Audit Report

OIG-14-014

GENERAL MANAGEMENT: OCC's Leasing Activities Conformed With Applicable Requirements; Issues With the Former OTS Headquarters Building Need to Be Resolved

December 20, 2013

Office of Inspector General

DEPARTMENT OF THE TREASURY

Contents

Abbreviations

CBA	Collective Bargaining Agreement
CFPB	Consumer Financial Protection Bureau
CICA	Competition in Contracting Act
FDIC	Federal Deposit Insurance Corporation
FHL	Federal Home Loan
FHLBB	Federal Home Loan Bank Board
GAO	Government Accountability Office
GSA	General Services Administration
JAMES	Joint Audit Management Enterprise System

Contents

OCC	Office of the Comptroller of the Currency
OIG	Office of Inspector General
OTS	Office of Thrift Supervision
RSF	rentable square feet

The Department of the Treasury
Office of Inspector General

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Thomas J. Curry
Comptroller of the Currency

This report presents the results of our office's review of the Office of the Comptroller of the Currency's (OCC) real property leasing and management activities.

The objectives of our audit were to (1) determine whether OCC's real property leasing policies and procedures comply with applicable laws, rules, and regulations; (2) assess whether these policies and procedures are consistently followed; (3) review select OCC leases, to include its lease for new headquarters space, and assess whether the lease requirements were appropriate; and (4) review OCC's management and leasing activities related to the former Office of Thrift Supervision (OTS) headquarters property. To accomplish our objectives, we reviewed relevant OCC leasing documentation. We interviewed the Chief Financial Officer and officials with OCC's Real Estate Services division and Administrative and Internal Law division. We also interviewed General Services Administration (GSA) officials in regard to the former OTS headquarters property. We conducted our fieldwork from November 23, 2011, to May 31, 2013. Appendix 1 contains a detailed description of our objectives, scope, and methodology.

In brief, we concluded that OCC's policies and procedures complied with applicable laws, rules, and regulations. We also found that OCC consistently followed its established leasing policies and procedures. Furthermore, based on a review of select leases, including the lease for its new headquarters space at Constitution Center, we found that OCC's lease requirements were appropriate, specifically as to acquiring the appropriate amount of space at a reasonable cost. However, in our review of OCC's leasing authority and activities related to the former OTS headquarters property located at 1700 G Street NW, Washington, DC, we identified a potential issue regarding OCC's absolute rights to the property and its ability to exercise all rights of ownership.

We recommend that the Comptroller of the Currency review its ownership position of the former OTS headquarters property by performing an analysis and developing a legal opinion of OCC's ownership rights to the property. If OCC determines it holds ownership rights to the former OTS headquarters property, we recommend the Comptroller of the Currency take action in an expedient manner to retitle the property in the name of OCC to ensure that its authority, interest, and ownership in the building is uncontestable; or, in the alternative, engage Congress to provide a specific statutory transfer. If OCC determines that it does not hold ownership rights to the former OTS headquarters property, we recommend the Comptroller of the Currency coordinate with GSA to return the property to GSA's inventory.

We also noted other matters relating to OCC's leasing and management activities for the former OTS headquarters property. In a letter dated June 14, 2013, we requested a decision from the Government Accountability Office (GAO) relating to OCC's authority to retain rental income received from leased space at the former OTS headquarters property, as well as proceeds from any future sale of the property. Accordingly, we recommend the Comptroller of the Currency implement the actions that GAO determines are necessary from its review of the matter. In addition, although OCC is not violating any laws or best practices by being a lessor of the former OTS headquarters property, it is questionable whether the activity correlates with its mission. Therefore, if it is determined that OCC holds ownership rights to the former OTS headquarters property, we recommend the Comptroller of the Currency reassess its continued involvement with the property, or whether the property should be sold.

In a written response, provided as appendix 2, OCC stated that as part of the transfer of the former OTS headquarters building from OTS, OCC concluded that it owned the building. Based on its prior analysis and any new information, OCC will develop a written legal opinion on its ownership. OCC will also take appropriate action to ensure that its rights in the property are protected; such requirements may include titling the building in its name. With respect to the pending request for a GAO decision, OCC will review recommendations received by GAO to determine the appropriate response. Furthermore, OCC will regularly assess its interest in the former OTS headquarters property, which will include an evaluation of whether it should sell or otherwise dispose of the building. We consider OCC's planned actions and commitments to be responsive to our recommendations.

Background

Title III, *Transfer of Powers to the Comptroller of the Currency, the Corporation, and the Board of Governors*, of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides OCC with independent contracting authority, including the authority to execute leases. Section 319 of the Dodd-Frank Act allows OCC to (1) enter into and perform contracts, execute instruments, and acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of OCC; and (2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired.

The Dodd-Frank Act also transferred many of the functions, personnel, and property of the former OTS to OCC. Section 323(b)(1) of the Dodd-Frank Act provides that all real property transfer to OCC or the Federal Deposit Insurance Corporation (FDIC) in a manner consistent with the transfer of OTS employees. The agencies jointly determined that ownership of all buildings and real property would transfer to OCC. Accordingly, OTS's interests in its legacy headquarters building located near the White House at 1700 G Street NW, Washington, DC, and recently valued at $153.7 million, transferred to OCC effective July 21, 2011. Figure 1 below shows the former OTS headquarters property and figure 2 shows the location of the building.

