



January 2019

LARGE BANK SUPERVISION

OCC Could Better Address Risk of Regulatory Capture

Accessible Version

GAO Highlights

Highlights of [GAO-19-69](#), a report to congressional requesters

Why GAO Did This Study

OCC supervises over 1,300 financial institutions, with assets under supervision totaling \$12 trillion. Weakness in supervision by federal regulators was among many factors that contributed to the 2007–2009 financial crisis, and some analyses have identified regulatory capture as one potential cause. Regulatory capture refers to a regulator acting in the interest of the regulated industry rather than in the public interest.

GAO was asked to review regulatory capture in financial regulation. This report examines the extent to which OCC (1) has policies that encourage transparency and accountability in the large bank supervision process, (2) has policies that address employees' conflicts of interest that could threaten their independence, and (3) promotes an agency-wide focus on supervisory independence and mitigating the risk of capture. GAO reviewed OCC policies, analyzed examination workpapers, and interviewed supervisory staff. GAO also analyzed conflict-of-interest data, as well as OCC's enterprise risk management framework.

What GAO Recommends

GAO is making nine recommendations to OCC related to managing the risk of regulatory capture, including improving the documentation of its supervision process, checking for conflicts of interest, periodically assessing the ethics program, and expanding its approach to addressing the risk of capture across the agency, among others. OCC agreed with one recommendation, disagreed with five, and neither agreed nor disagreed with three. GAO maintains that the recommendations are valid.

View [GAO-19-69](#). For more information, contact Michael Clements at (202) 512-8678 or clementsm@gao.gov.

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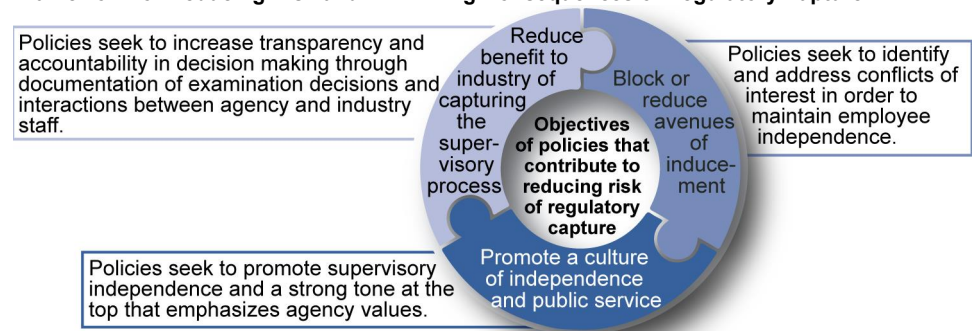
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What GAO Found

Banking regulators such as the Office of the Comptroller of the Currency (OCC) can implement policies to address the risk of regulatory capture. The objectives of these policies include reducing the benefit to industry of capturing the supervisory process, reducing avenues of inducement offered by regulated banks, and promoting a culture that values independence (see figure).

Framework for Reducing Risk and Minimizing Consequences of Regulatory Capture



Source: GAO. | GAO-19-69

OCC has some policies that encourage transparency and accountability in its large bank supervision processes; however, weaknesses in documentation requirements may make large bank supervision more vulnerable to regulatory capture. For example, examination teams are not required to document internal deliberations or communications with banks that lead to consequential decisions for a bank, such as supervisory or enforcement actions. Further, examination teams are required to delete drafts of key documents that memorialize reviews that are part of the supervisory process. Maintaining a complete and transparent record of decision making and important communication with banks could improve OCC's ability to mitigate capture-based decisions.

OCC also has some policies to mitigate conflicts of interest, but implementation is hindered by issues related to collection and use of data and lack of program assessments. For example, when staffing a bank examination team, OCC does not have a policy to verify that employees do not have active conflicts of interest by checking employee data. OCC also does not periodically assess the implementation of its ethics program, including policies and procedures intended to help the agency meet ethics laws and regulations. Improving data collection and assessing policies, controls, and guidance that identify and address conflicts of interest could help OCC ensure that its ethics program is operating effectively.

OCC leadership has taken some steps to demonstrate support for supervisory independence, but its approach to mitigating regulatory capture is narrow. For example, OCC only considers two factors when assessing the risk of capture: the tone of its media coverage and the extent to which examination staff rotate among banks. OCC does not analyze other relevant factors, such as employee movement to and from industry or its supervision practices, which can impact this risk. Without expanding its approach to addressing the risk of regulatory capture, OCC may be missing opportunities to identify other ways in which this enterprise-wide risk may affect the agency.

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Abbreviations

ERM	enterprise risk management
Federal Reserve	Board of Governors of the Federal Reserve System
LBS	Large Bank Supervision
MRA	Matter Requiring Attention
OCC	Office of the Comptroller of the Currency
OGE	Office of Government Ethics
OMB	Office of Management and Budget
Treasury	Department of the Treasury

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January 24, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
House of Representatives

The Honorable Al Green
House of Representatives

The Office of the Comptroller of the Currency (OCC), within the Department of the Treasury (Treasury), supervises over 1,300 financial institutions, including some of the largest in the United States, with total assets of approximately \$12 trillion as of June 2018. In our work on the financial crisis of 2007–2009, we found that banking regulators such as OCC struggled, and often failed, to mitigate the systemic risks posed by large and interconnected financial institutions and to ensure that they adequately managed their risks.¹ We have also noted that in a well-functioning regulatory system, regulators should be independent of inappropriate influence, including undue influence from the industry they are regulating.² Weakness in large bank supervision by federal regulators, including OCC, was among many factors that contributed to the financial crisis.³ Some analyses have identified regulatory capture as one potential cause of this weakness. While definitions vary, we define regulatory capture as a condition that exists when a regulator acts in service of private interests, such as the interests of the regulated industry, at the expense of the public interest, due to actions taken by the interested parties.⁴

¹GAO, *Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System*, [GAO-09-216](#) (Washington, D.C.: Jan. 8, 2009).

²[GAO-09-216](#).

³GAO, *Bank Regulation: Lessons Learned and a Framework for Monitoring Emerging Risks and Regulatory Response*, [GAO-15-365](#) (Washington, D.C.: June 25, 2015).

⁴We used this definition previously in GAO, *Large Bank Supervision: Improved Implementation of Federal Reserve Policies Could Help Mitigate Threats to Independence*, [GAO-18-118](#) (Washington, D.C.: Nov. 6, 2017). We note in that report that the literature uses multiple definitions of regulatory capture.

You asked us to examine issues related to regulatory capture in the financial services industry. This report examines the extent to which OCC (1) has policies that encourage transparency and accountability in its large bank supervision process; (2) has policies that address employees' conflicts of interest that could threaten their independence; and (3) promotes an agency-wide focus on supervisory independence and mitigating the risk of regulatory capture.⁵ This report is part of a series reviewing issues related to regulatory capture and supervisory independence among federal financial regulatory agencies.⁶

To address our objectives, we took the following steps:

- To examine the extent to which OCC has policies that encourage transparency and accountability in its large bank supervision process, we reviewed OCC's policies for conducting targeted examinations of large banks and documenting examination findings and bank communications. We also reviewed documentation from a nongeneralizable sample of three large bank examinations, selected based on factors that included the examination's subject matter and resulting corrective actions. We interviewed OCC officials and a randomly selected, nongeneralizable sample of staff responsible for supervising large banks. We conducted 17 individual interviews and 11 group interviews, and we interviewed 69 large bank supervision employees in total.
- To examine the extent to which OCC has policies that address employees' conflicts of interest that could threaten their independence, we reviewed OCC's conflict-of-interest policies and procedures, relevant statutes, and regulations. Additionally, we analyzed data on conflict-of-interest determinations by ethics officials based on financial disclosure forms filed by supervisory staff from 2011 through 2017. We also interviewed OCC ethics officials about how the agency collects data on conflict-of-interest determinations. We determined that OCC's conflict-of-interest data were sufficiently reliable for our purposes of analyzing compliance with ethics policies and guidance by reviewing documentation on how conflict-of-interest

⁵The concept of regulatory capture can be broadly applied to any regulated industry. This report focuses on regulatory capture by the financial industry of bank examiners and other supervisory staff.

⁶The first report in the series focused on the Board of Governors of the Federal Reserve System. See [GAO-18-118](#).

determinations were reviewed and stored and by interviewing OCC ethics officials.

- To examine the extent to which OCC promotes an agency-wide focus on supervisory independence and mitigating the risk of regulatory capture, we reviewed OCC's strategic plan and documentation on training and performance management policies. We also reviewed relevant documentation from OCC's Office of Enterprise Risk Management and interviewed agency officials on OCC's approach to enterprise risk management (ERM) and how the agency mitigates the risk of regulatory capture within its ERM framework.

For all three objectives, we assessed OCC's policies against relevant federal internal control standards.⁷ Appendix I provides more detail on our scope and methodology.

We conducted this performance audit from April 2016 to January 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Banking Regulators and Regulatory Capture

Some experts argue that banking regulators may be particularly susceptible to regulatory capture.⁸ Reasons for this include the size and profitability of regulated banks and their ability to offer regulatory staff attractive employment opportunities.⁹ In addition, the banking industry has influential trade associations that can lobby for their interests and

⁷GAO, *Standards for Internal Control for the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁸For example, see Daniel Hardy, *Regulatory Capture in Banking*, IMF Working Paper, WP/06/34 (International Monetary Fund, January 2006).

⁹At the end of 2017, banks and thrifts supervised by OCC made \$106 billion in profits and employed 1.3 million people. Figures are based on GAO analysis of data on depository institutions provided by the Federal Deposit Insurance Corporation's Statistics on Depository Institutions.

participate in public debate on regulatory measures. Experts generally agree that capture is a potentially significant threat to an agency's efforts to regulate industry effectively.¹⁰ For example, bank regulator employees who are captured may make supervisory decisions that inappropriately benefit the banks they regulate by overlooking risky practices or not imposing appropriate penalties. Our 2017 report identified a broad set of factors that could threaten the independence of banking regulators and increase the risk of capture by banks.¹¹ These factors include information asymmetry and cultural capture between the regulator and regulated; frequent movement of personnel between the two ("revolving door"); certain agency funding structures (e.g., some regulators are funded through fees paid by regulated firms); and external political pressures.¹²

To respond to risks such as regulatory capture, *Standards for Internal Control in the Federal Government* indicates that agencies should apply the principles of internal control through control activities, including policies and procedures.¹³ To aid in our assessment of OCC's response to the risk of regulatory capture, we operationalized theoretical economic literature on preventing collusion into three core objectives, each of which addresses a different aspect of an agency's response to the risk of regulatory capture: (1) reduce the potential benefits to industry of capturing the supervisory process; (2) block or reduce avenues of inducement; and (3) promote a culture that values independence and public service (see fig. 1).¹⁴ We also reviewed federal internal control standards and academic literature to identify specific control activities that

¹⁰For example, see D. Carpenter and D. Moss (eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York, N.Y.: Cambridge University Press, 2014).

¹¹See [GAO-18-118](#).

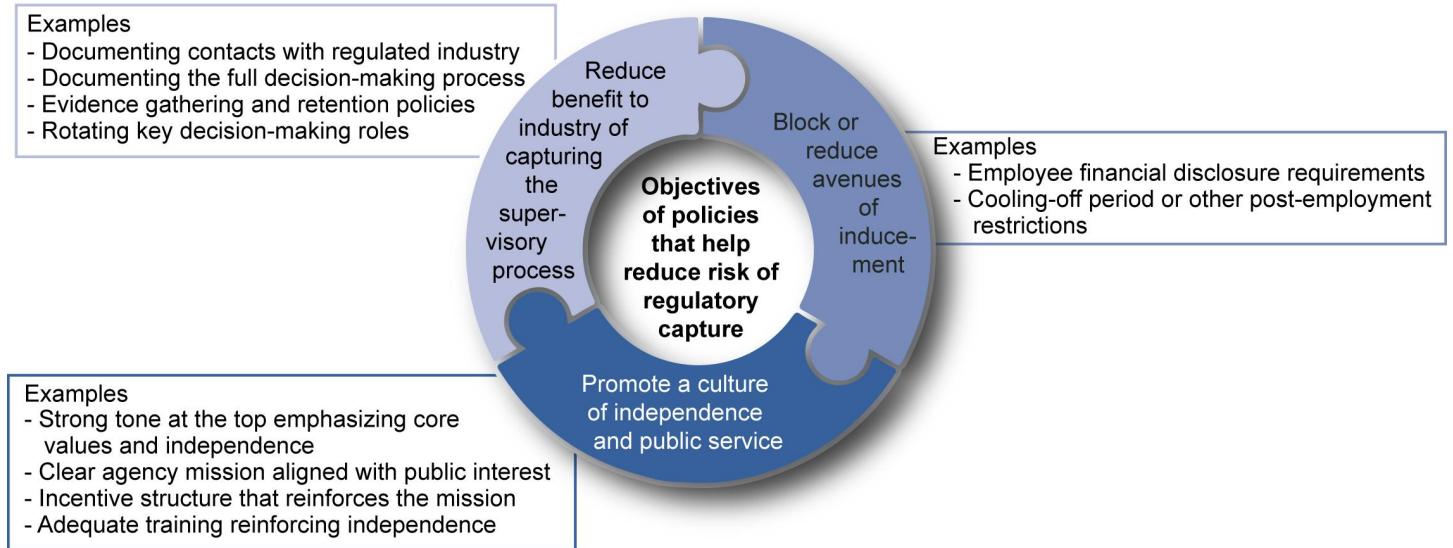
¹²Information asymmetry refers to circumstances in which regulators depend on regulated firms for information, such as specialized knowledge and financial data, and may be unable to view that information skeptically. Cultural capture refers to a situation in which shared cultural values between employees of the regulating agency and the regulated institution may cause supervision to be less objective. Some studies indicate that regulators come to value relationships developed through repeated interactions and may avoid making decisions that could harm those relationships. See [GAO-18-118](#) for a review of literature on factors that may contribute to regulatory capture.

¹³[GAO-14-704G](#).

¹⁴For a review of the theoretical literature on regulatory capture and related problems of collusion, see Jean-Jacques Laffont and Jean-Charles Rochet, "Collusion in Organizations," *The Scandinavian Journal of Economics*, vol. 99, no. 4 (1997).

agencies can use to respond to the risk of regulatory capture.¹⁵ We discuss these control activities and how they address the three core objectives below.¹⁶

Figure 1: Policy Objectives and Examples of Policies That Help Reduce Risk of Regulatory Capture



Source: GAO. | GAO-19-69

Reduce benefits to industry of capturing the supervisory process. Agencies can help reduce the risk of industry capturing bank supervision by implementing policies that reduce the value to industry of capturing agency staff. These policies can limit the effect any one individual can have on an examination by, for example, requiring layers of review to help ensure that decision making is not concentrated with a single employee. They also include steps in the examination process to increase the likelihood that an agency will identify an examiner whose decisions are industry-biased. The agency can accomplish these goals by implementing policies to increase transparency and accountability in the decision-

¹⁵See [GAO-14-704G](#) for federal internal control standards. For academic literature on regulatory capture, see for example, Carpenter and Moss (eds.), *Preventing Regulatory Capture* and S. Pagliari, *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture* (United Kingdom: Grosvenor House Publishing, Limited, 2012). Also, see [GAO-18-118](#) for a review of literature on factors that may contribute to regulatory capture and strategies for mitigating it in banking supervision and regulation.

¹⁶For additional information on the methodology used to develop the three policy objectives, see app. I.

making and work processes, particularly by focusing on decisions that affect industry profitability and interactions between agency and industry staff. The policies can include

- layers of review that include individuals with differing perspectives, incentives, and relationships with industry;
- processes to help make supervisory decisions and rationale transparent to lower-level staff, with appeal rights for lower-level staff who believe a decision is biased;
- documentation of the full decision-making process for consequential decisions, including the retention of divergent views and the rationale and evidence used to resolve any divergent views;
- rotation of staff in key decision-making roles, so as to mitigate the impact of any one employee;
- controls to help ensure that management cannot override internal controls relevant to capture;
- documentation of contacts with the regulated industry (both routine regulation-related contact and unsolicited contact by industry in an attempt to influence the regulator).

Block or reduce avenues of inducement. Agencies can also seek to block or reduce industry’s ability to offer regulators inducements—such as future employment opportunities—in exchange for preferential treatment. However, these strategies are generally difficult to implement and may be too narrow in scope to adequately protect the agency from capture. For example, because regulators must interact with the regulated industry, contact between the two cannot be fully barred. Similarly, too many restrictions on financial holdings and allowable career paths can restrict the pool of talent available to the regulator. Nonetheless, some policies can reduce avenues of inducement, including the following:

- prohibiting employees from holding a direct financial interest in a regulated entity, including recusing those who are exposed to the conflict of interest;
- monitoring employees’ financial holdings through disclosure requirements; and
- instituting cooling-off periods—which bar certain employees from employment at or representation before their former agencies—or other post-employment restrictions.

Promote a culture that values independence and public service.

Additionally, agencies can mitigate the risk of regulatory capture by promoting a focus on their mission to serve the public interest and their values of transparency, accountability, and supervisory independence. Some avenues to do this include

- cultivating a culture of public service;
- ensuring that the agency's mission is clear and well aligned with the public interest;
- having a strong, clear tone at the top that emphasizes the agency's core values;
- establishing incentive structures (such as in pay and promotion decisions) that reward employees who demonstrate a commitment to the public interest, independence, and agency mission; and
- providing adequate staff training to support individuals' abilities to execute their duties in an independent manner in line with the public interest, particularly for those coming from regulated industries.

OCC's Large Bank Supervision

OCC charters and supervises national banks, federal savings associations (also known as federal thrifts), and federal branches and agencies of foreign banks. In its supervisory role, OCC is authorized to examine banks and take supervisory and enforcement actions against banks that do not comply with laws and regulations or that otherwise engage in unsafe or unsound practices.

