Section 106 of the Bank Holding Company Act Amendments of 1970 prohibits commercial banks from “tying,” a practice which includes conditioning the availability or terms of loans or other credit products on the purchase of certain other products and services. The law does permit banks to tie credit and traditional banking products, such as cash management, and does not prohibit banks from considering the profitability of their full relationship with customers in managing those relationships.

Some corporate customers and officials from an investment bank not affiliated with a commercial bank have alleged that commercial banks illegally tie the availability or terms, including price, of credit to customers’ purchase of other services. However, with few exceptions, formal complaints have not been brought to the attention of the regulatory agencies and little documentary evidence surrounding these allegations exists, in part, because credit negotiations are conducted orally. Further, our review found that some corporate customers’ claims involved lawful ties between traditional banking products rather than unlawful ties. These findings illustrate a key challenge for banking regulators in enforcing this law: while regulators need to carefully consider the circumstances of specific transactions to determine whether the customers’ acceptance of an unlawfully tied product (that is, one that is not a traditional banking product) was made a condition of obtaining credit, documentary evidence on those circumstances might not be available. Therefore, regulators may have to look for indirect evidence to assess whether banks unlawfully tie products and services. Although customer information could have an important role in helping regulators enforce section 106, regulators generally have not solicited information from corporate bank customers.

The Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency (OCC) recently reviewed antitying policies and procedures of several large commercial banks. The Federal Reserve and OCC, however, did not analyze a broadly-based selection of transactions or generally solicit additional information from corporate borrowers about their knowledge of transactions. The agencies generally found no unlawful tying arrangements and concluded that these banks generally had adequate policies and procedures intended to prevent and detect tying practices. The agencies found variation among the banks in interpretation of the tying law and its exceptions. As a result, in August 2003, the Board of Governors of the Federal Reserve, working with OCC, released for public comment new draft guidance, with a goal of better informing banks and their customers about the requirements of the antitying provision.