



# BANKING LEGISLATION & POLICY

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## Recent Developments

### PNC Faces Regulatory Sanctions

On July 18, 2002, the Federal Reserve Board (FRB) and the Securities and Exchange Commission (SEC) announced administrative actions against PNC Financial Services Group, Inc., a Pittsburgh-based bank holding company. The regulators took measures against PNC after concluding that PNC had violated generally accepted accounting principles (GAAP) and had made false and misleading disclosures about its financial condition, earnings, and exposures to lending risks in certain press releases and quarterly reports filed with the Commission for the second and third quarters of 2001.

The SEC issued a settled cease-and-desist order against PNC. The order states that PNC transferred about \$762 million of volatile, troubled, or under-performing loans and venture capital investments from its financial statements to three special-purpose entities. PNC didn't consolidate the special-purpose entities on second- and third-quarter financial statements filed with the Commission even though the entities failed to meet the requirements under GAAP for nonconsolidation.

On July 12, 2002, the Federal Reserve Bank of Cleveland executed a written agreement with PNC to address bank supervisory matters. Among other things, the agreement requires PNC's board of

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directors to retain an independent consultant approved by the FRB to review the structure, functions, and performance of the bank's management and the board of directors' oversight of management activities. The consultant will then prepare

a written report that includes findings, conclusions, and descriptions of any management or operational changes recommended after the review. Then, at least twice a year, the board of directors will review management's adherence to the new

policies and procedures. Risk management, internal controls, corporate governance, and financial and regulatory reporting are all areas to be emphasized.

### **FDIC Liquidates NextCard's Credit Card Accounts**

The Federal Deposit Insurance Corporation

(FDIC) rendered useless approximately 800,000 NextCard credit cards on July 10, 2002. NextCard is a division of NextBank, which was put into receivership by the FDIC in February. Since being appointed receiver, the FDIC was able to sell only about 20 percent of NextCard's accounts to other institutions, as potential buyers were

hesitant because many of the credit loans were of poor quality. In addition, NextCard's securitized receivables are going into early amortization. The FDIC estimates that, by liquidating NextBank, the total cost to the Bank Insurance Fund will be between \$300 and \$400 million.

## **SUMMARY OF FEDERAL LEGISLATION**

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### ***Enacted Legislation***

**1. Public Company Accounting Reform and Investor Protection Act of 2002 (H.R. 3763).** Introduced by Rep. Oxley (R-OH) on Feb. 14, 2002.

Status: Signed into law by President George W. Bush on July 30, 2002.

This piece of corporate reform legislation creates a board independent of the U.S. government to oversee the accounting industry and prohibits auditors from offering many non-tax-related services to their customers. In addition, the law requires chief executives and chief financial officers to certify the accuracy of their companies' financial statements. Public companies must disclose off-balance-sheet transactions that could affect their financial condition. (For a detailed description of the bill, see *Banking Legislation and Policy*, April-June 2002.)

Just before the conference committee approved the bill on July 24, a section was added to allow banks, under Regulation O, to continue to make "arm's length" loans to their executives under normal market terms. On July 25, the bill passed the House and the Senate by votes of 423-3 and 99-0, respectively.

### ***New Legislation***

**1. Check Clearing for the 21st Century Act (H.R. 5414).** Introduced by Rep. Ferguson (R-N.J.) on Sept. 19, 2002.

Status: Referred to the House Committee on Financial Services.

Nicknamed "Check 21," the Check Clearing for the 21st Century Act aims to improve the overall efficiency of the nation's payment system by authorizing substitute checks, which are paper reproductions of original checks. A substitute check must show both the front and back of the check and the magnetic ink character recognition (MICR) line containing numbers including the bank routing number, account number, check number, and other information printed in magnetic ink at the bottom of the check.