OCC's Large Bank Supervision (LBS) business unit supervises the largest and most complex national banks in the United States.¹⁷ As of March 2018, LBS had approximately 720 examiners to oversee 20 banks whose OCC-supervised assets totaled approximately \$10.1 trillion, or about 86 percent of national banking assets.¹⁸ LBS's senior management

¹⁷OCC has organized its supervision into three programs: large bank supervision, midsize bank supervision, and community bank supervision.

¹⁸LBS also includes International Banking Supervision, which supervises foreign banking organizations operating in the United States and whose OCC-supervised assets total approximately \$400 billion. For the purposes of this report, we focused on bank examination teams in national banks not supervised under the International Bank Supervision business unit.

consists of a senior deputy comptroller, four deputy comptrollers, and one examiner-in-charge per large bank. Other LBS staff involved in supervision include team leads, bank examiners, and specialists (known as lead experts) who work across multiple large banks.

Federal statute requires OCC's examination teams to conduct a full-scope, on-site examination of each of their supervised banks at least once every 12 months, a period known as the supervisory cycle.¹⁹ To comply with this requirement, LBS examination teams conduct multiple targeted examinations throughout the year.²⁰ These examinations focus on a particular bank product, function, or risk.²¹ Because issues affecting a bank product may have implications for several risk categories, examinations assess controls and processes for each applicable risk category. Conclusions from examinations are memorialized within OCC in final conclusion memorandums and communicated to the bank in supervisory letters.

LBS also performs ongoing supervisory activities throughout the supervisory cycle to assess risks to the safety and soundness of a bank on an ongoing basis. Ongoing supervision activities by large bank teams include periodic communication with management regarding areas of concern and identification of significant issues affecting the kinds of examinations that the teams will conduct during future supervisory cycles. OCC officials told us that supervisory conclusions generated from ongoing supervision activities could result in changes to the OCC supervisory strategy, regulatory ratings, or risk-assessment conclusions for the bank.²²

¹⁹See 12 U.S.C. § 481; 12 U.S.C. § 1820(d).

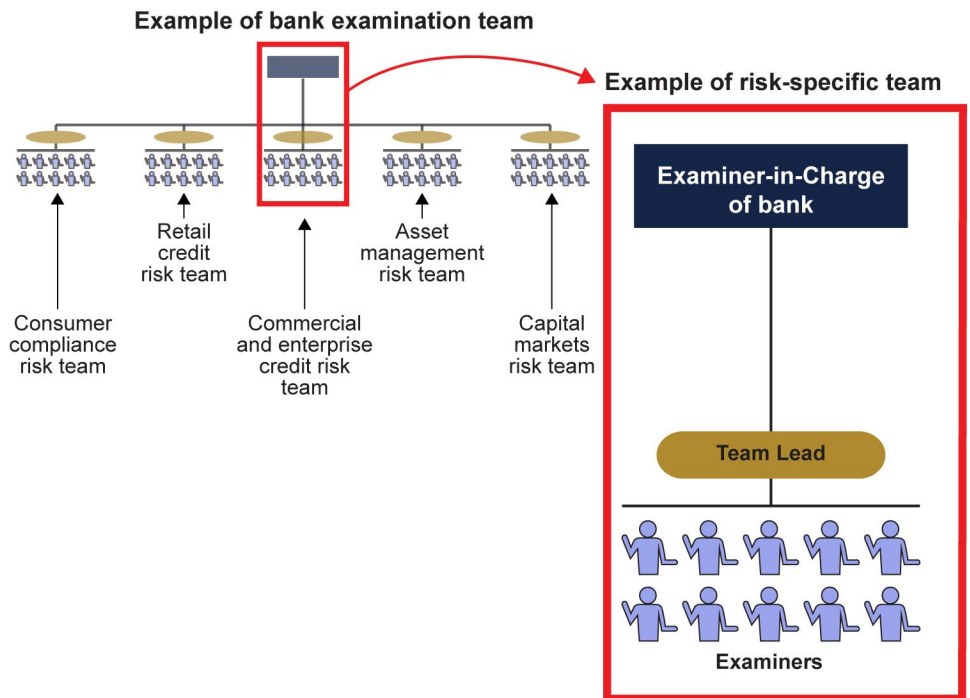
²⁰For the purposes of this report, we refer to targeted examinations as examinations. Each examination team must provide a report of examination to the bank's board of directors at least once during every supervisory cycle. A report of examination conveys the overall condition and risk profile of the bank, risk ratings assigned by the regulator, and examination activities and findings during the supervisory cycle.

²¹OCC has defined eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. Furthermore, examinations may cover specialty areas such as municipal securities dealers.

²²A final supervisory letter communicating conclusions is required for all ongoing supervision activities that result in significant findings or in the identification of a supervisory concern.

Large bank examination teams are assigned to specific banks and are housed in OCC offices or embedded on-site with banks. They consist of smaller teams of examiners who focus their supervisory activities on particular risks that could impact the bank’s safety and soundness, such as capital market and consumer compliance risks. See figure 2 for an example of the structure of an OCC team dedicated to supervising a large bank.

Figure 2: Example of an Office of the Comptroller of the Currency Large Bank Team



Source: GAO analysis of Office of the Comptroller of the Currency information. | GAO-19-69

When examiners identify supervisory concerns during examinations or ongoing supervision activities, they can address them in several ways depending on the severity of the issue. According to OCC policy, these supervisory actions include the following:

- **Matters Requiring Attention (MRA)** involve significant issues and communicate OCC’s concern about a bank’s practices that deviate from sound governance, internal controls, and risk management principles, or that result in substantive noncompliance with laws and regulations. Examiners must communicate MRAs to a bank’s board of

directors and senior management in writing—for example, in supervisory letters and the annual report of examination.

- **Formal enforcement actions** involve the most severe supervisory concerns and include consent orders, cease and desist orders, capital directives, or placement of a bank into conservatorship or receivership. OCC discloses to these actions to the public.

Preventing Conflicts of Interest

Employees' individual conflicts of interest can undermine their independence in performing supervisory duties. Congress has enacted legislation intended to prevent conflicts of interest or the appearance of conflicts of interest to help ensure that federal employees act in the interest of the public.²³ Congress also created the Office of Government Ethics (OGE) in 1978 to provide direction to executive branch agencies in developing policies related to preventing conflicts of interest.²⁴ OGE oversees federal ethics programs and works with more than 4,500 agency ethics officials across the executive branch; these agency ethics officials, in turn, have the primary responsibility for directing the agencies' ethics programs and coordinating with OGE.²⁵ OGE also issues standards of conduct for federal employees and regulations that implement federal statutes intended to prevent conflicts of interest. In addition, OGE administers an annual questionnaire to gather information on executive branch agencies' ethics programs.²⁶

²³For example, a criminal conflict-of-interest statute prohibits former employees from representing another person or entity by making a communication to or appearance before a federal department, agency, or court concerning the same "particular matter involving specific parties" with which the former employee was involved while in public service. 18 U.S.C. § 207. In addition, certain senior officials are subject to a "cooling off" period and are prohibited for 1 year after leaving a senior position from representing another person or entity by making a communication to or appearing before the former employee's former agency to seek official action on any matter. 18 U.S.C. § 207(c).

²⁴Ethics in Government Act of 1978, Pub. L. No. 95-521, tit. IV, 92 Stat. 1862 (codified as amended at 5 U.S.C. app. §§ 401-408).

²⁵See 5 C.F.R. § 2638.104(a).

²⁶Executive Order 12674 (as modified by Executive Order 12731) set out 14 basic principles of ethical conduct for executive branch personnel and directed OGE to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct. OGE's Standards of Ethical Conduct for Employees of the Executive Branch regulation, 5 C.F.R. part 2635, became effective on February 3, 1993. 57 Fed. Reg. 35006 (Aug. 7, 1992).

In addition, federal agencies have issued supplemental ethics regulations that impose additional ethics restrictions on their employees. Treasury supplemental regulations include additional rules for OCC employees, such as prohibitions on employees receiving preferential terms in connection with a credit card or a loan secured by a personal residence from a regulated bank and on employees making recommendations about the acquisition or sale of securities of any commercial bank or its affiliates.²⁷ OCC Chief Counsel is the lead ethics official for OCC and has delegated many program responsibilities to the Director of OCC's Administrative and Internal Law Division and district ethics officers.

Enterprise Risk Management

ERM is a forward-looking management approach that allows an organization, such as a banking regulator, to assess threats and opportunities that could affect the achievement of its goals. ERM is also part of overall organizational governance and accountability functions and encompasses all areas where an organization is exposed to risk.²⁸ ERM can address the full spectrum of the organization's external and internal risks by understanding the combined impact of risks as an interrelated portfolio. Agency leaders are responsible for managing complex and risky missions, and ERM is a way for those leaders to manage risk across their organizations—including risks related to regulatory capture.²⁹ In 2016, the Office of Management and Budget (OMB) updated its Circular A-123, which requires all executive branch agencies to implement ERM frameworks and adjust their internal controls to align with GAO's updated *Standards for Internal Control in the Federal Government*.³⁰ OMB's

²⁷ 5 C.F.R. § 3101.108.

²⁸ Office of Management and Budget, Circular A-123: *Management's Responsibility for Enterprise Risk Management and Internal Control* (Washington, D.C.: July 15, 2016). The Office of Management and Budget has defined "risk" as the effect of uncertainty on objectives. Risk management is a series of coordinated activities to direct and control challenges or threats to achieving an organization's goals and objectives.

²⁹ We previously reported on good practices some federal agencies use to implement their ERM frameworks. These include aligning ERM with agency goals and objectives, identifying risks, assessing risks, selecting risk responses, monitoring risks, and communicating and reporting about risks. GAO, *Enterprise Risk Management: Selected Agencies' Experiences Illustrate Good Practices in Managing Risk*, [GAO-17-63](#) (Washington, D.C.: Dec. 1, 2016).

³⁰ Office of Management and Budget, Circular A-123; [GAO-14-704G](#).

Circular A-123 also discusses how internal control and ERM fit together to manage agency risks.

Effective ERM implementation starts with an agency establishing a customized ERM program that fits its specific organizational mission, culture, operating environment, and business processes.³¹ OMB Circular A-123 specifies elements that federal agencies' ERM frameworks should include and steps agencies should take to develop these frameworks. These include a planned risk management governance structure, a process for considering risk appetite and risk tolerance levels, a methodology for developing a risk profile, a general implementation timeline, and a plan for maturing the comprehensiveness and quality of the risk profiles over time. OMB defines risk appetite as the amount of risk an organization is willing to accept in pursuit of its mission. It is established by the organization's most senior leadership and serves as the guidepost to set strategy and select objectives. OMB defines risk tolerance as the acceptable level of variance in performance relative to the achievement of objectives.

OCC's Enterprise Risk Management

OCC has established an Office of Enterprise Risk Management. This office's mission is to develop an enterprise-wide program to support the identification and assessment of OCC's mission-critical risks, manage those risks, and align resources with risks. OCC formed the office in 2015, and it operates under a charter, formal operating policies and procedures, and an ERM framework. According to the charter, the office is designed to embed a culture focused on enterprise risks, and it manages these risks in a manner consistent with the agency's overall governance, policies, values, and culture, among other things. The office's functions include facilitating an agency-wide view of enterprise risks; developing and assessing adherence to a risk appetite statement; partnering with departments on enterprise risk assessments and risk responses; communicating ERM principles, activities, and key risks to educate and inform staff; and reassessing ERM processes and maturity at least annually.

The Office of Enterprise Risk Management is led by OCC's Chief Risk Officer, who reports directly to the Comptroller. The Enterprise Risk

³¹[GAO-17-63](#).

Committee meets, at a minimum, each quarter to formally discuss enterprise-wide risks.³² The Enterprise Risk Committee's functions include approving the ERM framework, including the annual OCC risk appetite statement; ensuring that strategic decisions and responses to high-priority information requests consider OCC's enterprise risk profile and risk appetite; reviewing and discussing enterprise risk assessments; and ensuring that enterprise risk mitigation actions are appropriate.

LBS Has Some Policies That Encourage Transparency in Its Supervision Process, but Documentation Requirements May Not Fully Mitigate Risk of Capture

LBS Has Some Policies That Promote Transparency and Accountability in Its Supervision Process

Policies that promote transparency and accountability in supervisory decision making can mitigate the risk of capture by helping the agency to detect capture-based actions and by reducing any one employee's ability to influence supervisory decisions. LBS has established some policies that encourage transparency and accountability in its supervisory process, including the following:

- **Supervisory strategy development.** Supervisory strategies establish the supervisory activities a large bank examination team plans to complete during an upcoming supervisory cycle. LBS policy states that in developing a supervisory strategy, examiners-in-charge and their teams should solicit and document stakeholder feedback as they review draft supervisory strategies, management should review and approve the final strategy, and examiners-in-charge must obtain approval if significant changes are made after the strategy has been finalized. These policies and procedures can improve the transparency and accountability of decisions. For example, team leads, lead experts, and deputy comptrollers must review supervisory strategies, and examiners-in-charge must document any changes

³²The Enterprise Risk Committee includes the Comptroller, Chief Counsel, Chief Risk Officer, Senior Deputy Comptroller for Large Bank Supervision, and Senior Deputy Comptroller for Enterprise Governance and Ombudsman.

from these reviews in an electronic system of record. In addition, LBS policy requires that examiners-in-charge consider certain sources of information when drafting a strategy, including supervisory ratings, the bank's supervisory history, and current economic conditions.³³

- **Rotation of staff.** OCC policy requires large bank examiners-in-charge to rotate to a different bank every 5 years and team leads to rotate positions every 10 years.³⁴ This policy can help deter banks from attempting to capture employees and helps employees maintain their supervisory independence by limiting the time employees, particularly those with key decision-making authority, spend with a particular bank.
- **Internal appeals program.** If examiners are unable to resolve disagreements with their team leads or examiners-in-charge, they can voice their concerns through the Comptroller's Internal Bank Supervision Appeals process, which could lead to an independent investigation by the OCC Ombudsman if warranted.³⁵ Concerns submitted through this process are not kept anonymous because investigators need access to all relevant facts, but OCC guidance states that OCC management is prohibited from retaliating against examiners who submit concerns. The internal appeals process can help increase the transparency of a team's decision making by giving examiners an opportunity to raise concerns outside of their supervisory chain of command and have those concerns investigated by an independent party within OCC.

³³OCC officials told us that examiners-in-charge can also use other sources of information that are not explicitly listed in policy documents to inform their strategies, such as bank customer complaints submitted to OCC's Customer Assistance Group. The Customer Assistance Group helps bank customers resolve issues with national banks and their operating subsidiaries.

³⁴OCC does not require its deputy comptrollers, who each manage a portfolio of large banks and are considered senior management in LBS, to rotate or change the group of banks they supervise. OCC officials told us that the average tenure of the current deputy comptrollers is approximately 3.5 years. OCC officials noted that team leads can serve on different risk areas within the same bank and that such a change would count as a "rotation." For instance, a credit risk team lead can serve in that position for up to 10 years and then rotate to become the asset management team lead for the same bank for another 10 years.

³⁵The OCC Ombudsman is located within the OCC Office of Enterprise Governance and Ombudsman. The Ombudsman operates independently from the bank supervision process and reports directly to the Comptroller of the Currency.

- **Independent internal reviews.** OCC's Office of Enterprise Governance and Ombudsman conducts independent internal reviews to, among other things, monitor and evaluate the implementation and effectiveness of LBS's supervisory policies.³⁶ This office makes recommendations that are meant to strengthen existing supervisory and operational processes and follows up on their implementation. This office also shares results from these reviews with examination staff and senior management. Independent internal reviews, such as evaluations of internal controls and implementation of policies, decrease the likelihood of regulatory capture because they hold employees accountable for performing their assigned responsibilities and can prevent agency staff from making capture-based decisions.
- **Examiner-in-Charge Quarterly Certification Program.** In response to Office of Enterprise Governance recommendations, LBS created the Examiner-in-Charge Quarterly Certification Program in 2017 to improve examination teams' compliance with agency policies and procedures.³⁷ The certification program requires examiners-in-charge to electronically certify that their teams complied with OCC policies during examinations, including adhering to minimum documentation requirements.³⁸
- **External reviews.** In 2013, OCC commissioned an external review by a group of international auditors to assess, among other things, the agency's supervision of large institutions.³⁹ The review resulted in several recommendations, including that the agency clarify its overall mission and strategic goals. In December 2016, OCC issued an

³⁶Examples of recent reviews include an assessment of LBS's compliance with documentation requirements and the sufficiency of its quality control and assurance processes.

³⁷From 2013 through 2018, the Office of Enterprise Governance recommended that LBS address noncompliance with its documentation standards. Furthermore, the office found that management controls over parts of LBS's examination process were insufficient, including the process for declaring required documents to be part of an examination's official record.

