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COMPTROLLER OF THE CURRENCY NEEDS AUTHORITY TO DISPOSE OF PROPE--ETC(U)
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BY THE COMPTROLLER GENERAL

Report To The Congress OF THE UNITED STATES

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Comptroller Of The Currency Needs Authority To Dispose Of Property Remaining From Failed National Banks

For many years the Comptroller of the Currency has held unclaimed property remaining from terminated receiverships of national banks that failed prior to the establishment of the Federal Deposit Insurance Corporation in 1934. The most recent audit of the inventory disclosed major discrepancies between the control records and the property onhand.

In view of the safekeeping problems and the lack of action by either the owners or the agency to obtain or return the property, GAO believes that one final effort should be made to locate the owners. Should this fail, all remaining property should be disposed of. GAO recommends that the Congress enact legislation giving the agency such authority.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

We have examined the Office of the Comptroller of the Currency's (OCC's) management of property remaining from closed receiverships of national banks which became insolvent prior to the Federal Deposit Insurance Corporation's (FDIC's) assumption of responsibility for liquidating failed national banks in 1934. The property has been in OCC's custody for many years. Agency officials stated that, during the past 20 years, no one has filed claims for the property, and the agency has not attempted to locate the owners.

Without an appraisal by experts, OCC has no official estimate of the value of this property. Aside from the obviously worthless items, the intrinsic value of much of the property probably would be overshadowed by its appeal to collectors for its antique or historic value. Also, there exists the possibility that some of these items might be "priceless" because of their condition, history, or uniqueness.

The most recent audit of the inventory by OCC's internal auditors disclosed major discrepancies between the physical inventory and the inventory control records. In view of the problems in safekeeping the property and the lack of action by either the owners to obtain or the agency to return the property, we believe OCC should initiate actions to dispose of it. We have been unable, however, to find any statutory authority which authorizes the final disposition of the property. We are, therefore, recommending that the Congress enact legislation that will authorize OCC to dispose of the property and have included suggested legislative language in appendix I of this report. We also recommend that OCC make one last effort to locate the property owners and establish adequate procedures for safeguarding the property until its final disposition.

BACKGROUND

Prior to the FDIC's assumption of responsibility for bank liquidations, OCC handled the liquidation of all insolvent national banks. When national banks became insolvent, OCC appointed individual receivers to settle the banks' affairs and liquidate all assets. The first receiver was appointed by OCC on April 14, 1865, to liquidate the First National Bank of Attica, New York. This practice continued until 1934, when the FDIC was appointed receiver for the first time for a national bank.

The termination of these receiverships resulted in various monies and property being turned over to OCC for safekeeping. After settling the affairs of closed banks and issuing checks for final distributions to the creditors of the banks, the receivers transferred to OCC all remaining funds which represented distributions that were undeliverable or were not used for payment. Additionally, receivers transferred to OCC's custody items which were being held by the banks for safekeeping but were not claimed by the owners after the banks closed.

When FDIC was appointed receiver of insolvent national banks, it did not continue the previous practice of taking possession of items that were not claimed before the receiverships were terminated. Instead FDIC liquidation officials at headquarters stated receivers transferred unclaimed property to the State in which the bank was located.

OCC has \$2.7 million from undelivered and uncashed checks in a closed receivership fund and thousands of items from safe-deposit boxes and other safekeeping arrangements. Sections 721 to 723 of the Depository Institutions Deregulation and Monetary Control Act of 1980 authorized the Comptroller to take actions to terminate the fund and absorb its proceeds, as well as income earned from investing this fund, into OCC's general operating fund. This legislation did not, however, provide for disposal of the property items that remain from national bank liquidations.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our review was to determine whether, *the Comptroller of the Currency* (OCC) was adequately carrying out its responsibilities for property remaining from insolvent national banks. We were also interested in determining what plans existed for disposition of the property.

We reviewed OCC's procedures for taking a physical inventory of the property and observed the agency's internal auditors' inventory-taking practices. Our review included an examination of files, studies, inventory listings, and other documents, as well as discussions with officials involved in the custodial activities.

We did not verify independently the accuracy of the physical inventory of the safe-deposit box items. We did, however, visit the current storage site at the Smithsonian's Museum of American History.

We had numerous discussions with OCC's legal staff on the need for authority to dispose of the property and the legislative provisions that would be most appropriate. In addition, we spoke with OCC administrative officials regarding the safekeeping and

inventory practices followed and the need for plans to provide for the ultimate disposal of the property. Finally, we discussed with FDIC officials the practices they follow in liquidating an insolvent national bank.

CONTROLS OVER ITEMS
SHOULD BE IMPROVED

The Comptroller of the Currency has limited detailed information about the property in its custody. Although an inventory of the assets was recently taken, the lack of detailed information makes it impossible to reconcile significant reported differences of items in the inventory and items recorded in the control records. OCC has relied primarily on the physical security of the storage area to safeguard the property with no apparent monitoring or systematic feedback on the security practices followed.

