

Annual Review of Banking Law
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DEVELOPMENTS IN BANKING LAW: 1998

*145 XVII. YEAR 2000 ("Y2K")

Michael Batson [FN1]Nathan Tilden [FN2]Copyright (c) 1999 by Trustees of Boston University; **Michael Batson**, Nathan Tilden**A. Origins of the Year 2000 ("Y2K") Problem**

The Y2K problem stems from the programming language of computers. [FN1] It is a glitch in the Common Business-Oriented Language ("COBOL"). [FN2] COBOL developers used the last two digits of a calendar year to identify that year. [FN3] Thus, "1997 is identified as '97' in COBOL programs, and 2000 will be designated as '00.'" [FN4] The problem with this two-digit format is that the year 2000 will be indistinguishable from the year 1900. [FN5] This problem will continue well past the year 2000. [FN6]

The climax of the Y2K problem is quickly approaching. It is a problem that could easily have been avoided. [FN7] During the Nixon administration, leading programmers were pushing to drop the two-digit standard. [FN8] Even Alan Greenspan admits that he was "one of the culprits who helped create this problem." [FN9] Memory was a valuable commodity during the early days of computer programming. [FN10] This meant that compromise was necessary, so the two-digit standard survived. [FN11]

Today, the problem has become more complex. [FN12] Programming has very little consistency. [FN13] Programmers work in a freewheeling atmosphere, *146 thus making many of the problems associated with the "Millennium Bug" [FN14] difficult to find. [FN15]

B. Banks**1. Y2K's Effect on Banks**

Y2K is having a profound effect on banks. As the Year 2000 approaches, banks "face the prospect of major computer systems failure and massive liability." [FN16] The banking industry is highly dependent on computer systems, and dates are an integral part of virtually every area of bank operations, transactions, and record keeping. [FN17] The banking industry's preparedness is essential because banks are at the center of our payment systems and affect credit flows throughout the economy. [FN18] Furthermore, computers are used to perform financial calculations, make direct deposits, transfer funds, and track deposits and loan payments. [FN19] If the banking industry fails to adequately address Y2K, there could be serious repercussions throughout the economy. [FN20]

2. Office of the Comptroller of Currency ("OCC")

a. Generally

The OCC, as the primary regulator of national banks, is committed to facing the challenges posed by the Year 2000 problem. [FN21] The OCC is participating in the coordinated efforts of the Federal Financial Institutions Examination Council ("FFIEC"), whose member agencies develop policy, procedures, and guidance for all depository institutions. [FN22] Most national *147 banks have shown a good faith effort toward addressing Y2K issues and the majority are on schedule with their remedial efforts. [FN23] However, "some of the toughest work associated with Year 2000 lies ahead." [FN24] Banks have recently begun the testing phase — arguably the most critical phase of Y2K preparation. [FN25] As banks move through the testing phase, the OCC will have a much clearer picture of whether their Year 2000 preparations will be completed in time. [FN26] Testing will not be an easy task. [FN27] Analysts estimate that commercial banks have nine to ten billion lines of source code containing data fields. [FN28] Therefore, banks should not underestimate the weight of this task because even after completing the required corrections, there is no guarantee that the system will function correctly. [FN29]

b. Compliance

The OCC established stringent guidelines for banks requiring all systems to meet Y2K specifications by the end of 1998. [FN30] The OCC met its target date of June 30, 1998 by completing one Y2K on-site examination of every institution it supervises. [FN31] Nearly ninety-six percent of these institutions received a satisfactory rating from the OCC on their efforts toward Y2K readiness. [FN32] Common problems found by the OCC include: "[1] Inadequate processes to assess customer readiness. [2] Insufficient allocation of financial resources to complete necessary tasks. [3] Failure to meet scheduled deadlines. [4] Ineffective management oversight of Year 2000 efforts and reporting. [and 5] Ineffective risk management process." [FN33] The *148 OCC will follow up as needed with every institution with which it has supervisory concerns. [FN34]

The OCC has mandated that all national banks become Year 2000 compliant by December 31, 1998, leaving one year for testing. [FN35] In addition, it mandated that the testing of the new system be under way by December 31, 1998. [FN36] The OCC has developed a supervisory plan to address heightened awareness of Y2K that requires banks to complete two additional onsite examinations by June 1999. [FN37] The first will review banks' testing plans and must be completed by year-end 1998. [FN38] The second examination will review banks' testing results and must be completed by mid 1999. [FN39] The OCC also established a Y2K hotline with a special team of technical experts to answer questions and to go onsite to national banks. [FN40] The OCC completed training of 550 examiners focusing on testing and contingency planning. [FN41] The OCC additionally asked each national bank to develop a customer awareness program by September 30, 1998. [FN42]

The OCC uses Supervisory Directives to effect prompt remedial action by banks. [FN43] Supervisory Directives are written instructions ordering the bank to take specific actions to remedy deficiencies. [FN44] Forty-one of 278 Y2K Supervisory Directives issued through September 15, 1998 were terminated because the institutions made the appropriate changes. [FN45] The OCC monitors compliance with all enforcement actions on a regular basis. [FN46] Nearly seventy percent of banks rely on service providers and software vendors for mission-critical data processing needs. [FN47] The OCC has been working closely with these service providers to ensure that they address *149 identified deficiencies. [FN48] According to the OCC, most of the service providers and software vendors are also making good progress addressing Y2K. [FN49]

