

GAO

Report to the Chairman, Subcommittee
on Financial Institutions Supervision,
Regulation and Insurance, Committee on
Banking, Finance and Urban Affairs,
House of Representatives

June 1992

EXECUTIVE FURNITURE

Financial Regulatory Agencies' Procurement Policies



147130

General Government Division

B-248289

June 29, 1992

The Honorable Frank Annunzio
Chairman, Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we determine whether the Office of the Comptroller of the Currency (OCC) and other financial regulatory agencies have procurement guidelines to prevent purchases of excessively priced executive furniture. We reviewed the furniture procurement guidelines at OCC, the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), the Office of Thrift Supervision (OTS), the Resolution Trust Corporation (RTC), and the Securities and Exchange Commission (SEC).

On May 27, 1992, we briefed the Subcommittee on the results of our work. We agreed to summarize in writing the information we reported at the briefing.

Results in Brief

We identified three policies to help prevent buying excessively priced executive furniture and protect the government from projecting an image of extravagance in its office furnishings. These policies include (1) using Federal Supply Schedules of the General Services Administration (GSA) for smaller purchases and competitive acquisition methods for larger purchases, (2) limiting furniture purchases to those requirements considered essential, and (3) prohibiting the purchase of "top-of-the-line" furniture.

All six agencies incorporate the three policies we identified to prohibit the purchase of excessively priced executive furniture, with one exception. OTS does not have a policy specifically barring the purchase of top-of-the-line furniture. Although SEC and FRB do not have policies specifically prohibiting the purchase of top-of-the-line executive furniture, SEC prohibits its presidential appointees and FRB prohibits all its employees from spending more than \$5,000 on new furniture. SEC and FRB officials said these limits effectively bar the purchase of top-of-the-line executive furniture.

Background

In the summer of 1991, OCC moved its Washington, D.C., offices from L'Enfant Plaza to 250 E St., S.W., about five blocks away. OCC bought new furniture for its new offices and conveyed its old furniture to GSA, which assumed OCC's lease at L'Enfant Plaza. On February 3, 1992, your Subcommittee staff reported that OCC purchased expensive and unnecessary executive furniture and other items for its new offices.¹ The Subcommittee staff report concluded that OCC could have exercised better judgment in purchasing certain items for its offices, including expensive office furniture, leather desk accessories, and china. For example, the Subcommittee reported that OCC bought marble conference tables for its executive offices costing between \$4,076 and \$4,951 each and paid \$2,637 for a 6-piece china service for 16. The report noted that OCC receives its funding from assessments of banks that it oversees and that spending "lavishly" to outfit new offices was not appropriate for a federal agency overseeing a financially troubled banking industry.

In September 1991, your Subcommittee issued a staff report criticizing FDIC's 1991 purchase of new furniture for its new office complex in Arlington, VA, and at other offices throughout the country.² According to the report, FDIC could have procured quality furniture less expensively through GSA Federal Supply Schedules. For example, the Subcommittee reported that while FDIC paid \$4,166 to furnish a standard 150-square-foot office, similar furniture could have been purchased through GSA Federal Supply Schedules for \$2,344. The report also noted that because FDIC has traditionally been funded through member bank premiums, the declining balance of the Bank Insurance Fund and the possibility that taxpayers might be required to pay for bank failures should have prompted FDIC to take "all necessary austerity measures" to conserve its remaining cash.

OCC, FDIC, FRB, and OTS do not receive funds appropriated from the Treasury Department's General Fund and are not required to follow federal procurement regulations. With the exception of FRB, these agencies receive operating funds through assessments against financial institutions. FRB receives its funds through assessments against federal reserve banks. SEC operates on funds received from the General Fund. Fees collected by SEC are considered appropriated funds. Only SEC is required by law to

¹Staff Report on Expenditures of the Office of the Comptroller of the Currency Relating to its Move to New Headquarters, House Banking Subcommittee on Financial Institutions Supervision, Regulation and Insurance, February 3, 1992.

