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Report to the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives

February 2006

OCC CONSUMER ASSISTANCE

Process Is Similar to That of Other Regulators but Could Be Improved by Enhanced Outreach

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Highlights

Highlights of GAO-06-293, a report to the Subcommittee on Oversight and Investigations, Committee on Financial Services, House of Representatives

Why GAO Did This Study

In January 2004, the Office of the Comptroller of the Currency (OCC)—the federal regulator of national banks—issued rules concerning the extent to which federal law preempts state and local banking laws. Some state officials and consumer groups expressed concerns about a perceived loss of consumer protection. GAO identified (1) how OCC's complaint process compares with that of other federal bank regulators, (2) how complaint information informs OCC's supervision of national banks, and (3) issues that consumer advocates and state officials have raised about OCC's consumer protection efforts and OCC's responses to the issues.

What GAO Recommends

GAO recommends that OCC (1) measure the satisfaction of consumers it assists; (2) revise the way it measures and reports on its timeliness in resolving consumer complaints; and (3) better inform the public, state officials, and others of its role in handling consumer questions and complaints.

OCC agreed with our conclusions and recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-293.

To view the full product, including the scope and methodology, click on the link above. For more information, contact David G. Wood at (202) 512-6878 or woodd@gao.gov.

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What GAO Found

Overall, OCC's process for handling consumer complaints—carried out primarily by its Customer Assistance Group (CAG)—is similar to that of the other three federal bank regulators. However, unlike two of them, OCC lacks a mechanism to gather feedback from consumers it assists that could help it and the banks improve service to consumers. All of the regulators resolve the majority of complaints by providing or clarifying information for bank customers; less frequently, the regulators investigate and determine that a bank or customer erred. OCC annually handles more complaints than the other regulators, likely reflecting its position as the supervisor of banks with the majority of the nation's bank assets. OCC's complaint volume has not increased appreciably since it issued the preemption rules. OCC, in accordance with federal requirements for agencies to measure how they are fulfilling goals related to serving the public, measures the percentage of complaints it resolves within 60 days, a target other federal bank regulators also use. In reporting its performance, however, OCC includes data on its response to consumers' inquiries, which typically take less time, thereby overstating its performance on timeliness of responses to complaints.

OCC's bank examiners use consumer complaint information collected by CAG to plan or adjust examinations. CAG staff and examiners communicate regularly regarding specific complaints or complaint volume and coordinate these efforts to provide consistent messages when discussing consumer-related issues with bank officials. In addition, complaint data inform OCC policy guidance to banks, often addressing potential compliance and safety and soundness risks banks face. CAG also provides feedback to banks, focusing on complaint trends and potential risks that may impact the banks' compliance with consumer protection laws or other issues.

Many of the state officials and consumer advocates GAO contacted during visits to four states, as well as some representatives of national organizations, nevertheless remain concerned about OCC's commitment and capacity to address consumer complaints—especially given their perception that the rules effectively ended protections provided by state laws and processes. Specific concerns these officials cited include an inability to obtain information on complaint outcomes, the fact that OCC handles complaints from a single location, and the adequacy of CAG's resources. OCC has taken actions addressing some of these concerns. The agency views itself as a neutral arbiter and continues to provide an avenue for consumers to file complaints related to national banks. OCC recently hired additional CAG staff and has begun working with a third-party vendor to expand telephone service from 7 to 12 hours a day. GAO noted that some officials and advocates contacted were unaware of OCC's process for handling consumer complaints and the assistance it can provide.

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Abbreviations

CAESAR	Complaint Analysis Evaluation System and Reports
CAG	Customer Assistance Group
CCS	Consumer Complaint System
CSBS	Conference of State Bank Supervisors
FDIC	Federal Deposit Insurance Corporation
GPRA	Government Performance and Results Act of 1993
MOU	Memorandum of Understanding
NAAG	National Association of Attorneys General
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
STARS	Specialized Tracking and Reporting System

United States Government Accountability Office
Washington, D.C. 20548

February 23, 2006

The Honorable Sue W. Kelly
Chairwoman
The Honorable Luis V. Gutierrez
Ranking Minority Member
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives

In January 2004, the Treasury Department's Office of the Comptroller of the Currency (OCC), which supervises federally chartered "national" banks, issued two final rules, the bank activities rule and the visitorial powers rule (commonly known as the "preemption rules"). The bank activities rule addressed the applicability of certain types of state laws to lending, deposit-taking, and other federally authorized activities of national banks. The visitorial powers rule addressed OCC's view of its authority under federal law to inspect, examine, supervise, and regulate the affairs of national banks. Some state officials, Members of Congress, and consumer groups opposed the rules because of what they viewed as potentially adverse affects on the dual banking system—which encompasses both national and state-chartered banks—and on consumer protection. In particular, state attorneys general, state banking departments and consumer advocates expressed doubts about OCC's ability or inclination—as the sole regulator of national banks and their operating subsidiaries—to adequately protect consumers.

In addition to OCC, the Federal Reserve System (Federal Reserve)—including the Board of Governors and the 12 Federal Reserve Banks—the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS)[1] are the primary federal regulators of banks. For commercial and savings banks with state bank charters, states charter the entity and have supervisory responsibilities, while the Federal Reserve or FDIC serve as the primary federal supervisor for these banks. In the

[1]OTS, established by Congress as a bureau of the Department of the Treasury, charters, examines, supervises, and regulates federal savings associations. For the purposes of this report, we refer to federal savings associations as banks.

National Bank Act, the Congress created OCC to supervise national banks.[2] In its capacity as the supervisor of national banks, OCC issues regulations, policies, and interpretations to establish standards, define acceptable practices, provide guidance on risks, and prohibit or restrict practices. Under the Federal Trade Commission Act, OCC is charged with protecting consumers from unlawful and deceptive practices by national banks. One indicator of potential consumer protection issues is consumer complaints that OCC receives and their resolution. The main division within OCC tasked with handling consumer complaints is the Customer Assistance Group (CAG), located in Houston, Texas.

In your letter, you requested that we review OCC's rulemaking process for promulgating the preemption rules, OCC's process and capacity to handle consumer complaints, and the impact and the potential impact of the rules on the dual banking system and consumer protection. On October 17, 2005, we provided you with a report on the rulemaking process.[3] This report focuses on OCC's process and capacity to handle consumer complaints. Specifically, the report identifies (1) how OCC's consumer complaint process and its disposition of complaints compare with those of other federal bank regulators, (2) how OCC's complaint process relates to the supervision of national banks, and (3) issues that consumer advocates and state officials have raised about OCC in relation to consumer protection and OCC's responses to these issues. We will soon provide you with a separate report that discusses the impact of the rulemaking on the dual banking system and consumer protection.

To examine how OCC handles complaints and how its consumer complaint process and disposition of complaints compare with those of other bank regulators, we interviewed OCC officials, as well as their counterparts at the Federal Reserve, FDIC, and OTS. In addition, we analyzed OCC's consumer complaint policies and procedures. We visited the CAG office in Houston and observed its work, and we reviewed a nonprobability sample of complaint case files to understand the different types of complaints and

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[2]OCC is a bureau of the U.S. Department of the Treasury. 12 Stat. 665 (1863). In 1864, Congress revised the National Currency Act (renamed the National Bank Act) to provide for comprehensive OCC regulation of national banks. Although OCC is a bureau of the Treasury, it is an independent office within Treasury. In 1994, Congress amended the National Bank Act to describe OCC's autonomy with respect to rulemaking. Pub. L. No. 103-325 § 331(b).

[3]See GAO, *OCC Preemption Rulemaking: Opportunities Existed to Enhance the Consultative Efforts and Better Document the Rulemaking Process*, GAO-06-8 (Washington, D.C.: Oct. 17, 2005).

outcomes. We also obtained and analyzed data on consumer complaints from the four federal bank regulators covering calendar years 2000 to 2004 to determine the number and types of complaints, as well as the nature of the outcomes for consumers, and how many complaints were resolved within the regulators' required time frames. To determine how OCC's complaint process relates to the supervision of national banks, we interviewed OCC and bank officials. We also analyzed documents to identify how, and the extent to which, bank officials and OCC examiners use consumer complaint information in planning and implementing supervisory activities, including policies and guidance. To identify issues raised by consumer advocates and state officials about OCC and its role in consumer protection, we conducted site visits between March and August 2005, in four states: California, Georgia, New York, and North Carolina. We selected these locations based on their experience with state consumer protection laws. The site visits included interviews of state attorneys general, banking regulators, banking officials, and local consumer advocate groups, as well as analysis of relevant documents. We also interviewed state attorneys general and banking regulators in Iowa and Idaho by telephone. We interviewed representatives of national consumer groups and trade groups for state officials—banking regulators and states' attorneys general—in Washington, D.C. We conducted our audit work in the previously mentioned four states, in addition to Texas and Washington, D.C., from October 2004 through December 2005 in accordance with generally accepted government auditing standards. Appendix I provides a detailed description of our scope and methodology.

Results in Brief

OCC's policies and procedures for handling and resolving consumer complaints are similar to those of the other federal regulators. All of the regulators follow the same general process when handling consumer complaints, and all claim to take a neutral position regarding consumers and banks that they regulate. However, OCC differs from some of its federal counterparts in that it does not have a customer feedback mechanism as part of its consumer complaint process. OCC, like the other federal bank regulators, resolves most complaints it receives by providing information to consumers. This can include clarifying consumers' misunderstandings, referring consumers to other regulators, or advising the consumers to seek legal counsel when their complaint concerns a factual dispute that only a court can resolve. Less frequently, regulators determine that specific errors or wrongdoings have occurred. The volume of complaints OCC handles annually is greater than that of the other federal bank regulators, likely reflecting its position as the supervisor of banks that account for the majority of the nation's bank assets. OCC's total volume of complaints has generally decreased over the past 5 years and has not increased appreciably since OCC issued the preemption rules. OCC, like other federal agencies, is required to measure its performance toward achieving goals related to services it provides. For example, all of the federal regulators strive to resolve consumers' complaints within similar time frames, usually 60 days. In reporting its performance against its timeliness goals, OCC has overstated the agency's percentage of complaints addressed within the 60-day target because it combined consumer inquiries, which typically require less time, with complaints in this measurement.

