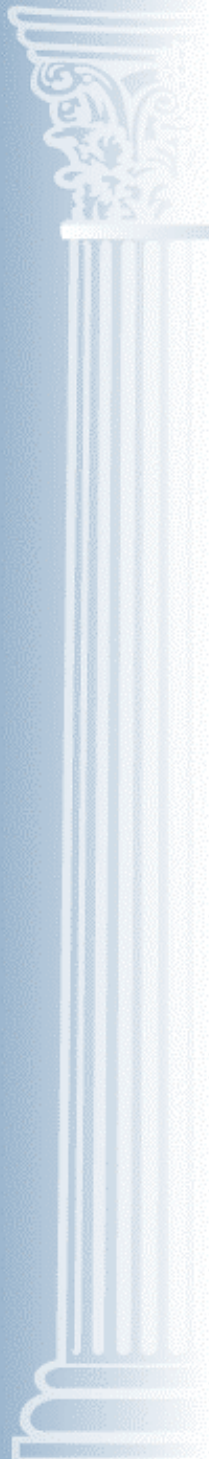




Comptroller of the Currency
Administrator of National Banks



OCC Strategic Plan

FISCAL YEAR 2003–2008

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A Message From Comptroller Hawke

I am pleased to present the Office of the Comptroller of the Currency's (OCC's) *Strategic Plan for Fiscal Year 2003-2008*, in the 140th anniversary year of our agency. This plan sets forth our strategic goals, program objectives and strategies that will guide our activities over the next five years as we continue the work of assuring a safe and sound, competitive and profitable national banking system that meets the needs of the American people.

I am proud of the OCC's ongoing accomplishments and this strategic plan for the future. The American public can expect the Office of the Comptroller of the Currency to ensure bank safety and soundness to advance a strong national economy, foster competition by allowing banks to offer new products and services to their customers as long as banks have the expertise to manage their risks effectively and to provide necessary consumer protections, improve the efficiency of bank supervision and reduce regulatory burden by streamlining supervisory procedures and regulations, and assure fair access to financial services for all Americans. Working together, OCC employees anticipate and respond to risks in the banking system and help ensure that the OCC's supervision is efficient and responsive to market developments, both domestically and globally.

We begin this next strategic plan period with a healthy national banking system with strong earnings despite the global economic slowdown. The OCC will continue to work with the banking community to build an even stronger national banking system in support of a healthy economy and in service to the American public. We will monitor our progress and performance on the initiatives outlined in this plan and will review the plan at least annually and make any necessary modifications. We will also continue to work on the initiatives outlined in the President's Management Agenda, with particular attention to the strategic management of human capital and budget performance integration.

Going forward, I believe that the OCC is well positioned to maintain its preeminent position among financial regulators in the United States and abroad, and am confident that the OCC's staff is committed to working together to achieve the goals and objectives outlined in this strategic plan.

John D. Hawke, Jr.
Comptroller of the Currency

September 2, 2003

The History of OCC

The mission of the agency and the character of the national bank charter are deeply rooted in the circumstances that gave rise to the creation of both the agency and national banks in 1863. Our history provides direction for our contemporary role, and explains the characteristics and legal status of the national bank charter and how it was designed to operate.

The Office of the Comptroller of the Currency was created to charter and supervise a new system of national banks, which would serve as the instruments of a uniform and sound national currency, and help finance the Civil War.

In creating this system of national banks, Congress was not just solving an immediate problem. From the very outset, national banks were unique federal enterprises. It was envisioned that they would be located throughout the country, and that wherever located, they would exercise a uniform set of federal powers, under federal standards of operation, and federally-mandated capitalization, with a federal supervisor overseeing all of the foregoing.

Regardless of their short-term role in Civil War finance, this was a system of financial institutions designed to far outlast the aftermath of the War, with attributes that would enable them to play a powerful and evolving role in the national economy.

This history explains the three defining characteristics of national banks and the national banking system, which are so important in the financial marketplace today: 1) the dynamic powers of national banks to engage in the business of banking, as that business evolves over time; 2) the unique role of the OCC as the supervisor and regulator of national banks; and 3) the National Bank Act's preemption of state laws that impose standards or restrictions on the business of national banks.

Based on this lineage, the powers of national banks to engage in the business and banking and activities that are "incidental" to that business have been continuously under construction under the careful administration of the OCC for well over a century. In this role, the OCC consistently has viewed the powers of the national bank charter as evolutionary; capable of developing and adjusting as needed to support the evolving financial and economic needs of the Nation and bank customers of all types.

So, today, national banks operate pursuant to federal authority contained in a federally-granted charter; that authority is recognized as flexible and adaptable to serve changing customer and business needs; and the OCC is uniquely empowered to define and redefine the evolving business of banking in order to enable national banks to best serve those changing needs on a safe and sound basis. The OCC makes its decisions concerning the content and boundaries of permissible national bank activities carefully and systematically, using a framework derived from judicial decisions, taking into account the vitality of the national bank charter in the environment in which it is then operating, as well as safety and soundness considerations associated with a particular new activity.

Appendix H provides a recent paper by the OCC's First Senior Deputy Comptroller and Chief Counsel on the OCC's history and how it provides the direction for the role of the OCC today.

The OCC Today

The OCC is responsible for the licensing, regulation, and supervision of this Nation's system of federally chartered banks. The operations of the OCC are primarily funded by semiannual assessments levied on national banks and from various licensing fees.

Currently, there are approximately 2,150 national banks and 53 federal branches or agencies of foreign banks. Although national banks account for only 27 percent of the number of commercial banks nationwide, they hold 56 percent of the total commercial banking assets in the United States (U.S.). Through the first quarter of calendar year 2003, national banks generated 62 percent of the banking industry's earnings.

The OCC has approximately 2,800 employees in locations throughout the U.S. The OCC maintains its headquarters in Washington, D.C., and the Ombudsman's Office in Houston. The OCC currently has six district offices in New York, Atlanta, Chicago, Kansas City, Dallas, and San Francisco. By October 2003, the number of district offices will be reduced to four. The OCC will combine the San Francisco and Kansas City district offices into a new district based in Denver, and will consolidate the Atlanta and Dallas offices in Dallas. The OCC will retain field offices in Atlanta, Kansas City and San Francisco. In addition to the district offices, the OCC maintains 48 field offices in cities throughout the U.S., 24 large bank resident examiner teams, and has an examining office in London, England.

Condition of the National Banking System

The national banking system remains healthy and has enjoyed strong earnings growth over the last several years, despite the global economic slowdown. Banks have used part of their additional earnings to further strengthen capital, which has now reached record levels. Most major income categories have reached or approached their historical peaks.

The sharp drop in short term interest rates over the last two years and the strength of the housing market has led to strong gains in net interest income and noninterest income. Real estate, which has been especially

responsive to the decline in interest rates, has increased as a share of national bank portfolios and generates an increasing portion of bank earnings. Banks have also seen an increase in deposits, as consumers reacted to the poor performance of equity markets and the prospect of low returns on other investments and placed their funds in the banking system. As a result, these deposits may be more sensitive to developments in the equity and bond markets. At the same time, the lower cost of long term borrowing has increased the attractiveness of capital markets for large businesses and led to record issuances of corporate securities. Coupled with the slowdown in business investment, this resulted in reduced demand for commercial and industrial (C&I) loans.

Despite the strong earnings, weakness in the national economy has affected credit quality. Problems in the corporate sector led to a deterioration in the quality of C&I loans through the first half of 2002. The rise in personal bankruptcies has pushed up charge-off rates on credit card loans. And the aftershocks of the slowdown include persistent unemployment in many regions, which affects consumer loans of all types.

The major overseas economies have been weak for several years, and are expected to remain weak for at least the next year. This has exacerbated credit quality problems in the C&I loan portfolios of U.S. banks, and contributed to a reduction in lending in the U.S. by branches of foreign banks.

In the financial access arena, the unbanked portion of the U.S. population has declined from 15% in 1989, to 9% in 2001. Although these statistics are encouraging, more of our lower income residents need to have reasonable access to traditional banking services.

In recent years, national banks have greatly increased their investments under the OCC's Part 24 community development investment authority which allows national banks to make equity investments in Community Development Corporations (CDCs), community development projects, and other public welfare activities. National banks made more than \$6 billion of Part 24 investments since 1995, almost ten times more than the amount invested during the previous 30 years since the Part 24 authority was established.

OCC's Mission, Vision, and Guiding Principles

Mission

The Office of the Comptroller of the Currency was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers.

Our Vision

The OCC seeks to assure a banking system in which national banks soundly manage their risks, maintain the ability to compete effectively with other providers of financial services, meet the needs of their communities for credit and financial services, comply with laws and regulations, and provide fair access to financial services and fair treatment of their customers.

Guiding Principles

The core values underlying both the Mission and our Vision are the guiding principles of:

- ❖ *Professionalism*
- ❖ *Responsiveness*
- ❖ *Respect*

Professionalism

We take personal responsibility and accept accountability for achieving OCC goals. We will continue to adhere to the highest standards of excellence and personal integrity in all our endeavors.

