



Audit Report



OIG-16-029

SAFETY AND SOUNDNESS

OCC Should Reconsider the Waiver of \$4.9 Million in Under-assessed Fees

January 15, 2016

Office of
Inspector General

Department of the Treasury

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Abbreviations

OCC	Office of the Comptroller of the Currency
IPA	Independent Public Accountant

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*The Department of the Treasury
Office of Inspector General*

January 15, 2016

Thomas J. Curry
Comptroller of the Currency

This report presents the results of our audit of the process used by the Office of the Comptroller of the Currency (OCC) to assess fees to independent trust banks.

We initiated the audit after OCC had informed our office of internal control weaknesses that led to the under-assessment of fees to certain banks, and subsequently waived (not collected). The independent public accountant (IPA) who audited OCC's fiscal years 2013 and 2012 financial statements noted a matter of concern in internal control over the financial institution assessment process in a management letter dated November 20, 2013. The IPA reported that from March 2009 through March 2013, five financial institutions were under-assessed by a total of approximately \$4.9 million. In September 2013, six financial institutions (including the five institutions above) were under-assessed an additional \$860,000. The IPA noted that the financial institutions were assessed as commercial banks instead of independent trust banks; independent trust banks are assessed a surcharge above the commercial bank assessment.¹ Furthermore, the IPA reported that the under-assessment of financial institutions occurred because OCC did not have policies and procedures for

¹ An independent trust bank is a national bank that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full-service national bank. An independent trust federal savings association is a federal savings association that has trust powers, does not primarily offer full-service banking, and is not affiliated with a full service federal savings association.

periodically reevaluating banks to determine whether their current categorization and thus the assessment, was appropriate.²

Our objectives were to assess (1) OCC's authority and decision-making process to waive the collection of fees erroneously under-assessed and (2) the actions taken by OCC to identify and correct internal control deficiencies in the assessment process for independent trust banks. To accomplish these objectives, we reviewed documentation provided by OCC and interviewed OCC personnel who were knowledgeable about the financial institution assessment process and OCC's authority and decision-making process for waiving the collection of fees. Appendix 1 contains a more detailed description of our objectives, scope, and methodology.

In brief, we concluded OCC had the requisite authority to waive the collection of fees. However, the waiver of the fees effectively resulted in the inconsistent treatment of banks subject to the fees and a windfall for a few banks. We noted that OCC did not have a documented process to address the handling of this type of event. We also concluded that OCC did take appropriate action to strengthen its internal control over the assessment process for trust banks.

We recommend that the Comptroller of the Currency (1) reevaluate the decision to waive the \$4,886,296 in under-assessments from the March 2009 through March 2013 period and as appropriate, take action to collect the under-assessments; and (2) implement policies and processes to govern the waiver of under-assessed fees.

In a written response, which is included as Appendix 2, OCC provided its corrective actions. With respect to the first recommendation, OCC stated that it convened a panel of senior managers and staff to reconsider its initial decision to waive the under-assessments. The panel reviewed the factors OCC used to make the original decision in October 2013, as well as the information and considerations provided by our audit. OCC continues to believe collecting assessments for prior periods based on inadequate OCC procedures would be unnecessarily disruptive

² Treasury Office of Inspector General (OIG), *Management Letter for the Audit of the Office of the Comptroller of the Currency's Fiscal Years 2013 and 2012 Financial Statements* (OIG-14-025; issued Feb. 4, 2014). The IPA performed that audit under contract with our office.

and an unfair burden to the limited number of affected community and midsize banks. With respect to the second recommendation, OCC implemented policies and processes to govern the waiver of under-assessed fees.

We acknowledge OCC's corrective actions and consider our recommendations closed. However, we are disappointed with OCC's decision regarding the waived fees, as the waiver effectively resulted in the inconsistent treatment of banks subject to the fees and a windfall for a few banks.

Background

12 U.S.C. §482, states: "The Comptroller of the Currency may impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities." Accordingly, OCC assesses and charges national banks, federal savings associations, and federal branches and agencies of foreign banks fees to support the examination and supervision processes. Payment of a semiannual assessment fee to OCC is due by March 31 and September 30 of each year, for the six-month period beginning on January 1 and July 1 before each payment date.

Each semiannual assessment is based on the total assets shown in the bank's or federal savings association's most recent Call Report or Thrift Financial Report, as appropriate. OCC calculates the amount due and provides a notice of assessments to each national bank, federal savings association, and federal branch or agency of a foreign bank, no later than 7 business days prior to collection on March 31 and September 30 of each year.

