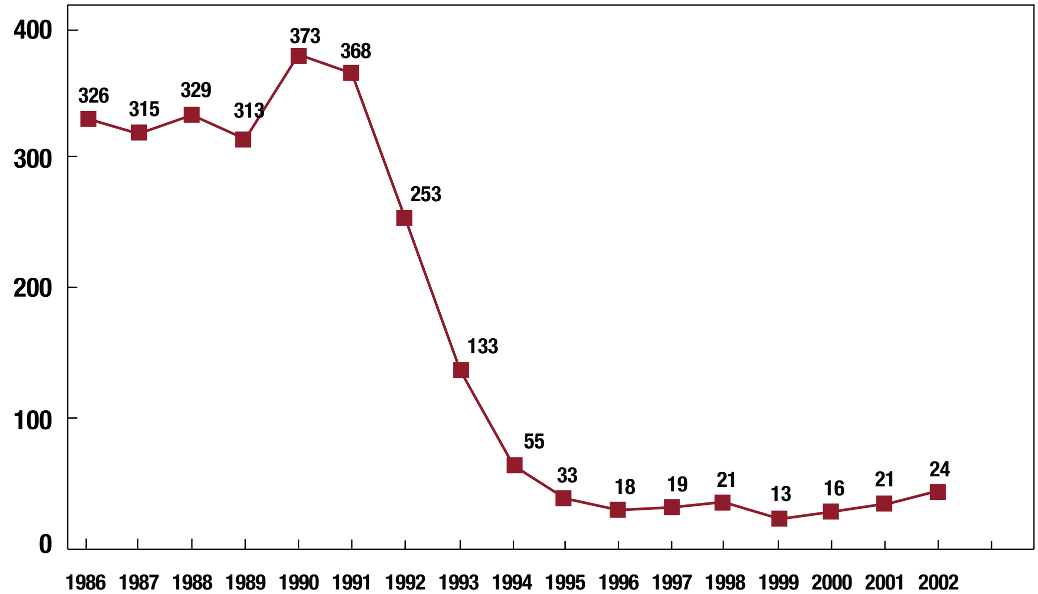
The Special Supervision/Fraud department of the Mid-Size/Community Bank Supervision department supervises the resolution of critical problem banks through rehabilitation or orderly failure management, monitors the supervision of nondelegated problem banks, coordinates fraud/white collar crime examinations, provides training, disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem bank and fraud/white collar crime related issues. Fraud experts are located throughout the United States representing each of the OCC's district offices, and they also provide support to the OCC's largest supervised banks.

This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by OCC's Special Supervision/Fraud department and the FDIC's Department of Resolutions in Washington. Information on enforcement actions is provided by the Enforcement and Compliance division (E&C) of the law department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