Responsiveness

We respond rapidly, creatively, and effectively to significant risks in the financial system and to the legitimate needs of our constituencies. We acknowledge our interdependence by working cooperatively across internal and external boundaries for the best interests of the public. We will continue to promote open and effective communication in a positive and productive way

while also maintaining a healthy perspective about life and work.

Respect

We treat each other, and everyone we deal with, fairly and with dignity, respect, and compassion. We value and embrace different backgrounds, ideas, and contributions. We promote equal opportunity, empowerment, and a continuous learning environment.

We reflect, in our work and demeanor, that we are public servants obligated to carry out our responsibilities in a professional, courteous, and fair manner.

Strategic Goals, Objectives and Strategies

The OCC has established four strategic goals:

- I. A safe and sound national banking system
- II. Fair access to financial services and fair treatment of bank customers
- III. A flexible legal and regulatory framework that enables the national banking system to provide a full competitive array of financial services
- IV. An expert, highly motivated, and diverse workforce that makes effective use of OCC resources

To accomplish these goals, the OCC organizes its activities around three major programs: Supervise, Charter, and Regulate. This program structure also provides the framework for our budget and cost accounting.

Strategic objectives and strategies are established for each program, as well as for the management of our resources. The objectives focus our direction to ensure our activities are aligned to achieve our strategic goals. Strategies are the operational processes, skills, technologies and resources we will use to achieve our strategic goals and objectives over the next five years.

Supervise Program

The Supervise program consists of those ongoing supervision and enforcement activities undertaken to assure that each national bank is operating in a safe and sound manner and is complying with applicable laws, rules, and regulations relative to the bank and the customers and communities it serves. This program includes bank examinations and enforcement activities; resolution of disputes through the National Bank Appeals process; ongoing monitoring of banks; and analysis of systemic risk and market trends in the national banking system or groups of national banks, the financial services industry, and the economic and regulatory environment.

Strategic Goal I: A safe and sound national banking system

Supervise Program Objectives and Strategies

1. Risks to the national banking system are anticipated, understood, addressed and conveyed to national banks.
 - A. Assess the effectiveness of problem bank supervision and develop and apply, as needed, new strategies for addressing and resolving supervisory issues and problem banks.
 - B. Achieve effective compliance with the examination schedule requirements of the Federal Deposit Insurance Corporation Improvement Act (FDICIA).
 - C. Refine the OCC's analytical processes and tools and expand their use in bank supervision activities.
 - D. Fully implement integrated and risk-based asset management, bank technology, and compliance supervision.
 - E. Identify new products and services, and emerging risk areas, including those related to operational and technology-related vulnerabilities, and adjust supervisory strategies and activities as appropriate.
 - F. Execute changes to bank supervision core process and focus on areas of special emphasis as outlined in the annual Bank Supervision Operating Plan.
 - G. Conduct examinations to determine compliance with the USA PATRIOT Act.
 - H. Enforce anti-money laundering and anti-terrorism statutory and regulatory requirements.
 - I. Familiarize examiners and banks with the proposed revisions to the Basel Capital Accord.
 - J. Develop and administer educational programs for bankers and bank directors.

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- K. Provide an independent, appellate process for national banks.
- 2. U.S. and international financial supervisory authorities cooperate on common interests.
 - A. Represent OCC's interest on the Basel Committee, Joint Forum and Financial Stability Forum.
 - B. Work effectively with U.S. regulators to identify and address risks and emerging issues.
 - C. Lead the Electronic Banking Group of the Basel Committee in its efforts to address global electronic banking issues.
 - D. Develop coordination and collaboration agreements regarding supervisory activities performed in national banks by the various federal regulators.
 - E. Develop coordination and collaboration agreements with foreign regulators regarding supervisory activities and information exchange.
 - 3. Supervision meets the challenges of modern financial firms.
 - A. Work to further leverage the use of technology in bank supervision activities and to expand the accessibility and capabilities of the OCC's National BankNet.
 - B. Develop approaches for the supervision of new or expanded activities of national banks and their subsidiaries.

Strategic Goal II: Fair access to financial services and fair treatment of bank customers

Supervise Program Objectives and Strategies

- 1. National banks are involved in community and economic development activities.
 - A. Support the ability of national banks to be involved in community and economic development activities.

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- B. Participate constructively in interagency community and economic development activities.
2. All customers have fair access to financial services and are treated fairly.
- A. Take a lead role in addressing predatory lending practices and customer privacy requirements.
 - B. Foster fair treatment of customers of national banks through OCC guidance and supervisory enforcement actions where appropriate.
 - C. Provide an avenue for customers of national banks to resolve complaints.

Charter Program

The Charter program involves those ongoing activities that result in the chartering or liquidation of national banks as well as the evaluation of the permissibility of structures and activities of national banks and their subsidiaries. This includes the review and approval of new national bank charters, mergers, acquisitions, conversions, business combinations, corporate reorganizations, changes in control, operating subsidiaries, branches, relocations, and subordinated debt issues.

Strategic Goal III: A flexible legal and regulatory framework that enables the national banking system to provide a full competitive array of financial services

Charter Program Objective and Strategies

1. Licensing procedures are streamlined, consistent with safety and soundness.
 - A. Revise application requirements, where possible, to eliminate unnecessary burdens, consistent with safety and soundness.
 - B. Expand the availability of the “e-Corp” automated application for banks to file licensing applications electronically.

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- C. Improve efficiency and responsiveness in the licensing process, consistent with safety and soundness and legal requirements.
 - D. Develop and implement approaches to supervisory issues raised in the licensing process.
 - E. Implement core principles for evaluating new national bank charters to include OCC's ability to supervise the institution into the future.

Regulate Program

The Regulate program consists of those ongoing activities that result in the establishment of regulations, policies, operating guidance, and interpretations of general applicability to national banks. These regulations, policies, and interpretations may establish systemwide standards, define acceptable banking practices, provide guidance on risks and responsibilities facing national banks, or prohibit (or restrict) banking practices deemed to be imprudent or unsafe. This program also includes the establishment of examination policies, handbooks, and interpretations for examiners.

Strategic Goal III: A flexible legal and regulatory framework that enables the national banking system to provide a full competitive array of financial services

Regulate Program Objectives and Strategies

1. Each OCC regulation is current, clearly written, and necessary for an effective supervisory process.
 - A. Participate in the interagency Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) project to review regulations for unnecessary burden.
 - B. Provide regulatory support for Basel capital rulemaking.
 - C. Develop regulations to streamline corporate reorganizations by national banks.
2. The OCC supports national banks' efforts to remain competitive, consistent with safety and soundness.

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- A. Support continued recognition of the preemptive attributes of the national bank charter through appropriate opinions, regulations, and participation in litigation where warranted.
 - B. Develop and modernize national bank charter powers and the role and status of the national banking system.
 - C. Communicate attributes of the national bank charter and developments concerning national banks' activities within OCC and externally.
 - D. Ensure regulations applicable to national banks facilitate their involvement in community and economic development activities.
 - E. Enhance communications with State authorities to facilitate better coordination on State law issues affecting national banks.

Resource Management in the OCC

In line with the President's Management Agenda, the OCC is committed to the effective, efficient, and economical management of its resources. The ability to accomplish our mission-related goals and objectives is highly dependent on the effective management of our resources, particularly our human capital. We have established resource management objectives and strategies to maintain the appropriate attention and focus in this critical area.

Strategic Goal IV: An expert, highly motivated, and diverse workforce that makes effective use of OCC resources

Resource Management Objectives and Strategies

1. An expert, motivated, and diverse workforce is maintained in a fair and inclusive work environment.
 - A. Implement the OCC's Strategic Plan for Recruitment, Retention and Career Development (SPARC) as the way of doing business within the OCC.

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- B. Establish a comprehensive and aggressive recruiting strategy for new entry level examiners and obtain and retain highly specialized skills.
 - C. Establish a work environment that fully engages OCC's workforce.
 - D. Remove barriers that impede the retention of OCC staff.
 - E. Implement a labor management relations program that meets the needs of the OCC and its workforce.
 - F. Ensure OCC employees have the technical expertise and leadership skills they need to perform their jobs in the current and future environment.
 - G. Implement a strategy for training staff in requirements of the proposed new Basel Capital Accord.
 - H. Implement a career development program that effectively meets our human capital needs.
 - I. Implement the Automated Learning System (ALICE) to track and monitor employee training.
 - J. Expand the flexibility of deploying resources between the supervision business lines.
2. OCC is an efficient and effective organization.
- A. Ensure the organizational structure and processes promote the integration of function and cross-functional collaboration, and emphasize effective delivery of OCC's three major programs.
 - B. Ensure compliance with laws, regulations and stewardship of OCC resources through program evaluations and a management accountability program.
 - C. Ensure OCC resources are used for strategic priorities and allocated to areas of greatest risk.
 - D. Ensure equipment, telecommunications, and systems development infrastructure support the mission and strategic business requirements as defined in the OCC Enterprise Architecture.