OCC uses consumer complaint data collected by CAG (1) to assess risks and identify potential safety, soundness, or compliance issues at banks; (2) to provide feedback to banks on complaint trends; (3) and to inform policy guidance for the banks it supervises. OCC's bank examiners use consumer complaint information to focus examinations they are planning or to alter examinations in progress. Examiners review data CAG has collected on consumer complaints to aid them in determining the risks a bank may face and the appropriate scope of their examination. For example, because of complaints about a particular bank loan product, examiners may—in addition to reviewing the bank's written policies regarding that product—examine a sample of loan files. CAG also often provides OCC policy staff with summaries of consumer complaint information, which influences compliance policy guidance that OCC provides in advisory letters to banks. Finally, OCC also uses CAG's complaint data to provide feedback to banks, focusing on potential risk issues that may affect the banks' compliance with consumer protection laws and/or other risks. CAG officials said that they meet annually with the 10 banks having the highest complaint volumes during the previous calendar year. In calendar year 2004, such meetings would have covered the national banks responsible for about 81 percent of the total complaint volume.

Many of the state officials and advocates with whom we spoke, nevertheless, continue to be concerned about OCC's commitment and capacity to address consumer complaints, especially given their perception that the effect of the rules is a loss of protection provided by state laws and processes. While OCC has taken some action designed to increase consumer knowledge about its consumer assistance services, consumer groups and attorneys general assert that OCC is unwilling to share information on complaint outcomes, and expressed concern about OCC's capacity to adequately serve consumers nationwide, particularly given

CAG's single centralized location. Consumer advocates see themselves as working to advance the interest of their clients, while OCC or CAG, defines itself as a neutral arbiter. However, some consumer advocates and some state officials see OCC as pro-bank. Some advocates with whom we spoke were unclear about how the OCC processes complaints through CAG and what assistance it can provide consumers. OCC has taken steps aimed at better informing the public about its services, such as revising a consumer complaint brochure. OCC cited privacy concerns as limiting its ability to share information about the outcome of complaints, but it drafted a Memorandum of Understanding in an effort to facilitate sharing information with state agencies. However, state officials with whom we spoke generally viewed it as an arrangement essentially favoring OCC; and, according to OCC officials, only one state official signed the memorandum. OCC revised the draft memorandum in an attempt to address those concerns, however, no additional state officials were willing to enter into the memorandum. Many of the consumer groups with whom we spoke viewed CAG's centralized location as a shortcoming because CAG staff, they said, could not be familiar with schemes or problem institutions in local areas. According to OCC, CAG operations were centralized in Houston because it offers efficiency advantages and facilitates identifying national trends and potential problems. Finally, some consumer groups and state officials questioned OCC's complaint-handling capacity, stating that the 2004 preemption rules could eventually increase the number of complaints OCC receives. CAG data show that the total number of complaints, in any given year, received from state offices—including banking departments and states' attorneys generals—is a relatively small percentage of the total number of complaints; therefore, any increase in referrals to OCC from those offices might not have a dramatic effect on total overall volume. To accommodate expected increases in telephone calls due to growth in the banks under its supervision, OCC has hired more CAG staff and has begun working with a third-party vendor to expand CAG's telephone service from 7 to 12 hours a day.

This report makes recommendations to the Comptroller of the Currency that are designed to improve OCC's process for handling consumer complaints and inquiries as well as its efforts to inform, educate, and serve bank customers. We provided a draft of this report to OCC for review and comment. In written comments, the Comptroller of the Currency concurred with our recommendations (see app. II). Specifically, OCC agreed to develop and implement a customer feedback mechanism to receive input and measure satisfaction of those who have used CAG services. OCC also agreed to revise the data it publicly reports on timeliness to reflect complaints resolved within the 60-day goal separately from data reported on inquiries. Finally, OCC agreed with our recommendation that it develop and implement a comprehensive plan to inform bank customers, consumer advocates, state attorneys general, and others of its role in handling consumer inquiries or complaints about national banks. OCC also provided technical comments that we incorporated, as appropriate.

Background

OCC's mission focuses on the chartering and oversight of national banks to ensure their safety and soundness, on fair access to financial services, and on fair treatment of bank customers. As of March 2005, the assets of the banks that OCC supervises accounted for approximately 67 percent—about $5.8 trillion—of assets in all U.S. commercial banks. Among the more than 1,800 banks OCC supervises are 14 of the top-20 commercial banks in asset size.[4]

OCC groups its regulatory responsibilities into three program areas: chartering, regulation, and supervision. Chartering includes not only reviewing and approving applications for charters but also reviewing and approving proposed mergers, acquisitions, and reorganizations. Regulation includes establishing written regulations, policies, operating guidance, interpretations, and examination policies and handbooks. Additionally, in its most recent strategic plan, OCC identified its regulatory approach as one that would ensure that national banks operated in a "flexible legal and regulatory framework" that enables them to provide a "full competitive array" of financial services.

According to OCC's latest strategic plan, OCC's supervision program consists of ongoing supervisory and enforcement activities undertaken to ensure that each national bank is operating in a safe and sound manner and is complying with applicable laws, rules, and regulations concerning the bank, customers, and communities it serves. OCC's supervisory activities include examinations and enforcement actions, dispute resolution, ongoing monitoring of banks, and analysis of systemic risk and market trends. OCC policies establish a minimum level of activity that must occur during the supervisory cycle, during which time examiners assess the overall condition of the bank in the areas of capital adequacy, asset quality,

[4]OCC also supervises federal branches and agencies of foreign banks.

management, earnings, liquidity, and sensitivity to market risks. Such examinations are generally referred to as "safety and soundness" examinations. In large banks, much of this work is conducted throughout the year by examiners assessing specific aspects of a bank's management and operations, while in the smaller banks, the on-site examination generally occurs at one time during a 12- or 18-month period.[5] OCC has a team of full-time, on-site examiners who are located at large banks throughout the year and who conduct ongoing monitoring and examinations. In addition to the safety and soundness examinations, OCC conducts compliance examinations that assess the bank's compliance with laws intended to protect or assist consumers, such as laws related to disclosure of loan terms, fair lending, equal credit opportunity, and others. Consumer compliance examinations are conducted on a continuous 3-year cycle in large banks and at least every 36 months at small banks.

OCC traditionally has issued opinions on a case-by-case basis, rather than rules or regulations, on whether the National Bank Act preempts state laws that impose standards or restrictions on the business of national banks. In contrast, on January 13, 2004, OCC issued the two preemption rules on the extent to which the National Bank Act preempts the application of state and local laws to national banks and their operating subsidiaries. The rules and the manner in which OCC promulgated them generated considerable controversy and debate, including questions about OCC's authority to issue the rules. According to OCC, the two rules "codified" judicial decisions and OCC opinions on preemption under the National Bank Act by making them generally applicable and clarified certain issues. The visitorial powers rule, as stated by OCC, clarifies that (1) federal law commits the supervision of national banks' banking activities exclusively to OCC (except where federal law provides otherwise) and that (2) states may not use judicial actions as an indirect means of regulating those activities.[6] The banking activities rule preempts categories of state laws that relate to bank activities and operations, describes the test for preemption that OCC will apply to state laws that do not fall within the identified categories, and lists

[5]According to OCC's *Comptroller Handbook—Bank Supervision Process* (April 1996), a large bank is one with total assets of $1 billion or more or a bank that is part of a multibank holding company, which includes at least one bank with assets of $1 billion or more.

[6]12 C.F.R. 7.4000 (2005).

certain types of state laws that are not preempted.[7] In proposing the banking activities rule, OCC stated that it needed to provide timely and more comprehensive standards about the applicability of state laws to lending, deposit taking, and other authorized activities of national banks because of the number and significance of questions banks were posing about preemption in those areas.[8]

However, opponents such as consumer groups and state legislators feared that the preemption of state law, particularly concerning predatory lending practices, would weaken consumer protections. They noted, in commenting on the preemption rules, that the rules would prevent states from regulating operating subsidiaries of national banks and would diminish the states' ability to protect their citizens. Prior to OCC's issuance of the rules, consumers who had complaints with national banks or their operating subsidiaries sometimes filed complaints with state officials who tried to resolve them, although consumers could have filed such complaints with OCC, and many did. Since OCC issued the rules, some state officials refer all complaints involving national banks to OCC while others, through informal arrangements, still try to assist consumers. It is too soon to assess the practical effect of the rules on a consumer who has a complaint with a national bank, given the short time frame and legal questions raised by opponents to the rules. We address some facets of the rules' practical effect on consumers in this report and will address others in our subsequent report on the impact of the rules on the dual banking system and consumer protection.

One of OCC's strategic goals is to ensure all customers have fair access to financial services and are treated fairly. The agency's strategic plan lists objectives and strategies to achieve this goal, including fostering fair treatment through OCC guidance and supervisory enforcement actions where appropriate, and providing an avenue for customers of national banks to resolve complaints. The main division within OCC tasked with handling consumer complaints is CAG. This group is a part of OCC's Office of the Ombudsman, a distinct division of OCC that operates independently of the agency's bank supervision function. In addition to CAG, the Office of the Ombudsman oversees (1) the national bank appeals process—a forum

[7] 12 C.F.R. 7.4007, 7.4008, 7.4009, 34.3, 34.4 (2005). These regulations also contain an antipredatory lending standard and discuss OCC enforcement of section 5 of the Federal Trade Commission Act for consumer protection purposes.

[8] 68 Fed. Reg. 46119, 46120 (Aug. 5, 2003).

by which banks may appeal the results of OCC's supervisory examinations and ratings and (2) a postexamination questionnaire to obtain feedback from banks. The Ombudsman reports directly to the Comptroller and is a member of OCC senior management team (the Executive Committee) that includes the Chief Counsel, the Chief National Bank Examiner, and the Senior Deputy Comptrollers for Large Bank and Mid-size/Community Bank Supervision.