The OCC's efforts will intensify throughout the first quarter of 1999 as it reviews banks' testing, renovation, and contingency planning efforts. [FN50] The testing phase will consume over sixty percent of the time and money spent addressing Y2K. [FN51] In preparation, the OCC has provided advanced training to examiners as well as resources to perform Year 2000 reviews. [FN52] The OCC has taken enforcement action against institutions that have fallen behind, and its legal staff is finalizing a review of its authority to close banks due to Y2K failures. [FN53] Furthermore,

the OCC's testing of its own internal system has proven successful to date. [FN54]

2. Federal Deposit Insurance Corporation ("FDIC")

Deposit Insurance plays a vital role "in reassuring depositors who may be worried about the safety of their funds because of Y2K problems." [FN55] The FDIC is trying to conduct onsite reviews of all banks for which it has supervisory responsibility. [FN56] The FDIC directed banks to inventory core computer functions by September 30, 1997 and to have testing of mission critical systems underway by December 31, 1998. [FN57] The FDIC "must effectively oversee the efforts of financial institutions in addressing Y2K *150 concerns." [FN58] The FDIC must "examine the status of Y2K testing, external data changes, and contingency planning efforts at financial institutions." [FN59] The FDIC has completed at least one on-site review at each of the 6,034 institutions it regulates, and classified less than one percent of all banks it regulates as unsatisfactory. [FN60] The FDIC is "participating with other regulators to conduct on-site Year 2000 assessments of 275 major data processing services and twelve major software vendors." [FN61] However, the FDIC's late start in developing an industry assessment remains the primary challenge facing the FDIC. [FN62]

3. Federal Reserve Board (the "FED")

The FED has expressed concerns about the integrity of transaction liquidity between branches and member institutions in light of Y2K. [FN63] Although other financial groups have considered whether a bank holiday on December 31, 1999 would ease disruptions, the FED believes a bank holiday is not warranted. [FN64] The FED has met its goals of: (1) renovating mission-critical applications and nearly completing internal testing; (2) opening mission critical systems to customers for testing; (3) progressing in its contingency planning efforts; (4) implementing a policy concerning changes to information systems; and (5) concluding an initial review of all banks subject to its supervisory authority. [FN65] The FED has commenced Phase 2 of its supervisory program and will conduct another round of supervisory reviews of Y2K testing and contingency planning. [FN66] The FED is preparing to implement a program allowing banks to test computers used for the FED *151 wire and automated clearing house transactions. [FN67] The test will allow banks to send dummy payments with a variety of post-2000 dates to help determine if they have eliminated the Year 2000 problem in their systems. [FN68]

C. Thrifts

1. Office of Thrift Supervision ("OTS")

Y2K "poses a serious dilemma for thrifts due to their heavy reliance on information systems." [FN69] The OTS takes the problem seriously and is directing considerable effort and resources to ensure that thrifts are Y2K compliant. [FN70] The OTS has been "emphatic in alerting thrifts to the Year 2000 problem, conducted a heightened assessment of the industry's Year 2000 readiness, and is in the process of making more detailed assessments." [FN71] Supervisory tools employed by the OTS include: on-site examinations, a battery of agency and inter-agency guidance, web page checklists, and a newsletter. [FN72] The OTS is actively involved in addressing the scope of the potential issues and developing strategies and remedial plans. [FN73] "[A]lthough the industry's progress is encouraging, there are still too many thrift institutions that need to move more quickly toward compliance." [FN74]

The OTS uses a number of enforcement tools including: (1) on-site supervision; (2) directives to boards of directors; and (3) required responses from board members containing key dates and milestones for correcting Y2K *152 deficiencies. [FN75] "Formal enforcement tools include supervisory agreements, cease-and-desist orders, and civil money penalties." [FN76]

In January 1998, the OTS started publishing a monthly newsletter, the Millennium, devoted to Year 2000 issues. [FN77] The OTS uses the newsletter as another way to keep the industry aware of Y2K and to urge the industry

to proactively address potential problems. [FN78]

On March 13, 1998, the OTS issued a supervisory goal for ensuring that the thrift industry becomes Y2K compliant. [FN79] Furthermore, the OTS provided guidance on examination follow-ups for thrifts assigned a less than satisfactory Y2K rating. [FN80] In March, the OTS issued guidance relating to service providers and software vendors, encouraging financial institutions to develop a due diligence process that identifies mission critical services and products and monitors procedures for establishing contingency plans. [FN81]

On April 10, 1998, the OTS "addressed the most critical phase of the Y2K project: testing." [FN82] The OTS mandated that all thrifts "should complete testing of internal mission critical systems by December 31, 1998 and service providers should be [prepared] to test with customers by December 31, 1998." [FN83]