Figure 1: Former OTS Headquarters Property

Source: Office of Inspector General (OIG) Photograph

Figure 2: Location of the Former OTS Headquarters Property

Source: www.bing.com/maps

Such interests resulted in OCC becoming the successor lessor to the ground level retail tenants at the property, who had previously leased retail space from OTS.[1] In addition to the existing retail tenant leases, in February 2012 OCC entered into a 20-year occupancy agreement[2] with the Consumer Financial Protection Bureau (CFPB), and the building now serves as CFPB's headquarters. As a result of these leases, OCC receives rental income. The leases expire at various dates through 2021, although some provide renewal options. Some leases also provide for future increases in rents over the term of the lease.

According to OCC officials, the 1700 G Street building and OCC's headquarters[3] prior to the 2012/2013 move to Constitution Center were not large enough to support the consolidated operations of the two agencies. In June 2008, OCC began to search for a new headquarters space in Washington, DC. In June 2010, OCC hired a commercial real estate firm to represent OCC for its strategic planning and federal leasing activities. In September 2010, to address the pending impact of the Dodd-Frank Act, OCC determined that a consolidated headquarters was required to best integrate OTS employees into OCC operations and culture. On February 11, 2011, OCC entered into a lease at Constitution Center located at 400 7th Street, SW, Washington, DC, for its new headquarters. OCC moved into its new location beginning in November 2012.[4]

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1 A portion of space is also occupied by a child daycare. According to an OCC official, the child daycare did not pay rent to OTS.

2 CFPB occupied portions of the 1700 G Street building from July 21, 2011, to February 16, 2012, under a short-term agreement.

3 Since 2007 until the Constitution Center move, OCC housed its headquarters operations among three separate properties in Washington, DC.

4 Under the authority of 40 U.S.C. § 581, GSA provides other federal agencies with services relating to the acquisition, management, and leasing of property. In accordance with Section 5 of Executive Order 13327, *Federal Real Property Management*, GSA provides policy oversight and guidance for executive agencies for federal real property management; manages selected properties for an agency at the request of that agency and with the consent of the Administrator of GSA; delegates operational responsibilities to an agency where the Administrator determines it will promote efficiency and economy, and where the receiving agency has demonstrated the ability and willingness to assume such responsibilities; and provides necessary leadership in the development and maintenance of needed property management information systems.

Audit Results

OCC's Real Property Leasing Policies and Procedures Complied with Applicable Laws, Rules, and Regulations

We concluded that OCC's real property leasing policies and procedures complied with applicable laws, rules, and regulations. In performing our work, we identified the most significant laws, rules, and regulations applicable to OCC regarding its leasing activities. In this regard, the applicable requirements are as follows.

- Dodd-Frank Act
- 12 U.S.C. 5416: Contracting and Leasing Authority
- Competition in Contracting Act of 1984
- Prompt Payment Act
- National Historic Preservation Act of 1966
- Anti-Kickback Act of 1986
- Anti-Lobbying Act
- Debt Collection Improvement Act of 1996
- Architectural Barriers Act of 1968
- Executive Order 11246 – Equal Employment Opportunity
- Executive Order 12072 – Federal Space Management
- Executive Order 12941 – Seismic Safety of Existing Federally Owned or Leased Buildings
- Executive Order 12902 – Energy Efficiency and Water Conservation at Federal Facilities
- Executive Order 13006 – Locating Federal Facilities on Historic Properties in Our Nation's Central Cities
- OMB Circular A-123 – Management's Responsibility for Internal Control

In its leasing manual, OCC identified the laws, rules, and regulations of primary importance that it is required to follow when conducting leasing activities. In addition, OCC's leasing manual provides a checklist encompassing all the leasing processes that it believes must be followed to ensure compliance with applicable laws, rules, and regulations. Based on our review, we determined that the laws, rules, and regulations identified by OCC and the checklist were complete and pertinent.

As mentioned above, the Dodd-Frank Act, among other things, gave OCC independent contracting authority, including the authority to execute leases. As a result, OCC is not required to follow the Federal Acquisition Regulation or utilize the services of GSA when conducting its leasing activities. However, according to OCC's policies and procedures, to the extent practicable, OCC voluntarily follows the Federal Acquisition Regulation and GSA's acquisition manual when acquiring leasehold interests in real property.

OCC's Real Property Leasing Policies and Procedures Were Consistently Followed

Based on our review of documentation and interviews of officials with OCC's Real Estate Services division, we concluded that OCC consistently followed its established leasing policies and procedures.

The types of leasing transactions OCC executes are relocations (new leases), renewals, and succeeding leases. We sampled 4 of the 90 OCC active leases[5] and determined that OCC consistently performed the steps required in its leasing manual. OCC's leasing manual requires the use of a lease file checklist for each type of leasing transaction to ensure that all required phases[6] in the leasing process are complete and its policies and procedures are followed. The lease file checklist lists all documentation required to be included in the lease file. We found that the lease files for our sample included a completed checklist and all relevant documentation.