CAG's mission is to ensure that bank customers receive fair treatment in resolving their complaints with national banks. According to the *2004 Report of the Ombudsman*, CAG carries out its mission by providing services to three constituent groups: (1) customers of national banks—by providing a venue to resolve complaints, (2) OCC bank supervisors—by alerting supervisory staff of emerging problems that may result in the development of policy guidance or enforcement action, and (3) national bank managers—by providing a comprehensive analysis of complaint volumes and trends. The Deputy Ombudsman manages and directs CAG operations. Since 1999, CAG has employed about 40 full and part-time staff, and it had 49 staff in 2005. The annual operating and personnel budget attributable to CAG operations more than doubled from $2.6 million to $5.4 million between 1999 and 2005. According to our analysis of CAG budget and staffing data, the budget's growth has outpaced that of staff due to the design and implementation of its computer network.

OCC's Handling of Consumer Complaints Is Similar to That of Other Regulators

OCC's process for handling and resolving consumer complaints is similar to that of the other three federal bank regulators. We identified six distinct steps that all of the federal regulators follow when processing consumer complaints. Unlike two of the federal regulators, OCC lacks a process for collecting feedback from consumers it assists. OCC and the other federal regulators also resolve complaints in a similar fashion, with the outcomes generally falling into the same categories. While the most common resolution of complaints was that of the regulator providing the consumer additional information, regulators also consider a complaint resolved if it is withdrawn or tabled due to litigation, or if the regulator determines that the bank did, or did not, make an error. The volume of complaints OCC handles is generally in proportion to the assets of the national banks it supervises. From 2000 through 2004, OCC handled on average more than twice as many complaints as the other regulators combined. OCC and other federal regulators have similar goals in responding to consumer complaints in a timely fashion. However, by combining consumer inquiries and consumer complaints in determining whether it met its timeliness goals, OCC overstated its performance on these goals.

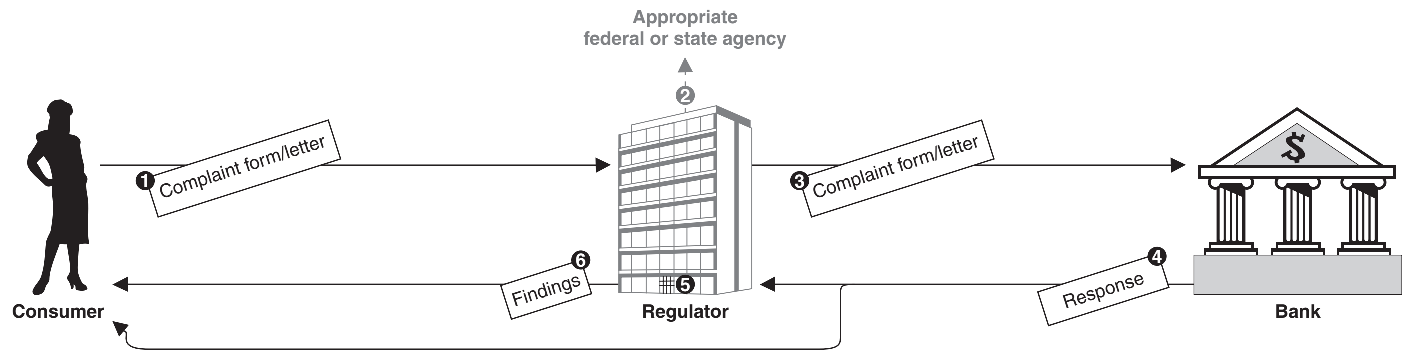
OCC and Other Federal Regulators Follow the Same General Process in Resolving Consumer Complaints

All four federal regulators we reviewed take similar approaches in processing consumer complaints about banks they supervise.[9] The regulators define their role as a neutral arbiter between consumers and the banks they regulate when processing complaints. For instance, the *2004 Report of the Ombudsman* states that CAG's role is to be neutral in answering questions and offering guidance on applicable banking laws, regulations, and practices and that it should not be an advocate for either the bank or consumers. As illustrated in figure 1, each regulator generally follows six distinct steps in processing a complaint:

- The consumer submits the complaint;
- The regulator determines if the bank is under its supervision;
- The regulator forwards the complaint to the bank;
- The bank sends a response to the regulator;
- The regulator examines the response to see if it completely addresses the consumer's complaint; and
- The regulator notifies consumer of complaint's outcome.

[9]During our work, we interviewed six state banking regulators about how they handle consumer complaints. Though all six generally follow the same process as the four federal regulators, we did not evaluate the states' processes. The purpose of obtaining information from selected states was to provide context for our review of the federal regulators. See appendix I for a list of state banking regulators we interviewed.

Figure 1: Consumer Complaint Processes of Selected Banking Regulators



1 Consumer complains to regulator.

2 For banks not under its supervision, regulator refers consumer to another agency.

3 Regulator forwards complaint to banks under its supervision.

4 Bank responds to complaint (often simultaneously to consumer and regulator).

5 Regulator reviews bank's response.

6 Regulator informs consumer of complaint's resolution.

Sources: GAO (analysis); Art Explosion (images).

Although consumers may initially contact OCC or other regulators about their complaints via various methods, such as telephone, mail, fax, or, in some cases, E-mail, regulators normally do not formally accept a complaint until they have received a signed complaint form or letter.[10] After a regulator receives a formal complaint, it must then determine if the bank involved is under its jurisdiction. If not, then the regulator determines who is the appropriate regulator and provides the consumer with contact information or forwards the complaint. Once the appropriate regulator receives the complaint, it forwards the complaint to the bank. OCC uses a secure Web-enabled application—CAGNet[11]—that permits it and

[10]Federal regulators have this requirement because many complaints involve personal information about the consumer that the regulator cannot request from a bank without the consumer's consent.

[11]CAGNet is a custom application that securely transfers consumer complaints and provides consumer complaint data to bank management for analysis. Of all complaints sent to any OCC supervised bank for response, approximately 90 percent were transmitted via CAGNet, based on December 31, 2004, data.

participating national banks to send and receive documents and images electronically.

Banks have a set period of time to respond to a complaint, though the period varies among regulators. Among the four federal regulators, the time allowed for initial response ranges from 10 to 20 days, with OCC requesting a response within 10 days.[12] All of the regulators permit the banks to request additional time to review the complaint or compile necessary information. After completing its review of the complaint, the bank sends a response to the regulator. Often, the bank responds concurrently to the consumer, since the consumer is the bank's customer. After receiving the bank's response, each regulator examines it to determine if the consumer's complaint has been completely and appropriately addressed. At this step, the regulator examines the complaint and response to determine if any additional follow-up is necessary by its supervisory or legal staff. If it is not satisfied with the bank's response, then the regulator requests additional information or clarification from the bank. Once satisfied with the bank's response, the regulator notifies the consumer about the outcome of the complaint.[13]

OCC Does Not Seek Feedback from Consumers on Services Provided

Of the four federal regulators, two offer consumers a method for providing feedback on the complaint process once the regulator has notified the consumer of the outcome. The Federal Reserve and FDIC offer consumers a feedback survey once their complaints have been resolved. The Federal Reserve mails a satisfaction survey, while FDIC directs consumers to a Web-based survey. Federal Reserve officials explained that the Federal Reserve has surveyed consumers since the mid 1980s and can link individual surveys back to original complaints, but the agency has not analyzed the aggregate data or used any findings from the surveys to modify its complaint-handling process. However, Federal Reserve officials explained that sometimes specific survey results are shared with staff who worked on the complaint or with management to better target staff training.

[12]Among the six state regulators we interviewed, the range was 14 to 45 days.

[13]If a consumer does not find the bank's response satisfactory, the consumer may contact the bank, seek legal counsel, or appeal to the regulator. Each federal regulator will reconsider a complaint that has already been resolved, though the appeal processes vary slightly across the regulators.

Neither OCC nor OTS has any formal mechanism to measure satisfaction with the consumer complaint process (though officials from both agencies explained that they receive many letters expressing both satisfaction and disappointment with their services). OTS officials explained that the small number of complaints they receive does not warrant the resources necessary to implement a customer satisfaction survey.

Like other federal agencies, OCC measures and reports on certain aspects of its performance in accordance with the Government Performance and Results Act of 1993 (GPRA).[14] According to the *2004 Report of the Ombudsman*, OCC measures the effectiveness of its supervisory process through an examination questionnaire, which is provided to all national banks at the conclusion of their supervisory cycles. The questionnaire is designed to gather direct and timely feedback from banks on OCC's supervisory efforts. While the questionnaire is a useful step to help OCC assess its performance regarding its national bank clients, OCC does not have a comparable tool to gather information regarding its performance in assisting the consumers of national banks. Collecting information about how individual consumers assess the assistance CAG provides in answering their questions or helping resolve a complaint with their bank could be equally helpful for OCC to measure its performance in ensuring fair treatment of bank customers. OCC officials stated that they understand the value of measuring the satisfaction of consumers who they assist and are evaluating several different options for obtaining consumer feedback.

Outcomes of Complaints Handled by All of the Federal Regulators Fall into the Same General Categories

OCC and the other three federal regulators offer consumers similar resolutions in their final responses to complaints. In analyzing the complaint data across the four federal regulators, we found that the regulators, after investigating complaints, generally resolved them in one of four ways, as shown in order of decreasing frequency: (1) providing the consumer with additional information without any determination of error, (2) withdrawing the complaint or tabling complaints already in litigation,

[14]GPRA requires agencies to set multiyear strategic goals in their strategic plans and corresponding annual goals in their performance plans, measure performance toward achieving those goals, and report on their progress in their annual performance reports.