On June 2, 1998, the OTS Northeast regional office hosted a symposium in New York City entitled "Facing the Year 2000 Challenge Together." [FN84] The symposium reinforced the assessment, inventory, and *153 conversion/renovation stages of the Y2K process. [FN85] It also featured information on the critical testing phase and contingency planning process. [FN86] Furthermore, the OTS believes that examination efforts, active supervision of the thrift industry, and monitoring of its own compliance efforts should ensure effective remediation. [FN87] As of August, ninety-three percent of the agency's complete code modification had been completed, tested, and implemented. [FN88] The remaining systems were to be completed and implemented by December 31, 1998. [FN89] Further, by August 31, 1998, the OTS rated 93.6% of thrift institutions satisfactory. [FN90]

D. Credit Unions

1. National Credit Union Administration ("NCUA")

The NCUA is aware of Y2K conversion and has been working to ensure that every credit union will have systems in place to solve this problem. [FN91] The NCUA mandates that "credit unions must have finished assessing their systems by December 1997, and finished renovating and testing them by December 1998." [FN92] The NCUA did not anticipate any problems in meeting its self imposed deadline of September 30, 1998 for full Y2K compliance of all NCUA internal automated systems. [FN93] "The NCUA's plan for testing, repairing, and verifying its internal systems are on, or ahead of, schedule." [FN94]

*154 The NCUA is committed to outreach and education of Y2K remediation efforts. [FN95] The NCUA issued five letters to federally insured credit unions to address the Y2K problem. [FN96] The most recent letter, issued January 14, 1998, alerted credit unions of the need to ensure that individual programs and services continue to work together when processing Y2K transactions. [FN97] In addition, the NCUA sent a letter to the supervisory committees of credit unions urging them to play an active role in the oversight of the Year 2000 conversion. [FN98] Also, the "NCUA is implementing a system that requires credit union managers to certify on a quarterly basis the credit union's level of completion on each of the five phases of Y2K compliance." [FN99] Approximately ninety-two percent of all federally insured credit unions were deemed satisfactory by the NCUA. [FN100]

E. Securities

1. Securities Exchange Commission ("SEC")

The SEC has worked to "ensure widespread awareness of [Y2K] and to encourage corrective action." [FN101] The SEC subjects "all banks and bank holding companies that are publicly traded entities to filing and disclosure requirements." [FN102] The SEC issued staff Legal Bulletin No. 5 on January 12, 1998, to address public companies' disclosure of Y2K risks. [FN103] The bulletin *155 suggests that "if the borrower is a publicly-held company, the lender should include a specific requirement for delivery of all SEC filing and reports." [FN104]

Arthur Levitt, SEC Chairman, issued a mandate that publicly traded companies focus attention on Y2K disclosures. [FN105] The SEC reviewed planning, impact and risk analysis, configuration management, data conversion, testing and debugging, and contingency planning. [FN106] The SEC's Y2K approach has four components: (1) industry oversight; (2) issuer disclosure; (3) internal commission systems; and (4) investor education. [FN107] This mandate describes the types of Y2K disclosures that companies should provide under SEC rules and regulations. [FN108] Moreover, the mandate supersedes staff Legal Bulletin No. 5, revised in January 1998. [FN109] Executives expressed concern that strict compliance with Y2K disclosure requirements would run for pages. [FN110] Moreover, all publicly held banking institutions should expect strict regulatory scrutiny into disclosures concerning Y2K expenses and liability. [FN111]

F. Mortgages

1. Federal Home Loan Mortgage Corporation ("Freddie Mac")

"Freddie Mac said its seller/servicers must be compliant by December 31, 1998." [FN112] Freddie Mac also plans to have all key systems *156 Y2K compliant by December 31, 1998. [FN113] It also told lenders to be prepared for the millennium computer digital change by the end of 1998, so that they will have a full year to test the system. [FN114] Freddie Mac implemented the December 31, 1998 readiness date to allow customers a full year to evaluate the performance of their systems and business processes. [FN115] The data also allows them enough time to test their computer interfaces with their business partners. [FN116] Freddie Mac is a premiere sponsor of the Mortgage Bankers Association's inter-system readiness, as the test is Freddie Mac's only venue for testing customers. [FN117]

G. Recent Congressional Activities

1. Activities in the House of Representatives

a. House Bill Proposals

Legislators have submitted numerous bills to the House to deal with the Y2K Problem. [FN118] Two of these bills, H.R. 4355 and H.R. 4455, encourage the exchange and disclosure of information regarding the computer processing problems related to Y2K. [FN119] H.R. 4355, known as the Year 2000 Information and Readiness Disclosure Act, was signed into law by the President on October 19, 1998. [FN120] A more focused bill, the Examination Parity and Year 2000 Readiness for Financial Institutions Act, H.R. 3116, passed the House and was sent to the Senate in February 1998. [FN121] *157 President Clinton signed it into law in March of 1998. [FN122] This act "encourages Federal agencies to reach out to the private sector financial institutions to increase awareness." [FN123] It also increases the authority of the OTS and NCUA to ensure uninterrupted service to their customers. [FN124]

b. Non-legislative House activities

In addition to enacting legislation, the House continues to look deep into the Y2K problem. [FN125] "[V]irtually every insured financial institution relies on computers ... to provide for processing and updating of records and a variety of other functions." [FN126] A few examples of problems that may arise are errors in calculation of interest, automated teller machine malfunctions, security systems, and vaults. [FN127] A less direct, yet very important risk, is the possibility of a financial institution's corporate customers being unable "to manage their own Year 2000 compliance efforts successfully." [FN128] These are all serious problems facing regulators and Congress. [FN129]