[5] We selected a risked-based sample of 4 leases for review, including Constitution Center. To select our sample, we identified risk-factors that could affect OCC's execution of its leasing activities. In this regard, we sampled leases OCC executed under its Dodd-Frank Act leasing authorities with the largest square footage and annual rent. We also considered the leased property location to test for compliance with Executive Order 12072, Federal Space Management, which among other things, requires that the process for meeting federal space needs in urban areas give first consideration to a centralized business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials.

[6] OCC's leasing process consists of five phases which are determination of the lease requirements, pre-solicitation of lessors, solicitation of lessors, determination of the successful offeror, and execution of the lease.

As part of our sample, we reviewed the lease file and relevant documentation for OCC's new headquarters space at Constitution Center, its largest lease. We found that OCC followed its leasing policies and procedures and complied with applicable regulations including, among others, the Competition in Contracting Act (CICA).

CICA requires federal agencies to conduct full and open competition for leased space. However, when any one or more of seven specific exceptions to CICA is applicable, CICA permits an agency to use noncompetitive procedures. OCC used the sole source exception to CICA to procure the Constitution Center lease.[7]

Consistent with Executive Order 12072, OCC commissioned a market study of all buildings in the central business area of Washington, DC, to determine which buildings met OCC's requirements[8] for its new headquarters space. The study, dated October 2010, found that no existing building in Washington, DC, could meet OCC's space requirements. In response to our inquiry as to the reasons OCC only pursued locations in Washington, DC, for its new headquarters space, an OCC official told us that because of frequent trips to the Main Treasury Building, Congressional offices, and other federal entities, a location in Washington, DC was preferred.

Shortly after completion of the market study, a soon-to-be tenant in Constitution Center determined it had committed to too much space in the building and was looking for a way to exit a significant portion of its lease. After receiving an unsolicited proposal from Constitution Center and the completion of a follow-up market study, dated November 2010, which determined that Constitution Center was the only existing space in Washington, DC, that could meet OCC's space requirements, OCC used the sole source

[7] 41 U.S.C. § 253, Competition requirements, states, in part, that an executive agency may use procedures other than competitive procedures when the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency.

[8] OCC requirements for its new headquarters space included (1) 600,000 to 650,000 rentable square feet (RSF) of contiguous space in a single location, (2) availability for immediate improvements, and (3) availability for occupancy by fall 2012.

exception to CICA to procure a lease at Constitution Center. As required by CICA, OCC prepared a sole source justification for other than full and open competition before using noncompetitive procedures, which was reviewed and approved by a senior OCC procurement official as well as a senior official in OCC's legal department. Furthermore, in accordance with internal policies and procedures, OCC published a notice of intent to lease space from a sole source and a notice of a contract award to a sole source in FedBizOpps.[9]

OCC's Lease Requirements Were Appropriate

Based on our review of the sampled leases discussed above, including OCC's lease at Constitution Center, we found that OCC's lease requirements were appropriate, specifically as they relate to acquiring the appropriate amount of space at a reasonable cost. OCC established a methodology for determining space requirements, and employed this methodology consistently to acquire office space. Furthermore, OCC conducted cost analyses when considering properties to fulfill its lease requirements and typically executed leases at prices near or below market averages.

OCC Leased an Appropriate Amount of Space

Based on interviews with OCC officials and our review of OCC's space standards documents and the Collective Bargaining Agreement (CBA) with the National Treasury Employees Union, we determined that OCC leased an appropriate amount of space. The amount of space that OCC leased was based on (1) its internal space requirements standards, (2) the CBA, and (3) feedback from the head of each local office.

OCC has space standards for offices, workstations, entry areas, coat closets, and conference rooms. Based on an independent study conducted in 2000, OCC established its standard office size at 120 square feet, a reduction from a previous standard of 145 square feet. The standard workstation size for examiners is 50

[9] FedBizOpps is the central website that all federal agencies use to post open procurements. All federal procurements estimated to cost over $25,000 have to be listed on the website. Sources sought, award notices, sole source awards, and other procurement related releases are also posted.

square feet. According to an OCC official, all OCC offices comply with these space requirements except for leases that were executed under standards previous to 2000. Locations operating under the previous standard will eventually reduce their footprints when the associated leases expire.

The CBA also requires standard space requirements for workstations and the like.[10] These requirements apply to field offices, satellite offices, and large bank offices. In addition, the CBA requires that OCC address space imbalances as soon as practicable. Based on our review of documentation and interviews with OCC officials, OCC corrects these imbalances at renewal and lease expiration intervals, or when space constraints impact OCC's ability to achieve its mission.