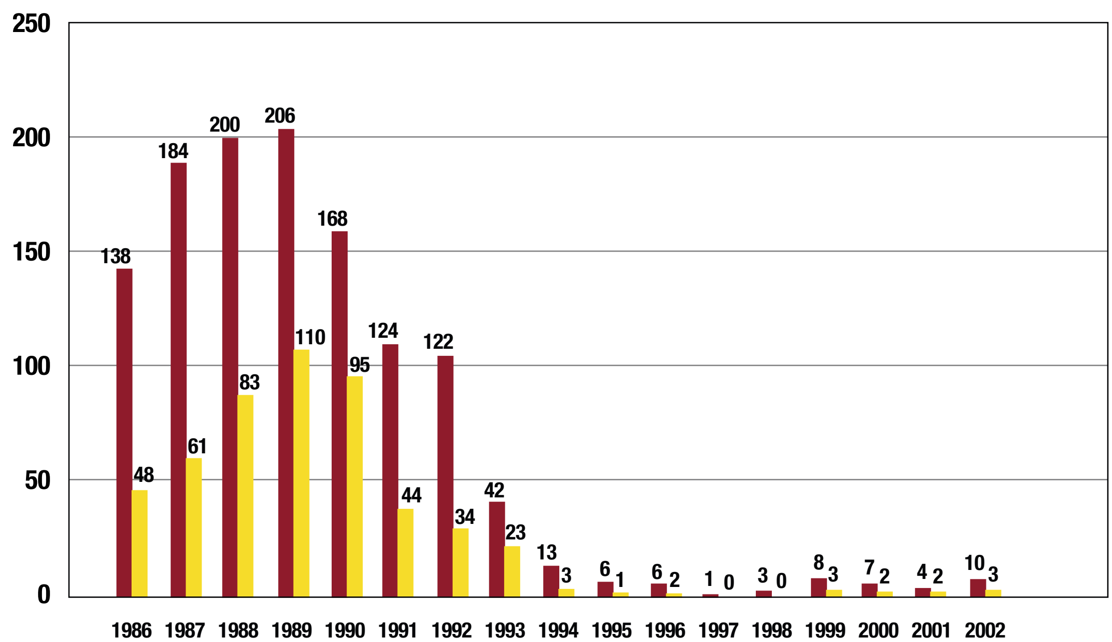
Problem banks represented approximately 1 percent of the national bank population as of December 31, 2002. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been relatively stable for several years, although the last several years show modest increases. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks is 24 at December 31, 2002, up from 21 at December 31, 2001. Three national bank failures occurred during 2002 out of 10 commercial bank failures.

Figure 1—Problem National Bank Historical Trend Line



Source: Special Supervision

Figure 2—Total Bank Failures Compared to OCC Failures



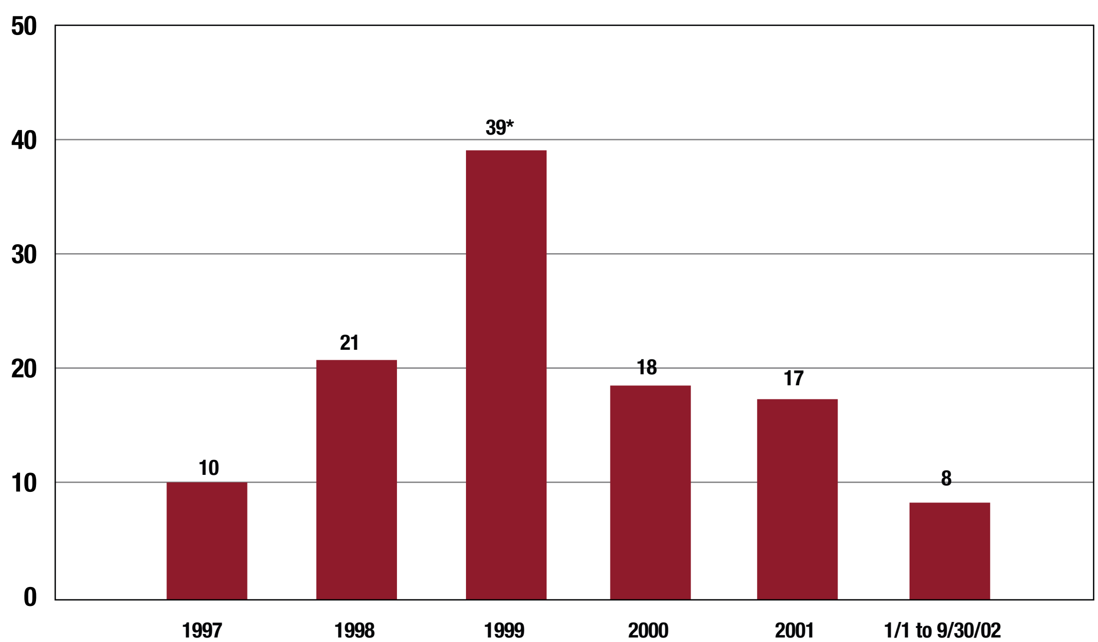
Source: Federal Deposit Insurance Corporation

Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

The OCC takes enforcement actions against national banks, individuals associated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of enforcement actions completed by the OCC against banks in the last several years. (Year-2000-related actions taken in 1999 are noted in parentheses.)