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- E. Implement cost effective information technology solutions that enhance and improve the public's interactions with the OCC, as well as improve the efficiency and effectiveness of OCC internal operations.
 - F. Convert information technology infrastructure to a complete server-based platform.
 - G. Implement technology solutions that reduce travel time and travel costs of examiners.
3. OCC resource decisions and operations reflect sound financial, security and risk management principles.
- A. Ensure reliable, accurate and timely information underpin human and financial resources management.
 - B. Protect sensitive, privacy and classified information through implementation of the information technology security blueprint.
 - C. Maintain a comprehensive and current Continuity of Operations Plan that meets internal and external needs.
 - D. Use best practice benchmarks and risk assessments to guide resource allocation, management and monitoring, where appropriate.
 - E. Ensure OCC's records are authentic, reliable and legally sufficient.
 - F. Implement a viable and tested recovery plan to ensure information technology disruptions are minimized in the event of a disaster.

Key Factors Affecting the Achievement of Strategic Goals

There are several factors that could affect achievement of our program goals and objectives. These factors fall into four broad categories: economic, human capital, legislative, and technological. Significant changes in these areas could affect our ability to achieve any of our goals and objectives, including those related to resource management.

Economic

Shifts in the national and global economies may significantly affect the risk profiles of national banks and corresponding OCC supervisory strategies. Changes in business conditions, interest rates, rates of inflation, exchange rates, and unemployment rates influence the lending and funding strategies of national banks. Longer-term structural changes in the banking business, such as the shift to fee-based income, the increasing reliance on non-core deposit funding sources, and industry consolidation continue to change the dynamics of the banking business.

A weak economic recovery and global uncertainties could slow asset growth, increase loan losses and reduce the profitability of national banks. All of these events could result in a greater amount of time spent on examinations. Rapid changes in the fabric of the financial services marketplace could outpace our ability to provide timely training to our staff and would place greater pressure on our systemic risk analysis function.

Because OCC funding relies on semiannual assessments levied on national bank assets, a slow economic recovery accompanied by a decline in national bank assets could reduce agency revenues at a time when OCC supervisory resource needs are the highest. Continued consolidation within the banking industry also exposes the OCC to the risk of substantial reductions in its revenues while our ability to respond quickly to revenue shortfalls is fairly limited.

Human Capital

Changing national and local economies may cause employment market variances that could affect the

OCC's ability to attract and retain the technical expertise required to support supervisory efforts. Additionally, the OCC is faced with an aging workforce and it will be a particular challenge to replenish the pipeline of examiners and to ensure an effective knowledge transfer before this vast amount of expertise is lost.

Legislative

Legislative changes could alter the way national banks conduct business and may require revised issuance or rulemakings and supervisory initiatives to address new powers or business models. Legislative changes also affect the OCC's outreach programs with bankers, consumers, and community groups by creating the need for more outreach activities and the distribution of informational and educational materials.

Technological

Emerging technology has introduced ways for banks to offer traditional products and services through new delivery channels and to develop innovative products and services. Technology changes have influenced the operating strategies of many banks and non-banks as they seek to compete in the increasing fast-paced and globally interdependent business environment.

Technological advancement in the banking industry continues at an increasingly rapid pace. The OCC's rulemaking as well as its consumer compliance and the safety and soundness examination functions continue to evolve and adapt in order to appropriately address the new risks presented by technology.

The OCC also faces the challenge of understanding technology and how it can be used internally to improve efficiencies and to deploy resources in the areas of greatest risk.

Appendix A:

Our Strategic Management Process

OCC's strategic management process begins at the Executive Committee planning conference held in the January/February timeframe each year. Programmatic and management issues discussed at the planning conference can revise existing initiatives, or result in new short term or long term initiatives. In many cases, these issues are assigned to the subcommittees of the Executive Committee (Committee on Bank Supervision; Regulatory Policy, Legal and External Affairs; Budget and Finance; Human Capital; Technology and Systems; and Audit) to further define the activities or actions to be taken.

The short term actions can either modify the current year's activities or serve as the basis for planning and budgeting for the subsequent year. Long term initiatives are used to update our strategic plan, either formally or informally, depending on where we are in the three-year strategic plan cycle. Generally, these meetings can include discussions of the following:

- ❖ An analysis of the condition of the national banking system, structural changes in the marketplace for financial services, legislative developments, an assessment of the competitiveness of national banks in the evolving marketplace for financial services, and an evaluation of significant consumer financial services issues.
- ❖ An evaluation of the existing risk profile and emerging risks in the national banking system, the large bank portfolio, and the mid-size/community bank portfolio.
- ❖ An assessment of internal strengths and weaknesses and a review of resource management issues such as human capital, financial resources, technology, and fixed assets.
- ❖ The integration of feedback from agency stakeholder groups and program evaluations.

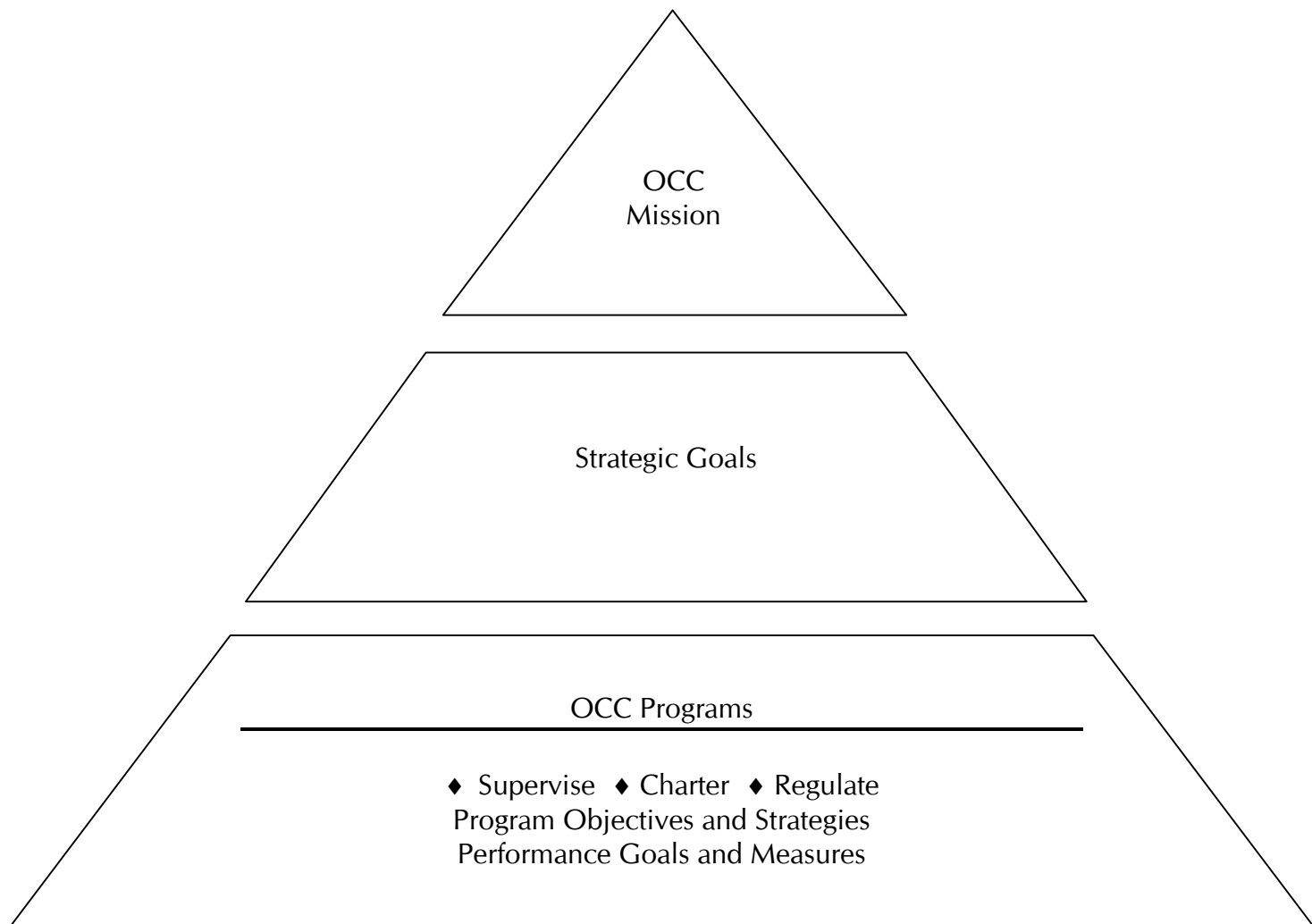
Coordinated by the Deputy Chief Financial Officer, the strategic goals, program objectives and strategies are reviewed, validated, and revised as necessary. The Deputy Chief Financial Officer works through the various subcommittees of the Executive Committee or their designees, to update or identify new goals, objectives and

strategies. The Comptroller and Executive Committee approve the final Strategic Plan.

The goals, objectives and strategies in the *OCC Strategic Plan* is further refined into activities to be accomplished on an annual basis. This is documented in the OCC Annual Performance Plan, functional operating plans, and ultimately employee performance plans. This process is the means of communicating the strategic direction and ensuring accountability for achieving our goals and objectives throughout the organization. Annual performance goals and measures are established to monitor program accomplishments. The OCC Performance Pyramid shown on the following page, illustrates our organizational performance model.