Assistant Deputy Comptrollers, who are the heads of each field office, communicate the specific needs of their field office to OCC management via a space requirements questionnaire. The Assistant Deputy Comptroller also completes an assessment form that evaluates the features (or lack thereof) of the current space. The results of the questionnaire and assessment form are taken into consideration by OCC management when making relocation, renewal, and space requirement decisions. In addition, OCC considers its projections for growth or contraction in the local market when determining the amount of office space it needs. Additional workspace to accommodate future growth must be approved by the appropriate senior officer at the field office, district office, and headquarters level. In the event that OCC has underutilized office space, OCC considers the net cost of exiting the lease and relocating to a smaller property.

We found that OCC applied the space requirement methodology described above when it acquired space for the four leases in our sample. For the first three leases in the sample (not including headquarters space at Constitution Center), OCC leased space without special circumstances or need to alter its occupancy plans.

[10] The requirements are 120 square feet for analysts, 64 square feet for office automation assistants, and 48 to 64 square feet for all other bargaining unit employees.

However, special circumstances did alter the amount of space leased relative to the amount of space required at Constitution Center. On February 11, 2011, OCC executed a 15-year lease agreement[11] with the owner of Constitution Center for 640,000 to 685,000 RSF.[12] The total amount of space leased exceeded OCC's original estimated space requirements; however, OCC justified its increase in space and has since adjusted its occupancy plans to ensure maximum utilization of the space. Based on Constitution Center's layout, to provide for physical security of OCC's premises, OCC increased the amount of space leased so that it could solely control the two elevator banks serving its area of the building. To fully utilize the additional space, OCC moved its Washington, DC, field office and data center into Constitution Center. The leases for both properties were due to expire in the near term; therefore, OCC believed its decision to relocate these units to Constitution Center was reasonable. We agree.

OCC Space Costs Were Reasonable

Based on OCC's internally prepared cost analysis documentation and a review of third-party commercial real estate data for the markets in our sample, we determined that OCC acquired space at a reasonable cost when fulfilling its lease requirements, including its lease for Constitution Center.

OCC prepares various types of cost analyses depending on the nature of the lease transaction. Such analyses include comparing the cost of new construction to leasing an existing structure, comparing the cost of staying in and/or modifying a current property versus moving to another property, considering the cost of leasing space in additional properties to accommodate growth versus consolidating functions into a single property, and considering the costs and benefits of offerors' properties during the selection phase. We did not take exception with the cost analyses prepared for the leases in our sample.

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[11] As part of the lease, OCC was provided 60,000 RSF for immediate occupancy, with the remainder of the space to be available in the third or fourth quarter of 2012.

[12] RSF is the square footage number used for leasing purposes that includes the actual square footage assigned to a space and an added factor for shared facilities within the building. For most properties, OCC used the Building Owners and Management Association RSF standard of measurement.

OCC's Ownership Position of the Former OTS Headquarters Property Is Uncertain

Based on our review of various documents related to the former OTS headquarters property, recently valued at $153.7 million, we believe that OCC should take action to clarify its ownership of the property. Currently, the deed to the land is held in the name of the United States of America, yet the property (land and building) is held in the inventory of OCC and is recorded as an asset on OCC's books.

Building History

The 1700 G Street land was originally acquired in 1972 by the Federal Home Loan Bank Board (FHLBB)[13] using the services of GSA. The deed for the land was issued to the United States of America. GSA awarded a contract for the construction of the building and for use as the FHLBB headquarters. To fund construction of the building, Congress authorized FHLBB to impose assessments,[14] along with advances,[15] on the Federal Home Loan (FHL) banks. FHLBB took possession of the building in or around 1977, and began to lease out commercial space in the building (at the ground level).

[13] FHLBB was established as an independent agency by the Housing Amendments of 1955 (69 Stat. 640), August 11, 1955. In 1966, Congress amended 12 U.S.C. §1438, adding subparagraph (c), which provided that, among other things, that FHLBB could obtain property and construct a building upon it.

[14] According to an OTS legal opinion dated July 11, 1996 (hereinafter referred to as the July 1996 OTS legal opinion), FHLBB had assessed the FHL banks $45 million by 1978. The banks amortized these assessments as an expense. FHLBB recorded the $45 million as "Paid in Capital-FHLBB quarters." OTS found no record of the FHLBB repaying the FHL banks the principal or interest on the assessments, noting that former FHLBB staff confirmed no repayments were ever made. In addition, the financial statements of both FHLBB and the FHL banks for calendar years 1974 through 1980 reveal their intention to treat the assessments as non-repayable expenses of the FHL banks; thereby, eliminating any potential claims by the FHL banks to the property today.

[15] The advances were to be repaid to the FHL banks at 4.5 percent. FHL banks were not given a "mortgage" on the land or the building; their advances to the board were an unsecured obligation. It is unclear the amount of or whether or not the advances were repaid. According to the July 1996 OTS legal opinion, "we found no record of the Board {FHLBB} repaying the FHL banks the principal or interest on the assessments/advances. Former Board staff confirmed that no payments were ever made."