Independent trust banks pay an additional assessment fee in addition to the general assessment fee. The additional assessment for an independent trust bank includes a fiduciary and related asset component comprised of a minimum fee determined by the OCC.

Results of Audit

OCC's Waiver of Under-assessed Fees, While within Its Authority, Was a Windfall to Those Banks Whose Fees Were Waived

OCC conducted an internal legal review to determine whether it had an obligation to collect an unpaid, independent trust bank assessment, specifically where OCC failed to bill for that assessment over a period of several years. OCC concluded that it may waive or collect the unpaid trust bank assessments under the Comptroller's implied authority in 12 U.S.C. §481, "Appointment of examiners; examination of member banks, State banks, and trust companies; reports," and §482, "Employees of Office of Comptroller of the Currency; appointment; compensation and benefits." The legal review concluded that §481 authorizes the Comptroller to prescribe regulations governing the computation and collection of assessments and that §482 provides the Comptroller with broad discretion to set assessments to meet OCC expenses.

We reviewed OCC's legal opinion and the applicable statutes and regulations. We agree that there is discretion in the language allowing OCC to waive or collect the unpaid trust assessments. We also reviewed OCC policies, procedures, and guidance to determine whether there was a documented process to address the handling of this type of event. We found there was none. Accordingly, we believe that, consistent with government-wide internal control standards,³ OCC should implement policies and processes to govern how to decide whether or not to waive the collection of under-assessments.

In September 2013, OCC initiated an internal review of its process for assessing financial institutions. The objectives of the review included assessing the root cause of under-assessments, determining the extent of under-assessments due from prior periods, and reviewing OCC's responsibility for addressing the uncollected assessments. To accomplish these objectives, OCC

³ As defined in the Government Accountability Office's *Standards for Internal Control in the Federal Government* (GAO-14-704G; issued Sep. 2014), internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Management documents in policies the internal control responsibilities of the organization.

reviewed its practices, policies and procedures, and controls for identifying and assessing trust banks; asked for written documentation of the process; and conducted interviews with responsible employees.

In October 2013, OCC completed the review of its financial institution assessment process and concluded there was a substantial breakdown in internal controls that permitted the under-assessment of approximately \$5.75 million during March 2009 through September 2013. OCC identified the following internal control weaknesses:

- The process for assessing trust banks was not documented.
- The roles and responsibilities of OCC personnel who were provided the list of institutions to verify the institutions’ status as trust banks were not clearly defined.
- The coordinating office was not clear on the requirements or criteria for assessing trust banks.

Table 1 provides a list of the amounts under-assessed by OCC during March 2009 through March 2013.

Table 1. OCC Under-assessments, March 2009–March 2013

Financial Institution	Under-assessed Amount
Bank A	\$3,342,949
Bank B	\$1,075,281
Bank C	\$179,675
Bank D	\$167,054
Bank E	\$121,337
Total	\$4,886,296

Table 2 shows the amounts under-assessed for September 2013. OCC identified a sixth trust bank (Bank F) that had been under-assessed during this period.

**Table 2. OCC Under-assessments,
September 2013**

Financial Institution	Under-assessed Amount
Bank A	\$483,127
Bank B	\$167,733
Bank C	\$26,724
Bank D	\$86,347
Bank E	\$22,486
Bank F	\$77,468
Total	\$863,885

During its review of the financial institution assessment process, OCC found that another bank was incorrectly charged the independent trust bank assessment fee.

OCC took the following actions to remedy the under- and over-assessments and the internal control deficiencies:

- waived the collection of the under-assessments from March 2009 through March 2013. Approval to waive the collection of the under-assessments was attributed to (1) OCC's legal counsel opinion that the Comptroller has the authority to waive unpaid trust bank assessments and (2) discussions with external consultants who considered the dollar amount immaterial and inconsequential to a reader of OCC's financial statements;
- collected the under-assessed fees for the September 2013 period;
- refunded the over-assessed amount (\$67,083) to the one bank;
- established a process improvement team to lead management of the process for assessing financial institutions and to more clearly define, streamline, and automate the process. According to OCC officials, as a result, 90 percent of OCC's validation of bank classifications is now automated. The classification of the bank determines what fees it is assessed. The other 10 percent of OCC's validation of banks' classification remains a manual

process conducted by the Chief National Bank Examiner business unit;

- updated policies and procedures (Financial Policies and Procedures 2032-14, "Bank Assessment Calculation Process," revised October 28, 2014) to document the assessment process and assessment cycle and to provide criteria for assessing trust bank assessments; and
- developed an internal review program for the financial institution assessment process, including all key internal controls, to ensure accurate and consistent accounting for assessment collections and revenue recognition. The review is meant to ensure that established quality assurance procedures are performed and timely.

