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Description of document: Memorandum of Understanding between the Department of the Treasury Office of Inspector General (OIG) and Office of Comptroller of the Currency (OCC), 2011

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FOIA Request  
Department of the Treasury  
Washington, DC 20220  
Fax: 202-622-3895  
[FOIA Online Request Form](#)

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From: "Delmar, Richard K." <DelmarR@oig.treas.gov>  
Date: Thu, 05 Jul 2012 16:00:26 -0400  
Subject: your FOIA request for Treasury OIG-OCC MOU

This responds to your May 5, 2012 FOIA request to the Department of the Treasury for records in two categories:

1. copies of "any and all letter correspondence with the Office of the Comptroller of the Currency regarding access to information for use in investigation of possible fraud upon OCC by individuals of failed OCC-regulated financial institutions;" and
2. [copies] of any and all MOUs, MOAs or other agreements concerning Treasury IG access to OCC information relating to the above matter."

Your request was designated as Treasury FOIA request # 2012-05-129.

In response, I am attaching a copy of the final, signed MOU between the OIG and the OCC, entered into in March 2011, which relates to OIG access to information about and conduct of investigations relating to OCC program integrity. This is a full grant of part 2 of your request.

OIG records responsive to part 1 of your request relate to the process by which the MOU was developed, discussed within the OIG and with the OCC and other Treasury offices, and made final. As such, they are pre-decisional, and thus within the ambit of FOIA Exemption 5, 5 U.S.C. § 552(b)(5)..Accordingly, I deny that portion of your request.

You have the right to appeal under 5 U.S.C. § 552(a)(6)(A)(i) for full disclosure of the requested files. Pursuant to the Department's FOIA appeal process set forth in 31 C.F.R. § 1.5(i), an appeal must be submitted within 35 days from the date of this response to your request, signed by you and addressed to: Freedom of Information Act Appeal, DO, Disclosure Services, Department of the Treasury, Washington, D.C. 20020. The appeal should reasonably describe the records to which access has been denied and should specify the date of the initial request and the date of this determination. Please enclose copies of your initial requests and this letter.

I would be happy to discuss this with you -

Rich Delmar  
Counsel to the Inspector General  
Department of the Treasury  
delmarr@oig.treas.gov

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE DEPARTMENT OF THE TREASURY**  
**OFFICE OF INSPECTOR GENERAL (OIG) AND**  
**OFFICE OF COMPTROLLER OF THE CURRENCY (OCC)**

Purpose: To establish procedures for communication and cooperation between our offices regarding OIG investigations and other inquiries relating to allegations of obstruction of OCC bank oversight or other events within OIG's investigative jurisdiction as discussed below in the fourth paragraph of this agreement. Both offices recognize the independent roles and responsibilities of the OCC and the OIG relating to OCC programs and operations, and OIG's access to information and cooperation regarding attempted obstruction of or fraud upon those programs and operations. It is understood that this MOU does not apply to employee misconduct and whistleblower matters involving OCC employees, which are solely within the OIG investigative jurisdiction.

Background: OIG recognizes that its investigations of matters involving instances of obstruction of or fraud upon OCC programs can affect matters within OCC's areas of program responsibility. Likewise, OCC recognizes OIG's responsibility under the Inspector General Act to prevent and detect fraud and abuse in OCC programs and operations. OIG and OCC agree that cooperation and mutually acceptable procedures are necessary and appropriate to avoid interference with OCC national bank oversight and other programs and OIG responsibilities. This document establishes procedures to facilitate cooperation between OIG and OCC in connection with OIG investigations of such interference.

The Inspector General Act, 5 U.S.C. App 3, Treasury Employee Rule of Conduct 31 C.F.R § 0.207, Treasury Order 114-01 and Treasury Directive 40-01 describe the authority and responsibility of the OIG, the responsibility of all Treasury employees to cooperate with the OIG to enable it to carry out its mission, and the rights of employees in connection to OIG investigations. Nothing in this memorandum supersedes, contradicts, or limits these laws, regulations, and directives, and they shall control in any apparent conflict.