The property formerly had been stored in a vault located in the Main Treasury Building. OCC was notified on October 19, 1979, that the vault contents would have to be moved because Treasury wanted to convert the vault space to a computer center. The property was moved temporarily on February 16, 1980, to the Bureau of Engraving and Printing.

In June 1980, OCC and the Smithsonian Institution entered into an agreement allowing the Smithsonian's Museum of American History to take temporary custody of the inventory in order to review the items for possible addition to its collections. Pursuant to the agreement, in June 1980 the items were moved into a secured area in the Smithsonian's Museum of American History. The items are being examined by the Museum's historical experts to identify items that would improve its collections. The original agreement with the Smithsonian provided that the items would be returned to OCC by December 31, 1980, but this date has been extended.

When OCC's internal auditors took their most recent inventory of the assets, they found thousands of items which were not listed in the inventory control ledgers. Also, the auditors could not find thousands of items listed in the control ledgers.

OCC's auditors told us that the reports of prior inventories could not be found, thus they did not know whether the differences disclosed by the recent inventory existed when prior inventories were taken. The missing items are listed on 270 typed pages and belong to about 2,500 owners. Many of the missing items were documents, such as notes, bonds, stock certificates, insurance policies, deeds, and wills. Other missing items were described as gold rings, sapphires, diamonds, and old coins. Also, many

missing items cannot be identified because the agency lacked information about the items. For example, the control ledger identified some items only as "contents of safe deposit box" or "miscellaneous papers."

OCC NEEDS AUTHORIZATION
TO DISPOSE OF PROPERTY

We believe that OCC lacks statutory authority to dispose of safe-deposit box articles in its possession. OCC officials originally believed they had authority pursuant to 10 U.S.C. 2575 to dispose of the articles; but after we discussed the legislative history of this provision and other pertinent matters, they agreed that legislation was needed.

In this respect, there is an issue as to whether the States, under their abandoned property laws, could make valid claims to the property. Legislation that we are proposing to authorize OCC to dispose of the property is not intended in any way to diminish any rights States might have to claim the property.

Before disposing of the property, however, OCC should make some effort to locate claimants to it. Because of the lack of records, we could not determine the full extent of efforts that may have been made to locate the property owners. We found indications, however, that in some cases little or no effort may have been exerted. For example, we noted a memorandum in the agency's files which indicated that, prior to March 1937, receivers did not make a concentrated effort to locate property owners. Although we cannot readily determine how much property now in OCC's possession was transferred from receiverships terminated prior to March 1937, it could be substantial. The memorandum, dated June 1, 1943, from Assistant Counsel to the Comptroller of the Currency states:

"Prior to March 8, 1937, receivers in terminated receiverships forwarded to this office miscellaneous items in the above categories without having made a concentrated drive to locate the owners thereof or to find successor custodians in the field. By circular letter of March 8, 1937, however, all receivers were given detailed instructions requiring them to exert every effort to locate the owners of the items by correspondence, telephone and personal contact and, finally, by advertising."

Records were not readily available to show how successful receivers were in returning safekeeping items to owners after

the March 1937 instructions. However, some problems may have continued to exist because we noted that on May 31, 1941, the Deputy Comptroller issued additional instructions to receivers of insolvent national banks which stressed the need to locate the owners of the items.

Another indication that some receivers may not have made an adequate effort to locate the property owners can be seen by the number of items that some receivers transferred to OCC for safekeeping. Many receivers transferred items belonging to a few owners that could not be located, but some receivers transferred items belonging to several hundred owners, and, in one case, a receiver transferred items belonging to about one thousand owners.

In addition to efforts made by receivers to locate the owners of the property, we attempted to find out what efforts OCC may have made after the receiverships were terminated and the property was transferred to OCC. Our review of available agency records and discussions with agency officials did not disclose any indication that OCC has made any effort to locate the owners of the property.

CONCLUSIONS

OCC's continued custody of this property involves some costs to adequately safeguard and account for it. During the past 20 years, the owners have not claimed any of the property, nor has OCC made any effort to locate the owners. The longer that this condition continues the more difficult it will be to return the property to the rightful owners.

It appears that little or no effort was made to locate the owners of the property remaining from receiverships terminated prior to March 1937. Although OCC issued instructions to receivers in March 1937 and May 1941 setting forth procedures for locating the owners of the property, it is not clear how effective these instructions were in disposing of the property. We believe OCC should make one last effort to locate the property owners and be authorized to proceed to dispose of the property. In addition, we believe that the Congress should provide OCC with authority to make final disposition of the property.

The disposal of the property will require a substantial amount of time. In view of the problems that have existed in the past in safeguarding the property, the agency should establish adequate procedures for safekeeping it during the period of its disposition.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact legislation to authorize the Comptroller of the Currency to dispose of property remaining from safe-deposit boxes and other safekeeping arrangements of closed national banks. Suggested draft legislation is included in appendix I of this report.