When a substitute check is created, it is the legal equivalent of the original check and can be used in its place for all purposes as long as it accurately represents all of the original check's information and clearly displays that it is a legal copy. The bill stipulates warranties that a bank can be required to honor a substitute check only once and that a substitute check must meet the requirements for legal equivalence. The proposed legislation does not mandate receipt of checks in electronic form, but using the electronic method will reduce costs, improve efficiency in check collections, and expedite funds availability for customers.

The bill provides a mechanism for expedited recredit of consumer accounts erroneously debited with a substitute check. A consumer may make a claim for expedited recredit if he or she experiences a loss resulting either from a bank's erroneously

charging a substitute check against his or her account or by the bank's breaching a warranty claim on the substitute check. The claim must be made within 30 days, barring extenuating circumstances, after receiving a statement or after receiving the substitute check. The claim must include an explanation of why the check was improperly charged to the account, any warranty claim, a statement of loss, and sufficient information to identify the check for investigation purposes. A bank may require the claim to be in writing. Within 10 business days after receiving the claim, the bank must recredit the customer the amount of the check plus interest or provide a reason for not doing so. Some exceptions apply, including claims made for check amounts in excess of \$2500 and claims made on new accounts.

Banks wishing to make expedited recredit claims against indemnifying banks must do so within 120 days of the date of the transaction that gave rise to the claim. Similar to a consumer's claim, a bank's claim must include an explanation of why a check cannot be properly charged to an account, an explanation of losses suffered, and enough information about the check to help the indemnifying bank investigate the claim. The indemnifying bank then has 10 business days after the claim is filed to either recredit the claimant or explain why it is not recrediting the claimant.

If a dispute goes to trial, the amount of damages that can be awarded depends on whether there was a breach of warranty. If

there is no breach, a successful claimant receives the amount of the substitute check plus interest and reasonable attorney's fees. However, if there is a breach of warranty, a successful claimant may be compensated for losses proximately caused by the breach.

Finally, the bill outlines that the Federal Reserve Board will be responsible for drafting a document about substitute checks for consumers. The document will be distributed to bank customers with the first regularly scheduled mailing after the

legislation's effective date, projected in the bill as Jan. 1, 2006. (See *Banking Legislation and Policy*, July-September 2001, for a related proposal.)

## SUMMARY OF FEDERAL REGULATIONS

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### Office of the Comptroller of the Currency

#### *Debt Cancellation Contracts and Debt Suspension Agreements (9/17/02)*

The Office of the Comptroller of the Currency issued a final rule September 17, 2002, establishing standards for the provision of debt cancellation contracts (DCCs) and debt suspension agreements (DSAs). DCCs and DSAs are arrangements in which, for a fee, a bank consents to cancel or suspend all or part of a customer's debt in circumstances of specific events, such as death or disability. With this rule, as with others relating to insurance products, the regulators aimed to protect consumers against banks exercising market power by tying the products to other services, especially providing loans.

Under the rule, banks providing DCCs and DSAs are prohibited from tying them to the approval or terms of an extension of credit, and they must provide a disclosure statement to this effect. In addition, banks cannot modify a DCC or DSA unless the modification benefits the customer or the customer has a reasonable opportunity to cancel the contract without facing penalties. Also, banks cannot charge a single, lump-sum fee for a DCC or DSA issued in connection with a residential mortgage loan.

Banks may offer DCCs and DSAs that don't allow for refunds of fees as long as they also offer another viable alternative that does include a refund provision and disclose that this option is available. For loans other than residential mortgage loans, banks may offer the option of paying DCC

or DSA fees in a single lump sum as long as they also offer a bona fide option to pay these fees in periodic payments. In addition, the rule prohibits advertisements and other practices that could mislead a reasonable person.

Finally, the rule mandates that banks offering DCCs and DSAs must manage the risks associated with the products using safe and sound banking principles, and it requires that banks establish and maintain effective risk management and control processes.

This rule is effective June 16, 2003. For further information, see 67 *Federal Register* pp. 58962-78.