²Staff Report on 1991 Expenditures of the Federal Deposit Insurance Corporation, Subcommittee on Financial Institutions Supervision, Regulation and Urban Affairs, 102 Cong., First Sess., September 1991, Committee Print 102-3.

follow federal procurement regulations. RTC operates in part on funds received from the General Fund.

Procurement officials at FDIC, FRB, OCC, OTS, and RTC said they generally comply with the principles of the federal procurement regulations on a voluntary basis. Uniform federal regulations pertaining to acquisition of services and supplies are found in the Federal Acquisition Regulation (FAR), which generally governs procurement and contract matters related to these acquisitions. Federal Property Management Regulations (FPMR) prescribe policies and procedures relating to property management. FRB, OCC, OTS, and RTC voluntarily follow the principles of FPMR while SEC is required to follow FPMR.

Criteria

We used the following three criteria to determine whether the six agencies had policies to prohibit the purchase of excessively priced executive furniture:

- Do they have written policies to encourage use of GSA's Federal Supply Schedules (for smaller purchases) and competition (for larger purchases)?³
- Do they have written policies to limit purchases to those requirements that are considered essential?
- Do they have written policies specifically prohibiting purchase of "top-of-the-line" furniture?

We identified these elements by reviewing the federal procurement and property regulations, which apply to executive branch agencies, and the individual financial regulatory agencies' furniture acquisition guidelines. FPMR allows executive agencies to use GSA Federal Supply Schedules for smaller purchases while FAR requires them to seek price competition from furniture vendors for larger purchases. Also, under FPMR the acquisition of new furniture is limited to those requirements that are considered absolutely essential. Some of the agencies we reviewed have supplemented the FAR and FPMR guidance with other policies. For example, FDIC, OCC, and RTC have proposed or adopted a policy specifically barring the purchase of "top-of-the-line" executive furniture. Also, FRB said it voluntarily follows a law (discussed later) limiting presidential appointees from spending more than \$5,000 on new furniture without the approval of the Appropriations Committees of Congress.

³GSA has set limits for ordering from the schedules that vary depending upon the value of the purchase and type of furniture. For instance, up to \$125,000 in workstations may be purchased from the schedules. Workstation procurements exceeding \$125,000 cannot be purchased from the schedules and must be competed.

Objective, Scope, and Methodology

Our objective was to determine whether the six selected financial regulatory agencies have guidelines to prohibit the purchase of excessively priced executive furniture. To accomplish our objective, we obtained and compared the furniture procurement policies of OCC, FDIC, FRB, RTC, OTS, and SEC to the three criteria discussed next. We interviewed procurement officials and toured the executive offices of these agencies in Washington, D.C. We did our work from March to June 1992 in accordance with generally accepted government auditing standards. A more detailed description of our objective, scope, and methodology is provided in appendix I.

Financial Regulatory Agencies' Furniture Procurement Policies

All six agencies incorporate the three criteria we identified to prohibit the purchase of excessively priced executive furniture, with one exception. OTS does not have a policy specifically barring the purchase of top-of-the-line furniture. Table 1 summarizes the six agencies' furniture procurement policies.

Table 1: Elements of Financial Regulatory Agencies' Furniture Acquisition Policies

Policies	FDIC ^a	FRB	OCC	OTS	RTC	SEC
Encourages use of GSA schedules and competition?	x	x	x	x ^b	x	x ^b
Purchases limited to those requirements considered essential?	x	x ^b	x	x	x	x ^b
Prohibits top-of-the-line furniture purchases?	x	x ^c	x		x	x ^d

^aFDIC's policies are proposed. According to FDIC officials, they have operated with these policies for at least the past 5 years.

^bPolicies are contained in the federal procurement regulations, rather than in separate agency guidelines. FRB and OTS said they voluntarily follow these policies and SEC is required to follow them.

^cFRB prohibits all its employees from spending more than \$5,000 for new furniture. FRB officials said this limitation effectively bars the purchase of top-of-the-line furniture.