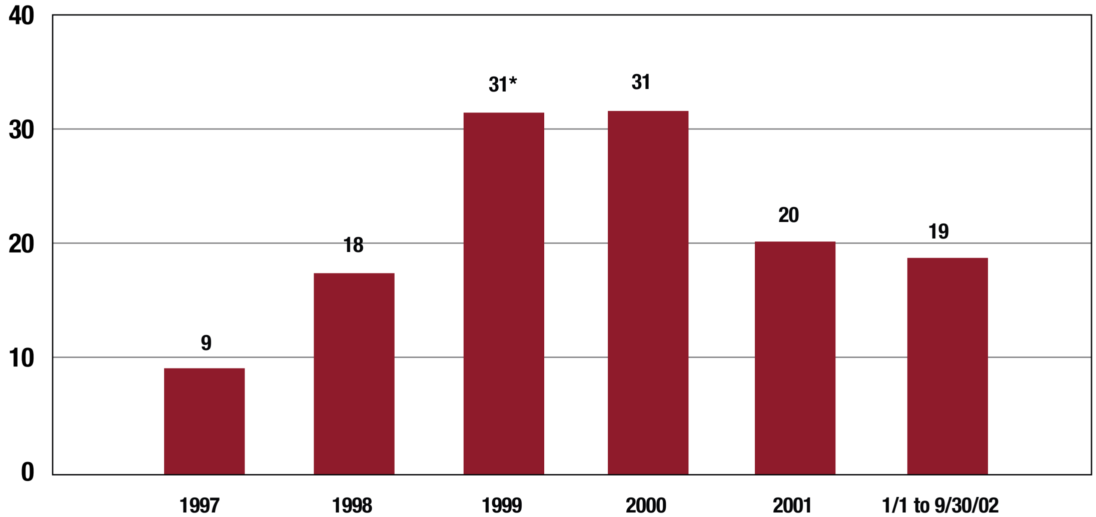
Figure 3—Commitment letters



Source: OCC Supervisory Monitoring System (SMS). Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are for year-2000 problems

Figure 4—Memorandums of understanding



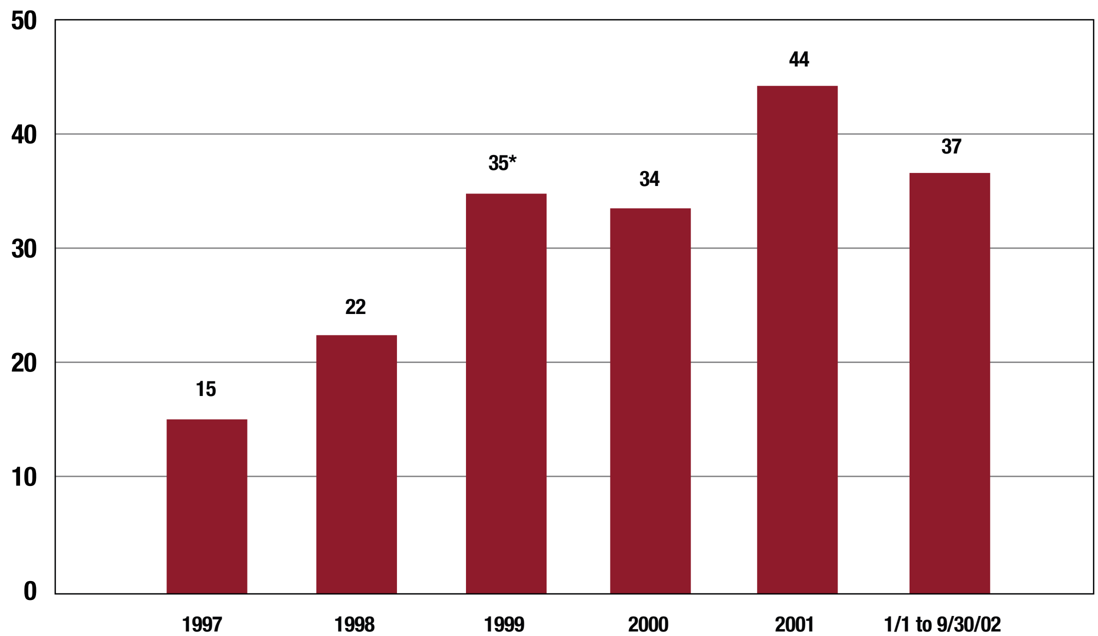
Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*6 of which are for year-2000 problems

The most common types of formal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements, but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court.