#### *Call Reports (7/12/02)*

Together with the Federal Reserve, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, the Office of the Comptroller of the Currency issued notice of proposed rulemaking requiring financial institutions to report information on subprime lending programs beginning with the March 31, 2003, call reports. The information would be kept confidential for at least two years.

Subprime loans are those made to borrowers with weak credit histories. All institutions would be required to report the dollar amount of loans extended or purchased through programs targeting these buyers. If the amount of subprime lending should be discovered to account for at least 25 percent of a lending institution's Tier 1 capital, the institutions

would be required to provide additional information. This information would begin with a breakdown of the dollar amounts into the following categories: (1) open- and closed-end loans secured by 1-4 family properties, with first and junior loans reported separately; (2) credit card loans; (3) other revolving credit plans; and (4) other consumer loans. Next, institutions would be required to report classified loans, i.e., loans past due 30-89 days, loans past due 90 or more days, and nonaccruing loans for each of the above categories. Finally, institutions would be required to report chargeoffs and recoveries for the same categories. This additional reporting would continue until the institution's subprime loans account for less than 25 percent of its Tier 1 capital for two successive quarters or the end of the year, whichever is longer.

This proposal would apply only to loans made through programs targeting subprime borrowers. Subprime loans originated and managed as occasional exceptions to prime risk selection standards, prime loans that later develop problems, loans initially extended in subprime programs that are later upgraded, and community development loans guaranteed by government programs would not be covered by the proposal.

Comments were due September 10, 2002. For further information, see 67 *Federal Register*, pp. 46250-4.

### *Money Laundering (7/23/02)*

The Office of the Comptroller of the Currency, in coordination with the Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and the National Credit Union Administration, Financial Crimes Enforcement Network, Commodity Futures Trading Commission, and Securities and Exchange Commission (Agencies), issued notice of a proposed rulemaking to implement section 326 of the USA PATRIOT Act of 2001. Section 326 of the act requires the agencies to establish guidelines that banks, savings associations, and credit unions can use in developing procedures to verify the identity of a person wishing to open an account or be added as a signatory.

The agencies, instead of issuing a standard procedure for all institutions, developed minimum standards that banks must incorporate into their own personal Customer Identification Program (CIP). Each CIP must be documented, included in the institution's anti-money laundering (BSA) program, and approved by the bank's board of directors or a committee of them. The proposed regulation lists minimal identifying information, including name, address, date of birth, and Social Security number or employer identification number (EIN). Non-U.S. citizens may provide a passport, alien identification card number, taxpayer identification number, or other government-issued document as a form of identification. There is a limited exception for new businesses that have applied for, but not yet received, an EIN.

The institution's CIP must outline the procedures it will take to verify the identifying information it receives. However, the rule would allow institutions flexibility as to how the information is verified. The CIP must include procedures for how a bank will respond in instances when a person's identity cannot be verified (for example, the bank could refuse to open an account).

Under the proposal, institutions would be required to keep records of the identifying information they obtain through their

verification process for at least five years after an account has been opened. Institutions may use electronic records, as long as they are accurate and accessible. The CIP must describe the steps an institution will take to compare its records with government-circulated lists of suspected or known terrorists or terrorist groups and how it would respond should it discover that a customer appears on such a list.

Comments were due September 6, 2002. For further information, see 67 *Federal Register*, pp. 48290-9.

### *Bank Activities (8/12/02)*

In an interpretive letter (#944) dated August 12, 2002, the Office of the Comptroller of the Currency (OCC) clarified that loss notification and credit monitoring services are part of or are incidental to the business of banking, and therefore, it is permissible for national banks to offer these services. The OCC had determined years ago that both loss-notification services and the operation of credit bureaus were permissible banking operations. The letter reasoned that if credit bureaus were permitted, then services offered by credit bureaus, including credit monitoring, must also be permitted.

### **Federal Financial Institutions Examination Council**

#### *Credit Card Lending (7/22/02)*

On July 22 the Federal Financial Institutions Examination Council (FFIEC) issued guidelines for loan-loss accounting and account management practices. Many of the guidelines reiterate common safety and soundness practices for any type of lending, but there are also some specific new requirements that apply to credit cards.