^dSEC prohibits its presidential appointees from spending more than \$5,000 for new furniture. SEC officials said this limitation effectively bars the purchase of top-of-the-line furniture.

Procurement officials at the six agencies said they generally obtain furniture from (1) liquidated institutions, (2) GSA Federal Supply Schedules, (3) open market competition, and (4) sole source procurement.

FDIC's proposed policy requires that

"[i]tem-by-item comparisons of like kind and quality are to be made using GSA's Federal Supply Schedules. This will ensure that FDIC receives the best possible prices . . . All furniture is to be bid competitively."

RTC's policy is that

"[e]xpenditures shall be made on the basis of adequate competition to the fullest extent possible. Adequate compensation means the solicitation and participation of a sufficient number of sources (not less than three) to ensure that the price paid by RTC is fair and reasonable."

FRB's general acquisition policy is to

"use competitive acquisition methods to the maximum extent practicable and to provide all vendors an opportunity to compete."

OCC uses a combination of GSA schedules, open market competition, and sole source procurement. OCC officials said they used open market price competition in acquiring most of the new furniture for their new headquarters. However, OCC used sole source procurements for the new executive furniture, which officials said represented less than 5 percent of the new furniture acquisition.⁴

Furniture guidelines proposed or adopted by all six agencies follow FPMR requirements that the acquisition of new items shall be limited to those requirements that are considered essential. In addition, RTC's policy is that "[e]xpensive, top-of-the-line quality, executive-type furniture will not be obtained and the component should take care to avoid creating an ostentatious office environment." Similarly, FDIC has proposed a policy that "furniture will be at an 'above standard' quality level but not top-of-the-line quality."

On May 19, 1992, near the end of our review, OCC adopted furniture procurement guidelines that (1) bar specifically the purchase of top-of-the-line executive furniture and limit purchases of executive furniture to the mid-range of prices available through GSA Federal Supply Schedules; (2) limit the acquisition of new furniture to those requirements

⁴OCC officials said the sole source procurements allowed them to obtain furniture less expensively than through the open market because they dealt directly with the manufacturers, not dealers. OCC officials also said that GSA has advised OCC that they are not required to use the GSA Federal Supply Schedules.

that are considered essential; (3) prohibit the purchase of top-of-the-line executive furniture, and (4) provide no office redecoration allowance for reassigned executives, executives promoted to the executive level, or a new Comptroller.

OCC's previous furniture procurement guidelines, adopted in 1988, were that "professional offices are furnished commensurate with National Bank furnishings for similar functions Executive offices are furnished comparably to senior government and bank executives." OCC also adopted a policy in 1986 that limited furniture purchases to the mid-range of prices available through GSA Federal Supply Schedules. OCC's May 1992 policy specifies that executive furniture will be comparable to that purchased for "senior executives of the U.S. government."

Dollar Limit for Presidential Appointees

During the course of our review, we became aware of a statutory provision that Congress has enacted annually since 1986 regarding furniture expenditures for presidential appointees.⁵ The law provides that

"[d]uring the period in which the head of any department or agency, or any other officer or civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer, or employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations of the House and Senate."

We believe this limitation applies to the presidential appointees at all the financial regulatory agencies we reviewed.

Of the six agencies we reviewed, only SEC's procurement officials said they are subject to the \$5,000 limitation. FRB officials said they voluntarily comply with the limitation and apply it to all employees. SEC and FRB officials said this limitation effectively bars the purchase of top-of-the-line furniture. FDIC, FRB, OCC, and OTS officials said they are not required to comply with this law because they do not receive funds from the General Fund of the Treasury.

⁵Treasury, Postal Service, and General Government Appropriations Act, 1992, P.L. 102-141, section 618 (Oct. 28, 1991); P.L. 101-509, section 614 (Nov. 5, 1990); P.L. 101-136, section 614 (Nov. 3, 1989); P.L. 100-440, section 614 (Sept. 22, 1988); P.L. 100-202, section 615 (Dec. 22, 1987); and P.L. 99-591, section 615 (Oct. 30, 1986).