The OCC also issued five CMPs against national banks as of June 30, 2001. In the first half of 2001, the OCC also issued six notices of deficiency, which notified the affected banks that they needed to submit a plan for bringing their operations into compliance with safety and soundness standards. As of June 30, 2001, the OCC did not issue any safety and soundness orders.

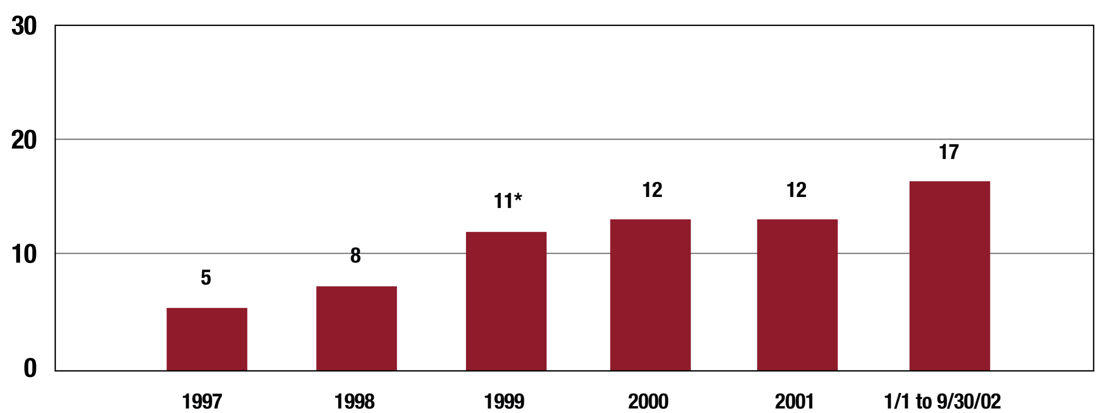
Figure 5—Formal agreements



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

*2 of which are for year-2000 problems

Figure 6—Cease-and-desist orders against banks

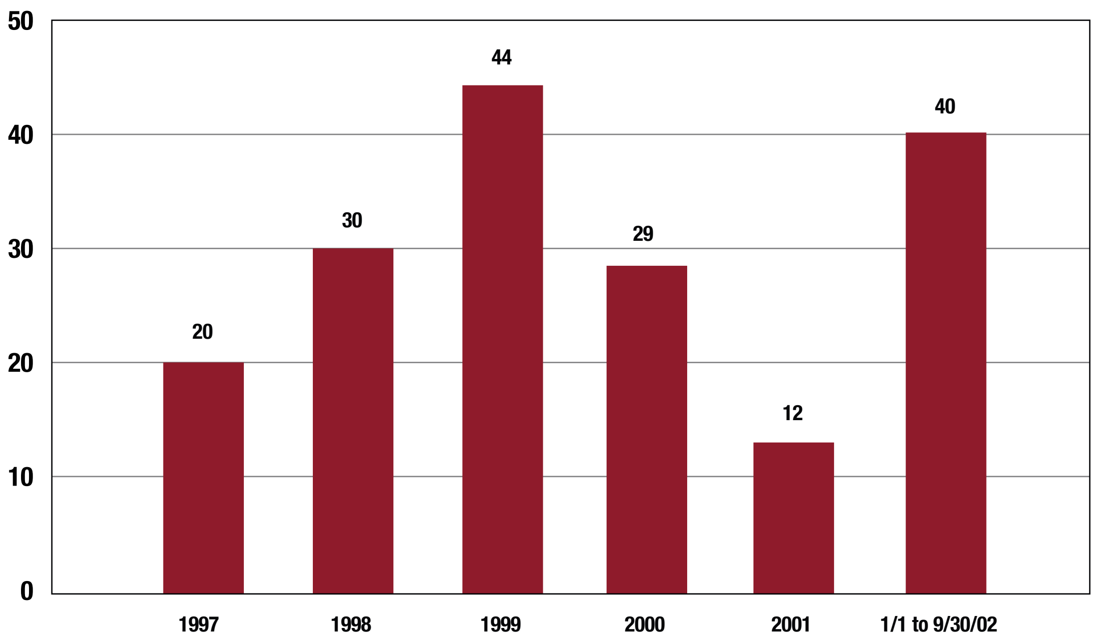


Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