Congress has recognized the extent of the Y2K problem. [FN130] The House Committee on Banking and Financial Services has noted that the Treasury's cost for its Y2K remedial program has risen to \$1.43 billion. [FN131] The Office of Management and Budget expressed concern over Y2K "problems at the Mint which recently added

nineteen more items to its *158 mission critical list.” [FN132] The Committee recognizes the problems described above, but accepts that it is responsible only for regulating agencies under its control. [FN133]

c. House Activities Relating to Small Businesses

In addition to the above actions, the House Small Business Committee held hearings on the impact of the Y2K problem on small businesses. [FN134] Suggestions to this committee include a public service advertising campaign by the government, incentives for businesses to take action, low interest business loans, tax breaks, and a Congressionally created Year 2000 Small Business Corps to help businesses focus on specific concerns. [FN135] No matter what the action, Congress needs to stay involved. [FN136]

2. Activities in the Senate

a. Senate Bill Proposals

Just as the House has been taking action on the Y2K problem, so has the Senate. [FN137] On May 5, 1998, S. 2000 was introduced to ensure that “business, financial markets, and the Federal Government are taking adequate steps to resolve the” Y2K problem. [FN138] On July 30, 1998, the Small Business Year 2000 readiness Act, S. 2372, was introduced. [FN139] It is intended to provide a pilot loan program for small businesses with Y2K problems. [FN140] In late 1997, the Computer Remediation and Shareholder Protection Act of *159 1997 (“CRASH”), S. 1518, was introduced. [FN141] It would “require publicly traded corporations to make specific disclosures in their initial offering statements and quarterly reports regarding the ability of their computer systems to operate after January 1, 2000.” [FN142] By the end of 1998, Congress still had taken no action on most of these acts. [FN143]

b. Non-legislative Senate Activities

During a Hearing on Disclosure of Year 2000 Readiness, Subcommittee Chairman Robert Bennett expressed concerns over the relationship between the Y2K problem and American optimism. [FN144] People who own long term investments are at risk if the Y2K problem is not fixed in every computer. [FN145] This is one key reason for the S. 1518 proposal. [FN146] Some investment advisors are urging investors to take the ultra-cautious approach and pull out of the market before 2000. [FN147] If everyone adopts this strategy, “the Dow would tumble dramatically,” [FN148] creating a tremendous economic downturn that the country cannot afford. [FN149] S. 1518 would allow investors to make more informed choices instead of playing a guessing game. [FN150]

c. Special Senate Committee

On April 2, 1998, Senate Resolution 208 was passed. [FN151] It established a special Senate committee to address Y2K technology problems. [FN152] This committee specifically addresses the Y2K effect on the Executive Branch, the Judicial Branch, State governments, and private sector *160 operations in the U.S. and abroad. [FN153] Its job is to make findings of fact, recommend new legislation, recommend amendments to existing laws, and propose any other appropriate actions. [FN154]

H. Present and Future Litigation

1. Types of Litigation.

Litigation concerning the Y2K problem is generally focused on three areas. The first type of litigation is based on installed systems that are not Year 2000 compliant. [FN155] The second type involves companies that are charging for the upgrades necessary to make systems Y2K compliant. [FN156] And, the third area involves preemptive suits by

consulting firms that installed non-compliant computer systems, to establish that they are not liable for upgrades. [FN157]

2. Non-compliant Systems Lawsuit

On September 10, 1998, the first case dealing with Y2K, *Produce Palace International v. Tec-America*, was settled. [FN158] The case, from a Michigan State Court, had nine separate counts. [FN159] These included breach of warranty, violation of the Magnuson-Moss Warranty Act, breach of warranty of fitness, revocation, breach of duty of good faith, negligent repair, misrepresentation, breach of contract, and violation of the Michigan Consumer Protection Act. [FN160] Produce Palace's cash registers could not recognize the year 2000 as a valid credit card expiration date. [FN161] Damages of *161 \$5 million plus legal fees were sought. [FN162] The suit was settled for \$250,000. [FN163]

3. Lawsuit Based on Fees for Upgrades to Make Systems Y2K Compliant

Another recent Y2K case is *Alan Issokson and others v. Intuit*. [FN164] It was a class action filed on behalf of thousands of licensees for return of their license fees due to the non-compliance of Quicken software versions prior to 1998. [FN165] Intuit had originally charged for upgrades of its Quicken software, but eventually agreed to provide them for free, resulting in dismissal. [FN166]