However, FHLBB's authority to lease out space was questioned. In a 1978 case, *Globe, Inc. v. FHLBB*,[16] a bookstore owner located across the street from the building sued to invalidate a concession agreement between FHLBB and a competing bookstore located in the building, alleging that FHLBB did not have the authority to enter into such an agreement. The court held that under 12 U.S.C. §1438(c)(4), GSA, not the FHLBB, had long-term custody, management, and control of the building. The provision in the statute only gave temporary authority to FHLBB. The custody, management, and control of the building were to remain vested to the Administrator of GSA until other arrangements were made between FHLBB and the Administrator. Therefore, any agreement made by the FHLBB could either be temporary or had to be formally approved by GSA. Additionally, the court held that "if Congress had intended that FHLBB should enjoy permanent authority over its quarters, Congress could have used the familiar draftsman's device of vesting authority in FHLBB 'unless and until the making of such arrangements.'" Nevertheless, commercial activities continued and neither FHLBB nor its successors have engaged in further discussion or completed a formal arrangement with GSA regarding the management, custody, or control of the property.[17]

FHLBB occupied the building until Congress transferred the duties and employees of the FHLBB among various other agencies in 1989. [18,19] These agencies, which included OTS, were to jointly divide all property of FHLBB that had been used to perform its functions and activities. OTS subsequently took possession of the property at 1700 G Street and inherited the same powers, restrictions, and responsibilities regarding the acquisition of real property that FHLBB had.

In 1996, a question arose at OTS as to who owned the property at 1700 G Street. In the July 1996 OTS legal opinion, OTS counsel concluded that the deed to the land occupied by the building was

[16] *Globe, Inc. v. Federal Home Loan Bank Board*, 471 F. Supp 1103 (1979)

[17] OCC had discussions with GSA solely for the purpose of executing an agreement with regard to OCC's ability to lease the 1700 G Street property to CFPB, but not for determining the long term custody, management, and control of the building.

[18] P.L. 101-73, §405; 103 Stat. 363 (1989)

[19] As part of this reorganization, Congress substituted OTS for the FHLBB in 12 U.S.C. §1211 *et seq.*, including in the relevant provisions of 12 U.S.C. §1438.

vested in the United States, but that OTS owned the building itself. The OTS opinion conceded that no document exists vesting clear title to the 1700 G Street building in OTS, but stated, “we cannot find a basis for any other person(s) or entity(ies) to claim ownership.” Nevertheless, the opinion stated that OTS did not have statutory authority, for instance, to actually sell the property; it would, presumably, be sold through GSA and the proceeds distributed accordingly.

In July 2010, Congress passed the Dodd-Frank Act, which among other things, abolished OTS and transferred its functions, employees, and property to OCC, FDIC, and/or the Board of Governors of the Federal Reserve System. Section 323 of the Dodd-Frank Act provided that OTS property used to perform or support the functions of OTS would be transferred to OCC or FDIC. However, section 323 did not specifically transfer the 1700 G Street property to OCC.

Section 319 of the Dodd-Frank Act gave OCC contracting and leasing authority. In 2011, OCC attempted to enter into a long term lease arrangement with CFPB to enable CFPB to acquire office space within the 1700 G Street building. OCC asserted that its right to lease space within the building was part of its independent contracting and leasing authority provided by section 319. However, according to an OCC official, CFPB believed that OCC still needed to obtain a delegation of authority from GSA to lease the building to CFPB. OCC received that delegation of authority and on February 17, 2012, and entered into a 20-year occupancy agreement with CFPB.

Discussion

The land at 1700 G Street was specifically mandated[20] to be acquired “in the name of the United States,” and not in the name of an independent agency. As stated above, the 1996 OTS opinion conceded that no document existed at the time vesting clear title to the 1700 G Street building to OTS. Therefore, whether or not the property (land and building) was actually “property of” FHLBB

[20] P.L. 89-754, §1016(b)(2); 80 Stat. 1293 (1966)

and OTS and available for valid transfer to OCC in fee simple absolute[21] by virtue of the Dodd-Frank Act is not clear.

Generally GSA has authority to dispose of federal property that is not exempt by statute.[22] GSA counsel told us that in the absence of a document separating the land and building, they are considered to be one unit owned by the United States[23] and not by any particular agency. Furthermore, GSA counsel said that GSA would not support the concept that OCC, OTS, or FHLBB had the authority to sell a property in the name of the United States in the absence of very specific statutory authority.

GSA counsel further stated that the property is not listed in the GSA inventory of federal buildings, but is reported as an asset on OCC's books. GSA counsel declined to provide an advisory opinion[24] regarding ownership in fee simple absolute of the property at 1700 G Street and suggested that OCC clarify its position with regard to the property. However, an OCC official does not believe that if OCC were to sell the building that it would create any problems because of the authority provided to OCC in Section 319. At the time of our audit, OCC had not prepared a legal analysis to support this position.

According to OCC officials, they have considered, and plan to re-consider, selling the property. A potential issue arises in the event OCC should choose to sell the property. In addition to giving OCC contracting and leasing authority, section 319 of the Dodd-Frank Act enables OCC to sell a building or interests wholly independent of GSA rules and regulations. Nevertheless, without clear ownership of the property, OCC could have difficulty proving ownership and therefore executing a sale. If OCC has title to the

[21] Fee simple means ownership that will not end with the death of the present owner but will be passed to his or her heirs. Absolute means that the owner's rights of ownership are not limited by any condition.