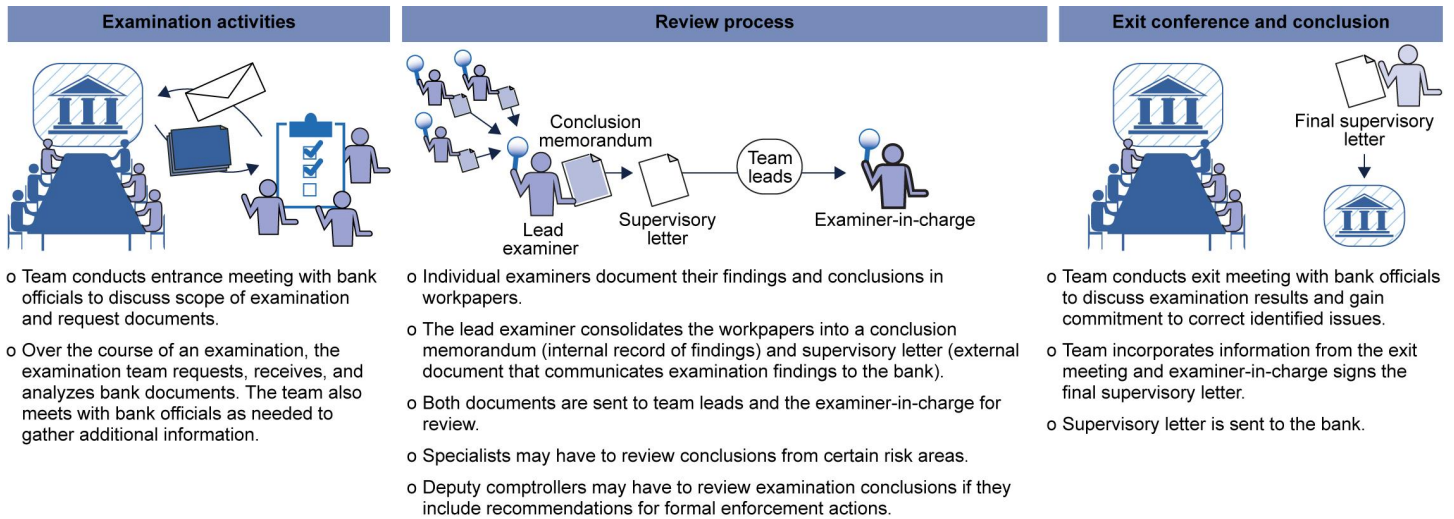
³⁸OCC officials said that as part of this certification program, LBS created tools to help assist examiners-in-charge and their teams, including a document search tool that allows users to sort through supervisory documents using a number of different filters (e.g., bank name, document type) and monitor the record-making process.

³⁹*An International Review of OCC's Supervision of Large and Midsized Institutions: Recommendations to Improve Supervisory Effectiveness*, independent review prepared at the request of the Office of the Comptroller of the Currency (Washington, D.C.: Dec. 4, 2013).

update on the implementation of the recommendations and noted it had addressed all of them.⁴⁰ Reviews by external parties decrease the risk of regulatory capture for reasons similar to those for internal reviews and offer additional objectivity.

- Review process for examination findings.** Various staff are responsible for reviewing examination teams' findings and conclusions before LBS issues a supervisory letter, which officially communicates examination conclusions and supervisory actions against a bank (see fig. 3).⁴¹ Before the team communicates findings and conclusions to a bank, the lead examiner consolidates individual examiner conclusions, observations, and findings into a single conclusion memorandum and submits it to others, including senior management and specialists, for review. These reviews are intended to allow staff with differing viewpoints and expertise to opine on the findings and to help ensure that conclusions are supported by evidence. They also provide accountability for decisions made when LBS develops examination findings and corrective actions for a bank.

Figure 3: Overview of Review Process for Examination Findings



Source: GAO. | GAO-19-69

⁴⁰ *Analysis of Implementation of 2013 OCC Bank Supervision Peer Review Project* (Washington, D.C.: Dec. 6, 2016).

⁴¹ OCC officials told us that at least two examination team members (e.g., lead examiner, team lead, or examiner-in-charge) review written conclusions prior to communicating them to a bank.

LBS Documentation Requirements Do Not Provide Reasonable Assurance That Consequential Decisions and Events Are Recorded and Preserved

LBS Does Not Require Examination Teams to Document Internal Deliberations When Making Consequential Decisions

LBS policy includes minimum documentation requirements for examinations that require staff to save several types of documents, including request letters that OCC sends to the bank asking for information, supervisory letters, and workpapers.⁴² LBS policy defines a “workpaper” as any document that contains essential information to support supervisory conclusions and does not fit into the other required document types.⁴³ Additionally, to supplement LBS examination guidance, some large bank examination teams have chosen to create their own process guides that include team-specific instructions on how to document certain events that occur during an examination.

LBS’s minimum documentation requirements for examinations do not specifically include requirements for teams to document internal deliberations when making consequential decisions that would impact the bank. For instance, LBS does not require teams to document deliberations when the team collectively discusses the conclusions of an examination and whether to issue MRAs or pursue other supervisory actions. In addition, we reviewed five large bank examination team process guides, and none of them provided guidance on documenting internal deliberations that result in key decisions to pursue supervisory actions. The majority of large bank examination staff we interviewed (63 of 69 staff members) acknowledged that internal deliberations are

⁴²The other minimum documentation requirements for examinations are scope memorandums (internal documents that discuss an examination’s objectives, assignments, and deliverables); conclusion memorandums (internal documents that summarize examination results); and bank source documents (documents authored and provided by the bank to be examined by OCC).

⁴³In reviewing LBS documentation, we observed various types of documents saved as workpapers, including examiner observations of bank practices, internal emails, and exit conference presentations.

common and noted that if differences of opinions exist among team members, examiners generally try to resolve them within the team before elevating them to senior managers, such as the examiner-in-charge.

We also reviewed documents saved under the “workpapers” category of records from three large bank examinations and found that none included evidence of teams’ internal deliberations to make critical decisions about what actions OCC should take. In particular, the workpapers we reviewed did not include evidence of how individual examiner findings were discussed, deliberated by the team, and consolidated to form the final conclusion memorandum and final supervisory letter. As a result, we were unable to observe how an individual examiner’s perspectives were shared among the team, if divergent views were raised, and how key decisions about whether to pursue corrective actions were made. For instance, workpapers for two examinations showed that examination staff had proposed MRAs that ultimately were not included in the final conclusion memorandum and final supervisory letter to the bank. In one example, the workpapers indicated that the bank started an initiative to address the identified issue and stated that another federal regulator planned to review the issue later in the year. However, the workpapers did not explain how the decision not to include the MRA was made. The remaining set of examination workpapers indicated that examiners did not identify issues, and the examination did not result in any MRAs.

Additionally, in our November 2017 report on the Board of Governors of the Federal Reserve System’s (Federal Reserve) policies to mitigate the risk of regulatory capture, we reported that each Federal Reserve Bank established documentation requirements for meetings dedicated to vetting examination findings.⁴⁴ For example, we found that one Reserve Bank required teams to use a vetting template to document changes that arose from vetting sessions, and another Reserve Bank required a scribe to attend vetting sessions to record any changes or divergent views that occurred during the meeting. In addition, current Federal Reserve guidance states that management should participate in the vetting of issues from examinations and that there should be a mechanism for ensuring that management is aware of significant issues arising from examinations.

⁴⁴[GAO-18-118](#).

Federal internal control standards state that management should design control activities to achieve objectives and respond to risks, including documenting significant events in a manner that allows for the documentation to be readily available for review.⁴⁵ LBS officials told us that examiners may not consider documents that memorialize internal deliberations about key decisions to be essential, but if they do, this information should be saved as workpapers as part of the official record. They also noted that they rely on examiners' professional judgment, common sense, and on-the-job training to allow them to determine what is essential to support conclusions. However, as previously mentioned, none of the workpapers we examined included evidence of teams' internal deliberations to make key decisions about what supervisory actions, if any, OCC should take. Consistently documenting internal deliberations that lead to consequential decisions for the bank could increase the transparency and accountability of examination teams' findings and decisions.

LBS's Record Retention Policy Requires Teams to Delete Drafts That May Document the Supervisory Review Process

The minimum documentation requirements in LBS policy also do not include requirements for teams to save drafts of key documents that memorialize the different supervisory reviews that occur during an examination. Such requirements can increase the transparency and accountability in the decision-making process. As previously mentioned, various team members review examination findings and conclusions before finalizing the conclusion memorandum and issuing the final supervisory letter to the bank. In particular, OCC officials told us that at least two examination team members (e.g., lead examiner, team lead, or examiner-in-charge) review written conclusions before the team creates the final supervisory letter. These key supervisory layers of review are intended to allow staff with differing viewpoints and expertise to opine on the findings and to help ensure that conclusions are supported by evidence. They also provide accountability for decisions made when LBS develops examination findings and corrective actions for a bank.

Additionally, LBS's record retention policy requires that examination teams retain only workpapers that support the final supervisory conclusions that are communicated to the bank, such as the final

⁴⁵[GAO-14-704G](#).

conclusion memorandum and the supervisory letter. If examination teams determine that workpapers do not support the final supervisory conclusions, LBS's record retention policy requires them to permanently delete these workpapers. In addition, the record retention policy states that drafts of a document that precede the final version, which LBS officials acknowledged could include drafts of conclusion memorandums or supervisory letters that were reviewed by team members and management, must be deleted. Documents that are not deleted are retained as the official record of LBS's examination of the bank.

As a result of this retention policy, LBS teams may not retain drafts of the final conclusion memorandum and supervisory letter that document key supervisory layers of review and changes or differing opinions that arose during the review process. For instance, none of the workpapers for the three examinations we reviewed contained drafts of conclusion memorandums and supervisory letters that showed the results of the various supervisory reviews because these versions had been permanently deleted. In one of the examinations we reviewed, file names indicated that the final conclusion memorandum was the third draft of the document and the final supervisory letter was the ninth; however, the prior drafts—which could demonstrate changes that resulted from the supervisory review and how teams ultimately decided to pursue or not pursue a supervisory decision—had been deleted.

Federal internal control standards state that management should design control activities to achieve objectives and respond to risks. The standards highlight the importance of clearly documenting all transactions and other significant events in a manner that allows the documentation to be readily available for review.⁴⁶ OCC officials stated that their teams delete drafts of these documents to comply with OCC's agency-wide records management policy and LBS's records retention policy. They added that doing so ensures that they do not retain extraneous data within their records, which makes it easier to locate documentation that supports supervisory decisions. OCC officials stated that they have not identified any increased financial costs or digital storage capacity issues associated with retaining drafts of documents or any negative effects caused by deleting prior drafts of documents. However, retaining documentation of key elements of the supervisory review process, such as prior drafts of conclusion memorandums and supervisory letters, would

⁴⁶[GAO-14-704G](#).

allow internal and external stakeholders to review prior decisions and hold examination staff and management accountable for their actions, thereby helping to mitigate the risk of regulatory capture.

LBS Does Not Require Examination Teams or Management to Record Communications with Banks That Inform Supervisory Decisions

The minimum documentation requirements in LBS policy also do not include requirements for teams to record communications with banks that inform the team's decision on whether to pursue supervisory actions. According to LBS's minimum documentation requirements, request letters and final supervisory letters are considered formal communication with the bank and are required to be documented. However, examination teams are not required to save documentation of communications with banks that inform whether or not to pursue supervisory actions (e.g., meeting minutes), unless the team determines that the documents are essential to support conclusions presented to the bank in the final supervisory letter. Of the five large bank process guides we reviewed, one provided guidance on how to document bank communications by including a template for examiners to use to document bank meetings.

None of the workpapers for the three bank examinations we reviewed included documentation of the examination teams' communications with banks other than formal documents, such as request letters and final supervisory letters. For example, none of the workpapers we reviewed included meeting minutes detailing what examination teams discussed with bank officials and steps the examination team and bank were planning to take in response to these discussions. The majority of large bank examination staff we interviewed (67 of 69 staff members) confirmed that they communicate and meet with bank officials regularly during examinations. For example, almost half of them (33 of 69 staff members) said that their teams conducted a "pre-exit conference" with bank officials prior to the formal exit conference.⁴⁷ Although a pre-exit conference is not in formal OCC guidance for conducting examinations, examination staff described it as a preliminary meeting where they discuss their examination findings, conclusions, and proposed corrective

⁴⁷Examination staff we met with noted that if bank officials accept the team's conclusions and findings at the pre-exit conference, then they would not need to conduct a formal exit conference with the bank.

actions prior to issuing the final supervisory letter.⁴⁸ Six examination staff also told us that information they obtained in this meeting could subsequently influence findings they would present in the formal exit conference and final supervisory letter. In addition, LBS policy states that written and oral communication with supervised banks is an important part of the examination process and encourages teams to hold periodic meetings with bank officials to discuss key issues and preliminary findings during an examination. However, none of the examination workpapers we reviewed included documentation of information learned or decisions made from meetings, such as entrance or pre-exit conferences.

Additionally, OCC does not have requirements for executive management to document when bank officials contact them to discuss examination findings or other supervisory concerns. LBS senior management (e.g., examiners-in-charge) and executive management (deputy comptrollers and the senior deputy comptroller for LBS) have substantial influence on supervisory priorities and decisions made throughout a supervisory cycle. For example, according to LBS policy, senior managers and executives play a key role in developing the priorities for each supervisory cycle, which influence where examination teams focus their attention. Furthermore, deputy comptrollers can influence supervision through their review and approval of all formal enforcement actions, and examiners-in-charge review and approve examination findings and conclusions before signing the final supervisory letter.

LBS examination staff in various positions told us that bank officials sometimes bypass examination staff and contact executive management directly to discuss supervisory issues. Six of 69 examination staff we interviewed stated that, while some executive managers refer the supervisory issue to the applicable examiner-in-charge, other managers prefer to deal with the bank themselves and may not discuss this communication with the examination team. Further, OCC officials told us that the extent to which they document direct contact from the bank depends on what bank officials communicated to senior managers. In our review of three sets of examination workpapers, we did not observe documentation of any type of communication between OCC senior management and bank officials, other than required documents such as final supervisory letters. Because OCC does not require executive

⁴⁸OCC officials also told us that pre-exit meetings are typically used to ensure that conclusions are based on accurate information.

management to document communications with banks that involve supervisory issues, we were unable to discern from the workpapers whether or not such communication occurred during the examinations.

LBS officials stated that they do not require examination teams or management to document communications with banks because, as previously noted, examination staff use their judgment, common sense, and on-the-job training to determine what is essential to support conclusions; therefore, they may determine that documents that memorialize communication with a bank are not essential. Moreover, OCC officials told us that they do not consider communication between examination staff or senior executives and bank officials during examinations to be related to regulatory capture. Rather, they consider these interactions as an essential part of understanding and assessing the bank's activities and, therefore, do not think it is necessary for staff to save such communication as part of the examination's official record. However, communications with banks could provide examination teams with information that can inform whether to pursue supervisory actions and, as previously mentioned, none of the examination workpapers we reviewed included documentation of bank communication other than formal letters. For example, none of the examination workpapers we reviewed included meeting minutes.

According to federal internal control standards, management should design control activities to achieve objectives and respond to risks, including documenting all transactions and significant events.⁴⁹ Documenting communications with banks that inform supervisory decisions, including communications between OCC executive or senior management and banks, would provide OCC with a more complete and transparent record of the information examiners considered in developing their final conclusions.

LBS Does Not Track or Monitor Its Use of Informal Recommendations

In addition to supervisory actions, such as MRAs or enforcement actions, examination staff can provide banks with informal recommendations, which OCC defines as suggestions to enhance practices that already meet acceptable standards. These recommendations may be provided

⁴⁹[GAO-14-704G](#).

verbally and do not require actions or responses from the bank; therefore, according to OCC officials, examiners generally do not follow up with the bank to assess whether it has implemented the recommendations. In addition, OCC officials and some LBS staff we interviewed told us that bankers have financial incentives to avoid having examination teams issue MRAs and enforcement actions (e.g., bonuses that are awarded for not receiving OCC supervisory actions). OCC policy states that informal recommendations should not be used as a graduated approach to an MRA (i.e., an issue that meets MRA criteria should not be first communicated to the bank as a recommendation and later communicated as an MRA if it is not addressed).

OCC policy also states that examiners, including those in LBS, should document informal recommendations in workpapers; however, LBS examination staff may not retain all workpapers that contain informal recommendations as part of the official record. As previously discussed, LBS's record retention policy requires that only workpapers that the examination team determines are essential to support supervisory conclusions should be saved as part of the official record. As a result, workpapers that do not support the final conclusions of the examination but may contain informal recommendations could be permanently deleted once the examination has been completed. For the three bank examinations we reviewed, we observed that some examination workpapers contained informal recommendations, but we were unable to determine if the teams developed other informal recommendations and communicated them to the bank. OCC officials also acknowledged that workpapers that contain informal recommendations to a bank may be deleted if examination staff determine that the workpaper is not essential to support supervisory conclusions.

LBS officials told us that they do not systematically track and monitor the use of informal recommendations because they are not required to do so. In addition, they stated that informal recommendations do not represent issues that could impact the safety and soundness of the bank or lead to violations of law. However, tracking and monitoring the use of informal recommendations can help ensure that LBS is aware of repeated informal recommendations and that these recommendations do not escalate into issues that impact the bank's safety and soundness.

Federal internal controls standards state that management should design internal control activities to achieve objectives and respond to risks,

including documenting transactions and other significant events.⁵⁰ The standards also state that management should establish and operate monitoring activities to monitor the internal control system and evaluate the results. Additionally, as previously noted, transparency and accountability in the decision-making and work processes can reduce the risk of regulatory capture by increasing the likelihood that inappropriate influence will be detected, thereby reducing the value of capturing agency staff. Tracking and monitoring the use of informal recommendations could help LBS to detect and mitigate regulatory capture by memorializing what was communicated to the bank and help LBS ensure that examiners are following OCC policy by not using informal recommendations in lieu of supervisory actions, such as MRAs.

OCC Has Policies to Mitigate Conflicts of Interest, but Implementation Is Hindered By Data Issues and Lack of Program Assessments

OCC Collects Some Information on Conflicts of Interest during the Financial Disclosure Review Process

OCC implements ethics policies and procedures to comply with federal statutory and regulatory requirements on preventing specified conflicts of interest.⁵¹ These policies can help limit the ability of industry to provide inducements, such as future employment or financial gain, in exchange for favorable treatment and mitigate the risk of undue influence on individual employees by individual banks. While these policies alone do not offer full protection from capture, they can limit some of the most direct forms of influence the industry might exert in an attempt to capture agency employees. For example, recusing examiners from examinations of banks where they have financial holdings reduces banks' ability to influence supervisory decisions that affect them.

⁵⁰[GAO-14-704G](#).

⁵¹This report focuses on concerns related to the criminal conflict-of-interest restrictions for current employees in 18 U.S.C. § 208, the post-employment restrictions in 18 U.S.C. § 207, and the existing procedures for promoting compliance with those restrictions. Our work does not address other federal ethics laws, such as those related to bribery and those involving the representation of foreign entities.

