



Highlights of [GAO-04-3](#), a report to the Ranking Minority Member, the Committee on Energy and Commerce, House of Representatives

## Why GAO Did This Study

Investment affiliates of large commercial banks have made competitive inroads in the annual \$1.3 trillion debt-underwriting market. Some corporate borrowers and officials from an unaffiliated investment bank have alleged that commercial banks helped their investment affiliates gain market share by illegally tying and underpricing corporate credit. This report discusses these allegations, the available evidence related to the allegations, and federal bank regulatory agencies' efforts to enforce the antitying provisions.

## What GAO Recommends

Because documentary evidence of an unlawful tying arrangement generally is not available in bank files, GAO recommends that the Federal Reserve and OCC consider additional steps to enforce section 106. Additional steps could include publication of specific contact points within the agencies to answer questions from banks and bank customers about the guidance in general and its application to specific transactions, as well as to accept complaints from bank customers who believe that they have been subjected to unlawful tying.

Because low-priced credit could indicate violations of law, the Federal Reserve should also assess available evidence of loan pricing behavior to provide better supervisory information, and publish the results of this assessment.

[www.gao.gov/cgi-bin/getrpt?GAO-04-3](http://www.gao.gov/cgi-bin/getrpt?GAO-04-3).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard Hillman at (202) 512-8678 or [hillmanr@gao.gov](mailto:hillmanr@gao.gov).

# BANK TYING

## Additional Steps Needed to Ensure Effective Enforcement of Tying Prohibitions

### What GAO Found

Section 106 of the Bank Holding Company Act Amendments of 1970 prohibits commercial banks from “tying,” a practice which includes conditioning the availability or terms of loans or other credit products on the purchase of certain other products and services. The law permits banks to tie credit and traditional banking products, such as cash management, and does not prohibit banks from considering the profitability of their full relationship with customers in managing those relationships.

Some corporate customers and officials from an investment bank not affiliated with a commercial bank have alleged that commercial banks illegally tie the availability or terms, including price, of credit to customers' purchase of other services. However, with few exceptions, formal complaints have not been brought to the attention of the regulatory agencies and little documentary evidence surrounding these allegations exists, in part, because credit negotiations are conducted orally. Further, our review found that some corporate customers' claims involved lawful ties between traditional banking products rather than unlawful ties. These findings illustrate a key challenge for banking regulators in enforcing this law: while regulators need to carefully consider the circumstances of specific transactions to determine whether the customers' acceptance of an unlawfully tied product (that is, one that is not a traditional banking product) was made a condition of obtaining credit, documentary evidence on those circumstances might not be available. Therefore, regulators may have to look for indirect evidence to assess whether banks unlawfully tie products and services. Although customer information could have an important role in helping regulators enforce section 106, regulators generally have not solicited information from corporate bank customers.

The Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency (OCC) recently reviewed antitying policies and procedures of several large commercial banks. The Federal Reserve and OCC, however, did not analyze a broadly-based selection of transactions or generally solicit additional information from corporate borrowers about their knowledge of transactions. The agencies generally found no unlawful tying arrangements and concluded that these banks generally had adequate policies and procedures intended to prevent and detect tying practices. The agencies found variation among the banks in interpretation of the tying law and its exceptions. As a result, in August 2003, the Board of Governors of the Federal Reserve, working with OCC, released for public comment new draft guidance, with a goal of better informing banks and their customers about the requirements of the antitying provision.