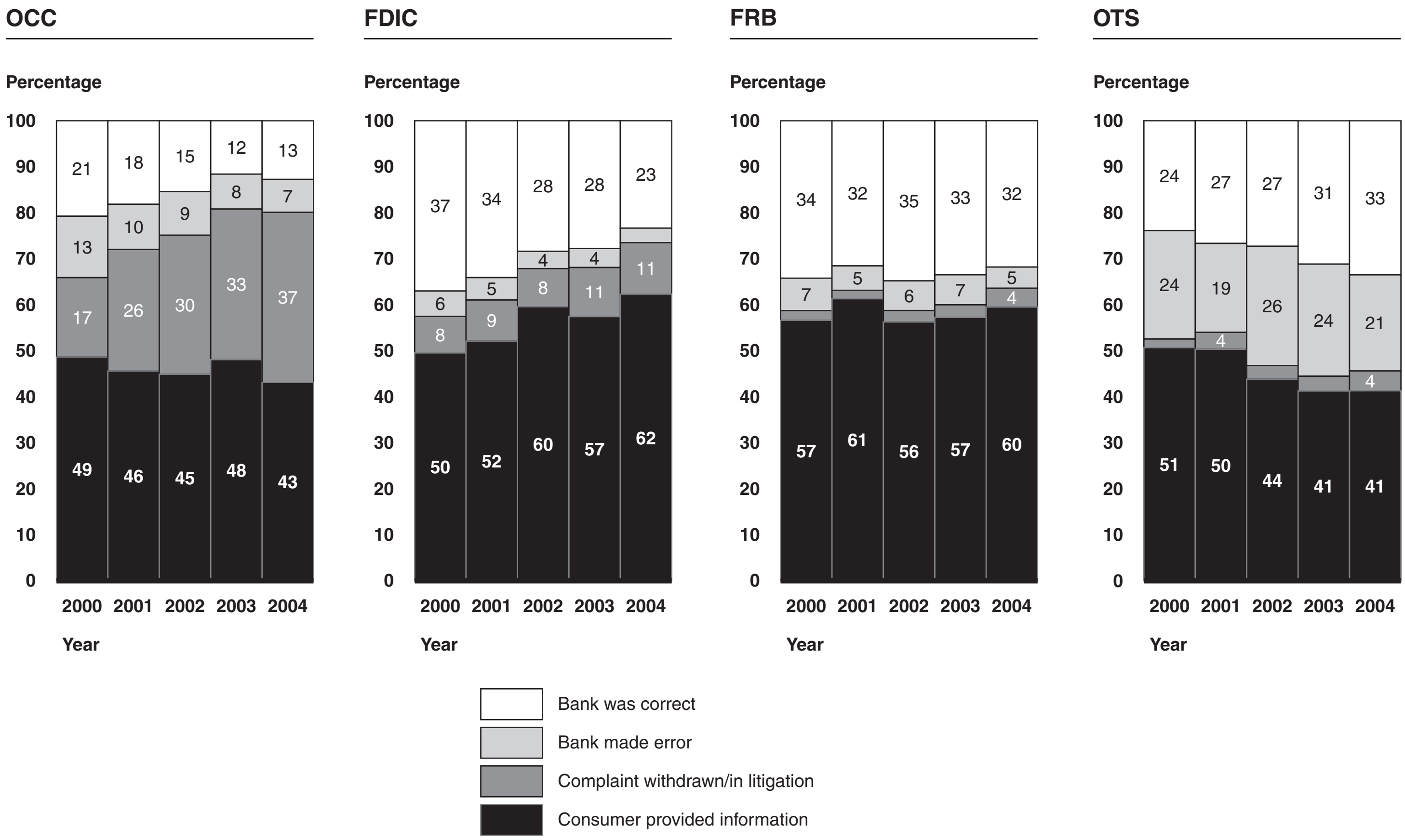
(3) finding that the bank had not made an error, and (4) finding that the bank had made an error.[15]

Regulators Provided Consumers Additional Information

Between 2000 and 2004, the most common resolution of complaints handled by all federal regulators was that consumers were provided more in-depth or specific information about their complaints (see fig. 2).

[15]In order of decreasing frequency, for the Federal Reserve and OTS, the resolution categories from 2000 through 2004 were (1) providing the consumer with additional information, (2) finding the bank not in error, (3) finding the bank in error, and (4) withdrawing or tabling the complaint. For FDIC, resolutions consisted of (1) providing the consumer with additional information, (2) finding the bank not in error, (3) withdrawing or tabling the complaint, and (4) finding the bank in error.

Figure 2: Complaint Resolutions of Selected Federal Regulators



Sources: GAO analysis of OCC, FDIC, Federal Reserve, and OTS data.

Note: Columns may not add to 100 due to rounding. Bars without numbers are less than 4 percent.

In these cases, the regulator's investigation revealed that the consumer required additional information to understand his or her situation, and the regulator made no determination of whether the bank or the consumer had made any error. For example:

- The regulator might explain to the consumer that the complaint involves a contractual dispute that is better handled by a court. For instance, in one case, OCC informed a consumer to consider seeking legal counsel since the matter between the bank and the consumer involved a factual dispute concerning the interest rate on a credit card. The bank, based on its review of credit information, raised the interest rate on the consumer's credit card after providing the consumer adequate notice about the impending change to the terms of credit, which included information on how to opt out of the credit card if the consumer did not agree to the new terms. The consumer complained that the bank failed to provide adequate notice and, thus, improperly raised the interest rate. After reviewing the relevant documentation from both the consumer and bank, OCC informed the consumer that since the bank claimed to have sent the proper notice to the consumer and the consumer denied receiving the notice, the agency could not judge which party was correct. Therefore, OCC counseled the consumer to consider taking legal action should the consumer want to pursue the matter further.

- The regulator may determine that rather than wrongdoing, there was a miscommunication between the bank and its customer.[16] For example, in one case involving a checking account, a bank charged a maintenance fee to an account with a zero balance. The checking account had a minimum monthly maintenance fee, which the bank deducted automatically from the checking account. When the bank charged the monthly maintenance fee and the balance became negative, the bank charged an overdraft fee. The consumer understood that overdraft protection should cover the maintenance fee but did not recognize that overdraft protection would result in an additional fee. After OCC forwarded the complaint to the bank, the bank decided to no longer hold the consumer liable for the delinquent monthly maintenance and overdraft fees that accumulated. OCC viewed the matter as miscommunication between the bank and consumer.

- The regulator may determine that the complaint should be forwarded to a different regulator. When appropriate, all four federal regulators directly refer consumers, or forward their complaints, to other federal and state agencies. We found that three federal regulators—the Federal Reserve, FDIC, and OCC—referred a considerable number of consumers who contacted them to another federal agency to have their complaints or inquiries addressed. For example, from 2000 through 2004, FDIC referred about 40 percent of the consumers who contacted them with a complaint to another federal agency; the Federal Reserve and OTS referred about 53 percent and 3 percent, respectively. OCC,

[16]Of the four federal regulators, OTS and OCC specifically identify complaints that result from miscommunication, while the Federal Reserve and FDIC include such resolutions under broader categories.

during this same period, referred approximately 38 percent of its callers to another federal agency.[17]

Complaint Is Considered Withdrawn or Tabled Due to Litigation

For OCC, the second most frequent type of complaint resolution was "withdrawn"[18] or "complaint in litigation," while it was the least common for the Federal Reserve and OTS and the third most common for FDIC.[19] These are complaints that, by and large, the regulator is not able to address. None of the federal regulators address complaints that they find are already involved in any legal proceeding at the time the consumer contacts them. In the case of OCC, one of the major reasons for complaints being withdrawn, according to OCC officials, is that the consumer does not send in the requested information, such as the signed complaint form or letter OCC requires before it begins any complaint investigation. As shown in figure 2, in 2000, OCC closed about 17 percent of complaint cases because it did not receive requested information or the complaint was in litigation, while in 2004, OCC closed nearly 37 percent of these cases for the same reasons. One reason for this increase, OCC officials explained, is that in mid-2000 they made changes to the database that tracks complaints. In particular, after the changes, the database coded complaints as "withdrawn" when the regulator did not receive information it requested from a consumer within 30 days. Previously, this type of complaint remained opened indefinitely or until the consumer provided the information. OCC's policy is to reopen any complaint cases if the consumer sends in the requested information after 60 days from the day OCC made the request for additional information. Since OCC does not open a new case in such instances, this policy negatively impacts OCC's average in meeting its timeliness goals for resolving complaints.

According to OCC officials, another reason for this increase is OCC's policy of encouraging consumers to contact the bank prior to filing a complaint with OCC.[20] It is typical for the staff to provide a case number and complaint form to the consumer to use if he or she is unsuccessful in

[17]In 2000, OCC began coding all referrals to other federal and state agencies as inquiries.

[18]Instances in which the regulator determined the complaint to be withdrawn does not necessarily mean that the consumer withdrew the complaint.

[19]This resolution category was on average about 3 percent for Federal Reserve and OTS, and about 9 percent for FDIC, from 2000 through 2004.

[20]This practice is shared by the Federal Reserve, FDIC, and OTS.

resolving the problem with the bank. OCC officials explained that in many instances they assume that the bank and the consumer has worked the problem out since the consumer never sends in a completed complaint form. In these instances, OCC codes the complaint as withdrawn because the consumer did not submit a completed complaint form. OCC officials explained that this coding procedure has an advantage. Although the complaint has been withdrawn, the information that the consumer provided through the initial contact is available to examination staff as well as to the bank, and it provides insight to potential issues at the bank.

Regulators Determine That Bank Was Not in Error

This category of complaint resolution was third for OCC in terms of frequency, while it was second for the other regulators. The regulators frequently resolve cases by finding that banks did nothing wrong, and the consumers do not have legitimate complaints, that is, the bank was correct. For example, in one case, OCC informed the consumer that an incorrectly completed deposit slip led the consumer to believe the bank improperly deducted funds from the consumer's checking account. OCC had the bank provide the consumer copies of the deposit slip and checks recorded on the slip, which showed the consumer inaccurately transcribing the amounts from the checks to the deposit slip.