The statement requires institutions to have sufficient internal controls and management information systems (MIS) so that they can aggregate account balances and limits for borrowers with multiple credit lines. The guidance outlines responsible over-limit practices, important for all

lenders, but especially sub-prime lenders. The FFIEC advises that all institutions should manage over-limit practices with the goal of timely repayment. In addition, for subprime accounts with authorized over-limits, institutions should limit negative amortization, which occurs when the required minimum payment is insufficient to cover fees and finance charges assessed in the current billing cycle.

While repayment policies and workout programs differ, the FFIEC recommends that their aim should be to maximize reduction of principal. Consumer credit counseling services encourage borrowers to repay credit card debt within four years, and the statement suggests institutions adopt similar time frames for their workout programs. For this to be feasible, institutions might have to reduce or eliminate interest rates and fees.

Banks should also have methods for determining loss allowances for uncollectible fees and finance charges. Banks' allowances for loan and lease losses should reflect expected losses on both delinquent and current loans. Banks' methods should take into account the additional risks associated with accounts where outstanding balances exceed the credit limit, in particular because additional fees and other finance charges may impair the borrower's ability to repay in a timely manner.

In general, when a lender forgives a portion of debt in a settlement agreement with the borrower, that amount should be charged off immediately. If there is any doubt that the remaining balance will not be repaid, it should be charged off immediately. Also, institutions should include over-the-limit balances and associated fees in their estimates of loan losses. Finally, the statement would prohibit institutions from booking recoveries on a charged-off account greater than the amount originally charged off.

The FFIEC extended comment on this guidance to September 23 and plans to issue final guidance shortly thereafter.

## Office of Thrift Supervision

### *Mutual-to-Stock Conversions (8/9/02)*

The Office of Thrift Supervision adopted a final rule governing mutual-to-stock conversions of thrift institutions and the creation of mutual holding companies. The rule was originally proposed July 12, 2000, and repropoed April 9, 2002 (for a summary of the original proposal, see *Banking Legislation and Policy*, July-September, 2000; for a summary of the reproposal, see *Banking Legislation and Policy*, April-June, 2002). The final rule contains a few substantive revisions. The April 9 proposal would have required a meeting between an OTS representative and the institution's board of directors (or a committee thereof) no less than 10 days before an application to convert was filed. The final rule continues to require a pre-filing meeting but does not specify a minimum number of days in advance of filing for the meeting to be held. Both the 2000 and April 9 proposals, as well as the final rule, require that a three-year business plan be included in any application to convert and set forth requirements as to what must be included in the business plan. However, both earlier proposals would have required the plan to demonstrate that the conversion would result in a "reasonable" return on equity (ROE) in each year. The final rule emphasizes ROE only at the end of the three-year period.

With regard to institutions forming charitable organizations in connection with a conversion, the final rule differs from the earlier proposals in that an operating plan for any foundation would not be required until six months after the conversion, rather than at the time of the conversion. The final rule also deletes a provision requiring an opinion on the legality of the foundation's chartering documents under state law. The rule became effective October 1, 2002. For information on the final rule, see 67 *Federal Register*, pp. 52010-48. For information on the original proposal, see 65 *Federal Register*, pp. 43092-128. For information on the

revised proposal, see 67 *Federal Register*, pp. 17228-55.

## Department of Housing and Urban Development

### *Real Estate Settlement Procedures (7/29/02)*

The Department of Housing and Urban Development proposed a rule amending the required disclosures of fees for mortgage settlements, particularly in transactions involving a mortgage broker. The rule's stated purpose is to address the problem of unexpected charges to borrowers at settlement, to require disclosure of payments by lenders to mortgage brokers and other fees not currently included in estimated closing costs, and to simplify the process of shopping for a mortgage. The rule allows mortgage providers to address these problems in one of two ways: either by making additional disclosures on the good faith estimate (GFE) of closing costs, with limits on how much these estimates may vary with actual closing costs; or, alternatively, by allowing mortgage providers to offer "mortgage packages," with almost no itemized costs, but rather a lump-sum guaranteed total price for closing costs.