*1 of which is for year-2000 problems

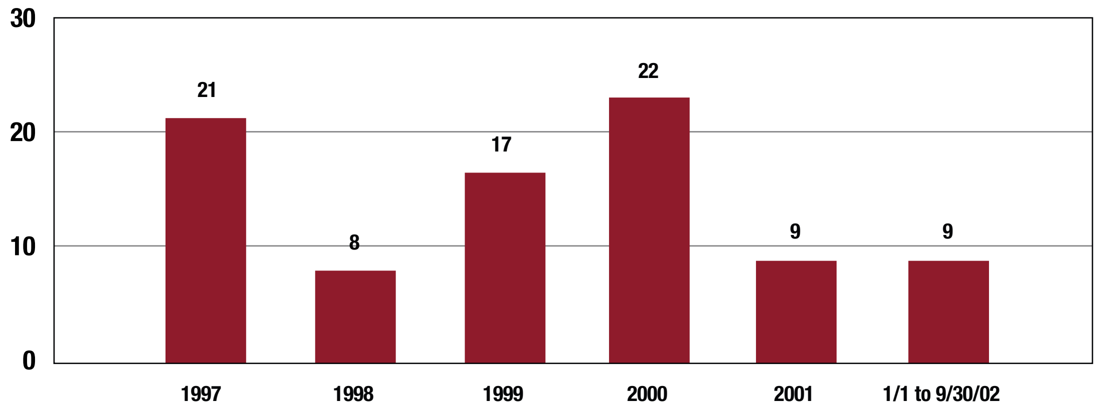
The most common enforcement actions against individuals are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, and under certain circumstances, unsafe or unsound banking practices and breaches of fiduciary duty. Personal C&Ds may be used to restrict individuals' activities and to order payment of restitution. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

Figure 7—Civil money penalties against individuals



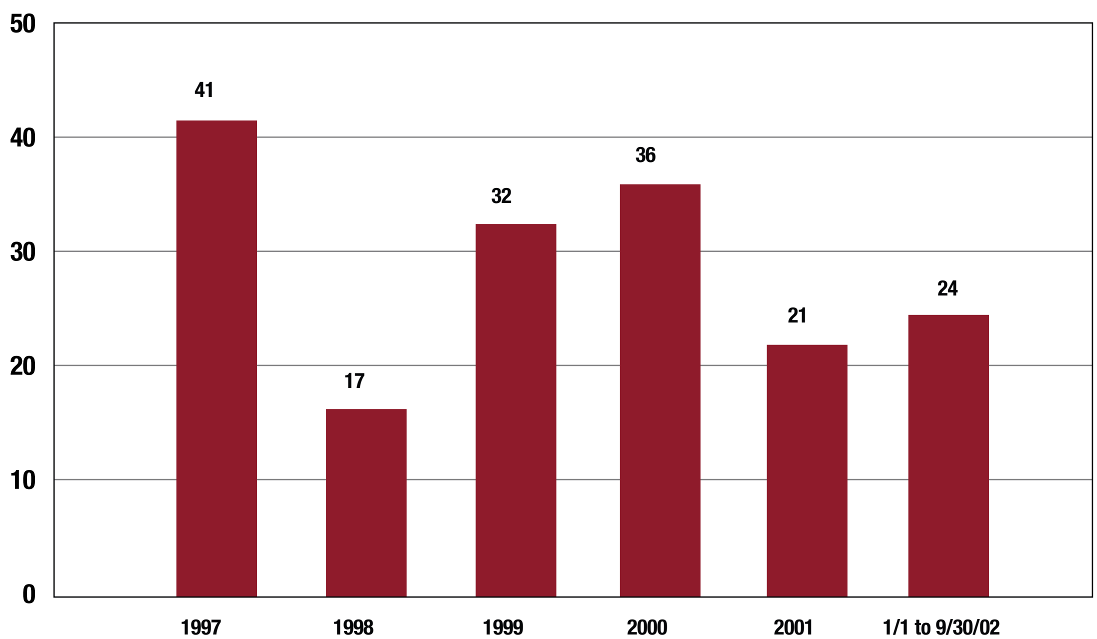
Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 8—Cease-and-desist orders against individuals