[22] Federal Property And Administrative Services Act Of 1949, 63 Stat 377 (June 30, 1949), as amended

[23] Department of Justice "Title Standards 2001" provides that such acquired property should be deeded to the United States of America and its assigns. See also 40 U.S.C. §3111.

[24] An advisory opinion is a formal opinion by a judge, a court, or a law officer relating to a legal question submitted by a legislative body or a governmental official. The opinion does not have any binding force.

building, it may sell or otherwise dispose of it; if it does not, it holds a property interest[25] and can only dispose of that interest, but not sell it without going through GSA. This is important in the context of providing clear title to any future purchaser and ensuring that the property of the United States is administered in the manner intended by Congress.

We reviewed the ownership documents for certain properties of other agencies that have authority to hold and alienate property, such as the U.S. Department of Housing and Urban Development and the U.S. Postal Service. For those properties, the title was in the name of the agency or in the name of the agency head and his or her successors in office, rather than the United States. The authority granted to OCC by section 319 of the Dodd-Frank Act is similar to the authority granted to the U.S. Postal Service under 39 U.S.C. sections 401(5) and (6), where, among other things, it can acquire, hold, maintain, sell, lease, or otherwise dispose of real property or interest.[26] Furthermore, section 2002 of the same title provides that GSA work with the U.S. Postal Service to transfer properties to it. However, the Dodd-Frank Act has no provisions similar to the U.S. Postal Service's section 2002 that seemed to anticipate formal property transfer.

Conclusion

Based on our review of the deed of the land, GSA's and OCC's authorities, the history of the 1700 G Street property, interpretations regarding ownership, and comparison of other agencies' rights and responsibilities regarding realty, we concluded that the scope of OCC's authority with regard to the building, should OCC decide to sell rather than lease the property, could be questioned.

[25] A property interest is the extent of ownership or rights of use in the property.

[26] 39 U.S.C.§401 (5) and (6) state among other things, the U.S. Postal Service can (1) acquire real property, or any interest, as it deems necessary or convenient in the transaction of its business; (2) hold, maintain, sell, lease, or otherwise dispose of such property or any interest; (3) provide services in connection with such property or interest and impose charges; and (4) construct, operate, lease, and maintain buildings, facilities, equipment, and other improvements on any property owned or controlled by it, including, without limitation, any property or interest transferred to it under section 2002 of this title. Section 2002 also provides that GSA work with U.S. Postal Service to transfer properties to it.

As stated earlier (1) the deed of the land is in the name of the United States of America, (2) no title exists for the building, and (3) there are no documents expressly establishing ownership in any particular agency of the United States. In the absence of such documents, and in contemplation of the 1996 OTS opinion, we recognize the likelihood for issues to arise concerning the ownership and right to dispose of the property. We believe that OCC should take action in an expedient manner to resolve the ownership issue with the building.

Other Matters Identified Relating to OCC's Leasing and Management Activities

OCC's Authority to Retain Rental Income Received from Leased Space at or the Proceeds from Any Future Sale of the Former OTS Headquarters Property Is Uncertain

As discussed above, in fiscal year 2012, OCC entered into a 20-year occupancy agreement with CFPB for a portion of the former OTS headquarters building, and began receiving rental income from building tenants. According to OCC's fiscal year 2012 annual report, OCC expects to collect approximately $12 million in rental income from the entire property, including retail tenants, during fiscal year 2013. Furthermore, OCC expects to collect future minimum rental income, including fiscal year 2013, totaling over $272 million over the terms of the leases. Based on a consultant's study, as of February 4, 2011, the building was valued at approximately $153.7 million.

Section 319 of the Dodd-Frank Act allows OCC to (1) enter into and perform contracts, execute instruments, and acquire real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of OCC; and (2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired. However, there is a lack of specific legislative authority to retain such funds, making it unclear whether OCC is required to deposit such funds into the Treasury in accordance with the Miscellaneous Receipts Act,[27] or whether it may deposit them for obligation against its expenses and operations costs. Our review of this and other applicable statutes[28] leads us to question the extent of OCC's authority to dispose of proceeds obtained by revenue-generating activities other than fees, assessments, or charges made in the course of its examinations of financial institutions. We, therefore, in a letter dated June 14, 2013, requested a decision from GAO relating to whether OCC is authorized to retain rental income received from leased space at the former OTS headquarters building, as well as proceeds from any future sale of the property. That decision is pending.

Future Consideration of the Sale of the Property

As discussed above, OCC became a successor lessor as a result of the transfer of the former OTS' property interests. Prior to the transfer of the property interest, OCC considered selling the former OTS headquarters property rather than taking on the role of a lessor. OCC engaged a private consulting firm to perform a study, dated February 4, 2011, to value the property for sale and rental purposes. [29] OCC decided not to sell the building. According to officials, OCC will re-consider selling the property every 2 to 3 years. However, it is important to note that OCC's primary mission is to charter, regulate, and supervise national banks and federal savings associations. That said, although OCC is not violating any laws or best practices by being a lessor, we believe that role does not correlate with its primary safety and soundness related mission. Therefore, if it is determined that OCC owns the former OTS headquarters property, OCC should consider its legislatively-based mission when it re-considers selling the property.