Under a 1986 policy, OCC permits \$18,980 to be spent on the initial furnishing of an executive office, provided that the purchases are within the mid-range of prices available through GSA. OCC spent \$16,627 in 1991 to furnish the new offices of the Comptroller, a presidential appointee, and \$12,902 to furnish the conference room adjacent to the Comptroller's office.⁶ OCC officials said they did not inform or receive advance approval from the Appropriations Committees about the furniture purchases for the Comptroller's office. They do not believe the limitation applies to agencies not receiving appropriated funds or to agency relocations.

We did not include the dollar limit for presidential appointees with the criteria to prohibit the purchase of excessively priced furniture for two reasons. First, the law only applies to presidentially appointed executives, not to career executives. Second, since we did not determine what level of expenditures would be appropriate to furnish an executive office, we have no opinion as to whether \$5,000 is adequate.

Conclusions

All six agencies we reviewed incorporate the three criteria we identified to prohibit the purchase of excessively priced executive furniture, with one exception. OTS does not have a policy specifically barring the purchase of top-of-the-line furniture. We also noted that FDIC has only proposed policies and that OCC's policies have been only recently adopted formally. However, we believe that the six agencies' policies generally provide them with adequate guidance to prohibit the purchase of top-of-the-line furniture.

Agency Comments

At your request, we did not ask for written comments on a draft of this report. However, OCC provided written comments on our report, which are found in appendix III. We discussed a draft of this report with officials at FDIC, FRB, OCC, OTS, RTC, and SEC in May and June 1992. The officials generally agreed with the report's facts and conclusions.

OCC officials said that, in retrospect, they would not have purchased certain items for their new offices, such as marble-top tables and leather desk accessories, because of their cost and appearance. They also said the

⁶A Comptroller General decision (B-245097, Sept. 20, 1991) concluded that a conference room was not part of a presidential appointee's office suite for the purpose of the \$5,000 limitation. The decision pointed out that the conference room was not attached or adjacent to the official's office and was not for his primary or exclusive use. The Comptroller of the Currency's conference room is located adjacent to the Comptroller's office and is accessed through the Comptroller's office and the main hallway. According to OCC officials, although other executives may use the conference room, it is primarily for the Comptroller's use.

purchase of new furniture should be viewed in the context of the money saved from the new office lease, including the benefits to the agency of conveying the old furniture to GSA. OCC officials said the new office lease is expected to save the agency \$13.2 million over 15 years, compared to leasing the former space. Officials also said that OCC saved an additional \$2.3 million—representing the remaining 4 months of OCC's lease at L'Enfant Plaza—by leaving the old furniture at its previous headquarters space that GSA was able to assume immediately because it was already furnished. OCC officials emphasized that its old offices and some of its old furniture did not meet the agency's technological needs.

OCC officials also disagreed, orally and in comments reproduced in appendix III, with our opinion that the law that bars presidential appointees from spending more than \$5,000 on new furniture applies to the agency. They said the law does not apply to OCC because the agency does not receive appropriated funds and, therefore, is not required to seek approval from the congressional Appropriations Committees. Further, they said that furnishing an agency's new offices is not covered by the law and is different from redecorating a presidential appointee's office, which they said the law is intended to restrict. They added that OCC's policies explicitly prohibit redecoration expenditures for the Comptroller's personal office space.

Officials at FDIC, FRB, OTS, and RTC also said they do not believe their agencies are required to follow the law that limits presidential appointees from spending more than \$5,000 on new furniture because they do not use appropriated funds to buy furniture. In addition, an FRB official said that the agency is not required to follow the \$5,000 limit because FRB has exclusive statutory control over its building. An FDIC official said that while the agency does not agree that it must follow the \$5,000 limit, it will do so voluntarily and will modify its guidelines accordingly. The FDIC official also said that although the agency's guidelines are only proposed, FDIC has been operating under those policies for at least 5 years. The FDIC official added that the agency plans to formally adopt the policies soon.