Various conflict-of-interest provisions apply to OCC supervisory employees, such as a general conflict-of-interest statute and investment and borrowing prohibitions (see app. II for more details). OCC employees are subject to the key federal criminal conflict-of-interest statute, which prohibits federal employees and others from participating personally and substantially in an official capacity in a particular matter in which, to the employee's knowledge, the employee or the employee's spouse, general partner, or minor child, among others, has a financial interest, if the particular matter will have a direct and predictable effect on that interest.⁵² Additionally, Treasury supplemental regulations generally prohibit OCC employees, their spouses, and minor children from directly or indirectly owning securities of any commercial bank (including national and state-chartered banks), bank holding company, or foreign bank, among others.⁵³

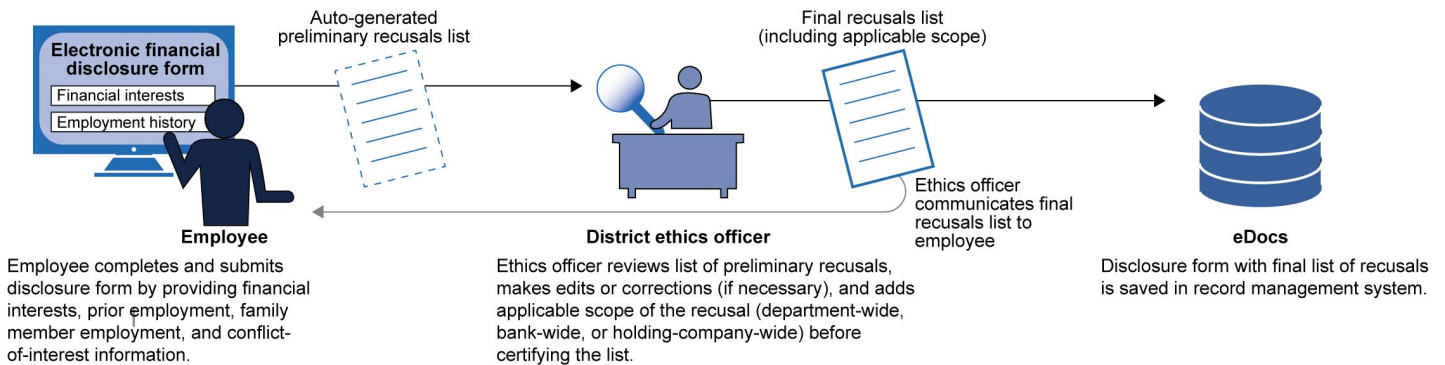
To ensure that its employees do not have conflicts of interest when they begin and as they continue working at the agency, OCC collects information on potential conflicts during the new entrant and annual financial disclosure processes.⁵⁴ The financial disclosure form requires employees to disclose information such as financial holdings, previous employment at particular financial institutions, and family employment at financial institutions. According to OCC, district ethics officials are primarily responsible for reviewing the financial disclosure forms and granting recusals from participating in examinations or supervisory activities at particular institutions, with guidance from headquarters. See figure 4 for OCC's financial disclosure review process.

⁵²See 18 U.S.C. § 208(a); 5 C.F.R. § 2635.402(a). Participation in a particular matter includes matters that involve deliberation, decision, or action that is focused upon the interests of specific persons or a discrete and identifiable class of persons. 5 C.F.R. § 2635.402(b)(3). Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter. 5 C.F.R. § 2635.402(b)(4).

⁵³5 C.F.R. § 3101.108(a).

⁵⁴Covered OCC employees are required to complete the financial disclosure form annually and include all examiners, attorneys, large bank examiners-in-charge, and deputy comptrollers.

Figure 4: Office of the Comptroller of the Currency’s Financial Disclosure Review Process



Source: GAO analysis. | GAO-19-69

OCC’s ethics office in headquarters provides guidance to district ethics officials on how to determine the appropriate scope for recusals and the extent to which an employee should be excluded from supervising certain parts of the bank. Ethics officials can scope the recusals to a specific department (e.g., mortgage and auto loan departments), the entire bank, or the entire holding company, depending on the nature of the employee’s financial holdings or the employee’s relationship with someone who has ties to a financial institution. Additionally, recusals can have end dates, as specified by OCC guidance or federal regulations. Table 1 presents selected examples from OCC’s guidance to district ethics officials on how to determine the scope of a recusal (see app. II for the complete table).

Table 1: Selected Rules from Office of the Comptroller of the Currency (OCC) Guidance to Determine Scope of Recusals

Type of conflict	Situation	Resulting scope of recusal	End date of recusal
Loans	Direct holding of a loan obtained prior to OCC employment date for primary residence loan	Mortgage department	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)
Loans	Direct holding of a loan obtained prior to OCC employment date for a nonprimary residence loan	Department/subsidiary	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)
Loans	Direct holding of a new primary residence loan obtained or refinanced after OCC employment date	Entire bank	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)
Prior employment	Filer was employee of a bank in the past 2 years and employee is a bank examiner	Entire bank	2 years from end of employment at bank
Prior employment	Filer was employee of a bank in the past year and employee is not a bank examiner	Entire bank	1 year from end of employment at bank
Family member employment	Spouse or minor child is employed by the bank in any capacity	Entire holding company	Until family member's employment with bank ends
Family member employment	Parent, adult child, or sibling is employed by the bank	Entire bank or department/subsidiary ^a	Until family member's employment with bank ends
Family member employment	Other family member (e.g., uncle, aunt, sibling-in-law, parent-in-law) is employed at a bank	Entire bank or department/subsidiary ^a	Until family member's employment with bank ends

Source: OCC. | GAO-19-69

^aThese determinations depend on the position of the relative, agency needs, and whether or not the OCC employee is a core examiner of the bank.

Federal laws and regulations include exemptions to some of the conflict-of-interest prohibitions and restrictions and permit agencies to waive some conflicts under certain circumstances. When an employee is granted a waiver, a restriction that would normally prohibit the employee from working on a certain bank is no longer applied. For example, the key criminal conflict-of-interest statute allows for waivers for individual employees if the employee's conflict is not so substantial as to be deemed likely to affect the integrity of the services the government may expect from the employee.⁵⁵ In addition, OCC allows some exceptions to its investment or borrowing restrictions. For example, OCC employees

⁵⁵See 18 U.S.C. § 208(b)(1). The penalties for acts affecting personal financial interest do not apply if the employee advises the appointing government official about the particular matter, makes a full disclosure of the financial interest, and receives in advance a written determination by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect from the employee.

are allowed to obtain new principal residence mortgage loans from an OCC-supervised bank as long as they observe a recusal from the time of initially applying for the loan.

OCC Lacks Conflict-of-Interest Information Needed to Ensure Compliance with Ethics Policies

The information OCC collects on employee conflicts of interest may not allow it to ensure that ethics policies are being followed. We analyzed the 3,622 recusal determinations made by OCC ethics officials based on LBS staff financial disclosure forms from 2011 through 2017.⁵⁶ We observed several issues with the collected information that could affect OCC's ability to determine the extent to which ethics staff are adhering to guidance and conflict-of-interest policies.

Explanation of changes to scope not consistently recorded. In reviewing the data OCC collects to track recusal determinations, we observed that ethics staff did not always document reasons for changing the scope of a recusal, which could affect OCC's ability to assess adherence to recusal guidance. For example, OCC guidance states that ethics officials should grant a holding-company-wide recusal if an employee holds a pension of any amount in a bank. This scope could be narrowed to a bank-wide recusal if the bank is not part of a holding company; it could also be further narrowed to a pension department recusal based on an ethics official's determination, which officials noted takes into account the bank's ability and willingness to fulfill its pension obligations. From 2011 through 2017, 417 recusals of LBS employees were based on employees having a bank-sponsored pension, and OCC ethics officials determined that 47 of these recusals should be narrowed from a holding-company-wide scope to a bank- or department-wide scope. Fifteen of these 47 recusal entries included explanations in the comments section about why the scope of the recusal was narrowed. However, we observed that the remaining 32 recusal entries did not contain explanations for the narrower scope, and a majority of these recusals were for employees who had pensions with banks that were part of holding companies but were given bank-wide recusals rather than holding-company recusals.

⁵⁶Individual employees can have several recusals.

According to OCC, ethics officials are not required to provide explanations or comments about how a recusal's scope is determined if the determination is consistent with standard practice or generally supported by information in the financial disclosure form; therefore, they may not always record such explanations in the data. We observed that nearly half of the recusal determinations (1,679 of 3,622) did not contain any information in the comments section. In cases where recusal determinations do not contain any explanations in the comments section, we could not determine if the change to the scope of the recusal was supported by standard practice or information provided on the form, based on the data provided. Additionally, officials noted that while all scope determinations are initially recorded on the financial disclosure form, some changes to scope are made via email after the form is filed and the determination on the form is not updated. Without consistently recording explanations for changes to the scope of recusals, OCC is unable to determine whether ethics officials are granting recusals in accordance with agency guidance.

Waivers and recusals not recorded separately. In situations where a recusal is granted in conjunction with a waiver of Treasury supplemental standards, OCC does not record the recusal and waiver separately in its data, making it difficult for OCC to assess whether policies for granting waivers are being followed. For example, Treasury supplemental standards prohibit OCC employees from owning securities of any commercial bank. However, employees may seek a waiver of this prohibition.⁵⁷ If employees obtain a waiver of the prohibition on owning bank securities, they must also be recused from working on an examination for that bank, and ethics officials are to record this recusal in their database. However, the ethics office does not document this recusal separately from its approval to waive the prohibition.

According to ethics officials, they do not record waivers of Treasury's supplemental standards separately from recusals because they have a method to identify which recusals in the data were granted in conjunction with a waiver. Specifically, ethics officials stated that they first identify entries in the recusal data of employees with holdings that are prohibited by Treasury supplemental standards, and then they examine other elements in the recusal data, such as the comments section. According to

⁵⁷ 12 CFR 3101.108(g).

ethics officials, these steps can indicate whether a recusal was granted in conjunction with a waiver of Treasury’s supplemental standards.

However, as previously mentioned, ethics officials may not always provide information in the comments section. Furthermore, because OCC’s method of identifying waivers relies on identifying recusals of employees with prohibited financial holdings, it is difficult to discern in the data if employees actually have prohibited financial holdings—and therefore are not complying with Treasury supplemental standards—or if the ethics office has reviewed the holdings and granted a waiver so that the employees may keep their holdings.

Federal internal control standards state that management should design control activities and use quality information to achieve the entity’s objectives, which can help management make informed decisions and evaluate the entity’s performance in achieving key objectives and addressing risks.⁵⁸ A key goal of the ethics program and its policies is to prevent conflicts of interest and reduce industry’s ability to influence employees by offering inducements, which can help reduce the risk of regulatory capture. Information that provides evidence of how OCC implements its ethics policies and reasons for any deviations can help the agency detect violations. Consistently recording key information, such as reasons for changing the scope of a recusal, and recording waivers separately from recusals would provide OCC with greater assurance that its staff are following ethics laws, regulations, and guidance, all of which decrease the risk of regulatory capture.

OCC Lacks a Policy to Ensure That Supervisors Check for Conflicts of Interest When Staffing Examination Teams

Ethics regulations and policies are intended to prevent OCC employees who have financial or personal connections with a bank from supervising those banks. Such regulations and policies help to reduce conflict-of-interest threats that might bias supervisory decisions or provide a source of leverage for the bank to use to gain favorable treatment. However, when staffing teams for large bank examinations and conducting other supervisory activities, OCC does not actively check if staff have conflicts of interest. After the ethics office makes a final determination about recusals, it stores the financial disclosure form in the same record

⁵⁸[GAO-14-704G](#).

management system used by LBS to save supervisory documentation. While supervisors have access to this information, OCC officials noted that OCC policy does not require supervisors to check the system for active recusals when staffing employees to bank examination teams. Rather, OCC ethics officials noted that employees are responsible for disclosing to their supervisor whether they have a conflict when receiving staffing assignments.

Many LBS staff are part of several large bank examination teams, which could increase the risk that OCC may staff an employee to a bank with which they have a conflict of interest. For instance, as of July 2018, OCC officials noted that about 17 percent of LBS staff were not dedicated to examining a specific bank; these nondedicated staff are usually experts who work across multiple bank teams or are examiners assigned to provide additional resources to a bank team. In addition, deputy comptrollers and others in management are assigned to work on a portfolio of banks and may be involved in decisions spanning across all large banks.

We previously found that the Federal Reserve has a system that automatically alerts employees who schedule large bank examinations about any conflicts when an employee is reassigned to a new bank team. Specifically, the Federal Reserve's electronic data system stores financial disclosure and other information about potential or actual conflicts for examiners at all Federal Reserve Banks.⁵⁹ This conflict-of-interest system is linked to the electronic scheduling software system, which manages staff assignments to examinations. If there is a conflict, the schedulers are alerted, which prompts discussion regarding the conflict with the employee, the employee's manager, and ethics staff, as appropriate.

Federal internal control standards state that management should design control activities to achieve objectives and respond to risks.⁶⁰ OCC ethics officials stated that they are in the process of creating a new electronic ethics database and expect to link this information with staffing assignments. Ethics officials stated that they anticipate that the new database will have additional functionality to track and review filings and potentially allow employees to file online. Officials said that they anticipate that the new database will be completed by 2021. However, until the new

⁵⁹[GAO-18-118](#).

⁶⁰[GAO-14-704G](#).

database is operational, OCC will continue to lack a policy to ensure that supervisors check for active conflicts of interest when staffing examination teams. Officials stated that OCC does not require supervisors to check for active recusals when staffing employees to bank teams because the responsibility for observing recusals rests with the employee. Furthermore, they noted that employees are responsible for ensuring that their managers are aware of any required recusals, when appropriate. However, a policy to check and document if an employee has active conflicts of interest would provide greater assurance that employees are not supervising or making policy decisions for banks in which they have a financial interest or with which they have a personal connection, decreasing the risk of regulatory capture.

OCC Collects Some Post-Employment Information, but Workpaper Review Instructions Are Outdated and Incomplete

OCC Has Post-Employment Procedures to Collect Information from Certain Departing Employees

Departing OCC employees are subject to restrictions following their employment at OCC. For example, all OCC employees are subject to federal restrictions that prohibit them from representing their new employer before OCC regarding particular matters with which they were involved at OCC.⁶¹ In addition, two categories of employees are subject to additional post-employment restrictions:

- **Senior employees.** Certain employees are subject to a 1-year “cooling-off period,” which restricts them from communicating with or

⁶¹ See 18 U.S.C. § 207(a)(1)-(2). Former OCC personnel are permanently barred from communicating with or appearing before, with the intent to influence, their former agency on behalf of their new employer for particular matters on which they were personally and substantially involved, which involved a specific party or parties at the time of such participation. For two years after leaving federal service, former personnel may not communicate with or appear before, with the intent to influence, their former agency on behalf of their new employer on particular matters that were pending under their official responsibility in their last year of service, which involved a specific party or parties at the time it was pending, even if the employee was not directly involved with the matter.

appearing before OCC on behalf of their new employer on any matter with the intent to influence, including matters that they had not previously worked on or supervised.⁶² Per federal law, applicability of this additional restriction is based on pay.⁶³ This restriction does not prohibit senior employees from working for a bank, other financial institution, or bank consulting firm directly after being employed at OCC.

- **Senior examiners.** Certain employees are subject to a 1-year compensation ban, which prohibits them from accepting compensation as an employee, officer, director, or consultant from a depository institution or holding company if they served as the senior examiner for that institution or holding company for 2 or more months during the examiner's final 12 months of employment.⁶⁴ OCC stated that senior examiners are examiners-in-charge of large or midsize institutions and certain examiners in a supervisory position assigned to a large or midsize institution for which they have continuing responsibility.

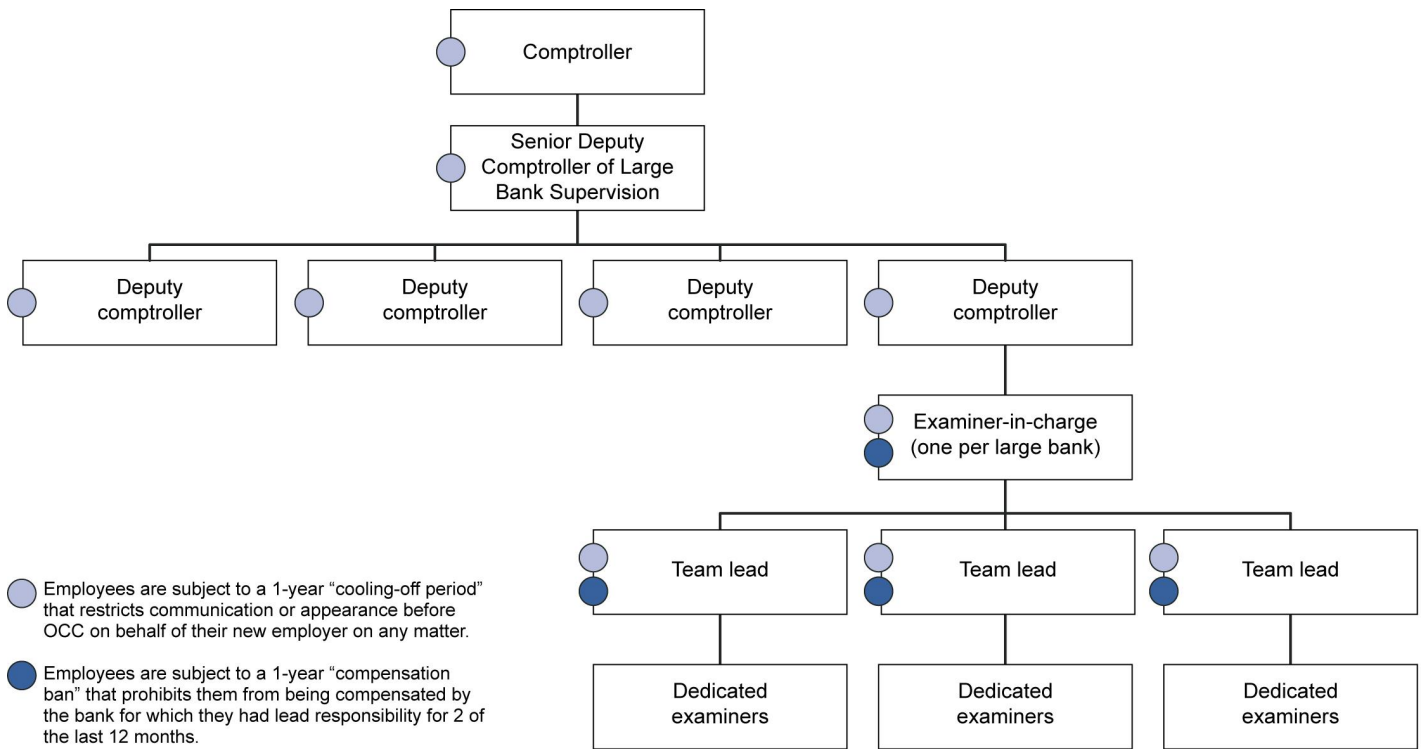
See figure 5 for the types of positions within LBS that are affected by these restrictions.

