OCC Challenges Connecticut Ban on ATM Surcharges

The Office of the Comptroller of the Currency (OCC) filed a brief that questioned the Connecticut Banking Commission’s jurisdiction to impose a blanket ban on surcharges for the use of bank ATMs in Connecticut. A surcharge is a fee that a bank imposes on non-customers who use the bank’s ATMs. The brief was filed in the case, Fleet Bank N.A. v The Honorable John P. Burke, et al (3:98CV2186“JBA”), which is being heard at the United States District Court for Connecticut in New Haven. In its brief, the OCC highlighted its concern that the state’s attempt to ban surcharges interfered with the OCC’s mandate to regulate national banks.

Pennsylvania Bank Protection Clause Dropped

A controversial bank protection clause in Pennsylvania SB 1157 was stricken before the bill was signed into law by Governor Ridge last December. Had the provision been enacted, it would have required the state banking secretary’s approval of any purchase of more than 5 percent of the voting shares of any bank that has its main office in Pennsylvania.

The bank protection clause had been linked to a similar protection provision designed to help Pennsylvania manufacturer AMP Inc. resist a takeover attempt by AlliedSignal Inc. of New Jersey.

When this provision was dropped, support for the bank protection provision disappeared.

NCUA Issues Rule to Expand Eligibility

On December 17, the National Credit Union Administration approved a rule that would substantially expand membership eligibility for credit union members. The new rule, effective January 1, 1999, allows an otherwise unrelated individual to join the credit union of an eligible member if they live together or act as an economic unit. For example, someone who shares an apartment and...
pays rent can now join his or her roommate’s credit union. Several banking trade groups are considering legal action to stop the NCUA from fully implementing this rule.

SEC Speaks Out on Bank’s Loan Loss Reserves

For the first time, the Securities and Exchange Commission (SEC) has raised questions about a bank’s loan loss reserve position on the grounds that reserve levels were excessively high. SunTrust Banks Inc. reduced its reserve level by $100 million on November 13 to ensure SEC approval for SunTrust’s acquisition of Crestar Financial Corporation. The SEC had expressed concern that SunTrust’s loan loss reserves were too high compared with the bank’s expected losses and that the bank might draw on these reserves to raise reported earnings in future periods of weak earnings. One of the SEC’s primary mandates is to ensure that the financial statements of a corporation give an accurate snapshot of that company’s true earnings.

SUMMARY OF FEDERAL LEGISLATION

Enacted Legislation


New Legislation


Status: Referred to Committee on Banking, Housing, and Urban Affairs.

This bill would amend the Federal Home Loan Bank Act to make community development financial institutions (CDFIs) eligible to be nonmember borrowers from the Federal Home Loan Bank. CDFIs are nonprofit, neighborhood-based organizations that channel a mixture of public and private funds to financially distressed communities.


Status: Referred to Committee on Banking and Financial Services.

This act would amend Title 31 of the United States Code to allow for the punishment of anyone knowingly smuggling more than $10,000 into or out of the United States. A person convicted under this act would face a prison term of up to five years. This individual would also forfeit the currency and any property used in the smuggling process. If the property subject to forfeiture is unavailable, the individual would be assessed a personal money judgment equal to what would have been subject to forfeiture.

A person who could prove that the currency involved in the offense is derived from legitimate sources and intended for a lawful purpose would have the forfeiture penalty reduced to an amount proportional to the gravity of the offense.


Status: Referred to Committee on Banking and Financial Services.

This bill would amend the Federal Deposit Insurance Act to allow affiliations between depository institutions and the holding company successor to the Student Loan Marketing Association (SALLIE MAE). Current law prohibits depository institutions from affiliating with, being sponsored by, or accepting financial support from any government-sponsored enterprise.

The secretary of the Treasury would reserve the right to limit the issuance of debt obligations and restrict the use of proceeds gained from the debt issuance by the new association.


Status: Referred to Committee on Banking and Financial Services.

This bill would amend the Federal Deposit Insurance Act and the Federal Credit Union Act to make it illegal for a depository institution to charge a fee to a customer for using a service of the institution in person. For example, it would
be illegal to charge a customer a fee to carry out a transaction with a bank teller.


Status: Referred to the Committee on Banking and Financial Services and the Committee on Ways and Means.

This bill would establish a 12-member International Financial Institution Re-examination and Review Commission (commission). The commission would make recommendations on how to more efficiently manage the World Trade Organization and the Bank for International Settlements. It would also advise Congress on how to better manage future financial crises. Six months after its establishment, the commission would present this report to the Treasury and the House and Senate Banking committees.

Within three months of the report, and annually for the next three years, the secretary of the Treasury would be required to report on the steps taken to implement the recommendations of the commission.