An RTC official said that the \$5,000 limit law is unclear and that Congress should clarify whether it is limited solely to expenditures by presidential appointees for reasons of taste, such as new carpet and drapes. He was concerned that the law might be interpreted to include expenditures for maintenance of presidential appointees' offices and for reconfiguration of space, which he thought should be excluded from the limitation.

An SEC official said he wanted to make clear that SEC's executives who are not presidentially appointed must follow federal procurement regulations in acquiring furniture.

We disagree with the agencies' position that they are not subject to the \$5,000 limit. The statute applies on its face to all presidentially appointed civilian officers and employees without qualification as to the nature or source of their agencies' funding and without regard as to whether agencies have control over their own buildings. While it may seem anomalous to apply the limitation to agencies that are not financed by appropriated funds and are not ordinarily subject to the jurisdiction of the Appropriations Committees, we do not consider this a sufficient basis to depart from the plain terms of the statute. However, the agencies may wish to seek clarification from the Appropriations Committees of whether they should be covered by this limitation. Further, the statute does not differentiate between furniture purchases as part of office relocations or for other purposes, although the factors cited by OCC may have provided a basis for justification for furniture expenditures exceeding \$5,000.

The officials suggested other minor changes, which we incorporated throughout our report, as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of this letter. At that time, we will send copies to the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the SEC Chairman, the President and Chief Executive Officer of RTC, the FDIC Chairman, the OTS Director, and other interested parties. Copies will also be made available to others upon request.

The major contributors to this report were Robert Homan, Evaluator-in-Charge, and Jeffrey Forman, Senior Attorney. If you have any questions about this report, please call me on (202) 275-8676.

Sincerely yours,

A handwritten signature in black ink that reads "L. Nye Stevens". The signature is written in a cursive style with a large, stylized initial "L" and a long horizontal flourish at the end.

L. Nye Stevens
Director, Government Business
Operations Issues

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Abbreviations

FAR	Federal Acquisition Regulation
FDIC	Federal Deposit Insurance Corporation
FPMR	Federal Property Management Regulations
FRB	Board of Governors of the Federal Reserve System
GSA	General Services Administration
OCC	Office of the Comptroller of the Currency
OTS	Office of Thrift Supervision
RTC	Resolution Trust Corporation
SEC	Securities and Exchange Commission

Objective, Scope, and Methodology

Our objective was to determine whether six financial regulatory agencies have procurement guidelines to prevent them from buying excessively priced furniture. To accomplish our objective, we interviewed procurement officials at the Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Resolution Trust Corporation (RTC), and the Securities and Exchange Commission (SEC). We asked the officials (1) whether they used appropriated funds to buy furniture, (2) whether they are required to comply with federal procurement regulations, (3) whether they have guidelines regarding furniture appearance, and (4) how they obtain their furniture. We obtained and compared the agencies' furniture acquisition guidelines and inspected the executive offices of these agencies in Washington, D.C.

We applied the three criteria discussed earlier in this report to determine whether the agencies had policies to prohibit purchasing excessively priced executive furniture. We developed these criteria after reviewing the Federal Acquisition Regulation (FAR) and Federal Property Management Regulations (FPMR), which apply to executive agencies, and the policies of the six agencies.

Because the Subcommittee had already thoroughly investigated furniture purchases by OCC and FDIC, we did not attempt to duplicate its work. Instead, we limited the scope of our work to reviewing furniture procurement policies of the agencies. We did not attempt to verify the information provided by the agencies or determine if the agencies actually followed their policies, with the exception of expenditures made for the Comptroller of the Currency.

We also reviewed the legislative history of an annually enacted limitation, currently in Public Law 102-141, which prohibits presidential appointees from spending more than \$5,000 on new office furnishings, to determine the congressional intent.

We did our work from March to June 1992 in accordance with generally accepted government auditing standards.