RECOMMENDATIONS TO THE
COMPTROLLER OF THE CURRENCY

We recommend that the Comptroller of the Currency:

- Attempt to locate the owners of property remaining from insolvent national banks liquidated by OCC-appointed receivers. In this regard, it may be appropriate to advertise for such owners once a week for 3 or 4 consecutive weeks in a newspaper of general circulation in the liquidated bank's community followed by final notice in the Federal Register.
- Develop adequate procedures for safekeeping the property until its disposition is accomplished.

AGENCY COMMENTS

The Comptroller of the Currency concurs with our recommendations. The full text of the agency's comments are included in appendix II.

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Copies of this report are being sent to the Comptroller of the Currency; the Secretary of the Treasury; and the Director, Office of Management and Budget.

Milton J. Fowler
Acting Comptroller General
of the United States

DRAFT LEGISLATION TO AUTHORIZE DISPOSAL
OF UNCLAIMED PROPERTY

Title VII of Public Law 96-221 is amended by adding the following:

Part C - Disposition of Unclaimed Property
From Closed National Banks

PURPOSE

Sec. 724. The purpose of this part is to dispose of unclaimed property in the possession of the Office of the Comptroller of the Currency by--

- (1) providing final notice of the availability of unclaimed property from closed national banks;
- (2) barring rights of claimants to obtain such property from the Comptroller after a reasonable period of time following such notice; and
- (3) authorizing the Comptroller to dispose of such property for which no claims have been filed under this Part C.

DEFINITIONS

Sec. 725. For purposes of this part--

- (1) the term "Comptroller" means the Comptroller of the Currency;
- (2) the term "unclaimed property" means any articles, items, assets, or other property from safe-deposit boxes held by the Comptroller of the Currency in his capacity as successor to receivers of those banks;
- (3) the term "claimant" means any person or entity asserting a legal interest in the title or possession of the unclaimed property.

DISPOSITION OF UNCLAIMED PROPERTY

Sec. 726. (a) Within 180 days following enactment of this Part C, the Comptroller shall publish notice once a week for 4 weeks in the Federal Register that all rights of claimants to obtain possession of any unclaimed property in the custody or control of the Comptroller shall be barred after 12 months following the last date of publication of such notice. Such notice

shall contain descriptions of all unclaimed property and shall provide reasonable times, places, and manner for inspection of such property.

(b) The Comptroller shall deliver such property to the claimant or its legally authorized representative upon receiving due proof that the claimant is entitled to the property, if the claimant files for the property within 12 months following the last date notice is published. Such proof shall include an affidavit by the claimant attesting to its rights or interests in the property. The Comptroller shall have sole responsibility for determining the validity of all claims filed. All expenses associated with delivery of any property shall be borne by the claimant.

(c) If, after 12 months from the date final notice is published, there shall remain property in the custody or control of the Comptroller for which no claim has been filed, or there remains property for which claims have been determined to be invalid, all rights, title, and interests in such property shall immediately vest in and become property of the United States. Thereupon, the Comptroller may sell, use, destroy, or otherwise dispose of any such unclaimed property. The proceeds of any sales authorized by this provision, after payment of any expenses incident thereto, shall be covered into the Treasury as miscellaneous receipts.

(d) The Office of the Comptroller of the Currency or any officer or employee of the United States shall not be subject to legal liability for delivery, sale, destruction, or other disposition of any unclaimed property made in accordance with this Part C.

Sec. 727. The Comptroller shall have power to issue rules or regulations necessary or appropriate to carry out the purposes of this Part C.



Comptroller of the Currency
Administrator of National Banks

Washington, D. C. 20219

September 9, 1981

Mr. William J. Anderson
Director
General Government Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Anderson:


We appreciate the opportunity to respond to GAO's draft report to Congress on the need for authority to dispose of property remaining from closed receiverships of national banks.

This property has been in the custody of the Comptroller of the Currency (OCC) for many years, having been received from closed receiverships prior to the Federal Deposit Insurance Corporation's assumption of responsibility for liquidating failed insured banks in 1934. We heartily endorse GAO's recommendation that the OCC take action to dispose of the property and hope that Congress soon will enact legislation authorizing us to proceed with the final disposition. The suggested legislative language granting the OCC authority to dispose of the unclaimed property is contained in appendix I of GAO's draft report.

In the draft report, GAO recommends that the OCC develop adequate procedures for safekeeping the property until its final disposition is accomplished. Of course, we concur with this recommendation and will assign our internal audit group the task of developing proper safeguards for the property pending final disposition. As the draft report notes, the property currently is housed in the Smithsonian Institution's Museum of American History. Under agreement, the items are being examined by the Museum's experts to identify items for possible accession to its historical collections. The agreement between the Smithsonian and the OCC has been extended three years to allow a more thorough examination of the property. Under this arrangement, the property is considered to be secure, enabling an orderly disposition at a later date.

GAO also recommends that the OCC attempt to locate the owners of the property. We are certain that mutually agreeable guidelines can be developed in a final effort to locate property owners and intend to work closely with GAO to achieve adequate procedures.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Charles E. Lord". The signature is fluid and cursive, with a large initial "C" and "L".

Charles E. Lord
Acting Comptroller of the Currency