4. Lawsuit by Vendor to Prevent Suit by Retailers

A different type of lawsuit was filed by Anderson Consulting. [FN167] This lawsuit involved a vendor preemptively suing a retailer. [FN168] "Anderson asked the court to rule that it had fulfilled its contractual obligations and that it is not responsible for upgrading the system." [FN169] The possible effects of this action by Anderson are immense. [FN170] One possible effect of the retailer winning is an opening of the floodgates to more litigation. [FN171] Another possibility is that other companies will take notice of how serious vendors are about litigating this issue. [FN172] Finally, if this issue is litigated, a standard of care could be established as a guide for future litigation. [FN173]

I. Other Related Activities

In October, the Bank Administration Institute and forty United States banks released a letter to reassure consumers that banks will be, and are *162 required to be, compliant by the end of the year 2000. [FN174] In addition, President Clinton approved \$3.4 billion in emergency funds for the Y2K problem. [FN175] However lawmakers do not feel this will be enough to cover the costs. [FN176] Despite concern over the administration's actions towards the problem, lawmakers are pleased with some measures, such as the Readiness Disclosure Act, the President's Council on the Year 2000 Conversion and the endorsement of Good Samaritan behavior. [FN177] Congress has made it clear that there will be more action in the future. [FN178]

J. Conclusion

With the year 2000 rapidly approaching, the banking industry has a long way to go before it is completely compliant. Even so, the banking industry is leading the charge in the race for year 2000 compliance. Numerous developments in the banking industry emerged during 1998. Constant congressional action coupled with intense litigation will dominate the landscape for upcoming developments.

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[FN1]. See Kendrick C. Fong and David M. Nadler, *Legal Implications of the Year 2000*, YEAR 2000 NEWS (visited Oct. 5, 1998) <<http://www.dsmo.com/y2k/LEGALIMP.htm>> [hereinafter *Legal Implications*].

[FN2]. See *id.*

[FN3]. See *id.*

[FN4]. *Id.*

[FN5]. See Erich Luening, *Senators Unveil Y2K Bill*, CNET (visited Oct. 5, 1998) <<http://www.news.com:80/News/Item/0,4,26504,00.html>>.

[FN6]. See *id.*

[FN7]. See Finn Bullers and David Hayes, *Chances to Fix Problem Frittered for Decades*, KAN. CITY STAR, Sep. 27, 1998, at A18 [hereinafter *Chances*].

[FN8]. See *id.*

[FN9]. *Id.*

[FN10]. See *id.*

[FN11]. See *id.*

[FN12]. See *id.*

[FN13]. See *id.*

[FN14]. "Millenium Bug" is another term for Y2K. See *Legal Implications*, *supra* note 1.

[FN15]. See *Chances*, *supra* note 7.

[FN16]. David Greaves, *Banks and the Year 2000 Problem*, 2 N.C. BANKING INST. 390 (1998).

[FN17]. See *Revised Hearing Notice: Julie L. Williams*, 105th Cong., *available in 1998 WL 18088483* (1998) (statement of Julie L. Williams, Acting Comptroller of the Currency) [hereinafter *Revised Hearing Notice*].

[FN18]. See *id.*

[FN19]. See *id.*

[FN20]. See *id.*

[FN21]. See *id.*

[FN22]. See *Before the House Comm. on Banking and Fin Services*, 105th Cong. (Sept. 17, 1998) (testimony of Julie L. Williams, Acting Comptroller of the Currency) (visited Nov. 25, 1998) <<http://www.occ.treas.gov/y2k/ftp/release/98-96b.pdf>> [hereinafter Testimony of Julie Williams].

[FN23]. See *Revised Hearing Notice*, *supra* note 17.

[FN24]. *Id.*

[FN25]. See *id.*

[FN26]. See *id.*

[FN27]. See Greaves, *supra* note 16, at 392.

[FN28]. See *id.* at 393.

[FN29]. See *id.*

[FN30]. See Carrington Nelson, *10...9...8...7...*, NASHVILLE BANNER, Sept 17, 1997, available in, 1997 WL 14339828.

[FN31]. See Letter from Julie L. Williams, Acting Comptroller of the Currency, to Chief Executive Officers of National Banks (Sept. 14, 1998) (visited Nov. 25, 1998) <<http://www.occ.treas.gov/y2k/temfindr.pdf>> [hereinafter Letter to Chief Executive Officers].

[FN32]. See *id.*

[FN33]. *Id.*

[FN34]. See *id.*

[FN35]. See Jeff Jinnet, *Year 2000 Problem: Disclosure Obligations and Impact*, J. LENDING & CREDIT RISK MGMT., Feb. 1, 1997, available in 1997 WL 9928171.

[FN36]. See Greaves, *supra* note 16, at 402.

[FN37]. See Letter to Chief Executive Officers, *supra* note 31.

[FN38]. See *id.*

[FN39]. See *id.*

[FN40]. See *Revised Hearing Notice*, *supra* note 17.

[FN41]. See Letter to Chief Executive Officers, *supra* note 31.

[FN42]. See *Revised Hearing Notice*, *supra* note 17.

[FN43]. *See id.*

[FN44]. *See id.*

[FN45]. *See id.*

[FN46]. *See id.*

[FN47]. *See* Testimony of Julie Williams, *supra* note 22.