Once an application has been made, as in the current regulation, the lender would be obligated to deliver or mail a GFE within three days. However, the lender could not charge any fees for the GFE except those necessary to provide the GFE. The GFE would be valid for 30 days.

The rule would require significant new disclosures on GFEs. First, there would be a statement that the loan originator does not guarantee the lowest price or the best terms available in the market and that the borrower should compare prices to get the terms that best meet the borrower's needs. Second, the GFE would have to inform borrowers that they have the option of paying settlement costs either (1) in cash at the time of settlement, (2) by borrowing additional funds, (3) through a higher interest rate, or (4) by lowering the interest rate and paying additional discount points.

Third, the GFE would have to disclose the total origination charges of both the mortgage broker and the lender, first as a consolidated figure, and then broken out separately. This would include yield spread premiums (payments to a broker for negotiating the loan), which are currently not included in the GFE. Brokers could not charge additional discount points. Additionally, the GFE would be required to list the annual percentage rate (APR), including information on adjustable rate mortgages (ARMs) and balloon payments, along with a disclaimer that, until the borrower locks in a rate, it is subject to change.

The new GFE would group and consolidate fees into categories. In addition to loan originator charges and lender payments based on the interest rate, these categories would include: (1) lender-selected third-party services, (2) title charges and title insurance premiums, (3) lender-required third-party services for which the borrower can comparison shop, (4) state and local government charges, (5) escrow, (6) hazard insurance, (7) per diem interest (interest paid on a day-to-day basis before the regular mortgage schedule officially starts), and (8) optional owner's title insurance. The rule would prohibit loan originators from exceeding the charges stated on the GFE for their own services, lender-selected third-party services, and government charges. There is an exemption for unforeseeable and extraordinary circumstances, such as acts of God, war, natural disaster, and other emergencies. The rule would also establish a 10 percent upper limit on the amount other charges on the GFE can vary. These charges would be for those things the borrower can purchase on his own, such as title services and escrow. If circumstances change after the GFE is issued and the estimates are no longer valid, the originator would have to issue a new GFE or state that the borrower does not qualify for the loan.

The rule would also relax the current prohibition on discounts from third parties in exchange for referrals by allowing loan

originators to negotiate volume discounts with these providers.

As an alternative to providing GFEs with these new disclosures, the rule would allow originators to offer “mortgage packages,” with a lump-sum price for nearly all settlement services and an interest rate guarantee. The interest rate may be subject to change prior to lock-in. The “guaranteed mortgage package agreement” (GMPA) would have to be offered without an upfront fee within three days of application and would remain open as an offer for 30 days thereafter. Once agreed to, the GMPA would

be a binding contract, and, if breached, borrowers could sue a provider under applicable state contract law.

In the lump-sum price, the cost of mortgage insurance would be the maximum upfront premium based on the borrower’s estimate of the property value and the amount borrowed. Some other items that the borrower has control over such as escrow, hazard insurance, per diem interest, and owner’s title insurance would be allowed to vary from the stated price, but only within 10 percent. The GMPA option would not be available for high-cost

mortgages, and HUD reserves the right to set other limits on the use of GMPAs in the future.

The rule would make only minor changes to the settlement statement forms (HUD-1 and HUD-1A). Lender payments to mortgage brokers and to third-party settlement service providers would have to be itemized in the borrower’s column. Comments were due October 28, 2002. For further information, see 67 *Federal Register*, pp. 49134-70.

## SUMMARY OF JUDICIAL DEVELOPMENTS

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In a case of significant local interest, a federal judge of the U.S. Claims Court found against the government August 14, 2002, for the December 1992 seizure of Philadelphia’s Meritor Savings Bank, formerly the Philadelphia Saving Fund Society (PSFS). Judge Loren Smith decided in *Slattery v. The United States* (93-280C) that banking regulators had breached a contract with the bank, an opinion that follows previous decisions in similar suits (see *U.S. v. Winstar Corp.*, *Banking Legislation and Policy* April-June 1996).