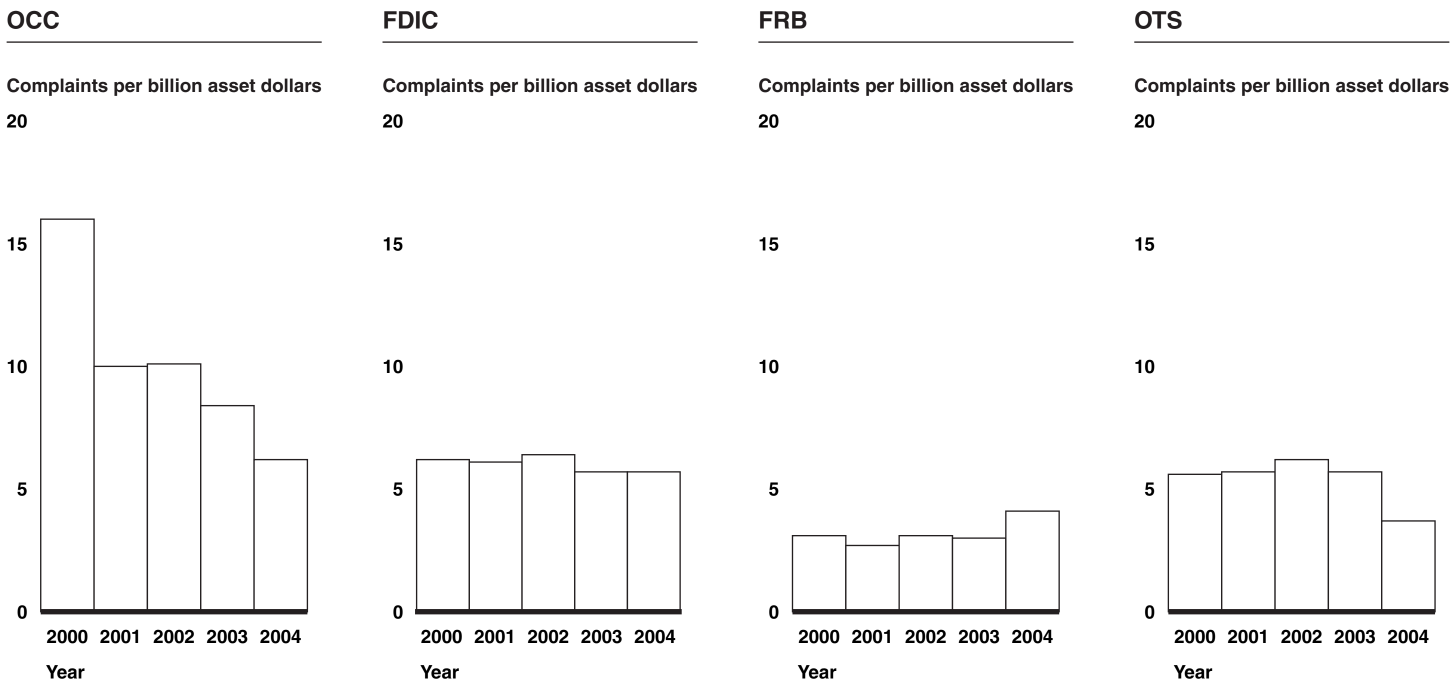
Regulators Determine That Bank Was in Error

"Bank Made an Error" was the least common outcome for complaints resolved by OCC and FDIC and next-to-least common for the other two regulators. The bank error category includes both regulatory violations and problems consumers had with the bank's customer service. In these instances, the regulators determine that the bank did make an error in how it provided its products and services to the consumer. For example, in one case, OCC determined that a bank did not properly respond when fraudulent charges were identified on a consumer's credit card account, and the bank did not reverse them. The complaint was resolved when the bank reimbursed the consumer's credit card account.

OCC Handles a Greater Volume of Complaints Than the Other Bank Regulators

Likely reflecting the greater volume of bank assets under its supervision, OCC handled more complaints from 2000 through 2004 than FDIC, OTS, and the Federal Reserve combined. During this time period OCC processed, on average, 10 complaints for every billion dollars under its supervision, while FDIC averaged 6 complaints, the Federal Reserve 3 complaints, and OTS 5 complaints (see fig. 3).[21]

Figure 3: Number of Complaints Per Billion Dollars in Assets under Supervision of Selected Federal Regulators



Sources: GAO analysis of OCC, FDIC, Federal Reserve, and OTS data.

From 2000 through 2004, credit cards were the most common product involved in complaints addressed by OCC, FDIC, and the Federal Reserve.[22] According to officials from OCC and FDIC, complaints about credit cards will continue to remain high because consumers have multiple credit cards and use them frequently. During this same time period, the assets of banks

[21]In addition to complaints, regulators also handle inquiries, defined as informational-only calls and correspondence. All the regulators handle inquiries in the same manner by providing the consumer the relevant information or directing the consumer to appropriate sources for the information, such as other regulators. This report focuses on complaints.

[22]Credit card complaints accounted for, on average, about 39 percent of all complaints handled by OCC, from 2000 through 2004. For FDIC, the amount was nearly 29 percent and for the Federal Reserve, approximately 40 percent.

under OCC's supervision that issued credit cards averaged $221 billion, while the total assets of the banks under the supervision of the other three regulators averaged $87 billion.[23] Given these numbers, it would appear that the volume of complaints OCC handles is not out of proportion to the bank assets under its supervision, especially given that OCC supervises several banks that specialize in issuing credit cards. Although OTS also receives complaints about credit cards, during the same time period it received the most complaints about home mortgage loans. This is not exceptional, given that mortgage lending is a leading activity of the thrifts and savings banks OTS supervises.

Federal Regulators Have Similar Timeliness Goals, but OCC Overstated Its Timeliness in Resolving Complaints by Including Inquiries in Its Calculation

Consistent with GPRA and its implementing guidance, OCC provides information in its annual report that includes performance measures, workload indicators, customer service standards, and the results achieved during the fiscal year. OCC aims to resolve complaints within 60 days. The Federal Reserve, FDIC, and OTS also have a goal of resolving complaints within 60 days. In fiscal years 2003 and 2004, OCC's target was to close 80 percent of all complaints within 60 calendar days of receipt. According to its 2003 annual report, OCC exceeded its target by closing 87 percent of complaints within 60 days. However, our analysis of calendar year data that OCC provided to us shows that only about 66 percent of complaints were closed within 60 days. Similarly, the 2004 annual report states that OCC closed 74 percent of complaints within the established time frame, while our analysis of OCC's data shows that in calendar year 2004, it was approximately 55 percent. The discrepancy between the percentages reported in the annual reports and our analysis cannot be entirely explained by the fact that we reviewed calendar year data and the annual reports include fiscal year data.[24]

OCC officials explained that the differences between its reported figures and our analyses are the result of differences in the consumer complaint data on which each is based. The annual reports stated that the agency closed 69,044 complaints in 2003 and 68,104 complaints in 2004. However, these totals include inquiries that the agency handled, not just complaints.

[23]By the end of 2004, OCC had under its supervision banks that accounted for nearly 67 percent of all assets held in commercial banks.

[24]To collect comparable data from all four federal regulators, we requested the data by calendar year.

Inquiries—which may be questions or comments subject to an immediate, simple answer—can typically be handled at the initial contact between the consumer and OCC, while some complaints can take well over the 60-day time frame to investigate and resolve. Therefore, by including both inquiries and complaints in determining whether it met its timeliness goals, OCC overstated its performance, as measured by the percentage of complaints resolved within the target time frame. OCC officials explained that the data in the annual reports were presented using the generic term "complaints" to simplify the amount of information given to the reader.

As OCC officials explained, some complaints involve more complex products, such as mortgages. Also, depending on the nature of the complaint, such as allegations of fair lending abuse, some investigations take more time. All four regulators have a percentage of complaints that they cannot resolve within their established time frames. OCC officials also explained that the time used in resolving complaints is a result of how it handles consumer appeals. Since OCC considers an appeal a reopened complaint, the start date for calculating the number of days it takes to resolve a complaint reverts back to the date it was originally filed with the agency. This practice had the affect of adversely impacting the measure of OCC's timeliness in meeting its timeliness goals.

CAG's Consumer Complaint Data Inform OCC's Bank Supervisory Activities

According to the *2004 Report of the Ombudsman*, CAG's role includes providing information to OCC examiners and the banks to "elevate" the issues raised by consumers and make them visible to OCC staff involved in supervision. The complaint data CAG collects, summarizes, and disseminates to OCC's examiners helps the examiners to identify banks, activities, and products that require further review or investigation. OCC supervision guidance requires examiners to consider consumer complaint information when assessing a bank's overall compliance risk and ratings and when scoping and conducting their examinations.[25] OCC guidance also requires that the banks have processes in place to monitor and address consumer complaints.

According to compliance examiners we interviewed, the examiners learn about complaints primarily through a Web-based application called CAG

[25]Two OCC booklets from the *Comptroller's Handbook* establish the agency's general examination policies and procedures: Community Bank Supervision and Large Bank Supervision.

Wizard. The application allows examiners to access near real-time consumer complaint data. Examiners can review specific complaints, generate standard reports or conduct customized searches of the data. The information available to examiners includes data on all of the banks OCC supervises, not just those where an examiner is currently assigned. With this capability, examiners can also generate similar reports on similar institutions. Examiners with whom we spoke said CAG Wizard is a useful tool. They reported using the application to prepare for an examination or when developing the annual risk assessment of the bank. Often, the examiners compare the complaint data that banks maintain with the data CAG provides through CAG Wizard.

OCC examiners and CAG staff also collaborate on other activities. For example, CAG staff may alert examiners if there are certain types of complaints that warrant further attention or if patterns emerge in the overall complaint volume about the bank. CAG officials and OCC examiners told us that there is an open line of communication between their respective staffs. For example, examination staff at one national bank undertook a specific investigation based on a complaint forwarded from CAG. Examination staff specifically requested and reviewed information from the bank concerning the advertising of a product and the bank's associated fees. Examiners can also forewarn CAG staff about any impending bank actions related to products, services, or policy that may cause consumers to complain. For instance, the bank might be changing the terms on a credit card product, and as such, sending a notification to customers. Such mailings typically lead to an increase in calls to CAG, but with forewarning from the examiners, CAG can have more accurate information on hand to use in assisting bank customers who call with questions.

OCC also uses consumer complaint data collected by CAG to formulate guidance for national banks. Topics of these guidelines cover various aspects of banking, including risks involved with using third-party vendor partners (e.g., when a bank partners with another business to provide a service to bank customers), predatory lending, and credit card practices. For example, CAG received a significant number of consumer complaints about aggressive marketing tactics and inadequate disclosures related to credit repair products offered through third parties. In response to the complaints received, OCC issued guidance in 2000 warning banks about risks posed to them by engaging third-party vendors for products and services linked to the credit cards that banks issue.[26]

CAG provides the largest national banks with aggregate information on the complaints about them. Also, CAG staff meets annually with bank officials of at least the 10 banks that received the most complaints during the previous calendar year. In 2004, the 10 banks with the most complaints accounted for 81 percent of all the complaints that OCC received. At these meetings, CAG officials discuss significant issues, such as data on complaint volume and trends, comparable data for the bank's peers and the industry, and current issues the bank should address. Prior to these meetings CAG officials consult with examiners on what specific issues warrant additional analysis or attention by bank officials. According to examiners, they attend the meetings and offer input on any specific topics CAG should highlight. Most bank officials with whom we spoke also said that the meetings with CAG were useful in helping them address customer satisfaction.