The OCC Performance Pyramid

Aligning Organizational Performance



Appendix B:

Links Between OCC and Treasury Department Goals

The following table depicts the relationship between OCC's strategic and annual performance goals and the Department of the Treasury's strategic goals and objectives.

OCC Strategic Goal	OCC Annual Performance Goals	Treasury Strategic Goals and Objectives
I. A safe and sound national banking system	<ul style="list-style-type: none"> ❖ Maintain a well-capitalized national banking system ❖ Maintain a safe and sound national banking system through effective supervision ❖ Achieve effective rehabilitation of problem national banks ❖ Conduct bank examinations in a highly competent and effective manner 	<u>Goal F3:</u> Preserve the integrity of financial systems <u>Objective F3C:</u> Increase the reliability of the U.S. financial system
II. Fair access to financial services and fair treatment of bank customers	<ul style="list-style-type: none"> ❖ Maintain a national banking system that effectively complies with consumer laws and regulations ❖ Maintain a national banking system that is responsive to community development opportunities ❖ Facilitate the timely and effective resolution of consumer complaints 	<u>Goal F3:</u> Preserve the integrity of financial systems <u>Objective F3C:</u> Increase the reliability of the U.S. financial system
III. A flexible legal and regulatory framework that enables the national banking system to provide a full competitive array of financial services	<ul style="list-style-type: none"> ❖ Increase the proportion of institutions that use the Internet to file licensing applications ❖ Complete licensing decisions in a timely fashion ❖ Provide highly effective and professional licensing services ❖ Issue external legal opinions within established timeframes 	<u>Goal E1:</u> Promote prosperous U.S. and World Economies <u>Objective E1B:</u> Provide a flexible legal and regulatory framework

OCC Strategic Goal	OCC Annual Performance Goals	Treasury Strategic Goals and Objectives
<p>IV. An expert, highly motivated, and diverse workforce that makes effective use of OCC resources</p>	<ul style="list-style-type: none"> ❖ Conduct bank examinations in a highly competent and effective manner ❖ Facilitate the timely and effective resolution of consumer complaints ❖ Increase the proportion of institutions that use the Internet to file licensing applications ❖ Complete licensing decisions timely ❖ Provide highly effective and professional licensing services ❖ Issue external legal opinions within established timeframes ❖ Maintain a diverse workforce in a fair and inclusive work environment ❖ Achieve an optimal employee to management services staff ratio for the efficient and effective support of OCC operations ❖ Maintain OCC reserves at the annual targeted levels to fund potential shortfalls ❖ Improve the safety of OCC's work environment 	<p><u>Goal M5:</u> Ensure professionalism, excellence, integrity and accountability in the management and conduct of the Department of the Treasury</p> <p><u>Objective M5B:</u> Manage Treasury resources effectively to accomplish the mission and provide quality customer service</p>

Annual Performance Goals and Their Relationship to Strategic Goals and Objectives

The longer-term strategies outlined in the *OCC Strategic Plan* will be implemented through our annual integrated planning, budgeting, and evaluation process. We will develop and use annual performance goals that will be directly linked to our strategic goals and program objectives. By maintaining a close linkage between our strategic plan, our annual performance plans, and our performance recognition process, we can stay focused on attaining our strategic goals while also contributing to the accomplishment of the goals and objectives of the Department of the Treasury.

Appendix C:

The OCC works closely with the other federal financial regulatory agencies to address issues and programs that transcend the jurisdiction of any one agency.

Coordination on Cross-cutting Issues

Federal Financial Institutions Examination Council (FFIEC)

The FFIEC, composed of members of each of the five federal financial regulatory agencies (Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Office of Thrift Supervision), formed as an interagency coordinating committee during the mid-1970s, was formalized by Congress in 1978. The FFIEC has served as a forum for promoting common standards for financial institution supervision and for reconciling many interagency differences. The tradition of coordination has become so ingrained that the agencies now routinely confer on all matters of common interest and concern, both within and beyond the purview of the FFIEC.

The FFIEC is empowered to prescribe uniform principles, standards, and report forms for the federal examination of depository institutions and to make recommendations to promote uniformity in the supervision of insured depository institutions. The FFIEC also provides uniform examiner training and has taken the lead in developing standardized software needed for major data collection programs that support supervisory requirements. In this regard, the FFIEC recently approved moving forward with a multi-year contract to build and operate a shared, central data repository for collecting, validating, storing and distributing data collected under federal bank regulatory reporting requirements. The data repository will replace aging applications and databases related to the banking agencies' Call Report processing and will provide a state-of-the-art platform for expanded use by the Federal Deposit Insurance Corporation, Federal Reserve, and OCC. Among the benefits of the new system will be enhanced data quality and expedited data sharing.

Pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the federal banking agencies and FFIEC are undertaking a review of their regulations to identify outdated, unnecessary, or burdensome regulatory requirements imposed on insured depository institutions. The first step of this project will be to categorize the agencies' regulations by type and seek comment on areas of the regulations that may be outdated, unnecessary or unduly burdensome. This review will provide the industry and other interested parties an opportunity to look at groups of related regulations (such as consumer protection) and comment on possibilities for streamlining.

The OCC works with each of the FFIEC's six task forces to carry out interagency objectives and activities. These task forces are Consumer Compliance, Examiner Education, Information Sharing, Reports, Supervision, and Surveillance Systems.

Basel Committee on Banking Supervision and the Joint Forum

The Basel Committee on Banking Supervision provides a forum for international cooperation on matters relating to bank supervision. The Committee promotes harmonization through the issuance of "sound practices" papers and the development of supervisory standards to which its members voluntarily adhere. The OCC is involved in the Basel Committee on Bank Supervision's efforts to update and revise the Basel Capital Accord to make the capital standards required of internationally active banks more comprehensive, risk sensitive, and reflective of advances in banks' risk measurement and management practices.

The Joint Forum is an international panel of banking, securities, and insurance regulators responsible for the supervision of financial conglomerates. Major issues pursued by these international bodies include enhanced information sharing, reform of capital regulations, and improved transparency and credit risk management practices.

Financial Stability Forum (FSF)

The FSF was convened in April 1999 to promote international financial stability through information exchange and international cooperation in financial supervision and surveillance. The FSF brings together on a regular basis national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The FSF seeks to coordinate the efforts of these various bodies in order to promote international financial stability, improve the functioning of markets, and reduce systemic risk.

Interagency Country Exposure Risk Committee (ICERC)

The ICERC members, the Federal Deposit Insurance Corporation, the Federal Reserve, and the OCC, are responsible for providing an objective opinion concerning the degree of transfer risk that is inherent in the cross-border and cross-currency lending by U.S. banks. OCC's participation in ICERC helps ensure that global economic and market events are assessed and their potential impact is uniformly integrated into the supervisory process. OCC serves as the secretariat for the ICERC committee.

Shared National Credits Program

The Shared National Credits Program is an interagency effort to perform a uniform credit review of bank loans that exceed \$20 million and are shared by three or more banks. The reviews are performed annually with results distributed to examining personnel as well as to the agent and participant banks.

Financial Banking and Infrastructure Information Committee (FBIIC)

The FBIIC was formed to facilitate federal efforts to improve the reliability and security of the U.S. financial system. The Committee is composed of representatives of the Commodity Futures Trading Commission, the Conference of State Bank Supervisors, the Department of the Treasury, the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Federal Reserve Bank of New York, the Federal Reserve Board, the

Homeland Security Council, the National Association of Insurance Commissioners, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Federal Housing Enterprise Oversight, the Office of Thrift Supervision, and the Securities and Exchange Commission. Treasury's Assistant Secretary for Financial Institutions chairs the Committee.

The key objectives of FBIIC are to work with the appropriate financial regulatory authorities and the financial industry to: identify critical components of the financial infrastructure; identify vulnerabilities in the infrastructure; remediate those vulnerabilities; evaluate progress; and provide procedures and systems to allow regulators to communicate among themselves and with the private sector during times of crisis.

GPRA Interagency Working Group

In support of the Government Performance and Results Act (GPRA), an interagency working group was formed in October 1997 to work on issues related to the general goals and objectives that cross federal financial regulatory agencies and their programs and activities, as well as on other general GPRA requirements.

The GPRA interagency working group, composed of representatives from the federal financial regulatory agencies, as well as the Office of Federal Housing Enterprise Oversight and the Securities and Exchange Commission, identifies and coordinates interagency cross-cutting issues. The Group shares "best practices" in compliance with GPRA and addresses common planning and budgeting issues, to include related General Accounting Office reports and Office of Management and Budget's program evaluations.

Appendix D:

Use of Program Evaluations

Both internal and external program evaluations are used to evaluate whether OCC programs are achieving their intended results in a cost-effective manner. The results of these reviews are used to revise existing or identify new program objectives and strategies in the *OCC Strategic Plan*. Generally, the schedule for internal program evaluations is developed on an annual basis. Evaluations also can be initiated as issues that warrant review are identified.