Comparison of Furniture Procurement Guidelines

We interviewed procurement officials at OCC, FDIC, FRB, RTC, and SEC. We asked the officials (1) whether they use appropriated funds to buy furniture, (2) whether they are required to follow federal procurement regulations, (3) whether they had guidelines regarding furniture appearance, and (4) how they obtain furniture. We asked them to provide any guidelines relating to these matters. This appendix summarizes the information they provided to us.

Question	Response
FDIC	
Uses appropriated funds to buy furniture?	No.
Type of guidance	Proposed policy only.
Required to comply with FAR and FPMR?	No, but voluntarily complies with the spirit and intent of FAR.
Guidelines regarding furniture appearance	Proposed policy: "Furniture will be at an 'above standard' quality level but not top-of-the-line quality. Moderately priced, quality furniture results in lower ultimate costs because of longer life . . . Existing FDIC furniture will be repaired, refinished and reused whenever possible."
Furniture procurement sources	Proposed policy: "Item-by-item comparisons of like kind and quality are to be made using the GSA's Federal Supply Schedules. This will ensure that FDIC receives the best possible prices . . . Make maximum use of used furniture—through the purchase of receivership property, auctions and secondary markets. Purchase of new furniture is limited to requirements considered essential. Any such purchase will be by competitive procurement, using FDIC national contracts. No artwork, art prints, etc., will be procured under any circumstances. All furniture is to be bid competitively."
FRB	
Uses appropriated funds to buy furniture?	No.
Type of guidance	Board of Governors Management Policy Statements July 30, 1990, and February 7, 1991.
Required to comply with FAR and FPMR?	No, but has established procedures that generally parallel FPMR and FAR.
Guidelines regarding furniture appearance	Furniture should "conform to a style, quality, and character consistent with the architecture" of the headquarters buildings.

(continued)

**Appendix II
Comparison of Furniture Procurement
Guidelines**

Question	Response
Furniture procurement sources	GSA and open market; also recycles furniture purchased in 1937 and 1974. "Use[s] competitive acquisition methods to the maximum extent practicable and to provide all vendors an opportunity to compete."
OCC	
Uses appropriated funds to buy furniture?	No.
Types of guidance	Policies and Procedures Issuance, May 19, 1992, from Deputy Comptroller for Resource Management; OCC Procurement Manual, 1987.
Required to comply with FAR and FPMR?	No, but voluntarily "generally conforms with the intent and spirit" of FAR and FPMR.
Guidelines regarding furniture appearance	"Executive furniture shall be comparable to that purchased for senior executives of the U.S. government The specification and acquisition of top-of-the-line executive furniture is expressly prohibited. Great care should be taken not to specify and acquire items which could create an ostentatious office environment. The acquisition of new items will be limited to those requirements considered essential for effective and efficient operation and will not include upgrading to improve appearance, office decor or status, or to satisfy the desire for the latest design or more expensive lines."
Furniture procurement sources	Open market, GSA, and sole source procurement. "Executive furniture will be acquired in accordance with the provisions of the OCC Procurement Manual which emphasizes competitive procurement processes for all goods and services, including furniture, to the extent practicable."
OTS	
Uses appropriated funds to buy furniture?	No.
Type of guidance	Directive from Assistant Secretary of the Treasury (Management), January 29, 1987.
Required to comply with FAR and FPMR?	No, but voluntarily complies with both.
Guidelines regarding furniture appearance	"The acquisition of new items shall be limited to those requirements which are considered absolutely essential and shall not include upgrading to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more expensive lines."
Furniture procurement sources	GSA and open market.