⁶²18 U.S.C. § 207(c).

⁶³At OCC, "senior employees" include the Comptroller and any other employee whose basic rate of pay at the time they leave federal employment is equal to or exceeds 86.5 percent of level II of the Executive Schedule. As of January 2018, that annual rate of pay was \$164,004.

⁶⁴See 12 U.S.C. § 1820(k); 12 C.F.R. pt. 4.

Figure 5: Positions within the Office of the Comptroller of the Currency’s Large Bank Supervision Subject to Additional Post-Employment Restrictions



Source: GAO analysis. | GAO-19-69

Through bank employment questionnaires, OCC collects information on where employees go after they leave the agency if they work for particular financial institutions. Specifically, OCC requires that a questionnaire be completed by all employees who are departing to work for any bank, savings association, or holding company. OCC also requires that employees who have entered into oral or written agreements to work for or provide consulting services to a specific bank or savings association or one of their affiliates should fill out the questionnaire. From 2015 through 2017, 86 employees departing for a bank, savings association, or holding company submitted bank employment questionnaires to the ethics

office.⁶⁵ Seventy-six of the 86 questionnaires indicated departures to a bank, and none indicated departures to consulting firms.⁶⁶

The questionnaire includes questions about how the employee was first contacted by the new employer, how the employee was first made aware of the new position, and the name of the new employer. The employee's supervisor or rating official and an ethics official then review the questionnaire prior to the employee's departure. Fifty-nine of the 86 employees who submitted a questionnaire from 2015 through 2017 indicated that they found out about new opportunities at the bank through personal connections or communications initiated by bank officials, including presidents, vice presidents, and chief executive officers. The remaining 27 employees' questionnaires indicated that employees learned of new opportunities at the bank through their job search online.

If supervisory staff accept a position with a bank they examined, OCC is to conduct workpaper reviews before they leave to determine if this future job opportunity undermined their supervisory decisions while at OCC.⁶⁷ OCC officials told us that these reviews are initiated if employees note in the bank employment questionnaire that they accepted a position at a bank that they recently examined or for which they had supervisory responsibility.⁶⁸ An examiner who works on a similar area but covers

⁶⁵From 2015 through 2017, 610 employees left OCC for reasons other than retirement. In addition to the bank employment questionnaire, OCC uses an employee exit survey to collect information on where departing employees work after they leave the agency. The exit survey does not capture the names of employers; rather, it captures categories of employers, including "non-profit organizations," "state or local government agencies," "private sector businesses," or "other federal agencies." According to OCC, of the 610 employees who departed from 2015 through 2017, 155 completed the survey and about 65 percent of these employees went to work for the private sector.

⁶⁶Other destinations of former OCC employees that were listed on the questionnaires include investment banks and bank holding companies.

⁶⁷OCC can conduct workpaper reviews on work by examiners, examiners-in-charge, or deputy comptrollers. Similarly, we previously found that the Federal Reserve reviews employees' workpapers from the previous 12 months if they leave for a firm they examined during that period. See [GAO-18-118](#).

⁶⁸For OCC to initiate a workpaper review for an employee leaving to a consulting firm, that employee must disclose that the bank they recently examined is a client of the consulting firm. OCC stated that it does not plan to expand workpaper reviews to include employees leaving for consulting firms where potential clients have not been specifically identified or where the clients may be banks that the employee has not recently examined. In such cases, ethics officials said, the risk of potential collusion on examiner findings between the examiner leaving for a consulting firm and a bank that is the client of that firm appears minimal or nonexistent.

another bank conducts the review. That examiner summarizes the results of the workpaper review in a form that asks if decisions made were supported, if judgments were unduly beneficial to the bank, and if there was any evidence of undue influence over staff members' work. If the workpaper reviews include unfavorable conclusions, management determines if the matter and employee should be referred for investigation to the Treasury Office of Inspector General, if the bank should be reexamined, or if the area of the bank upon which conclusions were based should be reexamined.⁶⁹ One of the 86 questionnaires and 1 of the 16 workpaper reviews from 2015 through 2017 noted possible violations of ethics standards, and the employees were referred to the Treasury Office of Inspector General as a result.

OCC's Workpaper Review Procedures Are Outdated, and Its Workpaper Review Form Is Incomplete

OCC's instructions for completing workpaper reviews consist of a workpaper review form—the document on which staff are to record findings from the review—and workpaper review procedures, which describe how and when to perform a review. However, OCC's workpaper review procedures are outdated and are not referred to in any documents specifically for OCC employees departing the agency. OCC last updated the procedures in 1999, and the procedures refer to obsolete offices and software systems the agency no longer uses. Additionally, while OCC has posted a blank copy of the workpaper review form on its internal website, it has not posted a copy of the workpaper review procedures.

Ethics officials stated that they have not updated the workpaper review procedures or posted them on the website because the workpaper review form incorporates the content of the procedures. However, the workpaper review form does not include all key information from the procedures, including time frames to complete the review and actions supervisors should take following unfavorable results of a workpaper review. In addition, the form focuses on reviewing the work of examiners and does not include information on how OCC officials should conduct a workpaper review for deputy comptrollers, which the procedures cover. In particular, the procedures note that a review should be conducted on work products created by deputy comptrollers if they accept a position with a bank that

⁶⁹If a workpaper review for an examiner results in unfavorable conclusions, a secondary review is done. If the two reviews come to the same conclusion, then management determines if the steps listed above should be taken.

was under their supervisory responsibility. The procedures also state that additional types of interactions with the bank should be considered, such as banker outreach meetings and informal banker discussions, when conducting this kind of review for a deputy comptroller. This information is not specified in the workpaper review form. Lastly, while the procedures and workpaper review form state that a workpaper review is required in all situations where an employee leaves to work for a bank if that employee worked on the “last examination of the bank,” only the procedures provide a definition for what constitutes the “last examination of the bank.”⁷⁰

Of the 86 bank employment questionnaires submitted from 2015 through 2017, 3 questionnaires did not result in a workpaper review, even though the employees stated that they worked on matters involving a bank within a year before leaving to work for that same bank. In one example, a bank examiner left to work for a bank 7 months after participating in a review of that bank. The ethics official who reviewed the questionnaire commented on the form that a workpaper review was not needed because the employee did not have supervisory responsibilities for that bank. This explanation is inconsistent with the workpaper review procedures, which require a review in all situations where an employee leaves to work for a bank if that employee worked on supervisory activities conducted in the last 12 to 18 months for a community bank and the last supervisory cycle (generally the last 12 months) for a large bank. This questionnaire indicated that neither the ethics official nor the employee’s supervisor verified whether the examination in which the employee participated was the last examination of that bank, as defined in the workpaper review procedures. The comments in the other two cases also did not indicate if the supervisor or the ethics official who reviewed the questionnaire determined whether or not the employee worked on the last examination of the bank.

Federal internal control standards state that management should implement control activities through policies, including periodically reviewing procedures for continued relevance, and internally communicating necessary quality information to enable personnel to perform key roles in addressing risks.⁷¹ OCC’s workpaper reviews can

⁷⁰According to the procedures, “last examination of the bank” is defined as “supervisory activities conducted in the last 12 to 18 months for a community bank and the last supervisory cycle (generally the last 12 months) for a large bank.”

⁷¹[GAO-14-704G](#).

help OCC to address the risk of regulatory capture by assessing if future employment with a bank unduly influenced the supervisory decisions made by employees. Revising the instructions for conducting workpaper reviews to ensure that they are complete would provide greater assurance that OCC staff are conducting the required reviews. Additionally, communicating the updated instructions to staff would provide more visibility of workpaper reviews and the consequences of a negative review (e.g., a potential investigation by the Treasury Office of Inspector General), which could deter employees from making capture-based decisions.

OCC Does Not Regularly Assess the Effectiveness of Its Ethics Program

OCC's ethics office does not routinely assess the various components of its ethics program—including the financial disclosure process—to determine the effectiveness of its policies, guidance, and controls in preventing conflicts of interest. For example, although the ethics office has the ability to create a dataset by extracting information directly from financial disclosure forms in its document management system, ethics officials said that they do so only as needed and do not analyze the data to assess adherence to recusal guidance and federal ethics statutes and regulations.⁷² Instead, ethics officials stated that the office relies on other measures to ensure that recusals and waivers are granted consistent with guidance, namely periodic conference calls with district offices about program updates and annual updates from the district offices on employees who are subject to certain recusals. However, these steps do not provide the ethics office with a comprehensive overview of the extent to which its guidance and ethics laws and regulations are implemented across the district offices. Additionally, the ethics office notifies senior management about the percentage of financial disclosure reviews completed within a certain time frame. The ethics office also provides senior management with annual attestations from managers stating that they followed up with employees who did not complete financial disclosure forms or ethics training and consulted with ethics officials when

⁷²Prior to 2016, OCC's ethics office used the Ethics Tracking System to gather financial disclosure forms and generate recusal notices. Ethics officers were required to manually input information recorded on forms into the system. In 2016, the ethics office discontinued the use of this system and created an electronic financial disclosure form that allows the office to extract data if needed, bypassing the need for manual entry.

their employees had conflicts of interest.⁷³ However, these responses are self-reported and do not measure how well program guidance has been followed or policies have been implemented.

In 2015, the ethics office conducted a self-assessment of its administration of the ethics program, but it did not analyze its conflict-of-interest data as part of the assessment and did not document the results.⁷⁴ To complete the assessment, OCC asked district ethics officers to provide, among other things, the number of financial disclosure filers who received extensions or were late in filing. To assess the consistency of advice and counsel, OCC also asked the district officers to provide names of individuals who received specific recusals and waivers and stated that it would review a sample of these individuals' records to ensure that written counsel and communication were consistent. However, the ethics office did not issue any written findings from this self-assessment—including any comparisons of responses or results from its sampling—because ethics officials stated that they were satisfied with the district ethics offices' answers to their questions.

External parties, such as OGE and Treasury, also have assessed OCC's ethics program for adherence to ethics laws and regulations, but not on a regular basis. OGE conducted its most recent review of OCC's ethics program in 2006 and found that the ethics program met the requirements of ethics laws and regulations.⁷⁵ Treasury's Office of the General Counsel is responsible for overseeing OCC's ethics program, but ethics officials at each bureau under Treasury are responsible for administering their respective ethics programs, and Treasury is not required to perform

⁷³OCC's fiscal year 2014 Balanced Scorecard indicated that an agency goal was to have 95 percent or more initial reviews of annual confidential and public financial disclosure reports completed within 60 days of the filing deadline. The OCC Balanced Scorecard is a prioritizing tool used by management to focus leaders and employees on actions and outcomes that represent success to the agency. Officials stated that the timeliness goal was removed from the scorecard after 2014 but is still part of the Chief Counsel's office performance metrics.

⁷⁴In its 2015 OGE questionnaire, OCC indicated that it had conducted a self-assessment of the administration of its financial disclosure program and the consistency of ethics advice and counsel.

⁷⁵The systems and processes that OGE reviewed in 2006 are no longer in place at the agency. In 2016, OGE carried out its most recent review of Treasury's ethics program, but this review focused on the administration of the ethics program at Treasury by headquarters ethics officials, not the ethics officials at the bureaus under Treasury.

routine audits of these programs.⁷⁶ In 2013, Treasury's Office of Inspector General conducted an investigation of OCC's ethics office in response to a whistleblower's claims that OCC failed to comply with federal statutory and regulatory requirements to notify certain senior employees about post-employment restrictions in a timely manner.⁷⁷ The investigation found that lapses in OCC's procedures constituted violations of the law and that the lack of notification had continued since 2011 because ethics officials did not consider the issue to be a priority at the time. OCC corrected its procedures, but the Office of Inspector General said it was concerned about the ethics office's decision to not prioritize issues that had subsequently resulted in noncompliance with ethics laws. In 2014, Treasury's Designated Agency Ethics Official conducted Treasury's most recent assessment of OCC's ethics program and found that the program exhibited positive efforts beyond technical compliance requirements. Treasury's Designated Agency Ethics Official suggested that OCC improve the reporting relationship between district ethics officials and headquarters, its sampling of financial disclosure forms to ensure thorough and proper review, and its recording of all ethics advice to promote consistency across the agency, among other things.

OGE regulations state that, as of January 1, 2017, agency ethics officials are responsible for periodically evaluating agency ethics programs, among other responsibilities.⁷⁸ In addition, federal internal control standards state that management should monitor the internal control system and evaluate the results.⁷⁹ The standards also state that comparisons and reconciliations contribute to an effective monitoring system, and they highlight the importance of using separate evaluations to periodically assess the effectiveness of ongoing monitoring. Furthermore, OCC documents note that a main responsibility of the ethics

⁷⁶The Designated Agency Ethics Official for Treasury and all its bureaus is the Assistant General Counsel for General Law, Ethics, and Regulation, who is responsible for coordinating with OGE and answering OGE's annual questionnaire about the administration of ethics programs. OCC submits its responses to the questionnaire to the Designated Agency Ethics Official, who produces the consolidated response for the department.

⁷⁷Detail on this fiscal year 2013 investigation can be found in publicly available documents on the U.S. Office of Special Counsel website. Documents can be accessed under Office of Special Counsel file number 13-36 DI-13-2004 at <https://osc.gov/Pages/PublicFiles-FY2013.aspx> (accessed November 27, 2018).

⁷⁸5 C.F.R. § 2638.104(c)(16).

⁷⁹[GAO-14-704G](#).

office is to resolve differences of interpretation among designated ethics officials to ensure a consistent agency-wide position. Ethics officials stated that their current procedures, namely conference calls and spot checks of data by district ethics officials, are sufficient to ensure consistency across district ethics offices. However, these efforts occur sporadically and do not give the ethics office a comprehensive understanding of how well district offices are adhering to guidance. Further, as previously discussed, we found weaknesses in the ethics office's implementation of a number of policies and procedures. Without assessing the ethics program, including its associated policies, controls, and guidance, OCC does not have reasonable assurance that its ethics program is operating effectively, which can impact its ability to address the risk of regulatory capture.

OCC's Management Has Identified Regulatory Capture as a Risk, but Its Approach to Mitigating This Risk Is Narrow

OCC Leadership Has Taken Steps to Demonstrate Its Support for the Agency's Mission and Supervisory Independence

OCC's leadership has taken steps to set a tone from the top that promotes the agency's mission and is aligned with the public interest. Such steps can help to counter the risk of "cultural capture"—that is, when a regulatory agency comes to share the beliefs, views, and perspectives of the regulated industry.⁸⁰ OCC's leaders have taken several actions to set the agency's tone, including the following examples:

- **Revised OCC's vision statement.** OCC leadership revised OCC's vision statement in 2013 to align with its mission of ensuring that financial institutions operate in a safe and sound manner, treat customers fairly, and comply with relevant legal standards. The

⁸⁰Carpenter and Moss, *Preventing Regulatory Capture*, and S. Pagliari, *Making Good Financial Regulation*.

change resulted from the 2013 international peer review of OCC supervision, which raised questions about a goal in OCC's vision statement to "maintain the ability of national banks and federal savings associations to compete effectively with other providers of financial services."⁸¹

- **Established OCC's core values and code of ethics.** According to its strategic plan, OCC's core values are integrity, expertise, collaboration, and independence. OCC also has a code of ethics that outlines principles of ethical conduct for employees and includes elements of these core values. Such documents can help OCC to communicate its priorities to employees and guide their attitudes and behavior in achieving OCC's goals.⁸²
- **Involved OCC senior management in risk management.** OCC's senior management is involved in the Enterprise Risk Committee and Office of Enterprise Risk Management, including the development of the risk appetite statement, annual risk assessments, and risk metrics. The Chief Risk Officer, who leads the Office of Enterprise Risk Management, was elevated to be part of OCC's Executive Committee in 2017. Such actions demonstrate management's commitment to identifying and responding to risks that may affect OCC's ability to meet its mission and strategic goals.⁸³
- **Promoted agency-wide training.** OCC has established a training program for both onboarding (acclimating new employees) and continuing education. As noted earlier, training can serve to promote an agency-wide focus on the public interest and OCC's mission and cultivate a supervisory mindset. Specifically, OCC offers a training module to some supervisory staff that provides strategies for persuasively asserting OCC's conclusions, approaching confrontational bankers, and presenting to bank officials when the message is likely to result in a negative reaction. Officials also noted that these skills are reinforced through on-the-job training.
- **Established OCC's performance management program.** OCC's performance management program is intended to recognize employee performance and encourage employees to act in a manner consistent with the public interest and OCC's mission, not private

⁸¹ *An International Review of OCC's Supervision of Large and Midsized Institutions.*

⁸² [GAO-14-704G](#).