[27] The Miscellaneous Receipts Act (31 U.S.C. § 3302(b)(1)) states "Except as provided in section 3718(b), an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable with deduction for any charge or claim."

[28] Our review primarily consisted of 12 U.S.C. § 16, 12 U.S.C. § 481, 12 U.S.C. § 482, and Revised Statute 5240, and the applicable sections and other statutes referred to within them.

[29] The study valued the building at approximately $153.7 million. At the time of the study, OCC knew that CFPB was willing to occupy the entire building under triple-net rent terms, which requires the lessee to pay for net real estate taxes on the leased asset, net building insurance, and net common area maintenance. The results of the study found that the net present value of renting the property under a triple net rent contract for 10 years slightly exceeded the net present value of selling the building.

Recommendations

We recommend that the Comptroller of the Currency:

1. Take action to review its ownership position of the former OTS headquarters property by performing an analysis and developing a legal opinion of OCC's ownership rights to the property.

   Management Response

   As part of the transfer of the former OTS headquarters property to OCC pursuant to Dodd-Frank, the OCC Chief Counsel's Office reviewed documentation related to ownership of the former OTS headquarters building provided by OTS staff, as well as applicable laws and regulations related to the transfer and ownership of the building. OCC concluded it owns the building. Based on its prior analysis and any new information, OCC will develop a written legal opinion on ownership of the headquarters building.

   OIG Comment

   OCC's planned action to develop a written legal opinion that considers the prior analysis and any new information is responsive to our recommendation. OCC will need to record an anticipated date for completing its planned action in the Joint Audit Management Enterprise System (JAMES), Treasury's audit recommendation tracking system.

2. If OCC determines it holds ownership rights to the former OTS headquarters property, take action in an expedient manner to retitle the property in the name of OCC to ensure that its authority, interest, and ownership in the building is uncontestable; or, in the alternative, engage Congress to provide a specific statutory transfer.

   If OCC determines that it does not hold ownership rights to the former OTS headquarters property, coordinate with GSA to return the property to GSA's inventory.

Management Response

OCC will take appropriate action to ensure that its rights in the former OTS headquarters building are protected based on applicable statutory and regulatory requirements. Such requirements may include titling the building in the name of OCC. OCC expects that its written legal opinion will conclude that OCC owns the building.

OIG Comment

OCC's planned action is responsive to our recommendation. OCC will need to record an anticipated date for completing its planned action in JAMES.

3. Implement the actions that GAO determines are necessary from its review of OCC's authority to retain rental income received from leased space at the former OTS headquarters building, as well as proceeds from any future sale of the property.

   Management Response

   OCC provided written responses to GAO questions concerning OCC's retention of rental income received from leased space at the former OTS building. To date, OCC has not been contacted by or received an opinion from GAO. When OCC receives recommendations from GAO, OCC will review the recommendations and determine the appropriate response.

   OIG Comment

   We consider OCC's commitment to determine an appropriate response to any GAO recommendations as meeting the intent of our recommendation. While the timing for implementation is not know at this time, pending the decision by GAO, OCC should still estimate and record an anticipated completion date in JAMES.

4. As applicable based on the results of the actions taken for Recommendations 1 and 2, reassess its continued involvement with the property, or whether the property should be sold.

Management Response

OCC will regularly assess its interest in the former OTS headquarters building, which will include an evaluation of whether it should sell or otherwise dispose of the building.

OIG Comment

OCC's commitment to regularly assess its interest in the former OTS headquarters property to be 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) 927-5776 or Alicia Weber, Audit Manager, at (202) 927-5811. Major contributors to this report are listed in Appendix 3.

/s/

Susan Barron
Audit Director

The objectives of our audit were to (1) determine whether the Office of the Comptroller of the Currency's (OCC) real property leasing policies and procedures comply with applicable laws, rules, and regulations; (2) assess whether these policies and procedures are consistently followed; (3) review select OCC leases, to include its lease for new headquarters space, and assess whether the lease requirements were appropriate; and (4) review OCC's management and leasing activities related to the former Office of Thrift Supervision (OTS) headquarters property. We conducted our fieldwork from November 2011 to May 2013. The scope of our audit ranged from 2005 to present to review leasing activities, and from 1966 to present with regard to the former OTS headquarters property.