Internal Program Evaluations

The OCC's formal program evaluation efforts include:

- ❖ Office of the Ombudsman,
- ❖ Quality Assurance Program,
- ❖ Program Analysis Unit,
- ❖ Management Accountability Program, and
- ❖ Licensing Customer Satisfaction Feedback Program.

The Office of the Ombudsman. The Ombudsman provides program-level intelligence to the strategic management process through its administration of the National Bank appeals process, the customer assistance program, and ongoing examination questionnaires provided to national bank chief executive officers seeking feedback on the quality of OCC supervision. Program evaluation activities are continuous.

Quality Assurance Program. The OCC's quality assurance (QA) program is designed to ensure that the objectives for bank supervision, as defined in the "Large Bank Supervision" and "Community Bank Supervision" booklets of the *Comptroller's Handbook for National Bank Examiners*, are achieved. Separate QA programs have been designed to support the policy frameworks established by these two booklets. The Quality Management Unit of the Program and Management Accountability Division coordinates the programs. This division also provides internal support services to assist bank supervision operating units in assuring them that bank supervision goals are achieved in their areas of responsibility. Feedback from these various programs provides input to the annual CBS operating plan and

provides additional context to the strategic planning process.

Program Analysis Unit. The Program Analysis Unit (PAU) is responsible for analyzing the major components of the OCC's organization and programs. The overall objective of the unit is to recommend ways to ensure more efficient use of OCC resources. Unit members meet regularly to coordinate their work across program and organizational lines and lead our analysis of operations, issues, and costs. The PAU works with the planning and budgeting staff in analyzing staffing plans, program plans and budget requests. The Comptroller meets with the group at least once a month. Annually, the Comptroller and PAU determine the specific reviews to be conducted.

Management Accountability Program. The Management Accountability Program (MAP) is an ongoing initiative with the primary objective of ensuring a sound system of internal controls at all levels of the organization. Key MAP elements include an annual risk assessment, a control-testing program, and an executive management certification program. MAP also provides managers with guidance on managing OCC internal financial affairs with the same discipline and integrity that we expect from the banks we supervise. Combined, these activities support the basis of the Comptroller's annual Federal Managers' Financial Integrity Act certification.

Licensing Customer Satisfaction Feedback Program. Each recipient of an OCC corporate decision is surveyed to obtain customer service feedback regarding timeliness of application processing, convenience, staff professionalism, courtesy, and the quality of written OCC guidance. Program evaluation activities are continuous.

External Program Evaluations

In addition to the OCC's ongoing internal program evaluation efforts, we receive program-level feedback from four primary external sources:

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- ❖ Department of the Treasury Office of Inspector General (OIG),
 - ❖ United States General Accounting Office (GAO),
 - ❖ Office of Management and Budget (OMB), and
 - ❖ Independent Public Accountant.

Office of Inspector General. The OIG conducts reviews of various aspects of OCC operations every year. The results from the OIG program and compliance audits provide useful input into the OCC strategic management process.

General Accounting Office. The GAO also conducts targeted reviews of OCC regulation and supervision of national banks.

Office of Management and Budget. In Fiscal Year 2002, OMB implemented a formal assessment program in keeping with the budget and performance integration initiative of the President's Management Agenda. The OCC was included in the first twenty percent of federal programs reviewed during Fiscal Year 2002. While the assessment will be made again in five years, there is an opportunity to update it annually.

Independent Public Accountant. Every year, the OCC commissions the services of an accounting firm to conduct a financial statement opinion audit and to provide senior management with conclusions regarding the effectiveness of OCC's program of financial controls.

Appendix E:

Data Capacity

OCC maintains electronic data processing systems that produce the bulk of the data on our performance measures used to assess progress in achieving our strategic goals and program objectives. Performance data is retrieved from the following OCC automated systems:

- ❖ Examiner View (EV),
- ❖ Supervisory Monitoring System (SMS),
- ❖ Remedy Action Response System (RARS),
- ❖ Corporate Application Information System (CAIS),
- ❖ e-Corp,
- ❖ Lotus Notes Project Tracking System (PTS),
- ❖ HR Connect, and
- ❖ Management and Accountability Reporting Tools System (\$MART).

Additionally, data from external sources are used to report on our performance measures. These sources include:

- ❖ Federal Financial Institutions Examination Council – Quarterly Reports of Condition and Income,
- ❖ Federal Reserve Board – National Information Center database,
- ❖ Department of Labor – Civilian Labor Force data,
- ❖ Office of Personnel Management – Employee Satisfaction Surveys on Merit System Principles, and
- ❖ Department of Treasury – Safety and Health Information Management System (SHIMS).

A small segment of our performance data is gathered, and tracked manually through our work processes.

OCC has internal data integrity processes and edit-check controls in place to help ensure a high degree of reliability of the information extracted from our automated systems. Supervisory reviews and approvals of work processes and products, as well as periodic quality reviews of data integrity also help to ensure data reliability. OCC managers evaluate and attest to the adequacy of controls over their systems and the reliability of the performance data annually, as part of the Management Accountability Program.

Appendix F:

Management Challenges and High-Risk Areas

The Treasury Office of the Inspector General did not identify any explicit management challenges or high-risk areas specific to the OCC in its most recent memorandum to the Secretary of the Treasury. However, the Comptroller has identified several strategic management challenges that the OCC will face over the next five years:

Uncertain Economic and World Affairs. National banks have stayed strong through the recent challenges of a slow economy. Current world uncertainties and the war on terrorism may further affect our economy and create many unknowns as we begin this five-year cycle of our strategic plan. The OCC will have to stay vigilant in its supervision and assessment of risk to ensure the overall stability of the national banking system.

Supervisory Assessment Funding Reform. The current funding arrangement, under which the supervision of state banks is subsidized by their federal supervisors, is unfair to national banks. National banks are forced to subsidize their state-chartered competitors through federal deposit insurance premiums, while bearing the full cost of their own supervision. This arrangement also disrupts the constructive competition between state and federal bank regulators that has been the hallmark of our dual banking system for more than a century and has the potential to compromise the safety and soundness of all banks. If this condition prevails, it could negatively affect the ability to deliver our mission. We will continue to work to resolve this important issue.

Federal Preemption. Because national banks are federally-chartered entities, they are generally subject to supervision and regulation through federal law, and many types of state laws are not applicable to them. Issues about preemption of state laws are arising in an increasing variety of contexts, ranging from state and local efforts to prevent national banks from charging non-customers for use of their ATMs, to the application of state and local “anti-predatory lending” laws and ordinances to national banks’ lending business. Because of the value of operating under uniform national standards, preemption is a major attribute of the national bank charter. Some non-bank companies, such as payday lenders, have tried to enter into arrangements with national banks, whereby the

banks would essentially “rent” their charters to enable the non-bank company to conduct aspects of its business through the national charter. The OCC has been supportive of national banks when preemption issues arise but has vigorously opposed such “rent-a-charter” arrangements and other abusive practices.

Basel Capital Accord. The Basel Committee on Banking Supervision, a forum for international cooperation on bank supervision, is undertaking a major revision of its 1988 Capital Accord. Initiatives in 2003 will include an issuance of an advance notice of proposed rulemaking in the summer of 2003 followed by a notice of proposed rulemaking sometime in 2004. While the OCC supports overhauling the existing capital adequacy framework, significant work remains before the current Basel Capital Accord proposal will be considered final in the U.S. The bank regulatory agencies will rely heavily on industry comments on the complex rule.

Strategic Management of Human Capital. Almost fifty percent of the OCC’s current executives are either eligible or will be eligible to retire in the next five years. It is critical that the OCC is well-positioned to fill gaps in institutional and technical knowledge that will be created when these executives retire. Additionally, we foresee a challenge to attract and retain the technical skills required to implement the proposed revised Basel Capital Accord and other highly technical areas of bank supervision. Another human resource challenge is to improve our capability to effectively deploy resources across the supervision lines of business.

Budget and Performance Integration. Although we have made progress on this element of the President’s Management Agenda, we do not yet meet all of the standards for success in this area. We need to implement a new labor allocation system to provide reliable data needed to fully cost our programs, activities, and outputs. We must further advance our efforts to incorporate the discipline of using program results in our budgetary decisions.

Appendix G:**Consultations with Stakeholders**

The draft OCC Strategic Plan was announced in the Federal Register and made available on the OCC Internet, inviting public, industry and stakeholder comments. In addition, the draft plan was sent to members of the Senate Finance Committee and House Financial Services Committee, the Secretary of the Treasury, and the Director, Office of Management and Budget, for comment. All comments were reviewed and considered, and revisions were made as appropriate.

The OCC also receives feedback routinely on its strategic direction from the public, banking industry interests, consumer groups, Congress, other federal, state, and international financial services regulators.

In addition, the OCC has an active outreach program which supplies senior agency management with information on events and trends in the financial services industry as well as feedback on the effectiveness and efficiency of OCC programs. For example, the Comptroller holds meetings in locations throughout the U.S. in order to discuss issues of mutual interest with national bankers, consumer groups, community leaders, and other agency stakeholders.