Status: Referred to the Committee on Banking and Financial Services.

This bill would establish a program to assist a homeowner in danger of foreclosure by making mortgage payments on the homeowner’s behalf. To qualify for this assistance: 1) the borrower must be suffering financial hardship due to circumstances beyond his or her control; 2) the borrower should be able to resume payments within 36 months; 3) the mortgaged property must be the borrower’s principal place of residence; and 4) the borrower cannot have been more than 60 days’ delinquent on a mortgage within the previous two years.

Borrowers receiving assistance would be required to repay the loan. Monthly repayment amounts would be based on criteria such as the mortgagor’s net effective income and percentage income devoted to housing. The interest rate on the mortgage assistance would reflect current average yield of outstanding 30-year Treasury bonds.


Status: Referred to the Committee on Banking and Financial Services.

This bill would amend the Consumer Credit Protection Act (CCPA) to require greater uniformity in leasing practices. The bill would raise the ceiling amount for consumer leases covered by this act from $25,000 to $50,000. This ceiling would also be pegged to changes in the Consumer Price Index.

The bill would bring the requirements for television lease advertisements in line with those for radio lease advertisements. Both television and radio advertisements would be required to supply a toll-free phone number for a recorded message describing lease terms and offering to have this information sent to the caller in writing. It would be illegal to state that no down payment is required if there is any significant initial payment other than a refundable deposit or first monthly payment. Advertising lease terms not generally available would be prohibited.

Lease advertisements that state payment amounts would be required to calculate these amounts based on a lease payment formula determined by the Board of Governors. Finally, dealers who advertise automobile leases must provide a written document that includes: 1) a description of the vehicle-model, including accessories or options; 2) a schedule of fees and payments included in the capitalized cost of vehicle; 3) the total number of scheduled lease payments; 4) any information used to calculate the advertised monthly lease payment amount; and 5) the total amount due at lease inception. This written information must be placed conspicuously in the dealership, and copies must be available for any customer requesting one.

Pending Legislation


Status: Passed in the House on October 8, 1998. Received in the Senate on October 9, 1998. [See Banking Legislation and Policy, Third Quarter 1998, for a summary of H.R. 4364.]


Status: House agreed to the Conference Report on October 9, 1998. Senate placed Conference Report under consideration on October 9, 1998. [See Banking Legislation and Policy, Third Quarter 1998, for discussion on the Bankruptcy Reform Compromise Bill.]


**Board of Governors of the Federal Reserve System**

*Appraisal Standards (11/27/98)*

Issued a final rule that permits bank holding companies’ section 20 subsidiaries to engage in the underwriting and dealing of mortgage-backed securities, without first validating that the loans underlying the securities meet the Board’s appraisal requirements. This rule became effective December 28, 1998. For further information, see 63 Federal Register, pp. 65530-2 (Regulation Y).

*Electronic Funds Availability (12/2/98)*

Gave notice of a proposed rule that would give banks more time to implement merger-related software changes. Banks that consummate a merger between July 1, 1998, and June 1, 1999, would be treated as separate banks until June 1, 2000. Merger consummations that take place after June 1999 would have the standard one-year transition period in which to implement software changes. Comments were due January 4, 1999. For further information, see 63 Federal Register, pp. 66499-500. (Regulation CC).

*Consumer Leasing (12/7/98)*

Gave notice of proposed revisions to the official staff commentary accompanying Regulation M, which governs truth in lending. The proposed commentary would provide another example for purposes of clarifying limitations on the use of the term “down payment.” This term may be used only for a payment that reduces the cash price of an item. The example involves a trade-in, in which the market value of the trade-in is less than the outstanding loan on the item. The difference between these values cannot be included as a negative amount on the down payment line. The lowest value that a down payment can be assigned is $0.

The proposed commentary also clarifies the effect of the Homeowners Protection Act of 1998 on the required disclosure of private mortgage insurance payments. Disclosure statements related to home mortgages must reflect mortgage insurance payments. These statements should assume that mortgage insurance will be carried until the law requires automatic termination of insurance. Comments were due January 22, 1999. For further information, see 63 Federal Register, pp. 67436-39. (Regulation Z).

*Truth in Lending (12/7/98)*

Proposed revisions to the official staff commentary for Regulation Z, which governs truth in lending.

Truth in Lending (12/8/98)

Gave notice of an adjustment in the dollar amount of points and fees that triggers certain disclosure statements and limitations on closed-end mortgages under the Truth in Lending Act. In 1994 the amount was set at the greater of $400 or 8 percent of the total loan amount. The $400 level has been annually adjusted to reflect changes in the Consumer Price Index. The new adjusted dollar level for 1999 is $441. This adjustment became effective January 1, 1999. For further information, see 63 Federal Register, p. 67575 (Regulation Z).