To accomplish our objectives, we

- reviewed applicable laws, rules, and regulations which OCC must follow when conducting leasing activities.
- identified laws, rules, and regulations which could be applicable to OCC when conducting its leasing activities.
- reviewed OCC's internal policies and procedures related to real property leasing and compared them to applicable laws, rules, and regulations.
- sampled 4 of 90 leases in effect at the time of our audit, which consisted of relocation, renewal, and supplemental leases. We included Constitution Center in our sample because we specifically identified it in our audit objectives. Based on a review of the documentation, we determined that the inherent risk that policies and procedures and/or lease requirements were inappropriate was very low. Therefore, we selected a sample of 3 leases in addition to Constitution Center, covering 4 out of OCC's 90 active leases (approximately 4.4 percent). To select our sample, we identified possible risk-factors related to OCC's execution of its leasing activities; such risk factors included the square footage rented, annual rent paid, and locations of properties. We reviewed relevant lease documents for each lease in our sample to determine whether policies and procedures were consistently followed and the lease requirements were appropriate. We reviewed publicly available 2011 commercial real estate data published by two global

commercial real estate services firms. We compared the average rents by market to the amounts of rent paid by OCC.
- interviewed the Chief Financial Officer and officials with the following OCC divisions responsible for its leasing and real estate property management activities: Real Estate Services and Administrative and Internal Law.
- reviewed relevant documentation related to OCC's acquisition and management of the former OTS headquarters property in Washington, DC.
- reviewed historical and legal documentation related to the history of ownership of the former OTS headquarters property.
- interviewed officials with the General Services Administration, including the Senior Asset Manager, Supervisory Asset Manager, Assistant Regional Counsel, and Supervisory General Attorney. We also consulted with the Deputy Assistant Inspector General for Real Property Audits at the General Services Administration's Office of Inspector General regarding the legal ownership status of the former OTS headquarters property.

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 12, 2013

Susan Barron
Audit Director
Office of Inspector General
Department of the Treasury
Washington, DC 20220

Subject: Response to Draft Report

Dear Ms. Barron:

We have reviewed your draft report titled "OCC's Leasing Activities Conformed With Applicable Requirements; Issues With the Former OTS Headquarters Building Need to be Resolved." Your objectives were to: (1) determine whether OCC's real property leasing policies and procedures comply with applicable laws, rules, and regulations; (2) assess whether these policies and procedures are consistently followed; (3) review select OCC leases, to include its lease for new headquarters space, and assess whether the lease requirements were appropriate; and (4) review OCC's management and leasing activities related to the former Office of Thrift Supervision (OTS) headquarters property.

You concluded that OCC's real property leasing policies and procedures complied with applicable laws, rules, and regulations and that they were consistently followed. You also concluded that OCC's lease requirements were appropriate. However, you found issues concerning the former OTS headquarters property. Specifically, you concluded that the OCC's ownership position of the former OTS headquarters property is uncertain and questioned the OCC's related leasing and management activities. In a letter dated June 14, 2013, you requested a decision from the Government Accountability Office (GAO) relating to OCC's authority to retain rental income received from leased space at the former OTS headquarters property, as well as proceeds from any future sale of the property. You make four recommendations to address these issues.

First, you recommend that the OCC take action to review its ownership position of the former OTS headquarters property by performing an analysis and developing a legal opinion of OCC's ownership rights to the property. As part of the transfer of the former OTS headquarters building from the OTS to the OCC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 21, 2010), the OCC Chief Counsel's Office reviewed documentation related to ownership of the former OTS headquarters building provided by OTS staff. In addition, the OCC reviewed applicable laws and regulations related to transfer and ownership of the building. The OCC concluded that it owns the building. Based on its prior analysis and any new information, the OCC will develop a written legal opinion on ownership of the headquarters building.

Second, you recommend that if OCC determines it holds ownership rights to the former OTS headquarters property, it takes action in an expedient manner to retitle the property in the name of OCC to ensure that its authority, interest, and ownership in the building is uncontestable; or, in the alternative, engage Congress to provide a specific statutory transfer. You recommend, on the other hand, that if OCC determines that it does not hold ownership rights to the former OTS headquarters property, it coordinate with the General Services Administration (GSA) to return the property to GSA's inventory. The OCC will take appropriate action to ensure that its rights in the former OTS headquarters building are protected based on applicable statutory and regulatory requirements. Such requirements may include titling the former OTS headquarters building in the name of the OCC. The OCC expects that its written legal opinion will conclude that the OCC owns the building.

Third, you recommend that the OCC implement the actions that GAO determines are necessary from its review of OCC's authority to retain rental income received from leased space at the former OTS headquarters building, as well as proceeds from any future sale of the property. On September 16, 2013, the OCC provided written responses to GAO questions concerning OCC retention of rental income received from leased space at the former OTS headquarters building. To date, the OCC has not been contacted by or received an opinion from GAO. When the OCC receives recommendations from GAO, the OCC will review the recommendations and determine the appropriate response.

Lastly, as applicable based on the results of the actions taken in response to the first and second recommendations, you recommend that the OCC reassess its continued involvement with the property, or whether the property should be sold. The OCC will regularly assess its interest in the former OTS headquarters building. The OCC's assessment will include an evaluation of whether the OCC should sell or otherwise dispose of the building.

If you need additional information, please contact me or Thomas R. Bloom, Senior Deputy Comptroller for Management and Chief Financial Officer at 202-649-5480.

Sincerely,

/s/

Thomas J. Curry
Comptroller of the Currency

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Susan Barron, Audit Director
Amni Samson, Audit Manager
Alicia Weber, Audit Manager
Kathryn Bustell, Auditor-in-Charge
Amy Altemus, Assistant Counsel
Rufus Etienne, Referencer

The 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

OIG Budget Examiner