(continued)

**Appendix II
Comparison of Furniture Procurement
Guidelines**

Question	Response
RTC	
Uses appropriated funds to buy furniture?	No.
Types of guidance	Directives from Assistant Executive Director, August 9, 1991, and from Executive Director, August 19, 1991.
Required to comply with FAR and FPMR?	No, but acquires furniture in accordance with "general principles" defined in FPMR and FAR.
Guidelines regarding furniture appearance	"Expensive, top-of-the-line quality, executive-type furniture will not be obtained and the component should take care to avoid creating an ostentatious office environment The acquisition of new items will be limited to those requirements which are considered essential for effective and efficient operations and will not include upgrading to improve appearance, office decor, or status, or to satisfy the desire for the latest design or more expensive lines."
Furniture procurement sources	Liquidated financial institutions, GSA, and open market. "Expenditures shall be made on the basis of adequate competition to the fullest extent possible. Adequate competition means the solicitation and participation of a sufficient number of sources (not less than three) to ensure that the price paid by RTC is fair and reasonable."
SEC	
Uses appropriated funds to buy furniture?	Yes.
Type of guidance	Office furniture use standards, June 19, 1981 (implementing FPMR).
Required to comply with FAR and FPMR?	Yes.
Guidelines regarding furniture appearance?	No.
Furniture procurement sources	GSA and open market.

Comments From the Office of the Comptroller of the Currency



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

June 19, 1992

Charles A. Bowsher
Comptroller General of the United States
United States General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

I have reviewed the draft report dated June 11, 1992, prepared by the GAO entitled "Executive Furniture - Financial Regulatory Agencies' Procurement Policies." After a thorough review and discussion of the report, the OCC must emphatically disagree with a legal conclusion made as part of GAO's review.

Specifically, we strongly disagree with the conclusion made by the GAO that the OCC was required to comply with the provisions of section 614 of the Treasury, Postal Service and General Government Appropriation Act, 1991, Pub. L. No. 101-509, when it acquired a new furniture inventory as part of its 1991 headquarters office relocation. As explained in the May 27, 1992 opinion of OCC's Chief Counsel (see enclosure), we do not believe that section 614 applied to OCC's actions since: (1) neither the statute nor its legislative history supports the GAO's analysis that the provision had applicability to the expenditures for the furniture and furnishings in question, made in the context of the OCC's bona fide and prudent relocation of its entire headquarters office; and (2) the acquisition was funded with monies which are neither "taxpayer's money," "Government funds," nor "appropriated monies."

For these reasons, as more fully explained in the attached memorandum, the OCC disagrees with the conclusion set forth in the GAO Report.

Sincerely yours,

Stephen R. Steinbrink
Acting Comptroller of the Currency

Enclosure

OCC's comments are
discussed on pp. 7-9.



MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

To: Judith A. Walter, Senior Deputy Comptroller for Administration
From: William P. Bowden, Jr., Chief Counsel *WPB*
Date: May 27, 1992
Subject: General Accounting Office Review of OCC Furniture Acquisitions

I understand that the GAO has questioned the legality under the Treasury, Postal Service and General Government Appropriations Act, 1991, Pub. L. No. 101-509, § 614, of the OCC's 1991 acquisition of furniture and furnishings for the Comptroller's Office in connection with the relocation of the OCC headquarters from L'Enfant Plaza to a newly constructed office building at One Independence Plaza. For the reasons set forth below, I believe the GAO's apparent interpretation of the statute is incorrect.

The statute provides:

During the period in which the head of any department or agency, or any other officer of civilian employee of the Government appointed by the President of the United States, holds office, no funds may be obligated or expended in excess of \$5,000 to furnish or redecorate the office of such department head, agency head, officer of employee, or to purchase furniture or make improvements for any such office, unless advance notice of such furnishing or redecoration is expressly approved by the Committees on Appropriations of the House and Senate.

Relying on the plain language of the statute, entirely out of context, and the uncontroverted fact that a sum in excess of \$5,000 was spent to acquire furniture and furnish the office of the Comptroller without prior approval by either the House or Senate Committee on Appropriations, the GAO appears to have concluded in its draft report that the OCC violated the statute.

I do not believe that the statute either can or should be interpreted so superficially. In the first place, the statutory language, although broad, seems clearly focused on the perceived ills of furnishing or redecorating existing government offices to

Appendix III
Comments From the Office of the
Comptroller of the Currency

suit the needs or tastes of presidential appointees. Surely, if the statute were intended to cover new construction and relocation of the entire Washington staff of a government agency in which the complete inventory of old furniture and furnishings was to be replaced with new furniture and furnishings more suitable to the new building, Congress would have chosen statutory language more clearly compelling such a result.