Like the other Winstar cases, *Slattery* stems from an accord with the FDIC in which Meritor agreed to acquire a failing thrift in exchange for supervisory goodwill to offset the new liability. In 1982, many U.S. thrifts were experiencing financial trouble, due in part to very high interest rates. With many of these troubled thrifts threatening to collapse, the FDIC sought out financially healthy firms to assume the weaker thrifts’ liabilities in exchange for a relaxed capital requirement that created a fictional type of capital for accounting purposes, known as “supervisory goodwill.” Meritor accepted the FDIC’s agreement and merged with Western Savings Fund in 1982, and the FDIC was spared having to immediately

pay Western’s deposit holders. At the time, Western’s liabilities exceeded its assets by \$796 million.

In 1988 the FDIC was becoming more and more uncomfortable with the outstanding goodwill on Meritor’s books and entered a memorandum of understanding (MOU) with the bank that required that Meritor have more tangible capital on hand by the end of 1988. To raise capital to comply, Meritor sold 54 fast-growing branches and was left with nonperforming assets that produced losses and inspired the FDIC to again raise capital requirements. In 1991, Meritor was forced to enter a written agreement with the FDIC in which, again, capital requirements were raised. Unable to meet the high capital levels, Meritor was seized and sold on December 11, 1992.

Now, nearly 10 years later, the court found that the government is liable for breaching its 1982 MOU with Meritor. Damages are yet to be decided or awarded, but the judge called for a status conference within 60 days of the decision to set a schedule for the proceedings.

On September 18, 2002, the U.S. Court of Appeals for the 11th Circuit overturned a

district court ruling that granted class certification to plaintiffs seeking to sue First Union Mortgage Corp. for paying yield spread premiums (payments made by a lender to a broker for delivering a mortgage that is above the par rate). In this case, (*Daniel Heimmermann et al. v. First Union Mortgage Corp.*, No. 99-14066), the court found that the payment of yield spread premiums (YSPs) cannot necessarily be presumed to be referral fees, which are prohibited by Section 8(a) of the Real Estate Settlement Procedures Act (RESPA) and a 1999 Housing and Urban Development (HUD) statement of policy. In its ruling, it found that the lower district court had abused its discretion by applying the wrong legal standard when it granted class certification to the plaintiffs.

For a court to grant class certification, four requirements must be met: (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. When it granted class certification, the district court reasoned that

the requirements were met because for each class member's loan, the amount of the YSP was based solely upon the amount by which the loan rate exceeded the par rate, and it was not tied directly to specific additional services provided by the broker. However, the appellate court cited HUD's 2001 statement of policy that clarifies that these facts, in themselves, do not constitute a violation of RESPA. Therefore, the district court's grant of class certification was vacated. The court's opinion in this ruling contradicts its earlier ruling in another case about YSPs. (See *Culpepper v. Irwin Mortgage Co.* in *Banking Legislation and Policy*, April-June 2002.)

Reversing its own previous ruling, on August 6, 2002, the U.S. Court of Appeals for the Ninth Circuit asserted that banks may use directly deposited Social Security benefits to balance account overdrafts (*Lopez v. Washington Mutual Bank F.A.*, 9th Cir., No. 01-15303, 8/6/02).

In March 2002 the Ninth Circuit ruled that the practice of applying Social Security and supplemental security income (SSI) benefits to offset check overdrafts violated federal law that prohibits the funds from being transferred or reassigned by means of "other legal process." (For more information on this ruling, see *Banking Legislation and Policy*, January-March 2002.) This decision created some concern that banks would not be able to offer senior citizens overdraft protection and direct deposit services.

