

# Tensions Flare Between OCC and Bank Consultants

by Rachel Witkowski  
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WASHINGTON — The Office of the Comptroller of the Currency's effort to gain enforcement authority over bank consultants has sparked objections from contractors who argue the agency's move threatens their independence.

The OCC asked lawmakers last week for the power to issue sanctions directly against independent contractors, who are often hired by a bank under an enforcement action. Such a move would expand the OCC's power to penalize or ban any bank consultant, including lawyers and auditors, at the agency's discretion.

But many consultants say that won't necessarily fix problems at banks and will spark other issues.

"I'm not sure having the regulators regulate consultants would make them more independent," said Jon Winick, president of bank advisory firm Clark Street Capital. "A better idea is to have the regulators hire the consultant then."

The OCC has already said that it is reviewing the current process with banks and consultants after regulators scuttled the independent foreclosure review in favor of a \$9.3 billion settlement in January. The OCC required banks to hire outside consultants to review loan files, a process that proved lengthy and expensive.

"Given the experience with the IFR, the OCC is currently evaluating its use of independent consultants and exploring ways to improve the process, particularly for situations involving significant consumer harm or law enforcement implications," said Daniel Stipano, the OCC's deputy chief counsel, in testimony before a Senate Banking subcommittee last week.

The OCC still believes that the use of independent consultants "is generally appropriate," Stipano



Having the OCC take enforcement actions against consultants would not "make them more independent," said Jon Winick, president of bank advisory firm Clark Street Capital.

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said, but the agency faces "significant jurisdictional obstacles" to go after contractors accused of wrongdoing.

He noted a case in 2008 when the OCC was stopped from penalizing accounting firm Grant Thornton for approving false financial reports of a failed bank that hired the firm because of an enforcement action. The U.S. Court of Appeals for the District of Columbia determined that the work performed by Grant Thornton did not fall within the "business of banking," so the OCC had no jurisdiction to proceed.

"The OCC would welcome a legislative change in this area that would facilitate our ability to take enforcement actions directly against independent contractors that engage in wrongdoing," Stipano told lawmakers Thursday. "Such a legislative change would be useful not only with respect to the use of independent contractors in an enforcement context but also, and perhaps more importantly, in cases where a bank has chosen to outsource significant activities to an independent contractor."

But consultants say the OCC already has significant power over a bank's relationship with an independent contractor, making more enforcement authority unnecessary.

"When I was a regulator, we did a lot of work reviewing third-party contracts" such as "engagement letters and ensuring the bank is getting value for their money," said C.K. Lee, a managing director at Commerce Street Capital who formerly worked at the Office of Thrift Supervision. "They already have some authority. It's just whether or not they're using it. That's the question."

Even before a bank selects a contractor, the OCC can ask the institution to submit the qualifications of the consultant and review the firm. It can also require the bank to modify or terminate the agreement at any time if the agency feels the work is "not consistent" with the intent of the enforcement action, Stipano told lawmakers. The OCC can also refer a contractor to its appropriate regulator or attorney general if necessary.

Though there are differing opinions on sanctions against consultants, all parties agree that the current independent consultant process should be reviewed in light of the flopped IFR.

"I think you've got to have a new process. And I think if the process requires modification of federal rules and regulations, then that's something the OCC and the Fed should immediately demand of us," said Sen. Jack Reed, D-R.I., at the Thursday hearing. "Because essentially what you describe is a core activity of the OCC — stopping the wrongdoing of regulated institutions and protecting consumers."

Still, consultants questioned whether the OCC's request has more to do with trying to divert political blame from the agency over the foreclosure review.

"I'm having a hard time figuring out whether this [request] of the OCC was because they were in trouble with Congress because of what happened with the foreclosure reviews," Lee said. "Or whether there really is a concern among regulators about the quality of work they're seeing" from consultants.

Others agreed.

"To me, the whole thing about the consultants is just more scapegoating," said Walter Moeling 4th, a partner at the Bryan Cave law office.

Consultants also say if there are deeply-rooted concerns at the OCC with the work being performed at the bank on the advice of an independent firm, it's ultimately up to bank's management to stay in compliance.

"I tell my clients all the time that I'm a consultant but I'm not a banker," Moeling said. "I can't run it. You've got to run it."



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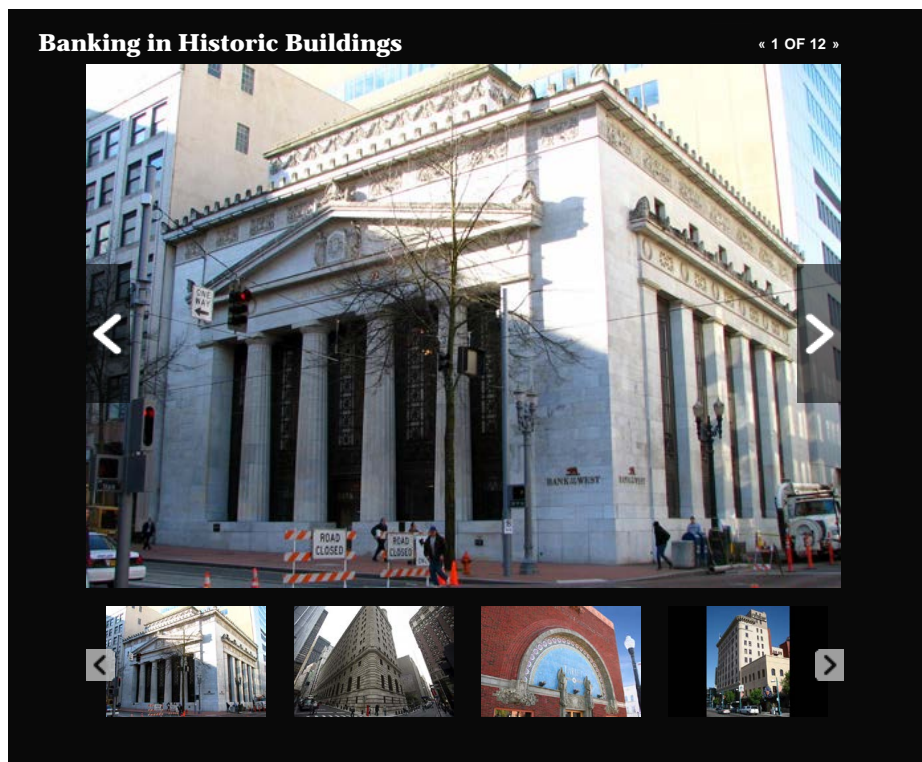
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Important to see this dust-up between the OCC and well-connected bank consultants as yet another attempt to divert attention from the agency's shortcomings resulting from its capture by the big banks, rather than a real problem with the quality of the consulting firms. After all, it was the OCC's idea to force the Too Big To Behave Banks to hire outside consultants to review foreclosure files. The action generated massive paydays for the usual consultants out of money that should have gone to injured homeowners.

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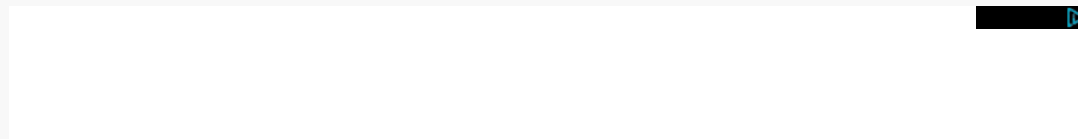
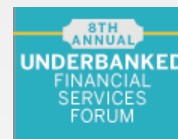
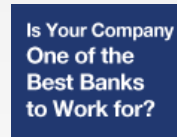
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