Despite OCC Efforts, State Officials and Consumer Advocates Still Have Concerns About OCC's Commitment and Capacity to Address Consumer Complaints

Many of the state officials and advocates with whom we spoke continue to be concerned that OCC does not have the necessary commitment or capacity to provide consumers with sufficient protection against violations of laws. Unlike consumer advocates and state attorneys general, OCC defines itself as a neutral arbiter in terms of assisting consumers. Yet state officials and consumer advocates perceive OCC as being pro-bank, not neutral, and as such, they may hesitate to forward complaints on behalf of their citizens or clients. Some officials were unaware of CAG's process for handling consumer complaints; however, OCC recently took steps to publicize its customer assistance function. State officials were concerned about a perceived unwillingness by OCC to share information about the outcomes of complaints. Other groups with whom we spoke view the CAG's centralized location as a shortcoming because CAG staff, they said, could not be familiar with current lending practices that pose high risk to consumers or to problematic institutions in local areas. OCC has taken

[26]The guidance encourages banks to conduct comprehensive due diligence to determine what third-party services or products can best help the bank achieve its goals and monitor the performance of the third-party vendors with regular reporting and documentation of such items as business plans, risk management reports, and contracts. *OCC Advisory Letter 2000-9*.

some steps to provide flexibility in operations to meet any upcoming increases in demand for its services.[27]

While State Officials and Advocates We Contacted Remain Concerned About OCC's Commitment to Consumer Protection, Some Were Unaware of Its Consumer Protection Efforts

As we previously reported, OCC received close to 3,000 letters commenting on the banking activities rule, with the majority of commenters opposed to the rule and citing concerns about weakened consumer protections.[28] Comments from state officials argued that a lack of state regulation would create "an enormous vacuum of consumer protection without adequate federal regulation to fill the gap." Many of these commenters suggested that OCC needed to do more, not less, to protect consumers. These views were echoed by those with whom we spoke in preparing this report, as were concerns that the visitorial powers rule severely limits the advocates' and state officials' abilities to assist their constituents and clients, thereby exposing them to potential consumer protection violations. The rule, according to OCC, clarifies that federal law commits the supervision of national banks exclusively to OCC. Because advocates work to advance the interests of their clients, they do not see their role being adequately filled by OCC, or CAG, which defines itself as a neutral arbiter. Although part of OCC's mission is to ensure fair access to financial services and fair treatment of bank customers, the perception remains, among the groups with whom we spoke, that OCC is "on the side" of the banks. Some advocates with whom we spoke were unclear about how OCC processes complaints through CAG and what assistance it can provide consumers. Some of the state officials and advocates with whom we spoke were unaware of the CAG, its process for responding to consumer inquiries and complaints, or the help it can provide. Some of the state officials and advocates with whom we spoke said that they are reluctant to refer clients to the agency, given their level of mistrust of OCC and lack of knowledge about its customer assistance function. However, CAG data from November 2001 to September 2005 show referrals from all 50 state banking departments and 49 state attorneys' general offices.

OCC officials said that they have several ongoing initiatives aimed at better informing the public about their services. For example, OCC recently

[27]Our forthcoming report will discuss broader issues related to the impact of the preemption rules on dual banking and consumer protection. For example, it will provide information on how some state officials have handled consumer complaints since OCC issued the rules.

[28]GAO-06-08.

revised its consumer complaint brochure. The brochure has "frequently asked questions" about OCC and the role it, and CAG specifically, play in resolving consumer complaints. This new version will be printed in Spanish and English. As of November 2005, OCC said they had distributed a small number of brochures to each national bank. In addition a "camera-ready" version will be made available to banks so that they can print more copies if they choose. However, OCC officials said they will not require the banks to display or distribute the brochures. In addition, officials said they do not have a distribution plan to give the brochure directly to the general public, although they did give a small supply to the Better Business Bureaus.[29] We note that the information in the brochure is available on the OCC Web site.

OCC also informs the public about CAG services and performance through the Annual Ombudsman report. This report is available on OCC's Web site and contains information on total case volume handled in the previous year, as well as a general discussion about complaint volumes and trends. Also, in 2004, OCC redesigned its Web site to enhance the consumers' capability to access information and learn more about its services. The redesigned Web site provides a searchable list of national bank operating subsidiaries that do business directly with consumers, which allows individual consumers to determine if an entity is associated with a bank supervised by OCC. However, some of the consumer groups with whom we spoke said that one limitation of this list is that it does not have dates attached to the list of operating subsidiaries indicating when they became associated with the bank, which can be important in trying to identify the parties involved in a transaction at a particular time. OCC officials said that they will address any complaint brought against a national bank and its operating subsidiaries, regardless of when the transaction took place.

OCC officials also said CAG staff are engaging in a series of outreach meetings with state government organizations and Better Business Bureaus.[30] For example, in November 2004, senior CAG officials met with one state attorney general's office to demonstrate how OCC handles

[29]Better Business Bureaus are private, nonprofit organizations funded by member businesses and other support. Their aim is to foster fair and honest relationships between businesses and consumers.

[30]In 2004, the bureaus reported receiving over 17,000 complaints about credit cards and related plans and about 11,000 complaints about mortgages. Among all complaints, these bank-related issues ranked number 3 and 12, respectively. Complaints about cell phone service ranked number one and auto dealers number two.

consumer complaints. That state attorney general told us that it was clear from the meeting that the CAG officials seemed earnest in wanting to cooperate, even though the two sides might still disagree on the appropriate roles for OCC and the states in protecting consumers. OCC officials said they intend to hold similar meetings with other state attorneys general and state banking departments, although none were planned as of November 2005. OCC staff is also engaged in outreach efforts with the Better Business Bureaus, which includes conference presentations, as well as meeting with several bureaus in order to educate them on OCC's customer assistance services and to enable OCC to better understand the nature and volume of complaints received by the Better Business Bureaus involving national banks. In addition, OCC officials are requesting that Better Business Bureaus update their Web sites to include a link to OCC. Also, during fiscal year 2005, representatives from CAG and OCC's Community Affairs office held outreach meetings with national consumer group organizations, such as the Consumer Federation of America, American Association of Retired Persons, and the National Association of Consumer Agency Administrators.

State Officials View OCC's Efforts to Share Information About Complaint Outcomes as Unsatisfactory

Among some of the states' attorneys general with whom we spoke, there is the perception that OCC is not willing to cooperate in protecting citizens, as evidenced, in part, by their perception of OCC's unwillingness to share information on consumer complaint outcomes. Most state attorneys general staff with whom we spoke said they are willing to forward complaints to OCC, but they have not been receiving what they perceive to be adequate information on the outcome of referrals. According to OCC officials, it is agency policy to send the consumer a letter acknowledging receipt of a complaint submitted to OCC. If a complaint is forwarded to OCC from another agency, it is OCC's policy to send a copy of the acknowledgment letter to the forwarding agency. Nonetheless, some state attorneys general and other state officials said that, in their experience, OCC does not provide any information about the resolution of the complaints, which is what state officials want. However, in commenting on a draft of this report, OCC officials told us that if state officials request information on the resolution of an individual complaint, OCC will notify them of the outcome. Specifically, they said that an attorney from OCC's Community and Consumer Law Division will contact the state official once a case is closed and will discuss the case. Although it is not a written policy, OCC officials told us these contacts are common practice.

In July 2003, OCC suggested a "Memorandum of Understanding" (MOU) between itself and state attorneys general and other relevant state officials that could, in OCC's words, "greatly facilitate" its ability to provide information on the status and resolution of specific consumer complaints and broader consumer protection matters state officials might refer to them. In his letter prefacing the MOU, the former Comptroller of the Currency stated that both attorneys general and OCC "have a mutual interest in ensuring that consumers are protected from illegal, predatory, unfair, or deceptive practices." To that end, the Comptroller urged attorneys general to send individual customer complaints directly to OCC. He also asked state officials to refer concerns about broader consumer protection issues to OCC saying,

> "Where you believe there is a broader issue, such as the applicability of a particular State law to national banks generally, or if you have information that a specific national bank is engaged in a particular practice affecting multiple customers that is predatory, unfair or deceptive, this information should be communicated to the OCC's Office of Chief Counsel for coordination."

The MOU was sent to all state attorneys general as well as the National Association of Attorneys General (NAAG) and the Conference of State Bank Supervisors (CSBS). Some of the officials from banking departments and the offices of attorneys general that we interviewed as well as representatives of CSBS said they viewed OCC's proposed MOU as unsatisfactory because, in their view, it essentially favored the OCC. In a written response to the OCC Comptroller, declining to sign the MOU, one state's attorney general described the proposal as one where "states send complaints to OCC with the idea that, at some later date, we would have the right to inquire about the results of the 'resolution' of the matter obtained by OCC." In addition, some of the state officials with whom we spoke believed that signing the proposed MOU would amount to a tacit agreement to the principles of the banking activities and the visitorial powers rules.

According to OCC, states' attorneys general—in informal comments on the proposed MOU—felt that the proposal was unilateral, imposing certain conditions upon states that received information from OCC, but not upon OCC when it received information from state officials. Also, OCC noted that the proposed MOU did not provide for referrals from OCC to state agencies of consumer complaints OCC received pertaining to state regulated entities. Therefore, in 2004, OCC attempted to address these concerns in a revised MOU, which it provided to CSBS and the Chairman of the NAAG Consumer Protection Committee. According to OCC, the revised

MOU expressly says that an exchange of information does not involve any concession of jurisdiction by either the states or by OCC to the other. Specifically, it states,

> "Nothing in this MOU is intended to or shall be construed to affect, modify, or imply any conclusion regarding the jurisdiction or authority of either of the agencies or affect the rights or obligations of the agencies under existing law concerning the scope of the respective jurisdiction of each of the agencies to supervise, examine or regulate the regulated institutions covered by this MOU."

Only one state official signed the original 2003 Memorandum, and according to OCC, to date, no additional state officials have signed the 2004 version.