[FN48]. *See id.*

[FN49]. *See Revised Hearing Notice*, *supra* note 17.

[FN50]. *See id.*

[FN51]. *See* Testimony of Julie Williams, *supra* note 22.

[FN52]. *See id.*

[FN53]. *See Summary of Statement of Julie L. Williams, Acting Comptroller of the Currency* (Sept. 17, 1998) (visited Nov. 25, 1998) <<http://www.occ.treas.gov/y2k/ftp/release/98-96a.pdf>>.

[FN54]. *See* Testimony of Julie Williams *supra* note 22.

[FN55]. *FDIC Y2K News - October 1998* (visited Oct 25, 1998) <<http://www.fdic.gov/about/y2k/newsletter/y2k-1098.html>>.

[FN56]. *See FDIC and Year 2000 Computer Problem: Before the Subcomm. on Fin. Services and Tech. of the Senate Comm. on Banking, Housing, and Urban Affairs*, 105th Cong. (Feb. 10, 1998) (testimony of Jack L. Brock, Jr., Director, Governmentwide and Defense Information Systems Accounting and Information Management Division) *available in 1998 WL 8991927* [hereinafter *FDIC and Year 2000 Computer Problem*].

[FN57]. *See id.*

[FN58]. *Before the House Comm. on Banking and Fin. Services*, 105th Cong. (Sept. 17, 1998) (testimony of FDIC Inspector General) (visited Nov. 30, 1998) <<http://www.fdic.gov/publish/speeches/98spchs/sp17sep.html>>.

[FN59]. *Id.*

[FN60]. *See id.*

[FN61]. *FDIC and Year 2000 Computer Problem*, *supra* note 56.

[FN62]. *See id.*

[FN63]. *See Greaves*, *supra* note 16.

[FN64]. See Federal Reserve Press Release, Jan. 28, 1998 (visited Oct. 25, 1998) <<http://www.bog.frb.fed.us/BOARDDOCS/press/general/1998/19980128/>>.

[FN65]. See *Year 2000 Progress of the Banking and Financial Services Sector Before the Comm. on Banking and Fin. Services* 105th Cong. (Sept. 17, 1998) (testimony of Edward W. Kelley, Jr., Governor, Federal Reserve Board) (visited Oct. 25, 1998) <<http://www.bog.frb.fed.us/BOARDDOCS?TESTIMONY/19980917.htm>>.

[FN66]. See *id.*

[FN67]. See Janet Seiberg, *Fed to Test Payment System Immunity to Year 2000 Glitch*, AM. BANKER, Jan. 27, 1998, at 1.

[FN68]. See *id.* at 1-2.

[FN69]. *Thrift Supervision Office and Year 2000 Problems, Before the Subcomm. on Fin. Services and Tech. of the Senate Comm. on Banking, Housing, and Urban Affairs*, 105th Cong. (Mar. 18, 1998) (testimony of Jack L. Brock, Jr., Director, Governmentwide and Defense Information Systems Accounting and Information Management Division), available in 1998 WL 8993436.

[FN70]. See *id.*

[FN71]. *Id.*

[FN72]. See *OTS Director Seidman Says Thrifts Agency on Track for Year 2000*, OTS News Release 98-20 (Mar. 18, 1998), available in 1998 WL 131720.

[FN73]. See *Banking and the Year 2000 Computer Problem: Submission for the Record to the Comm. on Banking and Fin. Services*, 105th Cong. (Nov. 4, 1997) (statement by Ellen Seidman, Director, OTS), available in 1997 WL 16138641.

[FN74]. *Thrifts Near 90 Percent 'Satisfactory' Rating*, 1 MMILLENNIUM 8, Aug. 17, 1998 (visited Oct. 25, 1998) <<http://www.ots.treas.gov/docs/92108.pdf>> (quoting Dorothy Van Cleave, OTS National Year 2000 Coordinator).

[FN75]. See *On the Office of Thrift Supervision's Preparedness in Addressing the Year 2000 Computer Problem, Before the House Comm. on Banking and Fin. Services* (Sept 17, 1998) (testimony of Ellen Seidman, Director, OTS) (visited Nov. 25, 1998) <<http://www.ots.treas.gov/docs/87026.pdf>>.

[FN76]. *Id.*

[FN77]. See *Banking and the Year 2000 Computer Problem: Before the Subcomm. on Fin. Services and Tech. of the Senate Comm. on Banking, Housing, and Urban Affairs*, 105th Cong. (Mar. 18, 1998) (Statement by Ellen Seidman, Director, OTS), available in 1998 WL 16138641.

[FN78]. See *id.*

[FN79]. See *Thrift Supervision Office and Year 2000 Problems*, *supra* note 69 (testimony of Jack L. Brock, Jr.).

[FN80]. See *id.*

[FN81]. See *Banking and the Year 2000 Computer Problem*, *supra* note 77 (testimony of Ellen Seidman).

[FN82]. *On the Office of Thrift Supervision's Preparedness in Addressing the Year 2000 Computer Problem*, *supra* note 75.