*Availability of Funds (12/15/98)*

Gave advance notice of a proposed rule to shorten the maximum time that nonlocal checks can be held. The rule would shorten this time from five to four business days. Banks that could demonstrate that most of their nonlocal checks did not return within four days would be given an exemption from this rule. Comments must be received by March 15, 1999. For further information, see 63 Federal Register, pp. 69027-30. (Regulation CC).

*Home Mortgage Disclosure (12/23/98)*

Issued a final rule that maintains the size of institutions that are exempt from collecting Home Mortgage Disclosure...
Act (HMDA) data at $29 million in total assets. Depository institutions must have been at or below this asset threshold on December 31, 1998. This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 70996-7. (Regulation C).

Federal Deposit Insurance Corporation

Bank Activities (12/1/98)

Issued a final rule that amends the FDIC regulations governing the activities and investments of insured state banks. This new rule would combine the regulations concerning the activities and investments of insured state banks with those governing insured savings associations. The rule would also move the regulations governing securities activities of subsidiaries and affiliates of insured state nonmember banks and place them with the regulations concerning the activities of insured state banks. This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 66276-338.

Activities of Operating Subsidiaries (12/1/98)

Gave notice of proposed rulemaking that would place additional safety and soundness standards on subsidiaries of state nonmember banks that engage in securities sales or underwriting through a subsidiary if those activities are not permissible for a national bank. Before engaging in any activity not permitted for a national bank, but permitted for a subsidiary, the state nonmember bank would have to file a 30-day notice with the FDIC. The subsidiary wishing to engage in such activities would have to meet the following criteria: 1) it is a member in good standing of the National Association of Securities Dealers (NASD); 2) it has been in continuous operation over the preceding five-year period; 3) no principal—director, officer, general partner, employee or person owning more than 10 percent of the subsidiary’s outstanding shares—has been convicted of a felony in connection with the purchase or sale of any security within five years of the notice; 4) no principal is subject to any state or federal administrative order, court order, judgment, or decree arising out of conduct in the securities business; 5) no principal is subject to an order issued by the SEC within five years of the notice; and 6) all officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years’ experience in similar activities at an NASD member firm. Comments were due by February 1, 1999. For further information, see 63 Federal Register, pp. 66339-46.

Office of the Comptroller of the Currency

International Banking Activities (10/26/98)

Issued a final rule that states that the accounting treatment for fees on international loans should conform to generally accepted accounting principles (GAAP). This replaces a more cumbersome method. This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 57047-8.

Information Availability (11/10/98)

Issued an interim rule that clarifies the right of the OCC to make nonpublic information available to supervised entities, at the discretion of the Comptroller, without a specific request for records or testimony. Before this interim rule, there existed no guidelines that allowed for the release of nonpublic information without a specific request to the OCC. The interim rule became effective November 10, 1998. Comments were due by January 11, 1999. For further information, see 63 Federal Register, pp. 62927-30.

Know Your Customer Requirements (12/7/98)

In cooperation with the other banking agencies, gave notice of proposed rulemaking that would require financial institutions to take steps to help deter illicit activities, such as money laundering, fraud, and other criminal activities. The institution would be required to determine its customers’ identity and source of funds. In addition, the institution would determine what are normal transactions for each customer and monitor the account for transactions that fall outside this norm. Finally, in accordance with each agency’s suspicious activity reporting regulations, each financial institution would report these suspicious transactions to the relevant agency. Comments should be received by March 8, 1999. For further information, see 63 Federal Register, pp. 67524-29.

Office of Thrift Supervision

Year 2000 (10/15/98)

Together with the Federal Reserve Board, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation, issued interim guidelines that establish the minimum safety and soundness standards for achieving Year 2000 readiness. The guidelines require each banking organization to comply with seven major requirements: 1) review mission-critical systems for year 2000 readiness; 2) renovate internal mission-critical systems, which are those systems controlled by the institution; 3) renovate external mission-critical systems, which are those systems controlled by a third party; 4) test mission-critical systems by March 31, 1999; 5) develop a business-resumption contingency plan; 6) develop a remediation contingency plan, describing how the institution will mitigate risks associated with the failure of systems or the failure to complete testing and renovation of mission-critical systems; and 7) have senior level officers...
involved with all stages of renovation, testing, and contingency planning.

These guidelines should be applied in conjunction with the Federal Financial Institutions Examination Council’s (FFIEC) guidance. The interim guidelines became effective October 15, 1998. Comments were due December 14, 1998. For further information, see 63 Federal Register, pp. 55480-6.

Electronic Operations (11/30/98)

Issued a final rule that governs federal savings associations’ use of electronic means to provide products and services to consumers. The rule requires a savings association to give 30 days’ prior notice to the OTS before establishing a transactional web site. The OTS would reserve the right to place additional requirements on savings associations that present supervisory or compliance concerns. This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 65673-83.