The Comptroller and senior executives are frequent speakers at meetings and conferences sponsored by the banking industry and consumer groups. These speaking engagements offer the opportunity to gather ideas and concerns that can be used to shape agency priorities.

Appendix H:

The Mission of OCC and the Role of National Banks --

**Julie Williams, First
Senior Deputy
Comptroller and Chief
Counsel**

What is the "mission" of the OCC? Why do we exist and what difference do we – should we – make?

The mission of the agency and the character of the national bank charter are deeply rooted in the circumstances that gave rise to the creation of both the agency and national banks in 1863. Our history provides direction for our contemporary role, and explains the characteristics and legal status of the national bank charter and how it was designed to operate.

*Introduction*¹

Banks have never been the most popular of American institutions, and in the early days of this country, banks that operated under a broad grant of national authority may have been most unpopular of all. It was Jefferson who spoke for many of his generation when he said that "banking institutions are more dangerous than standing armies." Given even George Washington's antipathy to an American standing army, that was saying quite a lot.

Yet even Jefferson did not believe that the country could afford to dispense with banks altogether. America needed banks even more than Britain did, for the U.S. was a young, undeveloped, and far-flung country noticeably lacking in the great private accumulations of liquid wealth with which England was blessed. In order to mobilize capital in such a place, banks were essential.

In 1791, at the urging of Alexander Hamilton, the first Secretary of the Treasury, Congress created the First Bank of the United States – America's first venture into the area of central banking. When the Bank's 20-year charter expired, the Bank expired with it. But a crumbling economy led lawmakers five years later to create the Second Bank of the United States, which proved no more popular than the first. And state-chartered banks, of which there were well over a hundred by 1816, took advantage of that unpopularity by encouraging state legislatures to pass a variety of discriminatory laws, hoping to rein in, if not destroy, the sometimes overbearing Second Bank.

¹ Thanks to Jesse Stiller for much of the content of this section.

Maryland's contribution to this state effort was an annual tax of \$15,000 levied against the Baltimore branch of the Second Bank of the U.S. When the bank refused to pay, it was successfully sued in state court. In the name of its cashier, J.W. McCulloch, the Second Bank appealed that verdict to the U.S. Supreme Court.

What emerged was one of the landmark decisions in our history. Speaking for a unanimous Supreme Court, Chief Justice Marshall declared constitutional Congress's creation of a national bank and declared unconstitutional Maryland's attempt to weaken it through taxation. On the first point, Marshall elaborated the "loose constructionist" view of federal power associated with Alexander Hamilton, an expansive view based on a strong union.

On the second point, regarding Maryland's attack on the Second Bank, Marshall invoked the Supremacy Clause -- paragraph 2 of Article VI -- holding that the Constitution of the United States, and the laws promulgated under it, are the law of the land and carry a presumption of supremacy over the states. "The States," Marshall affirmed, "have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations" of any agency created by lawful exercise of federal authority.

But, the states could still send elected representatives to Washington to accomplish the same end by federal legislation or presidential authority, and under President Andrew Jackson, legislation to extend the life of the Second Bank was vetoed.

With the loss of this centralizing and stabilizing influence, the U.S. banking system stumbled into near-anarchy. Indeed, one is hard pressed to call it a system at all, because standards and practices varied enormously from state to state. In states like Indiana and New York, new bank organizers were required to have real capital, and their operations were subject to some degree of government supervision. But in many states, banks could organize without a dollar's capital to their name, and supervision was virtually nonexistent. That permitted the shadiest of operators to enter the field -- and dominate it in some states.

The currency of the country then consisted of notes issued by those banks, and the practice of issuing bank notes with no or inadequate real assets backing them up became a national scandal – and an impediment to interstate commerce, which depended on a reliable currency. To keep redemption-minded note-holders at a safe distance, shady bank operators became experts at evasion, moving their hole-in-the-wall offices to frontier backwaters "where only the wildcats roamed." The term "Wildcat banking" has its source in this experience.

Today we would probably characterize such a situation, where a customer provides value and receives in return an instrument of uncertain and possibly little value, as a consumer protection problem. But in the mid-1800's, the lack of uniformity in the value of currency was a great flaw in the nation's economic system before the Civil War, because it gave rise to confusion and uncertainty -- two major obstacles to economic development.

This situation cried out for a remedy, and the Civil War provided the catalyst for a new system to deal with it. The Office of the Comptroller of the Currency was created to charter and supervise a new system of national banks, which would serve as the instruments of a uniform and sound national currency, and help finance the Civil War.

National banks' Civil War financing role occurred because each newly chartered national bank was required to use a portion of its paid-in capital to purchase Treasury securities, and the funds received filled the Federal government's coffers. The securities purchased were then, in turn, pledged as backing for a new species of circulating notes issued by the banks. Issuance of these notes – the new national currency – was subject to the OCC's control and approval, hence the agency's name – "Comptroller of the Currency." Because these new national banks were to be subject to uniform federal supervision, with capital in the form of government securities, their circulating notes would hold a stable value and could be used, reliably, from state to state. The design of the new national banks thus solved the safety and soundness problem that plagued many state banks, and at the same time, addressed the fraud and deception that resulted from the issuance of notes of questionable value by many state banks.

But, the design of the national banking system evidences creation of more than just a financing arm for the Federal government's war effort. In an extraordinary step for the time, Congress created an entirely new system of federally-chartered, but privately-owned enterprises, whose powers and responsibilities were established under federal law, whose duration could be perpetual, and which were made subject to uniform federal supervision by a new federal regulator. In creating this system of national banks, Congress was not just solving an immediate problem.

From the very outset, national banks were unique federal enterprises. It was envisioned that they would be located throughout the country, and that wherever located, they would exercise a uniform set of federal powers, under federal standards of operation, and federally-mandated capitalization, with a federal supervisor overseeing all of the foregoing. Regardless of their short-term role in Civil War finance, this was a system of financial institutions designed to far outlast the aftermath of the War, with attributes that would enable them to play a powerful and evolving role in the national economy.

This history explains the three defining characteristics of national banks and the national banking system, which are so important in the financial marketplace today: 1) the dynamic powers of national banks to engage in the business of banking, as that business evolves over time; 2) the unique role of the OCC as the supervisor and regulator of national banks, and 3) the National Bank Act's preemption of state laws that impose standards or restrictions on the business of national banks.

The Powers of National Banks

The centerpiece for powers of national banks is language set forth at 12 U.S.C. § 24 (Seventh), which provides that national banks are authorized –

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

security; and by obtaining, issuing, and circulating notes....

It is remarkable, but it was deliberate, that this central source of national bank powers is contained in these few words. Congress had modeled this authority from the bank charter authorized by the New York Free Banking Act; a type of bank charter that the New York courts explicitly had found to possess flexible and adaptive powers. Shortly before enactment of the National Bank Act, the New York Court of Appeals had described the New York banking charter as follows:

The implied powers [of a bank] exist by virtue of the grant[to do the banking business] and are not enumerated and defined; because no human sagacity can foresee what implied powers may in the progress of time, the discovery and perfection of better methods of business, and the ever-varying attitude of human relations, be required to give effect to the express powers. They are, therefore, left to implication.²

The specifications of certain banking activities in the New York banking laws that were copied into the National Bank Act were "eminently useful," but "not indispensable, "according to the court in Curtis v. Leavitt. (Put more directly, banks' permissible activities were not limited to just the activities listed in the statute.) As one commenter observed over 50 years ago:

The tenets of construction [of the National Bank Act] must be long-range standards. The statute must be construed in terms of objectives and not in terms of mechanisms; it is an architect's drawing and not a set of specifications.³

Based on this lineage, the powers of national banks to engage in the business and banking and activities that are "incidental" to that business have been continuously under construction under the careful administration of the OCC for well over a century. In this role, the OCC consistently has viewed the powers of the national bank charter as evolutionary; capable of developing and adjusting as needed to support the evolving financial and

² Curtis v. Leavitt, 15 N.Y. 9 (1857).

³ Harfield, "The National Bank Act and Foreign Trade Practices," 61 Harv. L. Rev. 782 (1948).

economic needs of the Nation and bank customers of all types. As the previous commenter subsequently noted:

The business of banking therefore must be viewed as fundamentally the business of dealing in money and credit and the provision of whatever financial services the public may seek. Except as expressly prohibited by law, the provision of these services and employment of the fullest and most imaginative techniques of dealing with money and credit are not incidental to the business of banking; they are the essence of and justification for the business of banking.⁴

Any doubt concerning this characterization of the powers of national banks was settled with the Supreme Court's decision in NationsBank v. Variable Annuity Life Insurance Co. (VALIC) in which the Court expressly held that the "business of banking" is not limited to the enumerated powers in § 24(Seventh) and that the Comptroller has discretion to authorize activities beyond those specifically enumerated in the statute.⁵ In the same decision, the Court also reiterated a previous admonition that the Comptroller's determinations regarding the scope of permissible national bank activities pursuant to this authority should be accorded great deference.