[FN83]. *Id.*

[FN84]. *Banking and the Year 2000 Computer Problem*, *supra* note 77 (testimony of Ellen Seidman).

[FN85]. *See id.*

[FN86]. *See id.*

[FN87]. *See id.*

[FN88]. See *Thrifts Near 90 Percent 'Satisfactory' Rating*, *supra* note 75.

[FN89]. *See id.*

[FN90]. See, *93.6 Percent of Thrifts Rated 'Satisfactory,'* MMILLENNIUM (Sept. 29, 1998) (visited Nov. 30, 1998) <<http://www.ots.treas.gov/docs/92109.pdf>>.

[FN91]. See *Banking and the Year 2000 Computer Problem: Hearings on H.R. 3116 Before the House Comm. on Banking and Fin. Services.*, 105th Cong. (Sep. 17, 1998) (testimony of Norman D'Amours, Chairman, NCUA) available in 1998 WL 8991691.

[FN92]. Gwen Carleton, *State Files Falsified Credit Union Forms*, CAPITAL TIMES, July 13, 1998, at 1A.

[FN93]. See *Banking and the Year 2000 Computer Problem: Hearing Before the House Comm. on Banking and Fin. Services*, 105th Cong. (Nov. 4, 1997) (executive summary) available in 1997 WL 16138516.

[FN94]. *Year 2000 Challenge: Hearing Before the Comm. on Banking and Fin. Services*, 105th Cong. (Sept. 17, 1998) (Testimony of Norman E. D'Amours, Chairman of the NCUA) (visited Nov. 30, 1998) <<http://www.ncua.gov/news/speeches/y2ktestimony.html>>.

[FN95]. *See id.*

[FN96]. *See id.*

[FN97]. *See id.*

[FN98]. *See id.*

[FN99]. *Banking and the Year 2000 Computer Problem*, *supra* note 92.

[FN100]. See *Year 2000 Challenge*, *supra* note 95.

[FN101]. *Readiness of the US Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*, Before the Senate Subcomm. on Fin. Services and Technology, Senate Comm. on Banking, Housing and Urban Affairs, 105th Cong. (July 30, 1997) (visited Nov. 30, 1998) <<http://www.sec.gov/news/testimony/tsty1397.txt>> (testimony of Arthur Levitt, Chairman of the SEC).

[FN102]. Greaves, *supra* note 16 at 406.

[FN103]. See Wilson, Sonsini, Goodrich, & Rosati, *US: SEC Staff Advises Prompt Consideration and Disclosure of Year 2000 Problem*, BUS. MONITOR, Mar. 3, 1998, [available in 1998 WL 9017109](#).

[FN104]. William L. Harvey, *Addressing Year 2000 Credit Risk Through Loan Documentation Provisions*, 80 J. LENDING & CREDIT RISK MGMT. 66, [available in 1998 WL 13754182](#).

[FN105]. See Sarah Hewitt and Gerard R. Boyce, *SEC's Guidance on Year 2000 Disclosure*, 220 N.Y.L.J. 5 (1998).

[FN106]. See *id.*

[FN107]. See *Readiness of the United States Securities Industry and Public Companies to Meet the Information-Processing Challenges of the Year 2000* (June 1998) (visited Oct 25, 1998) <<http://www.sec.gov/news/studies/yr2000-2.htm>>.

[FN108]. See Hewitt, *supra* note 106.

[FN109]. See *id.*

[FN110]. See *id.*

[FN111]. See *id.*

[FN112]. See *In the News*, REAL EST. FIN. TODAY, ELECTRONIC ED., [available in 1998 WL 7566480](#).

[FN113]. See Freddie Mac's Year 2000 Resource Center, *Y2K News for the Primary Market*, (visited Oct. 25, 1998) <<http://www.freddiemac.com/function/y2k/seller/index.html>>.

[FN114]. See *id.*

[FN115]. See Jim Cotton, *The Strategic Business Impact of Year 2000*, 58 MORTGAGE BANKING 89 (1998).

[FN116]. See *id.*

[FN117]. See Freddie Mac's Year 2000 Resource Center, *Here's the Latest on Y2K*, (visited Oct. 25, 1998) <<http://www.freddiemac.com/function/y2k/index.html>>.

[FN118]. See *Year 2000 State and Federal Legislative Proposals and Lawsuits* (last modified Sep. 15, 1998) <<http://www.ita.org/Y2Klaw.htm>>.

[FN119]. See *id.*

[FN120]. See *Bill Summary and Status for the 105th Congress* (visited Jan. 1998) <<http://thomas.loc.gov/cgi-bin/bdquery/z?d105:SN02392:@@@L>>.

[FN121]. See *Year 2000 State and Federal Legislative Proposals and Lawsuits* (last modified Sep. 15, 1998) <<http://www.ita.org/Y2Klaw.htm>>.

[FN122]. See *Before the House Comm. on Banking*, 105th Cong. (Mar. 24, 1998) (visited Oct. 5, 1998) (statement by John Koskinen, Chairman of President's Council on the Year 2000 Conversion) <<http://www.house.gov/banking/32498kos.htm>> [hereinafter *Statement of John A. Koskinen*].