OIG has law enforcement authority to conduct investigations of criminal and other activity related to the programs and operations of OCC. OIG's goal, in part, is to prevent and detect fraudulent conduct that impedes or is intended to impede OCC's bank oversight, to protect OCC and other affected entities from further harm, and to facilitate imposition of appropriate penalties against offenders. OIG's investigative procedures can include surveillance, review of OCC, bank, and other records, interviews of witnesses, and service of subpoenas. OIG investigations may result in detection and deterrence of efforts to conceal information or otherwise impede OCC's safety and soundness examinations and other oversight of the financial institutions

within its jurisdiction. OIG will provide information about such investigations to OCC consistent with Federal criminal law and procedure.

OCC has authority to regulate the conduct and operations of national banks, and to exercise visitorial powers, including conducting examinations and other oversight activities of such banks to assure the safety and soundness of the national banking system, in accordance with the National Banking Act, 12 U.S.C. §1 et seq. OCC does not conduct criminal investigations. Similarly, OIG does not conduct bank regulatory examinations.

In order to properly carry out their respective responsibilities, OIG and OCC acknowledge that OCC must have control over its personnel and records, and that OIG has the right of access to such personnel and records. OIG is aware of OCC's concerns about the confidential and privileged nature of certain information in its possession, and will endeavor to frame its requests to minimize these concerns. Should OCC have concerns about an OIG information or access request, or about its ability to assure that such confidentiality and privilege issues are honored in any subsequent criminal, civil, or administrative proceedings, OCC's Chief Counsel will promptly notify OIG Counsel of such concerns.

OCC and OIG Coordination Policies and Procedures. The nationwide coordination of OCC's and OIG's efforts will be accomplished through headquarters operations. To facilitate providing information concerning possible obstruction of the OCC examination process or other events within OIG's investigative jurisdiction as discussed above in the fourth paragraph of this agreement, requests from the OIG for OCC documents and records and/or access to OCC employees in connection with allegations of obstruction shall be made to the OCC OIG/GAO Liaison, or the designated OCC primary point of contact in the OCC's Enforcement and Compliance Division ("E&C"). Upon receipt of a request from OIG for documents concerning allegations of obstruction or other fraudulent activity within OIG's jurisdiction, the OCC will provide to OIG all such documents, records, transcripts and other information available to the OCC, including non-public supervisory information. Upon receipt of a request from OIG for access to OCC employees in connection with allegations of obstruction, the OCC will make its employees available to OIG for interview, generally at a mutually agreeable time and place, but if investigative needs dictate, as the OIG determines (in such circumstances, OIG will be mindful of, and attempt to accommodate reasonable work-related or personal obligations of the employee). The heads, or designees of E&C and the OIG's Office of Investigations will discuss any issues that arise regarding availability of OCC employees, and will meet quarterly, and more often if necessary, to discuss the status of investigations and examinations of mutual interest, and other related issues.

When OCC employees become aware of indicators of attempts to mislead examiners, conceal or falsely amend records, or otherwise hamper or misdirect OCC's examination and other oversight functions, the OCC will promptly report such information to the designated OIG point of contact, whose contact information will be disseminated to all offices by OCC. OIG employees will have access to OCC field offices and personnel in the course of their investigations.

In any OIG investigation that leads to coordination with the Department of Justice or a U.S Attorney's Office, OIG will assure that such offices are aware of OCC's responsibilities, authority, and concerns about sensitive information, or interference with any parallel proceeding.

Whenever possible, OIG will share with OCC information relating to charges, proceedings, judgments and sanctions that involve institutions and persons subject to OCC's oversight. It is understood that OIG cannot always be aware of such actions, nor control them, and that only when it joins a Department of Justice-led investigation does it act as an agent of the Department of Justice, which has sole legal authority to prosecute violations of Federal criminal law. It is also understood that OIG cannot disclose information in violation of the grand jury secrecy rules in F.R.Cr.P. 6(e).