Assessments and Fees (11/30/98)

Issued a final rule that would amend OTS regulations to permit the OTS to impose assessments on savings associations that more accurately reflect the costs of supervising each association. The amount assessed would be a function of the savings association’s size, condition, and complexity. This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 65663-65673.

Financial Management Policies (12/1/98)

Issued a final rule allowing savings associations to engage in transactions involving financial derivatives. These transactions must also comply with safety and soundness standards as discussed in the Thrift Bulletin 13a, under the title “Management of Interest Rate Risk, Investment Securities, and Derivatives Activities.” This rule became effective January 1, 1999. For further information, see 63 Federal Register, pp. 66348-50.

SUMMARY OF JUDICIAL DEVELOPMENTS

A November ruling by the state of California’s Court of Appeals in San Francisco has stopped Bank of America’s (BofA) attempt to require some credit card customers to submit to arbitration of disputes. The case, Badie et al. v Bank of America (A068753), centered on BofA’s contention that a “change of terms” clause in its account agreement gave it the right to unilaterally impose the binding arbitration of disputes on existing as well as future customers. The plaintiffs argued that in accepting the original agreement, they did not envision that a “change of terms” referred to anything more substantial than the disclosure terms required under the Truth in Lending Act.

The decision by this court overturned an earlier ruling by a California trial court that found in favor of BofA. The California Appeals Court agreed with the plaintiffs that when entering the credit agreement with BofA, “there was nothing about the original terms that would have alerted a customer to the possibility that the Bank might...add a clause that would allow it to impose [binding arbitration] on the customer.” The court further argued that as the author of the credit card agreement, the bank bore primary responsibility for being clear about possible changes of terms. Bank of America is considering an appeal of this decision.

In late October, a Virginia Circuit Court jury found Nationwide Insurance Companies guilty of redlining. The Richmond-based jury in Housing Opportunities Made Equal v. Nationwide Insurance Companies (LB-2704-4) awarded the plaintiff $500,000 in compensatory damages and fined Nationwide an additional $100 million in punitive damages.

The trial centered on allegations made by Housing Opportunities Made Equal (HOME), a nonprofit housing organization, that Nationwide had engaged in practices that resulted in redlining. Redlining is the practice in which a financial institution maintains policies or engages in practices that, intentionally or unintentionally, render certain areas of a community ineligible for products or services. HOME showed that Nationwide had moved its agents to the suburbs out of Richmond’s minority neighborhoods. HOME also presented evidence that demonstrated that whites were far more likely to get insurance quotes than minorities.

This was the first jury trial against an insurance company accused of violating the Virginia Fair Housing Law. In the past, Nationwide has chosen to settle redlining or discrimination cases out of court rather than risk going to trial. Although Nationwide has indicated that it would appeal this verdict, the size of this judgment has sent shock waves through the industry.
New Jersey
On November 9, 1998, Governor Whitman signed into law S. 888. The new law, Chapter 121, Laws of 1998, allows financial institutions to release certain customer account information to a law enforcement agency or county adult protective service provider. The release of information must be relevant to actual or suspected illegal activities.

A financial institution that releases such information in conformity with this bill would be immune from any liability under the laws of the state of New Jersey from a suit alleging invasion of privacy. This law became effective immediately.

On November 9, 1998, Governor Whitman signed into law A. 2077. The new law, Chapter 130, Laws of 1998, clarifies that an advance of principal, other than a line of credit, made with respect to a mortgage does not have the lien priority of the original mortgage and is not considered a “modification” as defined in P.L. 1985, c. 353. This law became effective immediately.

On November 23, 1998, Governor Whitman signed into law A. 2128. The new law, Chapter 133, Laws of 1998, expands the field of membership of state-chartered credit unions. The law allows for credit unions to be composed of groups with similar occupations or interests, groups that reside in a well-defined community, or immediate family members of members of the credit union. Membership privileges are also extended to individuals who meet low-income criteria if they reside in the primary metropolitan statistical area of the credit union.

The new law is intended to help bring the membership requirements of state-chartered credit unions in line with those of federally chartered credit unions. This law became effective immediately.

Pennsylvania
On December 21, 1998, Governor Ridge signed SB 95 into law. The new law, Act 132 of 1998, requires all savings associations to be insured by the Federal Deposit Insurance Corporation within 30 months. The law also makes provisions for the dissolution of the Pennsylvania Savings Association Insurance Corporation (PSAIC), allows for the conversion of affected institutions into credit unions or mergers with other savings associations, and increases the interim period between examinations for state-chartered, federally insured savings associations from one to two years.

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