[FN123]. *Id.*

[FN124]. *See id.*

[FN125]. See *Before the House Comm. on Banking* 105th Cong. (Mar. 24, 1998) (visited Oct. 5, 1998) <<http://www.house.gov/banking/32498bro.htm>> (statement of Jack L. Brock, Jr., Director, Governmentwide and Defense Information Systems Accounting and Information Management Division) [hereinafter *Statement of Jack L. Brock, Jr.*]; *Statement of John A. Koskinen*, *supra* note 123.

[FN126]. *Statement of Jack L. Brock, Jr.*, *supra* note 126.

[FN127]. *See id.*

[FN128]. *See id.*

[FN129]. *See id.*

[FN130]. See *Opening Statement Assessing the Year 2000 Readiness of Critical Systems at HUD, Treasury, and the Federal Financial Regulatory Agencies Before the House Banking and Fin. Services Comm.* 105th Cong. (Mar. 24, 1998) (statement by Rep. James A. Leach, Chairman, House Banking and Fin. Services Comm.) (visited Oct. 5, 1998) <<http://www.house.gov/banking/32498lea.htm>>.

[FN131]. *See id.*

[FN132]. *Id.*

[FN133]. *See id.*

[FN134]. See *Before House Small Business Comm.* 105th Cong. (July 15, 1998) (statement of Fred P. Hochberg, Deputy administrator, U.S. Small Business Administration) (visited Oct. 5, 1998) <http://www.house.gov/smbiz/leg/hearings/hearing_11/hochberg.htm> [hereinafter *Statement of Fred Hochberg*].

[FN135]. See *Before House Small Business Comm.* 105th Cong. (July 15, 1998) (statement of Harris N. Miller, President, Information Technology Assoc. of America) (visited Oct. 5, 1998) <http://www.house.gov/smbiz/leg/hearings/hearing_11/miller.htm> [hereinafter *Statement of Harris Miller*].

[FN136]. *See* *Statement of Fred Hochberg*, *supra* note 135; *Statement of Harris Miller*, *supra* note 136.

[FN137]. *See Year 2000 State and Federal Legislative Proposals and Lawsuits* (last modified Sep. 15, 1998) <<http://www.ita.org/Y2Klaw.htm>>.

[FN138]. *See id.*

[FN139]. *See id.*

[FN140]. *See id.*

[FN141]. *See id.*

[FN142]. *Id.*

[FN143]. *See id.*

[FN144]. *See Hearing on Disclosure of Year 2000 Readiness* (June 10, 1998) (testimony of Robert F. Bennett, Special Committee on the Year 2000 Technology Problem Chairman) (visited Oct. 5, 1998) <http://www.senate.gov/%7Ebanking/98_06hr/061098/members/bennett.htm>.

[FN145]. *See id.*

[FN146]. *See id.*

[FN147]. *See id.*

[FN148]. *Id.*

[FN149]. *See id.*

[FN150]. *See id.*

[FN151]. *See Year 2000 State and Federal Legislative Proposals and Lawsuits* (last modified Sep. 15, 1998) <<http://www.ita.org/Y2Klaw.htm>>.

[FN152]. *See id.*

[FN153]. *See id.*

[FN154]. *See id.*

[FN155]. *See id.*

[FN156]. *See id.*

[FN157]. *See Blaise Zerega, Lawsuit Could Set Crucial Year-2000 Precedent*, CNN, Sept. 14, 1998 <<http://cnm.com:80/TECH/computing/9809/14/lawsuit-Y2K.id.g>>.

[FN158]. *See, Year 2000 State and Federal Legislative Proposals and Lawsuits*, (last modified Sep. 15, 1998)

<<http://www.ita.org/Y2Klaw.htm>>.

[FN159]. *See id.*

[FN160]. *See id.*

[FN161]. *See* Erich Luening, *First Y2K Lawsuit Filed is Settled*, CNN, Sept. 14, 1998 <<http://www.news.com:80/News/Item/0,4,26323,00.html?ow>>.

[FN162]. *See Year 2000 State and Federal Legislative Proposals and Lawsuits* (last modified Sep. 15, 1998) <<http://www.ita.org/Y2Klaw.htm>>.

[FN163]. *See id.*

[FN164]. *See id.*

[FN165]. *See id.*

[FN166]. *See id.*

[FN167]. *See* Zerega, *supra* note 158.

[FN168]. *See id.*

[FN169]. *Id.*

[FN170]. *See id.*

[FN171]. *See id.*

[FN172]. *See id.*

[FN173]. *See id.*

[FN174]. *See* Kathleen Ohlson, *Banks Offer Consumers a Y2K Checklist* (last modified Oct. 26, 1998) <<http://cnn.com/TECH/computing/9810/26/consumery2k/>>.

[FN175]. *See* Margaret Johnston and Cheri Paquet, *Clinton Inks \$3.4B Y2K Budget* (last modified Oct. 23, 1998) <<http://cnn.com/TECH/computing/9810/23/y2kclinton.idg/index.html>>.

[FN176]. *See id.*

[FN177]. *See id.*

[FN178]. *See id.*

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