It is settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with enforcement of that statute. The Comptroller of the Currency is charged with the enforcement of banking laws to an extent that warrants the invocation of this principle with respect to his deliberative conclusions as to the meaning of these laws.⁶

So, today, national banks operate pursuant to federal authority contained in a federally-granted charter; that authority is recognized as flexible and adaptable to serve changing customer and business needs; and the OCC is uniquely empowered to define and redefine the evolving business of banking in order to enable national banks to best serve those changing needs on a safe and sound

⁴ Harfield, "Sermon on Genesis 17:20; Exodus 1:10 (A Proposal for Testing the Propriety of Expanding Banking Services)," 85 Banking L.J. (1965).

⁵ NationsBank of North Carolina v. Variable Annuity Life Insurance Co., 513 U.S. 251.

⁶ Clarke v. Securities Industry Assn., 479 U.S. 388, 403-404 (1987) (quoting Investment Company Institute v. Camp, 401 U.S. 617, 626-627.

basis. The OCC makes its decisions concerning the content and boundaries of permissible national bank activities carefully and systematically, using a framework derived from judicial decisions, taking into account the vitality of the national bank charter in the environment in which it is then operating, as well as safety and soundness considerations associated with a particular new activity.

The Role of the OCC As Supervisor of National Banks

At the beginning of the national banking system, both proponents and opponents of the new system expected that it would supersede the existing system of state banks.⁷ Given this anticipated impact on state banks and the resulting diminution of control by the states over banking

⁷ Representative Samuel Hooper, who reported the bill to the House, stated in support of the legislation that one of its purposes was "to render the law [Currency Act] so perfect that the State banks may be induced to organize under it, in preference to continuing under their State charters." Cong. Globe, 38th Cong. 1st Sess. 1256 (March 23, 1864). While he did not believe that the legislation was necessarily harmful to the state bank system, he did "look upon the system of State banks as having outlived its usefulness . . ." *Id.* Opponents of the legislation believed that it was intended to "take from the States . . . all authority whatsoever over their own State banks, and to vest that authority . . . in Washington . . ." Cong. Globe, 38th Cong., 1st Sess. 1267 (March 24, 1864) (statement of Rep. Brooks). Rep. Brooks made that statement to support the idea that the legislation was intended to transfer control over banking from the states to the federal government. Given that the legislation's objective was to replace state banks with national banks, its passage would, in Rep. Brooks' opinion, mean that there would be no state banks left over which the states would have authority. Thus, by observing that the legislation was intended to take authority over state banks from the states, Rep. Brooks was not suggesting that the Federal government would have authority over state banks; rather, he was explaining the bill in a context that assumed the demise of state banks. Rep. Pruyn opposed the bill stating that the legislation would "be the greatest blow yet inflicted upon the States . . ." Cong. Globe, 38th Cong., 1st Sess. 1271 (March 24, 1864). See also John Wilson Million, *The Debate on the National Bank Act of 1863*, 2 *Journal of Political Economy* 251, 267 (1893-94) regarding the Currency Act. ("Nothing can be more obvious from the debates than that the national system was to supersede the system of state banks.").

in general,⁸ proponents of the national banking system were concerned that states would attempt to undermine it. Remarks of Senator Sumner in 1864, connection with consideration of the National Bank Act (which succeeded the 1863 National Currency Act), addressing the prospect of state taxation of national banks, illustrate the sentiment of many legislators of the time: "Clearly, the bank must not be subjected to any local government, State or municipal; it must be kept absolutely and exclusively under that Government from which it derives its functions."⁹

The allocation of any supervisory responsibility for the new national banking system to the states would have been inconsistent with this need to protect national banks from state interference. Congress, accordingly, established a Federal supervisory regime and vested responsibility to carry it out in the newly created OCC. Congress granted the OCC the broad authority "to make a thorough examination of all the affairs of [a national] bank,"¹⁰ and solidified this Federal supervisory authority by vesting the OCC with exclusive "visitorial" powers over national banks. These provisions assured, among other things, that the OCC would have comprehensive authority to examine all the affairs of a national bank and protected national banks from potential state hostility by establishing that the authority to examine national banks is

⁸ See, e.g., Tiffany v. National Bank of the State of Missouri, 85 U.S. 409, 412-413 (1874) ("It cannot be doubted, in view of the purpose of Congress in providing for the organization of national banking associations, that it was intended to give them a firm footing in the different states where they might be located. It was expected they would come into competition with state banks, and it was intended to give them at least equal advantages in such competition National banks have been national favorites. They were established for the purpose, in part, of providing a currency for the whole country, and in part to create a market for the loans of the general government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the states, or to ruinous competition with state banks."). See also B. Hammond, Banks and Politics in America from the Revolution to the Civil War, 725-34 (1957); P. Studenski & H. Krooss, Financial History of the United States, 155 (1st ed. 1952).

⁹ Cong. Globe, 38th Cong., 1st Sess., at 1893 (April 27, 1864). See also Anderson v. H&R Block, ___ F.3d ___, 2002 U.S. App. LEXIS 5978, at 15-16 (No 01-11863, April 3, 2002) ("congressional debates amply demonstrate Congress's desire to protect national banks from state legislation . . .").

¹⁰ Act of June 3, 1864, c. 106, § 54, 13 Stat. 116, codified at 12 U.S.C. 481.

vested only in the OCC, unless otherwise provided by federal law.¹¹

Courts have consistently recognized the unique status of the national banking system and the limits placed on state involvement in national bank supervision and regulation by the National Bank Act. The Supreme Court stated in one of the first cases to address the role of the national banking system that "[t]he national banks organized under the [National Bank Act] are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end."¹²

Subsequent opinions of the Supreme Court have been equally clear about national banks' unique role and status.¹³ For example, in Guthrie v. Harkness,¹⁴ the Supreme Court recognized how the National Bank Act furthered the objectives of Congress:

Congress had in mind, in passing this section [section 484] that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and examiners appointed by him, and, authorizing the appointment of a receiver, to take possession of the business with a view to winding up the affairs of the bank. It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over

¹¹ Writing shortly after the Currency Act and National Bank Act were enacted, then-Secretary of the Treasury, and formerly the first Comptroller of the Currency, Hugh McCulloch observed that "Congress has assumed entire control of the currency of the country, and, to a very considerable extent, of its banking interests, prohibiting the interference of State governments" Cong. Globe, 39th Cong., 1st Sess., Misc. Doc. No. 100, at 2 (April 23, 1866).

¹² Farmers' and Mechanics' National Bank v. Dearing, 91 U.S. 29, 33 (1875).

¹³ See Marquette National Bank v. First of Omaha Service Corp., 439 U.S. 299, 314-315 (1978) ("Close examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, . . . Congress intended to facilitate . . . a 'national banking system'." (citation omitted)); Franklin National Bank of Franklin Square v. New York, 347 U.S. 373, 375 (1954) ("The United States has set up a system of national banks as Federal instrumentalities to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositories."); Davis v. Elmira Savings Bank, 161 U.S. 275, 283 (1896) ("National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States.").

¹⁴ 199 U.S. 148 (1905).

a national corporation. Except in so far as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power.¹⁵

The Supreme Court also has recognized the clear intent on the part of Congress to limit the authority of states over national banks precisely so that the nationwide system of banking that was created in the Currency Act could develop and flourish. For instance, in Easton v. Iowa,¹⁶ the Court stated that Federal legislation affecting national banks—

has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. * * * It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute. * * * [W]e are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities.¹⁷

The Court in Farmers' and Mechanics' Bank, after observing that national banks are means to aid the government, stated—

Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is "an abuse, because it is the usurpation of power which a single State cannot give."¹⁸

Consistent with the need for a uniform system of laws and uniform supervision that would foster the nationwide banking system, courts have interpreted the OCC's visitorial powers expansively. The Supreme Court in Guthrie noted that the term "visitorial" as used in section

¹⁵ Id. at 159.

¹⁶ 188 U.S. 220 (1903).

¹⁷ Id. at 229, 231-232 (emphasis added).

¹⁸ Farmers' and Mechanics' Bank, 91 U.S. at 34 (citation omitted).

484 derives from English common law, which used the term "visitation" to refer to the act of a superintending officer who visits a corporation to examine its manner of conducting business and enforce observance of the laws and regulations (citing First National Bank of Youngstown v. Hughes¹⁹).²⁰ "Visitors" of corporations "have power to keep them within the legitimate sphere of their operations, and to correct all abuses of authority, and to nullify all irregular proceedings." The Guthrie Court also noted that visitorial powers include bringing "judicial proceedings" against a corporation to enforce compliance with applicable law.²¹ Thus, section 484 establishes the OCC as the exclusive regulator of the business of national banks, except where otherwise provided by Federal law.

Congress recently affirmed the OCC's exclusive visitorial powers with respect to national banks operating on an interstate basis in the Riegle-Neal Interstate Banking Act of 1994 (Riegle-Neal).²² Although Riegle-Neal makes interstate branches of national banks subject to specified types of laws of a "host" state in which the bank has an interstate branch (except when Federal law preempts the application of such state laws to national banks), the statute then makes clear that even where the state law is applicable, authority to enforce the law is vested in the OCC.²³

¹⁹ 6 F. 737, 740 (6th Cir. 1881), appeal dismissed, 106 U.S. 523 (1883).