OCC took appropriate action by collecting the under-assessments for the September 2013 period and strengthening internal control. However, we believe that the waiver of the fees from March 2009 through March 2013 effectively resulted in the inconsistent treatment of banks subject to the fees and a windfall for a few banks.

We do note that the approximately \$4.9 million in waived trust bank assessments amounted to 0.1 percent of the total assessments collected during fiscal years 2009 through 2013, and agree that a reader of OCC's financial statements would likely perceive the amount waived as immaterial to those financial statements. The issue at hand, however, is not a matter of materiality with respect to financial reporting. We also note that the waived assessments were 10 percent of OCC's total trust bank assessments collected during the same period so the waived amount was not inconsequential to this fee category. Additionally, we believe that the internal control deficiency that led to the under-assessment of the trust banks does not absolve those banks from their obligations.

Recommendations

We recommend that the Comptroller of the Currency:

1. Re-evaluate the decision to waive the \$4,886,296 in under-assessments from the March 2009 through March 2013 period

and, as appropriate, take action to collect the under-assessments.

Management Response

OCC convened a panel of senior managers and staff to reconsider its initial decision to waive the under-assessments. That group reviewed the factors OCC used to make the original decision in October 2013, as well as the information and considerations provided by the Office of Inspector General. They also considered that OCC took corrective actions as soon as OCC learned that unclear and inadequate trust assessment procedures caused the assessment errors. OCC reassessed the affected banks for the period ending September 2013, the then-current assessment period, charged the affected institutions the correct assessment rate, and refunded an over-assessed amount to one bank. In addition, they considered the additional burden it would create for these community and midsize banks to restate their records to account for OCC's delayed collection of under-assessments for the March 2009 through March 2013 periods. In at least one occasion, a reassessment would require the institution to restate its earnings. Banks rely on the OCC to provide accurate fee assessments. As a result, OCC continues to believe collecting assessments for prior periods based on inadequate OCC procedures would be unnecessarily disruptive and an unfair burden to the limited number of affected community and midsize banks.

OIG Comment

We acknowledge that OCC took corrective action on this recommendation by reassessing its decision to waive the under-assessed fees. While not explicitly said in the written response, OCC has no plans to collect the under-assessed amounts in question, which is within its authority. Accordingly, we consider the recommendation closed.

That said, we are disappointed with OCC's decision not to collect the under-assessments, as we believe that the waiver of the fees effectively resulted in the inconsistent treatment of banks subject to the fees and a windfall for a few banks.

2. Implement policies and processes to govern how decisions are made with regard to the waiver of collection for under-assessed fees.

Management Response

Management agreed with the recommendation. OCC implemented policies and processes to govern the waiver of under-assessed fees. Further, the Comptroller of the Currency directed that OCC formalize the process whereby a panel of senior staff representing OCC's supervision, legal, and governance units be convened to provide the Comptroller with additional perspective on potential waivers before the Comptroller makes those decisions.

OIG Comment

Management's corrective action is responsive to our recommendation.

* * * * *

We appreciate the courtesies and cooperation provided to our staff during the audit. If you wish to discuss the report, you may contact me at (202) 927-0384 or Andrew Morgan, Audit Manager, at (202) 927-8121. Major contributors to this report are listed in Appendix 3.

Jeffrey Dye /s/
Audit Director

Our objectives were to assess (1) the Office of the Comptroller of the Currency's (OCC) authority and decision-making process to waive the collection of fees erroneously under-assessed and (2) the actions taken by OCC to identify and correct internal control deficiencies in the assessment process for independent trust banks. We took the following actions to accomplish these objectives:

- interviewed OCC personnel knowledgeable about the financial institution assessment process and OCC's authority and decision-making process for waiving the collection of fees erroneously under-assessed
- reviewed OCC documentation related to OCC's authority and decision-making process to waive the under-assessments. The documentation included a question-and-answer memorandum on OCC trust assessments, a legal opinion on disputed semiannual assessments, and a memorandum on waiving unpaid trust bank assessments approved by the Comptroller. We also consulted with the Counsel to Office of Inspector General on the legal opinion.
- reviewed OCC's internal Trust Assessment Memorandum and the supporting work papers and determined:
 - a) actions taken by OCC to identify internal control deficiencies in the financial institution assessment process
 - b) internal control deficiencies identified by OCC that contributed to the under-assessment
 - c) actions and status of measures taken by OCC to correct the identified internal control deficiencies

We did not perform, as part of the scope of this audit, a validation of the under-assessed amounts for the trust banks shown on the internal trust-assessment review memorandum.