Washington Mutual requested that the court review its first decision, and in its

August decision, the same Ninth Circuit found that by accepting the terms of an account agreement that outlines the practice of using deposits to offset overdrafts, and then by supplying Social Security and SSI benefits as direct deposits, an individual consents to have these deposits applied to overdraft accounts.

On July 16 the U.S. Court of Appeals for the District of Columbia unanimously upheld a lower court ruling that credit reporting agencies are subject to federal financial privacy laws and cannot sell "credit header" information (such as name, address, or telephone number) without first notifying consumers and providing them with an opportunity to opt out (*TransUnion LLC v. Federal Trade Commission*, 295 F.3d 42).

In 2000, the Federal Trade Commission (FTC) and bank regulators issued rules implementing the privacy provisions of the Gramm-Leach-Bliley Act (GLBA). Under that law, financial institutions may not share personally identifiable financial information with unaffiliated third parties without first notifying the consumer and providing an opportunity to opt out of the information sharing. The law contains an exception for information provided to credit reporting agencies and for credit reports provided by them. Under the FTC rule, however, credit header information does not qualify as a credit report and is therefore ineligible for this exception. TransUnion challenged the FTC's authority, arguing that a credit reporting agency is not a

financial institution and, therefore, should not be subject to GLBA. TransUnion also claimed that the FTC's definition of personally identifiable financial information was too broad and that the rule compromises TransUnion's right of free speech.

The U.S. Court of Appeals rejected all of these claims. It concluded that the FTC correctly categorized credit reporting agencies as financial institutions, as defined in GLBA, and that the FTC is authorized to regulate them under GLBA. The finding that credit reporting agencies are financial institutions was based on the Federal Reserve's 1997 ruling that credit bureau services are "so closely related to banking...as to be a proper incident thereto." Next the court found that credit header information is personally identifiable financial information because it is requested by financial institutions in connection with providing services. Third, the court found that the FTC's restrictions on reuse of data are consistent with GLBA. Finally, the court concluded that the rule does not violate TransUnion's free speech rights, because such speech is commercial speech and can therefore be regulated more strictly than other forms of speech.

This opinion upheld the April 30, 2001, ruling by the U.S. District Court for the District of Columbia in *Individual Reference Services Group, Inc. v. Federal Trade Commission et al.* For more information on the 2001 decision, see *Banking Legislation and Policy*, April-June 2001.

## SUMMARY OF THIRD DISTRICT DEVELOPMENTS

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### **Delaware**

The governor signed two pieces of legislation amending Title 5 of the Delaware Code July 9, 2002. Under the first, H.B. 566, an individual has the right to sue a licensed check-casher for charging an unlawfully

high fee for cashing a check or money order. Liable institutions can be penalized between \$250 and \$500 for the first offense and between \$500 and \$1000 for every additional violation. Subsequently, if a person can prove he suffered losses, he will

be awarded damages equal to three times the loss.

The second act, H.B. 480, clarifies short-term loan guidelines. The bill defines a short-term loan as a loan of \$500 or less that must be repaid in fewer than 60 days. A

lender may make a maximum of four rollovers, or extensions, on consumer short-term loans before it may enter into a workout agreement with the borrower or take other legal actions in an effort to collect the unpaid debt. In addition, the bill gives the borrower right of rescission, or the right to return the loan in full, before the end of the following business day without incurring any fees.

#### **New Jersey**

On July 1, 2002, the Uniform Unclaimed

Property Act was amended by A.2507 to reduce from 10 years to three years the amount of time the state must wait before it can claim an inactive bank account. The amendment provides that the three-year escheat period (time after which the state acquires property that has been unclaimed by its owner) will begin after the earlier of maturity or the last customer-initiated activity on the account. Because many certificates of deposit are issued for longer than three years, however, they become

subject to the law. On September 12, 2002, S.1814 was introduced to again amend the law so that the three-year escheat period would begin after the later of maturity or the date of the last customer-initiated activity on the account. In addition, the bill stipulates that a customer's activity in one account with a financial institution is evidence that he has not abandoned any other accounts there.

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