²⁰ Guthrie, 199 U.S. at 158. See also Peoples Bank v. Williams, 449 F. Supp. 254, 259 (W. D. Va. 1978) (visitorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs).

²¹ Enforcement through judicial proceedings was the most common—and perhaps exclusive—means of exercising the visitorial power to enforce compliance with applicable law at the time section 484 was enacted into law. Administrative actions were not widely used until well into the 20th century. Thus, by vesting the OCC with exclusive visitorial power, section 484 vests the OCC with the exclusive authority to enforce, whether through judicial or administrative proceedings.

²² Pub. L. 103-328, 108 Stat. 2338 (Sept. 29, 1994).

²³ See 12 U.S.C. 36(f)(1)(B) ("The provisions of any State law to which a branch of a national bank is subject under this paragraph shall be enforced, with respect to such branch, by the Comptroller of the Currency.").

Federal Preemption of State Laws Under the National Bank Act

The OCC's exclusive visitorial authority complements principles of Federal preemption, to accomplish the objectives of the National Bank Act. The Supremacy Clause of the United States Constitution²⁴ provides that Federal law prevails over any conflicting state law. An extensive body of judicial precedent has developed over the 140 years of existence of the national banking system, explaining and defining the standards of Federal preemption of state laws as applied to national banks.²⁵ In effect, preemption of state law is a means by which national banks are enabled to operate under the uniform

²⁴ U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

²⁵ See, e.g., Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 26, 32, 33 (1996) ("grants of both enumerated and incidental 'powers' to national banks [are] grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law." States may not "prevent or significantly interfere with the national bank's exercise of its powers."); Franklin National Bank, 347 U.S. at 378-379 (1954) (federal law preempts state law when there is a conflict between the two; "The compact between the states creating the Federal Government resolves them as a matter of supremacy. However wise or needful [the state's] policy, . . . it must give way to contrary federal policy."); Anderson National Bank v. Lockett, 321 U.S. 233, 248, 252 (1944) (state law may not "infringe the national banking laws or impose an undue burden on the performance of the banks' functions" or "unlawful[ly] encroac[h] on the rights and privileges of national banks"); First National Bank v. Missouri, 263 U.S. 640, 656 (1924) (Federal law preempts state laws that "interfere with the purposes of [national banks'] creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States."); First National Bank of San Jose v. California, 262 U.S. 366, 368-369 (1923) ("[National banks] are instrumentalities of the federal government. * * * [A]ny attempt by a state to define their duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United Sates or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created."); McClellan v. Chipman, 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not "destro[y] or hampe[r]" national bank functions); First National Bank of Louisville v. Commonwealth of Kentucky, 76 U.S. (9 Wall.) 353, 362-63 (1870) (national banks subject to state law that does not "interfere with, or impair [national banks'] efficiency in performing the functions by which they are designed to serve [the Federal] Government"); Association of Banks in Insurance, Inc. v. Duryee, 270 F.3d 397, 403-404 (6th Cir. 2001) ("The Supremacy Clause 'invalidates state laws that "interfere with, or are contrary to," federal law.' * * * A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal.") (citations omitted).

national standards that Congress intended from the outset of the national banking system. Together, Federal preemption and the OCC's exclusive visitorial authority are defining characteristics of the national bank charter, which have fostered the development of the nationwide system of Federally chartered banks envisioned by Congress.

As described above, Congress established the national banking system in 1863 as a means of achieving the economic policy objectives of the United States, including promoting the nationwide availability of private credit and sound banking services vital to economic development and opportunity. Through the national bank charter, Congress built a banking system intended to be nationwide in scope, and authorized the creation of national banks, whose powers were intended to be uniform, established under Federal law, regardless of where in the nation they were doing business. The Supreme Court noted in Deitrick, Receiver v. Greaney²⁶ that "The National Bank Act constitutes 'by itself a complete system for the establishment and government of National Banks.'" In an earlier case, the Supreme Court stated that:

National banks are instrumentalities of the federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created.²⁷

This independence from state control over national bank powers both reflects the essential federal character of national banks and protects them from conflicting local laws that may undermine the uniform, nationwide banking system that Congress intended. The Supreme Court has consistently recognized that subjecting national banks' exercise of their Federally authorized powers to state regulation or supervision would be inconsistent with

²⁶ 309 U.S. 190, 194 (1939).

²⁷ Davis, 161 U.S. at 283.

the purposes for which the national banking system was established.²⁸ Because national banks are Federal creations, state law directed at regulating banks and their activities applies to national banks only when Congress directs that result.²⁹

The national banks organized under the [National Bank Act] are instruments designed to be used to aid the government in the administration of an important branch of the public service. * * * Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit."³⁰

The Supreme Court also has recognized that Congress was concerned not just with the application of certain states' laws to individual national banks but also with the application of multiple states' standards which would undermine the uniform, national character of the powers of national banks throughout the system. This point was made clearly by the Supreme Court in Talbott v. Silver Bow County Commissioners, where the Court stressed that –

[T]he entire body of the Statute respecting national banks emphasize that which the character of the system implies – an intent to create a national banking system co-extensive with the territorial limits of the

²⁸ See, e.g., Marquette Nat. Bank of Minneapolis, 439 U.S. at 314-315 ("Congress intended to facilitate a 'national banking system.'"); First National Bank of San Jose, 262 U.S. 366, 369 (1923) (national banks are instrumentalities of the Federal government; "any attempt by a State to define their duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United States or frustrates the purpose of national legislation or impairs the efficiency of the bank to discharge the duties for which it was created.").

²⁹ Of course, Congress may specifically require the application of state law to national banks for certain purposes. See, e.g., 12 U.S.C. 92a(a) (the extent of a national bank's fiduciary powers is determined by reference to the law of the state where the national bank is located). Congress may also, more generally, establish standards that govern when state law will apply to national banks' activities. See, e.g., 15 U.S.C. 6701 (codification of section 104 of the Gramm-Leach-Bliley Act, which establishes standards for determining the applicability of state law to different types of activities conducted by national banks, other insured depository institutions, and their affiliates). In such cases, the OCC applies the law or the standards that Congress has required or established.

³⁰ Farmers' & Mechanics' National Bank, 91 U.S. at 33-34.

United States, and with uniform operation within those limits....³¹

Similarly, the Court in Easton, already noted, emphasized uniform standards applicable to national banks' operations as inherent in the design of national banking system:

That legislation [i.e., legislation creating and regulating national banks] has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States.³²

These decisions reflect a recognition by the Supreme Court of the essentially federal character of national banks. This federal character has consistently informed the decisions of the Supreme Court when the Court has considered whether particular state laws apply to national banks. In a recent instance in which the Supreme Court had occasion to review the federal constitutional foundations of the national banking system, the Court concluded that, because of the Federal status and purpose of national banks, national bank powers are not normally limited by state law.³³

In sum, operating under a broad and potent grant of enumerated powers and such "incidental powers as shall be necessary to carry on the business of banking," the national banks were designed from the outset to carry on their business under uniform federally-granted powers, uniform federal supervision, and uniform, federally-set standards.

As the administrator of the national banking system, the OCC bears a heavy responsibility under this federal system. The system is designed and premised on the OCC carrying out *multiple* responsibilities that trace to the

³¹ Talbott v. Silver Bow County Commissioners, 139 U.S. 438, 443 (1891).

³² Easton, 188 U.S. at 229, 231-232 (emphasis added).

³³ Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 32 (1996) (the history of the legal concept of national bank powers "is one of interpreting grants of both enumerated and incidental 'powers' to national banks as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.").

agency's origins: ensuring the safety and soundness of the national banking system, overseeing the standards by which national banks operate, and assuring that national banks are playing an appropriate role in the national economy. In this mix, the safety and soundness of national banks is of obvious importance, but so too is the fairness and integrity national banks display in conducting their business.

As Judge Posner of the Seventh Circuit observed in Central National Bank of Mattoon v. U.S. Dept of Treasury, "[t]hose banks are [the Comptroller's] wards, and his only wards; if they fail in droves, he will be blamed."³⁴ And so too will the Comptroller be held responsible if national banks commit modern-day versions of the customer frauds and deception that plagued the pre-Civil War banking scene. And so too will he be criticized if national banks fail to provide products and services that support a healthy, stable and growing economy.

As Carter Golembe put it in one of his famous commentaries:

The responsibility of the Office carries with it, in addition to safety and soundness considerations, the need for the Comptroller to assure that the national banking system is healthy, vigorous, competitive, profitable, innovative, and capable of serving in the best possible manner the banking needs of its customers.

Viewed in terms of the OCC's "mission," this translates into a mission of multiple dimensions. While one dimension may predominate at any given time, the facets are related, and the effective performance of all are essential to the intended role of the OCC.

With appropriate thanks to Mr. Golembe for stealing some of his lines, this "mission" could be captured as follows:

"The Office of the Comptroller of the Currency was created by Congress to charter national banks, to oversee a nationwide system of banking institutions, and to assure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner the banking needs of their customers. "

³⁴ 912 F.2d 897, 905 (7th Cir. 1990).