We performed our audit fieldwork from January 2014 through February 2015.

We conducted this performance audit 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.



Office of the Comptroller of the Currency

Washington, DC 20219

December 10, 2015

Jeffrey Dye
Audit Director
Office of Inspector General
Department of the Treasury
Washington, DC 20220

Subject: Response to Draft Report

Dear Mr. Dye:

The Office of the Comptroller of the Currency (OCC) reviewed the Treasury Office of Inspector General (OIG) draft review report titled "OCC Should Reconsider the Waiver of \$4.9 Million in Under-assessed Fees." The OIG objectives were to assess (1) the OCC's authority and decision-making process to waive the collection of fees erroneously under-assessed and (2) the actions taken by the OCC to identify and correct internal control deficiencies in the assessment process for independent trust banks.

The OIG concluded that the OCC had the requisite authority to waive the collection of fees. However, the OIG recommended the OCC (1) re-evaluate the decision to waive the under-assessments and (2) implement policies and processes to govern the waiver of under-assessed fees.

We appreciate the work of the OIG. The OCC remains committed to ensuring the accurate assessment and collection of fees. Prior to your review, the OCC referred this matter to the OIG based on our own internal review of trust bank assessments. Our external financial auditors also reviewed the issue during the course of our annual financial audit and did not consider the under-assessed amount as financially material.

In response to your first recommendation, the OCC recently convened a panel of senior managers and staff to reconsider our initial decision to waive the under-assessments. That group reviewed the factors we used to make the original decision in October 2013, as well as the information and considerations provided by the OIG. They also considered that we took corrective actions as soon as we learned that unclear and inadequate trust assessment procedures caused the assessment errors. The OCC reassessed the affected banks for the period ending September 2013, the then-current assessment period, charged the affected institutions the correct assessment rate, and refunded an over-assessed amount to one bank. In addition, they considered the additional burden it would create for these community and midsize banks to re-state their

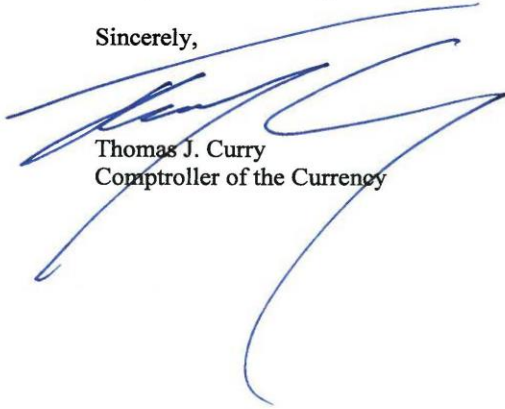
Appendix 2
Management Response

records to account for our delayed collection of under-assessments for the March 2009 through March 2013 periods. In at least one occasion, a reassessment would require the institution to restate its earnings. Banks rely on the OCC to provide accurate fee assessments. As a result, we continue to believe collecting assessments for prior periods based on inadequate OCC procedures would be unnecessarily disruptive and an unfair burden to the limited number of affected community and midsize banks.

We agree with the second recommendation and have implemented policies and processes to govern the waiver of under-assessed fees. I have directed that we formalize the process whereby a panel of senior staff representing our supervision, legal and governance units be convened to provide me with an additional perspective on potential waivers before I make those decisions.

If you need additional information, please contact me or Kathy Murphy, Senior Deputy Comptroller for Management and Chief Financial Officer at (202) 649-6993.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Thomas J. Curry', is written over the typed name.

Thomas J. Curry
Comptroller of the Currency

Appendix 3
Major Contributors to This Report

Andrew Morgan, Audit Manager
Adelia Gonzales, Auditor-in-Charge
Virginia Shirley, Auditor
Khuyen Tran, Referencer

Department of the Treasury

Deputy Secretary
Office of Strategic Planning and Performance Management
Office of the Deputy Chief Financial Officer, Risk and Control
Group

Office of the Comptroller of the Currency

Comptroller of the Currency
Liaison Officer

Office of Management and Budget

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