⁸³ [GAO-14-704G](#).

interests. Further, OCC's strategic plan states that OCC incorporates diverse perspectives into decision making, and OCC's performance evaluation criteria for key supervision employees include multiple measures that link to this effort.⁸⁴ For example, OCC's performance standards for managers specify the expectation to communicate with the team, encourage two-way discussion, and listen actively. As noted in our previous work, policies that foster an inclusive culture in which staff are able to raise divergent views can reduce the risk of capture.⁸⁵

- **Developed OCC's risk appetite statement.** OCC has specifically included the risk of regulatory capture in its risk appetite statement.⁸⁶ OMB guidance on enterprise risk management states that risk appetites are essential when determining risk responses and serve as the agency's guidepost to set strategy and select objectives.⁸⁷ OCC's risk appetite statement was finalized in 2016 and sets boundaries for the level of risk OCC will accept in pursuit of its strategic objectives. The 2016 statement notes that OCC has no appetite for regulatory capture. Officials told us this means the agency will respond quickly and take aggressive action if potential regulatory capture is identified.

OCC Has a Narrow Approach to Mitigating Regulatory Capture

While OCC has identified regulatory capture as a risk, it has not analyzed many aspects of that risk. OCC's 2016 risk appetite statement has nine risk categories, but regulatory capture is identified only under the category of "reputation risk," which OCC describes as the risk that negative public perception could jeopardize OCC's credibility, achievement of mission and strategic objectives, or ability to maintain the agency as a preeminent banking regulator.⁸⁸ However, regulatory capture

⁸⁴Office of the Comptroller of the Currency, *The OCC Strategic Plan: Fiscal Years 2019–2023* (Washington, D.C.: September 2018).

⁸⁵[GAO-18-118](#).

⁸⁶According to OCC's ERM charter, risks identified in the risk appetite statement must be proactively identified and managed and are to be reviewed and reassessed at least annually. The Enterprise Risk Committee revised OCC's risk appetite statement in 2018.

⁸⁷Office of Management and Budget, Circular A-123.

⁸⁸OCC's risk appetite statement identifies nine risk categories: supervision, human capital, strategic, reputation, technology, operational, legal, external, and financial.

is an enterprise-wide risk that cuts across multiple risk categories, including the following:

- **Supervision risk.** The supervision process can be vulnerable to regulatory capture, as noted previously, and the documentation and internal control weaknesses in OCC's supervisory processes that we identified could increase this vulnerability.
- **Human capital risk.** As described earlier, OCC maintains data on employees' potential conflicts of interest, but supervisors do not routinely check these data when making staffing decisions, increasing the risk of regulatory capture. Similarly, OCC collects some information from employees who leave OCC to work for a bank but does not analyze it for trends that might shed light on emerging revolving-door risks (i.e., risks associated with frequent movement of personnel between OCC and banks it regulates).⁸⁹
- **Operational risk.** In 2017, OCC decided to reverse a previous initiative to move examination teams off bank premises, which had been done partly to reduce the perception of regulatory capture.⁹⁰ OCC's Comptroller said it was not practical to move resident examiners off-site and that the agency would continue to review its locations to ensure they support the agency's mission in the most operationally and financially effective manner possible.⁹¹

In addition, the Office of Enterprise Risk Management only analyzes two factors when assessing the risk of regulatory capture: the tone of media

⁸⁹A revolving door situation may threaten the independence of supervision in different ways. For example, according to some experts, banking supervisors may consider taking higher-paying jobs at supervised banks, potentially making them less willing to challenge supervised firms. In addition, when supervised banks hire examiners or other experienced staff from a banking regulator, these employees may help the bank navigate the regulatory requirements, according to these experts. [GAO-18-118](#).

⁹⁰The initial initiative stemmed from a recommendation made in the 2013 peer review to "move examination teams and subject matter experts from individual bank locations to shared OCC offices in the field, where practicable, to improve internal communications, sharing of information among examination teams, and workforce flexibility." The peer review also noted that "examiners may get stale and become too familiar with the mid-management of the institution, giving rise to perceptions of regulatory capture." *An International Review of OCC's Supervision of Large and Midsize Institutions*.

⁹¹According to OCC's Comptroller, OCC has established controls to ensure that examiners remain independent and protect against the perception of regulatory capture, such as a rotational policy and lead experts who work across multiple bank teams.

coverage and compliance with OCC's examiner rotation requirements.⁹² Through reviewing news media articles published about OCC, the office tracks the tone of its media coverage to provide insight into positive or negative perspectives on OCC that can affect its reputation. Officials noted that adverse trends in media coverage would require additional research to determine if regulatory capture played any role. Additionally, the office tracks compliance with examiner rotation requirements on a quarterly basis by monitoring a database where supervision business units (such as LBS) input and update information on staff assignments. According to officials, OCC's examiner rotation requirements were established, in part, to encourage independence and avoid any appearance of actual or perceived regulatory capture.⁹³ OCC officials stated the agency considers the risk of regulatory capture to be actively managed through the monitoring of these factors, particularly the rotation requirements.⁹⁴

OCC's narrow approach to regulatory capture as a reputation risk and its assessment of only two factors excludes other factors that could inform the Office of Enterprise Risk Management's analyses during its risk assessments. In particular, OCC does not analyze ethics and supervision practices—which we have examined earlier in this report—as part of its assessment of the risk of regulatory capture. For example, the ethics office collects information on employees hired from and leaving for the banking industry, but the Office of Enterprise Risk Management does not use this information to analyze how the revolving door may be affecting examiner independence and supervision. OCC also does not analyze the bank employment questionnaires and results of the workpaper reviews

⁹²OCC measures risk and examines trends relative to the various risks identified in its risk appetite statement through certain factors, which OCC refers to as "metrics." OCC's departments develop tracking and reporting mechanisms and collect data to report quarterly on these metrics to the Enterprise Risk Committee and contribute to the annual risk assessments.

⁹³According to OCC officials, as of August 2018, the rotation policy applied to all managers who were responsible for day-to-day supervisory decisions (23.2 percent of employees in the LBS office). The remaining employees were part of the Collective Bargaining Agreement with the National Treasury Employees Union and therefore were not included in the rotation policy. While OCC officials expressed interest in expanding the rotation policy to the bargaining unit, they said the timeline for doing so was not yet determined.

⁹⁴The Office of Enterprise Risk Management annually assesses OCC's top risks and identifies new and continuing risks. The office defines the risk status of "actively managed" to mean that there is robust management and control of the risk.

across banks or employees, which could inform OCC about the extent to which banks are contacting OCC staff with employment opportunities and the extent to which employees' supervisory decisions could be influenced by the potential of future employment at the bank they are examining. Analyzing the questionnaires could also inform OCC about the extent to which affiliates of the banking industry, such as bank consulting firms, are contacting OCC staff with employment opportunities and help OCC monitor the risk associated with these institutions.⁹⁵ Additionally, the Office of Enterprise Risk Management and the Enterprise Risk Committee did not formally analyze the Comptroller's decision to keep bank examiners on-site, even though that decision may impact the risk of regulatory capture.⁹⁶

OCC officials stated that they have not considered additional factors when assessing the risk of regulatory capture. They noted that measuring risks related to regulatory capture is challenging. In addition, OCC officials told us that they have multiple strategies to address the risk of regulatory capture beyond the two factors they analyze, including (1) annual employee ethics filings and the availability of ethics counsel as needed; (2) policies applicable to the bank supervision program, including examiner rotation requirements and the Comptroller's Internal Bank Supervision Appeals program; (3) supervisory reviews by team leads and examiners-in-charge, and quality assurance that includes interaction with and feedback from the lead experts and deputy comptrollers; and (4) independent reviews by OCC's Office of Enterprise Governance and Office of Enterprise Risk Management. However, other than the rotation requirements, OCC has not identified any information about these programs and policies as factors to analyze when assessing the risk of regulatory capture, which limits its ability to treat it as an enterprise-wide risk.

Federal internal control standards state that management should identify, analyze, and respond to risks related to achieving the agency's defined objectives.⁹⁷ OCC officials told us they are aware that regulatory capture

⁹⁵Bank consulting firms contribute to the risk of regulatory capture because they can offer future employment opportunities in exchange for preferential treatment for their clients.

⁹⁶According to OCC officials, the Chief Risk Officer and other members of the Enterprise Risk Committee were aware of the Comptroller's decision before it was announced. They said that following the announcement, the decision was discussed at a weekly Executive Committee meeting.

⁹⁷[GAO-14-704G](#).

risks overlap across the risk categories and that they would address those risks as appropriate. OCC also noted that it has strategies, in addition to what it has identified in its risk appetite statement, to address the risk of regulatory capture. However, because these other categories and strategies are not formally incorporated into its risk appetite statement and factors it analyzes to assess risk, OCC may be overlooking information that might indicate an increased risk of regulatory capture. Additionally, without expanding its approach to assessing the risk of regulatory capture, such as through assessing supervision practices and results of workpaper reviews, OCC may not fully understand how its actions may increase the risk of regulatory capture more broadly and could be missing opportunities to identify additional ways to mitigate this risk.

Conclusions

OCC supervises some of the largest financial institutions in the United States, and it is essential that its staff are not inappropriately influenced by the industry they are regulating. OCC has identified regulatory capture as a risk and has policies in place that could address this risk. However, improvements are needed in several areas:

- **Supervision process.** OCC's LBS has established some policies and procedures that encourage transparency and accountability in large bank supervision. However, weaknesses in OCC's documentation and retention policies limit its ability to identify and prevent capture-based decisions. Without additional steps to ensure a more complete and transparent record of decision making, OCC's efforts to detect, mitigate, and deter capture-based decisions may be hindered.
- **Individual conflicts of interest.** OCC collects information on potential employee conflicts of interest in annual financial disclosure forms, but certain key information is not collected or recorded, supervisors do not actively check whether staff have conflicts of interest, and the agency does not periodically assess its ethics program. Without better policies to prevent situations in which banks can exert influence on employees through financial or other benefits, OCC is limited in its ability to detect and address conflicts of interest, which increases the risk of regulatory capture.
- **Agency-wide approach to mitigation.** OCC has identified regulatory capture as a risk and has taken steps to promote a culture that values independence and public service, but its efforts to mitigate the risk of

regulatory capture have been narrow. Without expanding its approach to addressing the risk of regulatory capture, OCC may be missing opportunities to identify other ways in which this enterprise-wide risk may affect the agency.

Recommendations for Executive Action

We are making the following 9 recommendations to the Office of the Comptroller of the Currency:

- The Senior Deputy Comptroller for Large Bank Supervision should revise Large Bank Supervision's policy to require documentation of examination teams' internal deliberations that lead to consequential decisions for the bank, such as the decision whether to issue a Matter Requiring Attention, among others. (Recommendation 1)
- The Senior Deputy Comptroller for Large Bank Supervision should revise Large Bank Supervision's policy to require that bank examination teams retain drafts of key documents, including the conclusion memorandum and supervisory letter, that record the supervisory review process. (Recommendation 2)
- The Senior Deputy Comptroller for Large Bank Supervision should revise Large Bank Supervision's policy to require documentation of communications with banks, including those between executive and senior management and banks, that inform supervisory decisions. (Recommendation 3)
- The Senior Deputy Comptroller for Large Bank Supervision should systematically track and monitor Large Bank Supervision's use of informal recommendations. (Recommendation 4)
- The Chief Counsel should require that staff who review and record employees' conflict-of-interest information (1) consistently record explanations of changes to scopes of recusals and (2) record waivers of Treasury's supplemental standards separately from recusals. (Recommendation 5)
- The Chief Counsel should develop a policy for Large Bank Supervision (1) to check employees' active conflicts of interests during the staffing process for examinations and other supervisory activities and (2) to document the results of this check. (Recommendation 6)
- The Chief Counsel should (1) revise OCC's instructions for conducting examination workpaper reviews to ensure that they are complete and

(2) communicate the revised instructions to employees.
(Recommendation 7)

- The Chief Counsel should (1) conduct a periodic self-assessment of OCC's ethics program, including evaluating the implementation of its associated controls, policies, and guidance; (2) document the results; and (3) take action based on this assessment, as appropriate.
(Recommendation 8)
- The Chief Risk Officer should expand OCC's approach to addressing the risk of regulatory capture, including (1) revising its risk appetite statement to address risk areas other than reputational risk and (2) identifying additional factors to analyze when assessing the risk of regulatory capture. (Recommendation 9)

Agency Comments and Our Evaluation

We provided a draft of this report to the Office of the Comptroller of the Currency for review and comment. OCC provided written comments, which we have reprinted in appendix III. OCC agreed with one recommendation, neither agreed nor disagreed with three recommendations, and disagreed with five recommendations.

In its overall comment, OCC disagreed with the concerns we raised about the risk of insufficient documentation. OCC noted that it believes that a majority of the recommendations are not necessary and do not advance the aim of promoting robust supervision and independence. However, we continue to believe that documentation in key areas can help mitigate the risk of regulatory capture. For instance, policies that increase transparency and accountability in decision-making processes, such as documentation requirements, can increase the likelihood that an agency can identify an examiner whose decisions are industry-biased. Without documentation—particularly around decisions that affect the profitability of banks and interactions between OCC and banks—OCC's decision-making process during examinations and the extent to which banks influenced those decisions is not transparent.

OCC disagreed with our first recommendation that examination teams be required to document key deliberations that lead to consequential decisions for an examined bank. OCC noted that examiners' supervisory conclusions are recorded in their workpapers and conclusion memorandums, and stated that the conclusions reached as a result of internal deliberation are fully explained in communications to the bank.

OCC also commented that documenting internal deliberations would be time consuming, would result in conducting fewer supervisory activities, and would not enhance the quality of supervision. While we observed both individual examiner conclusions in workpapers and conclusions communicated to banks in supervisory letters, our recommendation focuses on improving the transparency of how those individual conclusions are deliberated and become the conclusions ultimately communicated to the banks. We acknowledge that documentation involves a time commitment. However, we maintain that consistently documenting internal deliberations that lead to consequential decisions for the bank could increase the transparency and accountability of examination teams' findings and decisions. We also note that the Federal Reserve, another financial regulator, has implemented documentation requirements to record internal meetings dedicated to vetting examination findings, including if divergent views were raised or if changes resulted from the discussion.

OCC disagreed with our second recommendation to revise Large Bank Supervision's policy to require that examination teams retain drafts of key documents that record the supervisory review process. OCC stated that the risk of regulatory capture is controlled through subjecting supervisory decisions to multiple levels of review. OCC also noted that retaining early drafts of conclusion memorandums and supervisory letters serves little purpose and prevents staff from being able to efficiently and effectively retrieve information. While we acknowledge that the various layers of review can provide transparency and accountability, our recommendation focuses on retaining drafts of key documents that demonstrate this supervisory review process. Furthermore, we could not observe documentation of any of these layers of review (e.g., feedback or changes made to draft supervisory letters to banks) because of LBS's record retention policy. We also acknowledge the importance of retrieving information effectively. However, we maintain that revising its policy to ensure that drafts of key documents are not deleted will help OCC increase the transparency and accountability of staff decisions. We also revised the draft to note that LBS created tools to help teams sort and filter supervisory documents as part of its Examiner-in-Charge Quarterly Certification Program, which can help ease the burden of retrieving information.

OCC disagreed with our third recommendation to require examination teams and management to document key communications with banks that inform supervisory decisions. OCC commented that this effort would be time and resource intensive and may not improve supervision. OCC

also stated that examiners can refer to discussions with bankers as part of support for their assessments, and the influence of interactions with bankers is reflected in the final supervisory decisions. While we did observe some references to bank meetings in our review of examination workpapers, none of the documents included details of what teams discussed with bank officials and steps the team and bank were planning to take as a result. We acknowledge that information learned from bank interactions is part of final supervisory decisions; however, we maintain that having meeting minutes and other documentation of key communications would provide OCC with a more complete and transparent record of the information banks provide to examiners and how that information impacts supervisory decisions.

OCC disagreed with our fourth recommendation to track and monitor use of informal recommendations. OCC noted that tracking these recommendations is not needed because banks are not expected to implement them. OCC also commented that reviews done by the Office of Enterprise Governance did not identify instances of inappropriate use of recommendations, which OCC attributes to its policies regarding the use of Matters Requiring Attention. However, OCC policy states that informal recommendations should not be used as a graduated approach to an MRA, and OCC cannot be certain if examination teams are complying with that policy if they do not track and monitor the use of recommendations. Furthermore, we note that bankers may have financial incentives to avoid having examination teams issue MRAs and enforcement actions (e.g., bonuses that are awarded for not receiving OCC supervisory actions). We maintain that tracking and monitoring the use of informal recommendations could increase transparency of the supervisory process, which could help LBS mitigate the risk of regulatory capture.

OCC neither agreed nor disagreed with our fifth recommendation to consistently record explanations of changes to scopes of recusals and record waivers separately from recusals, but it described actions that, if fully implemented, would meet the intent of our recommendation. OCC noted that changing the scope of a recusal reflects permissible judgments, and reasons for doing so are often evident to ethics reviewers based on information on financial disclosures or in emails. While we acknowledge that changes are permissible, information on why the recusal was modified is not consistently captured in one place. OCC stated that it recognizes and concurs with the value of documenting reasons for adjusting the scope of a recusal, and stated that the Acting Chief Counsel has instructed all ethics officials to do so. OCC noted that

since 2015, all determinations on waivers of OCC's supplemental ethics regulations have been documented via email to the headquarters ethics official. OCC stated that it expects its new ethics management system to be online in fall 2019 and to have the capability to record and retrieve waivers of supplemental standards separately from recusals.

OCC disagreed with our sixth recommendation to develop a policy to check for active conflicts of interests when staffing examinations and other supervisory activities. OCC noted that such a policy would shift the responsibility for ensuring compliance with recusal requirements from employees to those responsible for staffing; OCC stated that this shift risks undermining the expectation of personal responsibility. Our recommendation does not aim to alleviate the personal responsibility that all employees have to comply with recusal requirements. Rather, our recommendation aims to strengthen the due diligence of those responsible for the staffing process by requiring an independent, preliminary check of active recusals that should be followed based on ethics office determinations. Such a policy also would mirror a Federal Reserve practice that automatically alerts employees who schedule large bank examinations about any conflicts when an employee is reassigned to a new bank team.