Others Raise Concerns About CAG's Centralized Operations, Although OCC Cites Advantages

Consumer groups also expressed misgivings about forwarding complaints to OCC. Many of the groups with whom we spoke viewed CAG's centralized location as a shortcoming because they believe that the CAG staff thus could not be familiar with current lending practices that pose high risk to consumers or problematic institutions in local areas. The consumer advocates we interviewed said an in-depth understanding of local real estate conditions was necessary to prevent predatory lending abuses. Furthermore, they said that OCC's 60-day time frame is too long to effectively address many of their clients' acute needs, such as when immediate action is needed to stop a foreclosure proceeding. We note however, that the other federal bank regulators and three of the six state regulators with whom we spoke all have a 60-day goal for resolving complaints.

According to OCC officials, the agency centralized its consumer operations in Houston because it offers efficiency advantages. FDIC officials said they are consolidating their complaint handling operations for the same reasons. OCC examiners we interviewed also pointed out that a central facility makes sense, given that national banks operate across state lines and have so many customers in multiple markets. According to CAG and bank supervision staff, funneling data to, and analyzing it in, one location provides more potential for seeing national trends and potential problems.

However, there are also potential drawbacks to having only one operational facility available for any such customer function, as it increases the likelihood that there might be disruptions in service. For example, during Hurricane Rita in September 2005, telephones were not staffed for 4 days at CAG, due to the evacuation of Houston.[31] However, consumers were able to submit complaints by either E-mail or fax. During that period, OCC received 14 faxes opening new cases, as well as 184 E-mails—34 from bankers and 150 from consumers. Of those complaints from consumers, 16 were from Members of Congress. OCC staff said these numbers are in-line with normal activity levels. When we asked about the closure, the Ombudsman replied that he decided to obey the evacuation notice issued by Houston-area officials, and while this may have resulted in some backlog of cases, his first priority was ensuring the safety of the Houston OCC employees.

In December 2005, OCC began seeking private-sector support for the CAG facility, in order to expand its telephone service hours. This expansion will give OCC the ability to quickly expand CAG's telephone operating hours in the event of an emergency, and because the third-party vendor will be located outside of Houston, those staff will be able to help OCC continue to serve consumers, even if the Houston office is unable to operate.

Some Groups and Officials Have Concerns About Complaint Handling Capacity, and OCC Plans to Increase Capacity

Some consumer groups and state officials stated that the recent banking activities and visitorial powers rules could potentially increase the number of complaints OCC receives, since now OCC will more likely handle all complaints pertaining to national banks and their operating subsidiaries. These groups and officials argued that OCC did not have the capacity to adequately handle any new volume. Furthermore, they contend OCC could not match the resources (i.e., personnel and hours of operations) of state banking departments, consumer credit divisions, and offices of state attorneys general that currently work to resolve complaints and, more broadly, to identify fraudulent and abusive practices. However, we note that state banking departments and state attorneys general handle other types of consumer complaints, such as complaints about automobile dealers, mortgage brokers, and check cashers.

Since OCC issued the preemption rules in January 2004, the volume of complaints, according to CAG data, has remained fairly steady. In fact,

[31]According to OCC's continuity of operations plan, CAG telephone lines serving consumers are to be back online 8 days after a closure. The telephone center in Houston would also serve as the main communication hub for OCC nationwide, should a disaster occur in Washington, D.C., or elsewhere outside of Houston.

between 2000 and 2004 complaints received by OCC have decreased 37 percent. According to OCC staff, complaint volume was high around 2000 due to a settlement with a large national bank on credit card disclosure issues. CAG data for 2005, while available only through June at the time of our review, indicate a potential increase in the volume of complaints when compared with 2004.[32] CAG officials believe that the conversion from state charters to federal charters of two large banks in 2004 accounts for the increase.[33] That is, customers of those banks who had complaints previously contacted the appropriate state regulator and either the Federal Reserve or FDIC, which jointly regulate state chartered banks. After the banks converted to federal charters, customers contacted OCC concerning any complaints.

These data suggest that an increase to levels of complaints experienced before the 2004 preemption rules could be absorbed by current OCC resources. Further, CAG data show that the total number of complaints, in any given year, received from state offices, including banking departments and states' attorneys generals, is a relatively small percentage of the total number of complaints; therefore, any increase in referrals to OCC from those offices might not have a dramatic effect on total overall volume. Nevertheless, concerns that OCC resources were not equivalent to those of a state attorney general or state banking department were still prevalent among some of those with whom we spoke at the state level. However, OCC officials said that they have staff—beyond CAG—that work on consumer protection issues, including bank examiners in compliance supervision and attorneys in the Community and Consumer Law and Enforcement and Compliance divisions.

Until 2004, OCC staffed the CAG's toll-free telephone line 4 days a week, 8 hours a day, but now has service 5 days. One measure OCC uses to gauge how effectively it is servicing customers is the wait time for callers to speak with a CAG representative. OCC officials told us their goal is to answer 80 percent of CAG calls within 3 minutes or less. According to OCC data,

[32]The number of complaints from January to June 2005 was 21,453. Assuming levels for the second half of the year match those of the first, we project a total of 42,906 for all of 2005. Complaints for 2004 were 34,669.

[33]During 2004, two large state-chartered banks came under OCC's supervision when they converted to national charters. One had assets of $649 billion and the other $93 billion.

between June 2004 and November 2005, CAG met this goal, although wait times generally were longer for Spanish speaking services.[34] In addition, to accommodate the expected increase in call volume due to recent charter conversions, OCC has recently hired more CAG specialists. Lastly, in December 2005, OCC began seeking private-sector support for the CAG facility, in order to expand its telephone service hours. A third-party vendor will handle routine matters, such as providing materials to satisfy noncomplex questions, obtaining information from callers that is necessary to open a case file, routing the caller to the appropriate OCC specialist and providing the status of an open case. In addition, the vendor's employees will be able to direct the many callers who have concerns that pertain to institutions not regulated by OCC to the appropriate regulator. OCC plans to begin expanding the CAG's telephone hours of operation after vendor selection and training is completed.

Conclusions

Overall, OCC's consumer complaint handling operations appear to be in-line with practices of other regulators, with OCC handling a larger volume of complaints than the other bank regulators, likely reflecting its position as the supervisor of banks that account for the majority of the nation's bank assets. A significant portion of OCC's and other regulators' work involves providing or clarifying information for bank customers who have questions and/or have misunderstood a bank product or service. Officials from all four regulators said that assisting consumers through the complaint process is an important part of their efforts to educate consumers about financial products and services. Two of the federal bank regulators collect some feedback from consumers who make complaints or inquiries; OCC does not. In contrast, OCC does seek feedback from banks after every examination, through a survey. Given that part of OCC's mission is to ensure that consumers of national banks' products and services are treated fairly and have fair access to financial services, obtaining feedback from bank customers who contact CAG should be useful in improving both its service to customers and helping banks to do likewise. Moreover, federal standards reflected in GPRA require that government agencies measure their progress toward goals, including those related to serving the public. OCC measures its timeliness in serving consumers with complaints and

[34]Over the same 18-month period, calls from Spanish-speaking customers represented 1.9 percent of total call volume. According to OCC officials, the CAG telephone system retains data only for the most recent 18-month period. Therefore, as of December 2005, data were not available on wait times prior to June 2004.

inquiries as one indicator of its performance and discloses the results in reports that are publicly available. However, because those reports combine data on complaints and data on inquiries—which are questions or comments that are subject to an immediate, simple answer and typically require less time to handle—they overstate OCC's performance in meeting its timeliness goal for resolving actual complaints.

OCC appears to make appropriate use of the data CAG collects and analyzes by informing banks about their performance in relation to consumer complaints and by using the data to inform its examination and supervisory activities. CAG's analysis of complaint data is presented to bank officials annually and used to identify any concerns. OCC examiners reported CAG data as useful tools in scoping examinations and in assessing areas of risk. We documented instances when examiners' audit plans were influenced by information from CAG. We also identified instances when information gathered from CAG complaints and additional research by supervisory staff contributed to the development of supervision policies and guidance.

The concerns expressed by a broad range of consumer advocates and state officials indicate some uneven understanding of OCC's process for handling consumer complaints, possibly contributing to the lack of trust that the agency will be aggressive in protecting consumers' interests. Because these concerns may inhibit state officials or consumer advocates from sharing information with or referring consumer complaints to OCC, they could adversely affect the agency's effectiveness in regulating banks or assisting bank customers who have complaints. Consumer advocates and others are concerned about CAG's centralized location and its capacity to handle complaints particularly if the volume of complaints should increase. Recent efforts such as outreach to the Better Business Bureaus and development of a revised brochure for consumers regarding CAG are appropriate steps designed to better inform the public of its process and services. However, the distribution plans for the brochure focus on the banks and rely on them to share the brochure with bank customers, if the banks wish. Given that the former Comptroller has acknowledged that OCC and state officials "have a mutual interest in ensuring that consumers are protected from illegal, predatory, unfair, or deceptive practices," it is essential that OCC undertakes outreach to key state partners—regulators and consumer advocates—in a manner that effectively and efficiently informs the public, and especially customers of national banks, about what CAG does and how state officials and OCC can work together to protect consumers. Such efforts cannot only raise awareness among the states about OCC's efforts and capabilities to assist consumers, it might help allay the suspicion and mistrust we identified and construct a path for better cooperation between OCC, state officials, and consumer advocates in the future.

Recommendations

To identify ways to improve its process for handling consumer complaints and inquiries and its efforts to better inform, educate, and serve bank customers, we recommend that the Comptroller of the Currency take the following three actions:

- Develop and implement a feedback mechanism to receive input and measure satisfaction of bank customers who have used CAG services.
- Revise the data publicly reported on timeliness to reflect complaints resolved within the 60-day goal separately from data reported on inquiries resolved within the time frame.
- Develop and implement a comprehensive plan to inform bank customers, consumer advocates, state attorneys general, and other appropriate entities of OCC's role in handling consumer inquiries or complaints about national banks. The plan could include such steps as directly distributing an informational brochure to some bank customers and meeting with state and local consumer advocates and appropriate state officials to describe OCC's role and processes for assisting bank customers and others who raise consumer protection concerns.

Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from the Comptroller of the Currency; they are presented in appendix II. OCC generally concurred with the report and agreed with our three recommendations. Specifically, OCC stated that a broader comparison of consumer protection activities, including those of state agencies, would have provided a clearer picture of protections available to consumers, but it acknowledged that such a comparison was beyond the scope of our report. Regarding the recommendations, OCC said it will develop and implement a customer feedback mechanism to receive input and measure satisfaction of those who have used CAG services. OCC also agreed to revise the data that it publicly reports on timeliness to reflect complaints resolved within the 60-day goal separately from data reported on inquiries. Finally, OCC acknowledged that state officials may not be aware that it does have some practices currently in place to inform state officials of the outcome of consumer complaints, and therefore it will undertake additional outreach to state agencies to make them aware of those options. Therefore, OCC agreed with our recommendation that it develop and implement a comprehensive plan to inform bank customers, consumer advocates, state attorneys general, and other appropriate entities of its role in handling consumer inquiries or complaints about national banks. OCC also provided technical comments that we have incorporated, as appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of this report until 30 days from the report date. At that time, we will provide copies of this report to the Comptroller of the Currency and interested congressional committees. We also will make copies available to others upon request. In addition, the report will be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions concerning this report, please contact me at (202) 512-8678 or woodd@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors are acknowledged in appendix III.

David G. Wood

David G. Wood
Director, Financial Markets and
Community Investment

Scope and Methodology

To describe how the Office of the Comptroller of the Currency (OCC) handles consumer complaints and to compare how its process compares with that of other bank regulators, we interviewed officials in OCC's Customer Assistance Group (CAG), as well as their relevant counterparts at the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS). We visited the CAG office in Houston, Texas, and observed its work, including a review of 18 closed cases to learn what information CAG collects from complaints.[1] In addition, we reviewed CAG's policies and procedures that relate to consumer complaint processing.

To describe how the four regulators resolve the complaints they handle, we requested complaint data for calendar years 2000 through 2004.[2] Specifically, we obtained information about the source and resolution (outcomes) of complaints, the banking products or services involved, and the amount of time the regulators took to resolve them. The data came from four different databases: (1) OCC's REMEDY database, (2) the Federal Reserve's Complaint Analysis Evaluation System and Reports (CAESAR), (3) FDIC's Specialized Tracking and Reporting System (STARS), and (4) OTS' Consumer Complaint System (CCS). We obtained data from OCC, the Federal Reserve, FDIC, and OTS in September 2005 that covered calendar years 2000 through 2004. For purposes of this report, we sought to use REMEDY, CAESAR, STARS, and CCS data to describe the number of cases each regulator handled, what products consumers complained about, how the regulators disposed of complaints, the number of complaints and inquiries the regulators forwarded to other federal agencies, and how long it took the regulators to resolve complaints. To assess the reliability of data from the four databases, we reviewed relevant documentation and interviewed agency officials. We also had the agencies produce the queries or data extracts they used to generate the data we requested. Also, we reviewed the related queries, data extracts, and the output for logical consistency. We determined these data to be sufficiently reliable for use in our report.

[1]Our sample was a nonprobability sample, so our results cannot be used to make inferences about the population. In a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected for the sample.

[2]To determine the total amount of assets under supervision for each regulator, as well as, assets under supervision related to credit cards, we also reviewed information from FDIC's Statistics on Depository Institutions for the period 2000 to 2004.

To make general comparisons about the source and resolution of complaints between the four regulators, we created categories that include all of the codes each regulator used to describe the sources and resolutions of complaints. Officials of the Federal Reserve, FDIC, OTS and OCC agreed with our categorization of their respective source and resolution codes. The source categories were "consumer," "federal," "state," and "other." The resolution categories consisted of (1) regulators provide consumers additional information, (2) complaint is withdrawn or tabled due to litigation, (3) regulators determine that bank was not in error, and (4) regulators determine that bank was in error. Using the codes, we sorted each of the regulators' complaints and tallied the number of complaints that fell into each category. We also sorted the complaints by codes indicating the type of bank product or service and confirmed for certain products, such as credit cards, that the codes represented the entire universe of complaints about the product. To describe how long it takes to resolve a complaint, we requested from each regulator a frequency count of how many complaints were resolved within and over 60 days.

To describe how CAG's efforts related to OCC's supervision of national banks, we interviewed OCC officials and reviewed related documents about how consumer complaint data influence bank examinations and guidance. We interviewed CAG officials and examiners at six national banks concerning how CAG shares consumer complaint information and how information is used by bank examiners. In addition, we interviewed bank officials to learn what information CAG provides the banks and how banks use the information.

To identify issues raised by consumer advocates and state officials, we conducted site visits in four states: California, Georgia, New York, and North Carolina. The site visits included interviews of state attorneys general, banking regulators, banking officials and local consumer advocate groups, as well as analysis of relevant documents. We also interviewed state officials in two additional states, Iowa and Idaho.[3] We selected these locations, in part, based on their experience with state consumer protection laws. In addition, we interviewed representatives of national consumer groups, including the Center for Responsible Lending, Consumer Federation of America, National Community Reinvestment Coalition, National Consumer Law Center, and Association of Community

[3]We reviewed general information from the six state banking regulators that we interviewed about how their respective agencies handle consumer complaints.

Organizations for Reform Now. Also, we interviewed representatives of national trade groups for state officials in Washington, D.C., including the Conference of State Bank Supervisors and the National Association of Attorneys General.

We conducted our work in California, Georgia, New York, North Carolina, Texas, and Washington, D.C., from October 2004 through December 2005 in accordance with generally accepted government auditing standards.

Comments from the Office of the Comptroller of the Currency

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

January 27, 2006

Mr. Dave G. Wood
Director, Financial Markets and Community Investment
United States Government Accountability Office
Washington, DC 20548

Dear Mr. Wood:

We have received and reviewed your draft report titled "OCC Consumer Assistance: Process Is Similar to That of Other Regulators, But Could Be Improved by Enhanced Outreach." The OCC's issuance of final regulations setting forth standards for determining when state laws can be applied to the operations of national banks (preemption), and clarifying the respective roles of federal and state authorities in overseeing the activities of those institutions (visitorial powers) prompted a Congressional request for your review in response to concerns expressed by some state officials and consumer groups about a perceived loss of consumer protection. The requesters asked you to evaluate the OCC's process and capacity for providing assistance to consumers.

You concluded and are reporting that: (1) the OCC's handling of consumer complaints is similar to that of other regulators; (2) the Customer Assistance Group's (CAG) consumer complaint data informs OCC's bank supervisory activities; and (3) despite OCC efforts, state officials and consumer advocates still have concerns about OCC's commitment and capacity to address consumer complaints.

As we previously conveyed in our comments on the draft report, given the genesis of the request for GAO review, we wished that your analysis could have encompassed the state agencies that have registered concerns about the OCC. While we recognize that such a comparison was beyond the scope of your project, comparing the OCC's consumer protection activities and resources to those of the full range of agencies and entities involved in this area would have provided a clearer and more complete picture of the protections available to consumers nationally. Even within the limited focus on Federal agencies, extending your comparison beyond routine processing to value-added uses of complaint information would have provided a more complete context for evaluating the OCC's performance. While we are proud of the performance of OCC's CAG, we are always looking to improve our performance. A better understanding of state and Federal capabilities would help to further strengthen our own consumer protection activities and mesh them more effectively with services provided by others.

Service to and Feedback from Consumers

Your report provides a positive assessment of the OCC's complaint handling process. Nevertheless, we would like to emphasize that our assistance to consumers is more than our CAG handling complaints. We take a holistic approach that, we believe, sets us apart from the other federal regulators with whom we are compared. First and foremost, the information that we glean from providing service to individual customers of national banks and their subsidiaries is integrated into the supervisory process. Not only do examiners use the information to set the scope of their examinations and to evaluate banking practices, but the information is shared with the institutions to encourage them to provide better service to their customers at the time of product delivery and in resolving any disputes or concerns that may arise. The service that we provide also extends to the operating subsidiaries of national banks. We accept and resolve complaints from consumers about their transactions with institutions that are currently national banks and their subsidiaries regardless of the entities' status at the time the transaction at issue occurred.

You observed that the OCC does not have a formal mechanism for assessing consumer satisfaction with our services. We accept your recommendation to develop and implement a feedback mechanism to receive input and measure satisfaction of bank customers who have used CAG services. Not only will such a survey add value to our process by providing us another opportunity to have a dialog with consumers, but also their feedback will prompt us to make improvements to our process.

Informing Others

Your report is helpful in pointing out specific areas where state governmental entities and consumers may not be aware of our efforts or have misperceptions about them. We are committed not only to clearing up misperceptions but to reporting correct information and sharing information with the states. We will take the steps you recommend to revise the data publicly reported on timeliness to reflect complaints resolved within the 60-day goal separately from data reported on inquiries resolved within the timeframe.

As you point out, it has been our practice to share information concerning the outcome of consumers' complaints with state entities when asked. When a state agency forwards a complaint to the OCC and requests either a copy of the OCC's response to the consumer or to know the result, we provide a copy of our letter or follow up with a phone call to the state. Because some states may not be aware that we do this, we will undertake additional outreach to state agencies to make them aware of this option. We also will again encourage state agencies to enter into memoranda of understanding that would facilitate broader information sharing. As you report, we revised the draft memorandum of understanding in an effort to address concerns raised by states concerning a previous draft; however, despite our efforts to address those concerns, only one agreement has been formalized.

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Accordingly, your recommendation that we develop and implement a comprehensive plan to inform bank customers, consumer advocates, state attorneys general, and other appropriate entities of OCC's role in handling consumer inquiries or complaints about national banks is entirely appropriate.

We appreciate the opportunity to comment on the draft report and to reaffirm our commitment to providing superior service to consumers.

Sincerely,

John C. Dugan
Comptroller of the Currency

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GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition to those named above, Katie Harris (Assistant Director), Nancy Eibeck, Jamila Jones, Landis Lindsey, James McDermott, Kristeen McLain, Suen-Yi Meng, Marc Molino, David Pittman, Barbara Roesmann, Paul Thompson, and Mijo Vodopic made key contributions to this report.

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