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

Figure 9—Removal and prohibition orders



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

Recent Enforcement Cases

For a list of significant cases during the first half of 2002, see the *Quarterly Journal,* Vol. 21, No. 3, September 2002. Below are summaries of the significant cases completed from July 1, 2002, to September 30, 2002.

In July 2002, the OCC entered into a formal agreement with a community bank in South Dakota regarding its credit card marketing practices. The OCC determined that the bank's marketing ran afoul of the prohibition against unfair and deceptive practices in the Federal Trade Commission Act. The agreement requires the bank to correct its practices and establish monitoring systems to ensure its future compliance with the act.

In August 2002, the OCC issued a temporary cease-and-desist order against a national bank in Florida. The bank was engaged in numerous unsafe or unsound practices in connection with its origination of high loan-to-value ratio mortgage loans. The OCC's temporary order required the bank to stop the practices. At the same time, the OCC served the bank with a notice of charges seeking a permanent order. When the temporary order was later modified by the OCC, it required the bank to obtain prior OCC approval before engaging in any new lines of business.

In August, September, and October, the OCC issued enforcement actions against six individuals affiliated with the federal branch of the Bank of China located in New York City. The individual enforcement actions included four prohibition actions, two personal cease-and-desist orders and four civil money penalties. In January 2002, the OCC and the bank's home-country regulator, the People's Bank of China, assessed separate civil money penalties of $10 million each against the bank. After a lengthy investigation, the OCC, with the cooperation of the Peoples' Bank of China, uncovered a series of questionable transactions at the branch, extending back several years that resulted in significant losses to the New York branch and included several that showed preferential treatment to certain customers of the New York branch who had personal relationships with some members of the New York branch's prior management. The OCC issued a cease-and-desist order, by consent, which required Bank of China's federal branches to develop procedures to guard against fraud; provide for adequate customer due diligence, using an independent third party to verify compliance; and cease doing business with 34 specific individuals and companies, and affiliated entities. The consent order also requires Bank of China's federal branches to take numerous other actions to strengthen the bank's internal anti-fraud protections.

In September 2002, the OCC issued a prompt corrective action directive to a national bank in Kentucky. The bank became critically undercapitalized as a result of numerous loan losses. Among other things, the OCC's directive required immediate recapitalization of the bank and submission of viable strategic plans. It also placed several restrictions on the bank's use of brokered deposits. The bank subsequently recapitalized and committed to address its deficiencies.

In September, as part of the OCC's Fast Track program, the OCC issued a prohibition and restitution order against a teller at a national bank branch in Texas. The teller engaged in identity theft and used the stolen information to assist third parties in theft of funds from bank customer accounts. The teller agreed to make restitution of $20,000 as part of the order.

Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks, but who are not being criminally prosecuted, are prohibited from working in the banking industry. As part of the Fast Track Enforcement program, E&C secured 14 consent prohibition orders against institution-affiliated parties between January 1, 2002, and September 30, 2002. Two of these orders also incorporated restitution payments to the appropriate banks for losses incurred. During the same period, E&C sent out notifications to 147 former bank employees, who were convicted of crimes of dishonesty, that under federal law they are prohibited from working again in a federally insured depository institution.