OCC agreed with our seventh recommendation to revise instructions for conducting examination workpaper reviews and communicate the revisions to employees. OCC stated that it is in the process of updating the instructions and plans to disseminate them to employees in 2019. These actions, if fully implemented, would address our recommendation.

OCC neither agreed nor disagreed with our eighth recommendation to conduct periodic self-assessments of the ethics program and document the results, but it described actions that, if fully implemented, would meet the intent of our recommendation. OCC disagreed that the ethics program had not been reviewed or that OCC is not assessing the program, citing reports by Treasury and Treasury's Office of Inspector General and annual questionnaires it has completed for the Office of Government Ethics, among other things. While we acknowledge these reports, we maintain that they are not regular reviews that measure how well program guidance has been followed, data have been collected, or policies have been implemented. Therefore, we maintain the need for this recommendation. OCC noted that it would formalize the process of documenting written findings from its periodic reviews and has initiated a self-evaluation of the ethics program that it expects to complete by January 2019. OCC also expressed concerns about the presentation of

information related to external reviews of the ethics program. We revised the presentation of the information in the report, as appropriate, to address OCC's comments.

OCC neither agreed nor disagreed with our ninth recommendation to expand its approach to addressing the risk of regulatory capture, but it stated that it would assess whether to implement an aspect of our recommendation. OCC stated that we had overlooked its consideration of regulatory capture in other risk categories in the risk appetite statement where they note that regulatory capture is considered. However, as we note in our report, regulatory capture is neither explicitly considered nor formally documented under any other risk categories. We maintain that making the connection between regulatory capture and the other risk categories in OCC's risk appetite statement more explicit can help ensure that OCC's assessment of the risk of regulatory capture is more complete. OCC stated that it would evaluate whether it would be helpful to add language to its risk category definitions to make the consideration of regulatory capture more explicit. OCC's letter did not include any comments on the second part of our recommendation to identify additional factors to analyze when assessing the risk of regulatory capture.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the House Committee on Financial Services, the Office of the Comptroller of the Currency, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8678 or clementsm@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.



Michael E. Clements
Director, Financial Markets and Community Investment

Appendix I: Objectives, Scope, and Methodology

This report examines the extent to which the Office of the Comptroller of the Currency (OCC) (1) has policies that encourage transparency and accountability in its large bank supervision process; (2) has policies that address employees' conflicts of interest that could threaten their independence; and (3) promotes an agency-wide focus on supervisory independence and mitigating the risk of regulatory capture.

To aid our assessment of OCC's response to the risk of regulatory capture, we developed a framework based on theoretical economic literature on preventing collusion, including regulatory capture, through well-designed contracts.¹ Specifically, we interpreted each of the elements from a mathematical condition about successfully preventing collusion as a potential objective of an agency's internal control system. This effort resulted in three objectives of control activities that help reduce the risk of regulatory capture.² Each objective is designed to address a different aspect of an agency's response to the risk of regulatory capture. The objectives are (1) reduce the potential benefits to industry of capturing the supervisory process; (2) block or reduce avenues of inducement; and (3) promote a culture that values independence and public service.³ We also reviewed Standards for Internal Control in the Federal Government and the broader academic literature on regulatory capture to identify specific control activities aimed at achieving these three objectives and responding comprehensively to the risk of regulatory

¹For a review of the theoretical literature on regulatory capture and related problems of collusion, see Jean-Jacques Laffont and Jean-Charles Rochet, "Collusion in Organizations," *The Scandinavian Journal of Economics*, vol. 99, no. 4 (1997).

²We used the collusion-proof condition as it appears in Roland Strausz, "Collusion and Renegotiation in a Principal-Supervisor-Agent Relationship," *The Scandinavian Journal of Economics*, vol. 99, no. 4 (1997).

³These objectives map to the collusion-proof condition ($kB \leq B$) in the following way: k = avenues of inducement; B = potential benefits to industry of capturing the supervisory process; and B = a culture that values independence and public service. The agency's goal is for the inequality to hold in order to prevent regulatory capture from occurring. Our mapping does not cover all possible interpretations of the model parameters but is instead tailored to the scope of our audit and designed in the context of OCC's mission and supervisory process.

capture.⁴ While the framework helped to facilitate our understanding of OCC's policies as they may contribute to limiting the risk of regulatory capture, we assessed OCC's policies against relevant federal internal control standards.⁵

To examine the extent to which OCC has policies that encourage transparency and accountability in its large bank supervision process, we reviewed OCC's Large Bank Supervision (LBS) business unit policy manuals, examination-team-specific guidance, handbooks, and standard operating procedures that establish requirements for conducting and documenting examinations and ongoing supervisory activities. To assess how LBS bank examination teams implement these requirements, we reviewed workpapers from a nongeneralizable sample of three large bank examinations conducted during fiscal year 2017 and related ongoing supervision activities. To select these examinations, we judgmentally selected one large bank from each of the top three locations in which LBS has a large concentration of banks and staff—Charlotte, North Carolina; New York City, New York; and San Francisco, California. In choosing these locations, we considered the number of LBS-supervised banks in the location, those banks' total assets under management, and the total number of LBS staff supervising banks in each location. In addition, we selected these examinations based on the risk areas OCC examined and whether the examination resulted in a Matter Requiring Attention. To analyze the examination documents, we compared workpapers that were part of the examination's official record to LBS's minimum documentation requirements and examination-team-specific guidance. While the observations from the three examinations are not generalizable to all examinations conducted by LBS, they provided examples and context regarding how large bank examination teams make and document supervisory decisions. We also reviewed independent internal reviews conducted by OCC's Office of Enterprise Governance and Ombudsman

⁴See GAO, *Standards for Internal Control for the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014). For academic literature on regulatory capture, see for example, D. Carpenter and D. Moss (eds.), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (New York, N.Y.: Cambridge University Press, 2014), and S. Pagliari, *Making Good Financial Regulation: Towards a Policy Response to Regulatory Capture* (United Kingdom: Grosvenor House Publishing, Limited, 2012). For a literature review on factors that may contribute to regulatory capture and strategies for mitigating it in banking supervision and regulation, see GAO, *Large Bank Supervision: Improved Implementation of Federal Reserve Policies Could Help Mitigate Threats to Independence*, [GAO-18-118](#) (Washington, D.C.: Nov. 6, 2017).

⁵[GAO-14-704G](#).

from 2016 through 2018. These reviews included assessments of LBS's compliance with policies and procedures relevant to mitigating the risk of regulatory capture.

We also conducted individual and group interviews with a nongeneralizable sample of staff responsible for supervising large banks. We conducted 17 individual interviews and 11 group interviews and interviewed 69 LBS employees in total. These employees included examiners-in-charge, team leads, examiners assigned to the banks in our selected locations, and deputy comptrollers assigned to supervise a portfolio of large banks. Because the sample was nongeneralizable, the views of the staff we spoke with are not generalizable to all OCC staff. Because of their role in reviewing and making supervisory decisions, we interviewed all LBS deputy comptrollers, as well as examiners-in-charge from all large banks in our three chosen locations. We randomly selected team leads and examiners assigned to banks from our chosen locations to interview. We determined that the data we used to create our interview samples were sufficiently reliable for that purpose. Our interviews focused on three topics: relationships with supervised banks, team deliberations during the examination process, and conflicts of interest and other threats to independence. Lastly, we extended a final opportunity for all interviewees to share additional perspectives that they did not cover during the interview anonymously via email. We did not receive any responses from LBS staff through this method.

To examine OCC's policies that address employees' conflicts of interest that could threaten their independence, we reviewed documents including federal statutes and regulations, Department of the Treasury (Treasury) supplemental regulations for OCC employees, annual financial disclosure form guidance, and post-employment workpaper review procedures. We also reviewed relevant reports produced by the Office of Government Ethics and reports by Treasury's Office of Inspector General on OCC's implementation of its ethics program. In addition, we analyzed conflict-of-interest determinations by ethics officials based on LBS employee financial disclosure forms from 2011 through 2017. These determinations included recusals from working on particular matters due to a conflict of interest and waivers that allowed employees to examine or supervise an institution with which they had a conflict of interest under particular circumstances. We determined that OCC's conflict-of-interest data were sufficiently reliable for our purposes of analyzing compliance with ethics policies and guidance by reviewing documentation on how conflict-of-interest determinations were reviewed and stored and interviewing OCC ethics officials. We also reviewed all 86 post-employment questionnaires

completed by departing employees from 2015 through 2017 and all 16 workpaper reviews completed by the OCC supervision office during that same time frame. Lastly, we interviewed ethics officials to discuss the design and implementation of ethics policies and procedures.

To examine how OCC promotes an agency-wide focus on supervisory independence and mitigating the risk of regulatory capture, we reviewed documents provided by LBS and OCC's Office of Enterprise Risk Management that describe policies, processes, and internal controls. For example, we reviewed documents including OCC's enterprise risk management (ERM) framework and risk appetite statement, relevant committee meeting minutes, performance standards, and training materials. We also reviewed OCC's strategic plan and an external review conducted in 2013 by an international group of auditors that assessed OCC's governance and supervisory structure.⁶ In addition, we reviewed OCC's risk appetite statement as well as factors OCC has identified to assess the risk of regulatory capture. We also interviewed officials from LBS and OCC's Office of Enterprise Risk Management to discuss the design and implementation of OCC's ERM framework.

We conducted this performance audit from April 2016 to January 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶*An International Review of OCC's Supervision of Large and Midsize Institutions: Recommendations to Improve Supervisory Effectiveness*, independent review prepared at the request of the Office of the Comptroller of the Currency (Washington, D.C.: Dec. 4, 2013).

Appendix II: Key Ethics Provisions That Apply to OCC Employees

Office of the Comptroller of the Currency (OCC) employees are subject to ethics policies that implement federal conflict-of-interest laws and regulations, as well as other policies that the Department of the Treasury (Treasury) and OCC have developed to apply to employees with specific roles and responsibilities.

General conflict-of-interest statutes. OCC employees are subject to the key federal criminal conflict-of-interest statute, which prohibits a federal employee from participating personally and substantially in an official capacity in a particular matter in which, to the employee's knowledge, the employee or the employee's spouse, general partner, or minor child, among others, has a financial interest, if the particular matter will have a direct and predictable effect on that interest.¹ Federal employees are also prohibited from participating in matters involving an organization with which the employee is negotiating or has any arrangement concerning prospective employment.² Participation in a particular matter includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons or a discrete and identifiable class of persons.³ Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter.⁴

Post-employment restrictions. Employees who leave OCC face restrictions on engaging in certain activities. Specifically, all OCC employees are subject to federal restrictions that prohibit them from

¹See 18 U.S.C. § 208(a); 5 C.F.R. § 2635.402(a).

²See 18 U.S.C. § 208(a); 5 C.F.R. § 2635.402(b)(2)(v).

³5 C.F.R. § 2635.402(b)(3).

⁴5 C.F.R. § 2635.402(b)(4).

representing their new employer before OCC regarding particular matters with which they were involved while at the agency.⁵ In addition, the Intelligence Reform and Terrorism Prevention Act of 2004 and implementing regulations prohibit an examiner who served as the “senior examiner” for a depository institution or depository institution holding company for 2 or more months during the examiner’s final 12 months of employment from working for that depository institution or holding company, or certain related entities, for 1 year.⁶

Investment prohibitions. Treasury supplemental regulations specify financial investment prohibitions for OCC employees.⁷ Generally, all OCC employees are subject to prohibitions on investing in securities of any commercial bank (including both national and state-chartered banks), federal savings association, state savings association, or any affiliates of these institutions (including bank holding companies, among others). The prohibitions also apply to an employee’s spouse and minor child. For example, employees and their immediate family members are generally prohibited from holding stocks and bonds in banking institutions. In addition, all employees, their spouses, and minor children are prohibited from investing in mutual funds that have a stated policy of concentrating their investments in the financial services industry.⁸

Borrowing prohibitions and restrictions. Federal statute generally prohibits financial institution regulatory agency examiners from accepting loans or gratuities from a financial institution examined by them.⁹ In

⁵18 U.S.C. § 207(a)(1)-(2). Former OCC personnel are permanently barred from communicating with or appearing before, with the intent to influence, an employee of the United States on behalf of any other person for particular matters on which they were personally and substantially involved, which involved a specific party or parties at the time of such participation, and in which the United States is a party or has a direct and substantial interest. For 2 years after leaving federal service, former OCC personnel may not communicate with or appear before, with the intent to influence, an employee of the United States on behalf of any other person on particular matters that were pending under their official responsibility in their last year of service, which involved a specific party or parties and in which the United States is a party or has a direct and substantial interest, even if the employee was not directly involved with the matter.

⁶See Pub. L. No. 108-458, § 6303(b), 118 Stat. 3638, 3751 (codified at 12 U.S.C. § 1820(k)); 12 C.F.R. § 264a.3.

⁷5 C.F.R. § 3101.108.

⁸5 C.F.R. § 3101.108(a)(3)(i).

⁹See 18 U.S.C. § 213(a).

addition, financial institutions may not make any loans or grant any gratuities to examiners who examine or have the authority to examine the institution or its branches, among other things.¹⁰ Under this statute and related Treasury regulations for OCC employees, covered employees—which include examiners and senior management of OCC’s Large Bank Supervision business unit—are prohibited from borrowing from an institution for which OCC is the primary supervisor (other than through certain credit cards or loans secured by their primary residence).¹¹

Exemptions. Federal laws and regulations include exemptions to some of the prohibitions and restrictions previously noted and permits agencies to waive some conflicts. For example, the key criminal conflict-of-interest statute allows for waivers for individual employees if the employee’s conflict is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect from such officer or employee.¹² Office of Government Ethics regulations also exempt certain investments from restrictions, including investments held through a diversified mutual fund or unit investment trust, certain employee benefit plans, federal government securities with maturities of 1 year or less, and U.S. savings bonds.¹³

In addition, OCC allows some exemptions to its investment or borrowing restrictions. For example, OCC employees may obtain new credit cards or mortgages on their primary residence from an OCC-supervised bank.¹⁴ Additionally, covered employees, their spouses, or minor children can still retain a loan from an OCC-supervised bank that they obtained prior to the

¹⁰See 18 U.S.C. § 212(a).

¹¹A “covered employee” for the purposes of this borrowing prohibition means an OCC examiner and any employee specified in OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency, require the application of the borrowing prohibition to ensure public confidence that OCC’s programs are conducted impartially and objectively. OCC generally defines “covered employee,” with certain limited exceptions, to include any employee required to file one or more financial disclosure forms, such as national bank examiners, law clerks, attorneys, managers, and executives.

¹²See 18 U.S.C. § 208(b)(1).

¹³See 5 C.F.R. pt. 2640, subpt. B.

¹⁴See 5 C.F.R. § 3101.108(b)(4). The employees must satisfy all financial requirements set by the lender that are generally applicable to all applicants for the same type of credit card account or mortgage loan and the terms for the account or loan must not be more favorable than those offered to comparable cardholders or borrowers.

employee's time working at OCC. However, in these examples, examiners must observe a recusal from examining the bank from which they obtained a mortgage loan from the time of initially applying for it or, in the case of a loan obtained prior to OCC employment, from the time the examiners joined OCC.

Recusals. In cases where an employee is permitted to hold a prohibited financial interest, the employee is generally recused (disqualified) from working on the particular matter regarding the financial institution with which the employee has a financial interest.¹⁵ OCC's ethics office provides guidance to district ethics officers on how to assess the appropriate scope of the recusals that need to be granted based on the responses from a covered employee's financial disclosure form (see table 2).

Table 2: Rules from Office of the Comptroller of the Currency (OCC) Guidance to Determine Scope of Recusals

Type of conflict	Situation	Resulting scope of recusal	End date of recusal
Bank security	Direct holding in bank or affiliate of less than \$25,000 in one bank and less than \$50,000 in aggregate for multiple banks	Entire holding company	Until filer no longer owns the bank security
Bank security	Direct holding in bank or affiliate of less than \$25,000 in one bank and more than \$50,000 in aggregate for multiple banks	Entire holding company and recusal from making regulations, policies, and legislation that impact any class that includes that particular bank (e.g., banking industry regulation)	Until filer no longer owns the bank security
Defined benefit pension	Direct holding of any amount in bank pension	Entire holding company or pension department	Until filer no longer owns pension
Defined benefit pension	Direct holding of any amount in bank pension, but bank is not part of a holding company	Entire bank or pension department ^a	Until filer no longer owns pension
Loans	Direct holding of a loan obtained prior to OCC employment date for primary residence loan	Mortgage department	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)
Loans	Direct holding of a loan obtained prior to OCC employment date for a nonprimary residence loan	Department/subsidiary	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)

¹⁵In certain limited circumstances, OCC may issue waivers to Treasury supplemental regulations to examiners that permit them to carry out their examination work while holding certain limited financial interests in the institution that would not arise to a criminal conflict of interest under 18 U.S.C. § 208.

Appendix II: Key Ethics Provisions That Apply to OCC Employees

Type of conflict	Situation	Resulting scope of recusal	End date of recusal
Loans	Direct holding of a new primary residence loan obtained or refinanced after OCC employment date	Entire bank	Until filer no longer is indebted to the bank for the loan (e.g., filer pays off the loan)
Defaults/debt restructuring	Filer defaulted on debt to a bank or engaged in a debt restructuring transaction (e.g., short sale ^b)	Entire holding company	Until filer satisfies full balance of the original loan obligation
Purchase of bank-owned property	Filer purchased bank-owned property	Entire bank	12 months from purchase date
Purchase of property through short sale	Filer purchased property on a short sale	Entire bank	6 months from purchase date
Prior employment	Filer was employee of a bank in the past 2 years and employee is a bank examiner	Entire bank	2 years from end of employment at bank
Prior employment	Filer was employee of a bank in the past year and employee is not a bank examiner	Entire bank	1 year from end of employment at bank
Family member employment	Spouse or minor child is employed by the bank in any capacity	Entire holding company	Until family member's employment with bank ends
Family member employment	Parent, adult child, or sibling is employed by the bank	Entire bank or department/subsidiary ^c	Until family member's employment with bank ends
Family member employment	Other family member (e.g., uncle, aunt, sibling-in-law, parent-in-law) is employed at a bank	Entire bank or department/subsidiary ^c	Until family member's employment with bank ends

Source: OCC. | GAO-19-69

^aThese determinations depend on the bank's ability and willingness to fulfill its pension obligations.