In fact, the legislative history referenced in the GAO's report supports a contrary conclusion, reflecting that the statute was adopted to address concerns with expenditures made of taxpayers' money to furnish or redecorate offices occupied by department or agency heads or other presidential appointees and incurred merely to satisfy the personal desires of such individuals. The examples cited in the history make it clear that the intent of the statute was to limit expenditures made to satisfy personal desires. Nothing in the legislative history suggests that the statute was intended to limit the cost of replacing an agency's entire inventory of furniture and furnishings, which necessarily and only incidentally includes new furniture and furniture for the agency head. None of the concerns discussed in the legislative history can remotely be said to have existed in connection with the OCC's headquarters office relocation. One must presume that, if Congress had intended Section 614 to apply as broadly as the GAO contends it does, the legislative history would have given some clue to this legislative intent.

It is worth noting that, when initially enacted by Congress in 1986, the § 614 prohibition extended to expenditures in excess of \$5,000 for "renovation, remodeling, furnishing, or redecoration". In 1988, the prohibition was amended to cover only expenditures for "furnishing or redecoration". While there is no legislative history which clearly explains this change, deletion of the terms "renovation" and "remodeling" appears to make the current statutory restriction narrower than the earlier language restricting expenditures made for general "remodeling" or "renovation", words which are somewhat closer to what occurred at the OCC in 1991. Even without the 1988 deletions, however, there is no legislative history which suggests that the prohibition of the original language of § 614 was intended to extend to expenditures such as those made by the OCC in its 1991 relocation.

When considered in connection with the fact that the entire headquarters relocation, including the acquisition of the Comptroller's furniture and furnishings, was funded entirely with monies which are not "taxpayers" "money" and, pursuant to 12 U.S.C. § 481, are not considered as either "Government funds" or "appropriated monies", the conclusion is inescapable that § 614 should have no applicability to the OCC's relocation. It would be anomalous to conclude that § 614, enacted as part of annual appropriations legislation, was intended to vest approval

Appendix III
Comments From the Office of the
Comptroller of the Currency

authority in the Congressional appropriations committees over such a potentially substantial but entirely ill-defined aspect of the OCC's ongoing operations, which are in any sense related to the expenditure of "appropriated monies".

A few details of the process involved are worth noting as well. Prior to the 1991 relocation, senior OCC officials responsible for OCC property management activities had determined that the OCC's existing inventory of furnishings could not be economically utilized at the new headquarters location. Accordingly, arrangements were made to convey the OCC's then-existing inventory to the General Services Administration under mutually advantageous terms and to acquire an entirely new furniture and furnishings inventory. The new furniture and furnishings selected for all agency employees, including the Comptroller, were comparable but not of higher quality than those transferred to the GSA. While an aggregate sum in excess of \$5,000 was spent for furniture and furnishings to be located in the Comptroller's office, all applicable agency policies and procedures were followed. These included (i) selecting furniture and furnishings which on the basis of the judgment of the OCC's internal professional staff and outside consultants would be the most cost-effective over time, taking into account factors such as initial cost, quality of construction, anticipated maintenance and useful life, (ii) selecting furniture and furnishings with reference to the upper-middle range of GSA government executive office guidelines, even though the OCC is not technically subject to these guidelines and (iii) making selections on the basis of competitive bids, or price comparisons where such bidding is not feasible. These policies and procedures, as pointed out to the GAO, were in most instances in written form. However, whether or not in written form, they were clearly understood by the OCC professional staff responsible for the project. In any event, I note with approval your decision to codify all of these policies and procedures into a single Policies and Procedures Memorandum for general distribution, which I have just reviewed and passed on for further review. It seems to me that taking all of these policies and procedures into account makes the OCC's 1991 actions manifestly reasonable, as well as entirely appropriate legally.



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