Access to OCC Employees, Documents, and Records. It is important that the OCC share with the OIG any information concerning possible obstruction of or fraud upon any OCC programs or operations, including information about possible criminal activity involving entities or persons subject to OCC's oversight. It is also important that OIG have access to any documents and records that will support its investigative efforts. OIG agents conduct their investigations on behalf of the OIG, and not as representatives of the Department of Justice or other agencies unless and until OIG joins a Justice investigation and becomes subject to the supervision of the Department of Justice. The OIG acknowledges the confidential and privileged nature of the information in the OCC's possession. Such information provided by the OCC to the OIG pursuant to this MOU shall remain the property of the OCC and is subject to the restrictions on disclosure that are contained in the OCC's rules on Release of Non-Public OCC Information under 12 C.F.R. Part 4. No confidential, privileged information shall be disclosed outside of OIG without advance notice to the OCC; unless other applicable law or directive, such as a judicial order, may control. OIG may, however, without identifying the source, use the information obtained from the OCC, or directly or indirectly derived therefrom, in the performance of OIG's investigatory duties without further OCC approval. Pursuant to 12 U.S.C. 1821(t), disclosure of the files or information to OIG does not waive any privileges associated with them.

If the OIG has the need, in the course of executing its responsibilities, to provide any information subject to the Right to Financial Privacy Act, 12 U.S.C. § 3401 et seq., outside the Department, it will take full responsibility for RFPA compliance when transferring any such information.

Matter of Mutual Interest and Concern. It is agreed that among the issues of mutual interest and concern are:

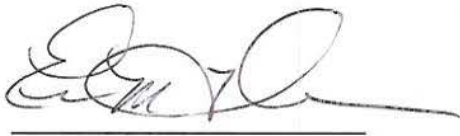
Bank Closings. OIG may determine that its presence is needed when a financial institution is closed, when there is a reasonable basis to believe that obstruction of the OCC examination process, or fraud on OCC's programs may have occurred at the institution before its closure. Coordination of notice of closings, and notice of OIG interest in participation, will be consistent with the procedures established in this MOU, and will include contacts between the OIG point of contact, and the OCC OIG/GAO Liaison or other point of contact.

Suspicious Activity Reports (SARs). OCC will notify OIG in all instances of falsification of bank records or otherwise fraudulent activity that is indicative of obstruction or fraud on OCC programs by or for a financial institution under OCC's oversight. OCC will report to OIG whenever it files a SAR, directs an institution to file a SAR, or becomes aware that a SAR regarding fraudulent activity that is indicative of obstruction of or fraud on OCC programs has been filed.

Security. OIG does not ordinarily provide personnel or physical security. However, because the matters at issue in this MOU may involve obstruction, falsification of bank records or other interference with OCC's operations, or threats to OCC employees, OCC will notify OIG of all such threats to physical security, and the OIG may, at its discretion, provide such coverage as it determines is necessary and appropriate, and will provide information and assistance regarding concerned Federal, state, and local law enforcement, security, and regulatory authorities, as appropriate.

Resolution of Disagreements. Disagreements in interpretation of this MOU, or in access to information in the course of an OIG investigation, will be resolved at the operational level, generally by discussions between the parties' Counsels and/or enforcement directors.

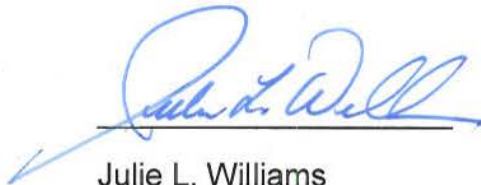
For the OIG:



Eric M. Thorson  
Inspector General

29 MAR 11

For the OCC:



Julie L. Williams  
Chief Counsel and  
First Senior Deputy Comptroller

3-30-11