^bIn a short sale, a homeowner sells a house rather than allowing the property to go into foreclosure. Proceeds from short sales are generally less than the mortgage amount, so a homeowner must have the lender's permission for the sale.

^cThese determinations depend on the position of the relative, agency needs, and whether or not the OCC employee is a core examiner of the bank.

Appendix III: Comments from the Office of the Comptroller of the Currency



Office of the Comptroller of the Currency

Washington, DC 20219

December 21, 2018

Mr. Michael E. Clements
Director, Financial Markets and Community Investment
U. S. Government Accountability Office
Washington, DC 20548

Dear Mr. Clements:

Thank you for providing the Office of the Comptroller of the Currency (OCC) an opportunity to review the Government Accountability Office's (GAO) draft report titled "Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture" (Report).

The GAO, in its review, addresses some of OCC's processes and procedures to mitigate the risk of regulatory capture, and in its findings, identifies a number of activities that in the GAO's opinion may improve documentation on these matters. We appreciate the challenge involved in trying to measure the risk of regulatory capture, and we understand the natural tendency in the face of such a challenge to focus on documentation. We agree that documentation can be improved on some matters, and we have already taken steps to implement a number of GAO's recommendations. However, we disagree that these documentation concerns increase the risk of regulatory capture. While the OCC remains fully committed to promoting vigilant supervision and independence, we are not convinced that a majority of the recommendations are necessary and advance this aim. We address these concerns below in our response to each of the nine recommendations.

Recommendation 1

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision revise Large Bank Supervision's policy to require documentation of examination teams' internal deliberations that lead to consequential decisions for the bank, such as the decision to issue a Matter Requiring Attention, among others.

OCC Response

The OCC is not prepared to implement this recommendation. As noted in your report, the supervisory conclusions of individual examiners are recorded in their workpapers and conclusion memos. Preserving those documents provides transparency around when a lead examiner, a team lead, or an examiner-in-charge concludes that a different supervisory outcome is appropriate, including whether an MRA should be issued. The conclusions reached as a result of internal deliberation and consequential decisions are fully explained in communications to the bank.

The ongoing nature of supervision of large banks results in a significant amount of dialogue among OCC staff and between OCC staff and bank management. Spending time documenting those discussions versus the conclusions reached from those discussions would be extremely time consuming, would not enhance the quality of supervision, and would result in the OCC being able to conduct fewer supervisory activities or needing to significantly reduce the scope of supervisory activities. Additionally, documenting deliberations in this manner would result in staff being less likely to share their opinions, thoughts, and perspective.

Recommendation 2

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision revise Large Bank Supervision's policy to require that bank examination teams retain drafts of key documents, including the conclusion memo and supervisory letter that document the supervisory review process.

OCC Response

The OCC is not prepared to implement this recommendation. The risk of regulatory capture is controlled through subjecting supervisory decisions to multiple levels of review and quality management. Examiners do not work in isolation and their internal consultations and discussions with subject matter experts, peers, and managers provides effective credible challenge and confirmation that conclusions are defensible and supported by factual evidence. Retaining early drafts of conclusion memos and supervisory letters that might not have fully informed conclusions serves little purpose. Initial impressions or early assessments of a bank's process or practice often change as examiners gather more facts and develop their analyses over the course of a supervisory activity and with benefit of consultations with and feedback from other members of the team, the EIC, and when warranted, a Deputy Comptroller. Should examiners have concerns regarding the integrity of supervisory matters, established processes exist for having those concerns investigated internally through the OCC's Ombudsman as noted in your report, or by the Treasury OIG.

Additionally, it is very important that OCC staff be able to efficiently and effectively retrieve pertinent supervisory information. Keeping extraneous information is counterproductive in that regard.

Recommendation 3

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision revise Large Bank Supervision's policy to require documentation of communications with banks, including those between executive and senior management and banks that inform decisions.

OCC Response

The OCC is not prepared to implement this recommendation. We cannot conclude that extensive documentation of conversations and taking minutes from meetings would improve supervision or

that without such, examiners and management are not considering pertinent information when reaching supervisory conclusions. As described earlier, the ongoing nature of large bank supervision would necessitate almost constant pauses from and reduce time and resources dedicated to mission critical research, analysis, and internal consultation amongst peers and with supervisors to record daily banker interactions. Suggesting that no records exist of significant events would also not be correct. It is not uncommon for individual examiner conclusion memos to refer to discussions or statements made by bank staff and management as part of their support for a supervisory assessment. The influence of meetings and interactions with bankers and other parties during the course of supervisory activities is reflected in the supervisory decisions and conclusions reached and documented in supervisory activity procedures, conclusion memos, supervisory letters, reports of examination, and when applicable, in enforcement actions.

Recommendation 4

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision systematically track and monitor LBS's use of informal recommendations.

OCC Response

The OCC is not prepared to implement this recommendation. This review and our independent Enterprise Governance reviews did not identify instances of inappropriate use of recommendations. This is attributable to OCC policies regarding the use of Matters Requiring Attention as the means to communicate actions a bank must take or changes that must be made. The policy is clear, enforced through training, and reinforced through review of supervisory work products at multiple points in the supervisory process. This same multi-step review process results in clear definition of actions or changes a bank must implement versus recommendations that are optional enhancements bankers might consider, if they find them useful.

Examiners make informal recommendations for bank policies that are already acceptable or for products or services that are already satisfactorily governed, constructed, and delivered to customers fairly in compliance with rules and regulations. Recommendations are not used to convey actions or changes that absent a bank taking an action or making a change would result in a bank policy, practice, product, or service that is unsafe or unsound, unfair to customers, or, in noncompliance with a law, rule or regulation. Therefore, there is no expectation that a bank implement a recommendation.

Because there is no expectation that a bank implement a recommendation and the suggested enhancement is not an action or change that affects bank safety and soundness, prudent risk management, or compliance with law, rule or regulation, tracking and monitoring recommendations is not appropriate or beneficial. In fact, it would be counterproductive as it would detract resources from the mission critical work that examiners perform - assessing large bank financial health, risk governance, compliance with laws, rules and regulations, and corrective actions required by MRAs to address concerns with a bank's practices.

Recommendation 5

GAO recommends 1) documenting the reasons for a modification to the standard scope of recusals on the annual financial disclosure form, and 2) recording waivers of supplemental standards separately from recusals.

OCC Response

The reasons for a modification from the standard practice in the scope of a recusal are often evident to an ethics reviewer from the information disclosed on the form itself and sometimes may also be documented in a separate email exchange between the ethics official and employee. It is also important to note that these modifications in the scope of a recusal are not waivers of the recusal requirement itself and reflect permissible judgments on the scope of a recusal to address potential appearance issues. Also, it would not be correct to conclude from this documentation issue or from any of the documentation issues noted in GAO's report that the OCC is somehow not collecting key conflict of interest data. We do not understand how GAO arrived at this conclusion. This ignores the extensive information the OCC collects and reviews every year on employees' interests and relationships during its financial disclosure process, a required reporting process that is far more detailed and specific with respect to banking interests and relationships than the standard Executive Branch financial disclosure process. That said, we recognize and concur in the value of further documenting reasons for an adjustment to the scope of a recusal on the annual financial disclosure form, and the Acting Chief Counsel has instructed all ethics officials to do so.

With respect to GAO's other recommendation about recording waivers of supplemental standards separately from recusals, the OCC ethics office has already been recording waiver determinations separately from recusals. GAO's concern pertains to data captured and stored in an electronic system that is being phased out and that will be retired next year. This system, known as the Ethics Tracking System, relied on manual data entry for tracking recusals and recusals/waivers. This manual data entry resulted in inconsistencies over the years in how these recusal determinations were classified, but nonetheless served one of its primary functions of showing an employee's recusals, whether or not such recusals were associated with a waiver of the OCC's supplemental ethics standards. Since 2015, all determinations on waivers of OCC's supplemental ethics regulations have been and continue to be documented via email to the headquarters ethics official. Starting next fall, the OCC's new ethics management system will be on line and will allow for capability to record and retrieve waivers of supplemental standards separately from recusals.

Recommendation 6

GAO recommends developing a policy for Large Bank Supervision to check employees' active conflict of interests during the staffing process for examinations and other supervisory activities and for documenting the results of this check.

OCC Response

The OCC is not prepared to implement this recommendation. In making this recommendation, GAO is shifting responsibility for ensuring compliance with recusal requirements from employees to personnel managing the exam staffing process. Such a shift runs the risk of undermining the expectations of personal responsibility that serves as the core of a government ethics program and a vigilant supervision program. Each year we train all employees on the government ethics standards, and we reiterate to employees – and will continue to do so – that they are responsible for upholding and adhering to Executive Branch ethics standards, which includes complying with their recusal requirements as well as all other government ethics obligations. And, we inform employees of the significant consequences, such as a criminal prosecution, that could result from their failure to do so. We believe fostering an expectation of personal responsibility will better ensure dedicated and engaged public servants.

Recommendation 7

GAO recommends updating the OCC instructions on workpaper reviews and disseminating these instructions to employees.

OCC Response

We agree and are in the process of updating the instructions, which we will disseminate next year to OCC employees. In the meantime, we are also sending out an agency-wide reminder to employees of the process and will include a copy of the OCC workpaper review form, which, as GAO noted, is available to all employees on the OCCnet.

Recommendation 8

GAO recommends conducting a periodic self-assessment of the ethics program and documenting the results.

OCC Response

We disagree with any suggestion that the OCC ethics program has not been reviewed or that the OCC is not assessing this program. GAO's analysis is largely based on a selective reading of the facts. It emphasizes a five-year old report by Treasury's Office of Inspector General about a required notification commonly handled by Human Resources, which was corrected in 2013, while minimizing the Department of Treasury's 2014 report on the OCC's ethics program, which states that Treasury's "review indicated that the OCC ethics program is strong, demonstrating a commitment to transparency and accountability and exhibiting positive program efforts that reach beyond mere technical requirements." In addition, each year we conduct a detailed review of the agency ethics program, answering approximately 95 questions and completing a 30-page report. We submit the report to the Department of the Treasury's Ethics Office as part of the annual ethics questionnaire report to the Office of Government Ethics. This is in addition to the OCC management reports GAO noted in its review, as well as the periodic reports from district ethics offices to the headquarters ethics office regarding financial disclosure filing numbers, IG

referrals, impartiality determinations, and waiver determinations. Although we have not previously documented written findings from these periodic reports, we will, in line with GAO's recommendation, formalize this process and do so going forward. Also, as previously planned, the new ethics management system will offer the headquarters ethics office greater ability to retrieve district ethics determinations and aggregate ethics information to verify information reported, which will further enhance the periodic reviews. Finally, the OCC headquarters ethics office has initiated a self-evaluation of the ethics program, patterned on the questions OGE typically requests in its review, and expects this review will be completed next month.

Recommendation 9

GAO recommends that the OCC expand its approach to addressing the risk of regulatory capture, including (1) revising its risk appetite statement to address risk areas other than reputational risk and (2) identifying additional factors to analyze when assessing the risk of regulatory capture.

OCC Response

It is neither accurate nor fair to characterize the OCC's approach to regulatory capture as limited to reputational risk. GAO's findings and recommendation on this matter overlook OCC's consideration of regulatory capture in seven of the nine defined risk categories in the OCC risk appetite statement. First, within the categories of Supervision Risk, Operational Risk, Reputation Risk, and Legal Risk, regulatory capture is considered within the element of employee conduct since regulatory capture is an employee conduct and integrity issue. Second, within the category of Supervision Risk, regulatory capture is considered within the element of lack of supervisory objectivity, critical thinking and sound judgement. Third, within the category of Legal Risk, regulatory capture is considered within the element that addresses gaps in mission critical functions and noncompliance with laws. Fourth, within the category of Human Capital Risk, regulatory capture is considered within the element of noncompliance with human capital law, rule, regulation, policy or procedure, or other matters that could compromise the agency's integrity. The OCC's 2018 Risk Appetite Statement states that the OCC has a low-risk appetite for these specific elements within Supervision, Operational, Reputation, Legal, and Human Capital Risk, and that the OCC will proactively manage and control these risks and will respond expediently should they surface. Finally, Reputation Risk also considers OCC culture from both external and internal views of OCC vision, mission, values and behaviors.

While we are unsure why these categories and elements were not addressed in GAO's review, we will evaluate whether it would be helpful to add language to our risk category definitions to make the above points more explicit.

**Appendix III: Comments from the Office of the
Comptroller of the Currency**

We appreciate the opportunity to comment on the Report. If you need additional information, please contact Senior Deputy Comptroller Morris Morgan, at (202) 649-6787.

Sincerely,



Morris R. Morgan
Senior Deputy Comptroller for Large Bank Supervision

Appendix IV: GAO Contact and Acknowledgments

GAO Contact

Michael Clements, (202) 512-8678 or clementsm@gao.gov

Staff Acknowledgments

In addition to the contact named above, John Forrester (Assistant Director); Christine Ramos (Analyst in Charge); Aaron A. Colsher; Anar N. Jessani; Elizabeth G. Spurgeon; Abigail Brown; Bethany Benitez; William Chatlos; Jennifer Schwartz; and Marc Molino made key contributions to this report. Also contributing to this report were Rachel DeMarcus, Farrah Graham, Matthew Keeler, James Lager, Natasha Oliver, Nadine G. Raidbard, Patricia Weng, and Jason Wildhagen.

Appendix V: Accessible Data

Agency Comment Letter

Accessible Text for Appendix III Comments from the
Office of the Comptroller of the Currency

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December 21, 2018

Mr. Michael E. Clements

Director, Financial Markets and Community Investment

U.S. Government Accountability Office

Washington, DC 20548

Dear Mr. Clements:

Thank you for providing the Office of the Comptroller of the Currency (OCC) an opportunity to review the Government Accountability Office's (GAO) draft report titled "Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture" (Report).

The GAO, in its review, addresses some of OCC's processes and procedures to mitigate the risk of regulatory capture, and in its findings, identifies a number of activities that in the GAO's opinion may improve documentation on these matters. We appreciate the challenge involved in trying to measure the risk of regulatory capture, and we understand the natural tendency in the face of such a challenge to focus on documentation. We agree that documentation can be improved on some matters, and we have already taken steps to implement a number of GAO's recommendations. However, we disagree that these documentation concerns increase the risk of regulatory capture. While the OCC remains fully committed to promoting vigilant supervision and independence, we are not convinced that a majority of the recommendations are necessary and advance this aim. We address

these concerns below in our response to each of the nine recommendations.

Recommendation 1

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision revise Large Bank Supervision's policy to require documentation of examination teams' internal deliberations that lead to consequential decisions for the bank, such as the decision to issue a Matter Requiring Attention, among others.

OCC Response

The OCC is not prepared to implement this recommendation. As noted in your report, the supervisory conclusions of individual examiners are recorded in their workpapers and conclusion memos. Preserving those documents provides transparency around when a lead examiner, a team lead, or an examiner-in-charge concludes that a different supervisory outcome is appropriate, including whether an MRA should be issued. The conclusions reached as a result of internal deliberation and consequential decisions are fully explained in communications to the bank.

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The ongoing nature of supervision of large banks results in a significant amount of dialogue among OCC staff and between OCC staff and bank management. Spending time documenting those discussions versus the conclusions reached from those discussions would be extremely time consuming, would not enhance the quality of supervision, and would result in the OCC being able to conduct fewer supervisory activities or needing to significantly reduce the scope of supervisory activities. Additionally, documenting deliberations in this manner would result in staff being less likely to share their opinions, thoughts, and perspective.

Recommendation 2

The Report recommends the Senior Deputy Comptroller for Large Bank Supervision revise Large Bank Supervision's policy to require that bank examination teams retain drafts of key documents, including the conclusion memo and supervisory letter that document the supervisory review process.

OCC Response

The OCC is not prepared to implement this recommendation. The risk of regulatory capture is controlled through subjecting supervisory decisions to multiple levels of review and quality management. Examiners do not work in isolation and their internal consultations and discussions with subject matter experts, peers, and managers provides effective credible challenge and confirmation that conclusions are defensible and supported by factual evidence. Retaining early drafts of conclusion memos and supervisory letters that might not have fully informed conclusions serves little purpose. Initial impressions or early assessments of a bank's process or practice often change as examiners gather more facts and develop their analyses over the course of a supervisory activity and with benefit of consultations with and feedback from other members of the team, the EIC, and when warranted, a Deputy Comptroller. Should examiners have concerns regarding the integrity of supervisory matters, established processes exist for having those concerns investigated internally through the OCC's Ombudsman as noted in your report, or by the Treasury OIG.

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OCC Response

The OCC is not prepared to implement this recommendation. We cannot conclude that extensive documentation of conversations and taking minutes from meetings would improve supervision or

Page 3

that without such, examiners and management are not considering pertinent information when reaching supervisory conclusions. As described earlier, the ongoing nature of large bank supervision would necessitate almost constant pauses from and reduce time and resources dedicated to mission critical research, analysis, and internal consultation amongst peers and with supervisors to record daily banker interactions.

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While we are unsure why these categories and elements were not addressed in GAO's review, we will evaluate whether it would be helpful to add language to our risk category definitions to make the above points more explicit.

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We appreciate the opportunity to comment on the Report. If you need additional information, please contact Senior Deputy Comptroller Morris Morgan, at (202) 649-6787.

Sincerely,

Morris R. Morgan

Senior Deputy Comptroller for Large Bank Supervision

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