

**THE COMMUNITY REINVESTMENT ACT:
IS THE OCC UNDERMINING THE
LAW'S PURPOSE AND INTENT?**

HEARING
BEFORE THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
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**THE COMMUNITY REINVESTMENT ACT:
IS THE OCC UNDERMINING THE
LAW'S PURPOSE AND INTENT?**

Wednesday, January 29, 2020

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Velazquez, Sherman, Meeks, Clay, Scott, Green, Cleaver, Perlmutter, Himes, Foster, Beatty, Vargas, Gottheimer, Lawson, Tlaib, Porter, Axne, Casten, Pressley, McAdams, Ocasio-Cortez, Wexton, Lynch, Adams, Dean, Garcia of Illinois, Phillips; McHenry, Wagner, Lucas, Posey, Luetkemeyer, Huizenga, Barr, Tipton, Williams, Hill, Zeldin, Loudermilk, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, Riggleman, Timmons, and Taylor.

Chairwoman WATERS. The Committee on Financial Services will come to order.

Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "The Community Reinvestment Act: Is the OCC Undermining the Law's Purpose and Intent?"

I now recognize myself for 4 minutes to give an opening statement.

Today, this committee convenes for a hearing to conduct oversight of the Office of the Comptroller of the Currency (OCC), including a review of its approach to overhauling the Community Reinvestment Act (CRA).

Comptroller Otting, welcome back. I am pleased that this committee will finally be able to hear from you after you missed our last hearing in December.

The Community Reinvestment Act is an important law that was enacted to combat redlining and to ensure that banks make responsible investments in the communities where they are chartered. Unfortunately, the OCC has put forth a rule that runs contrary to the purpose of the CRA and would lead to widespread bank disinvestment from low- and moderate-income communities throughout the country.

Comptroller Otting's proposal, which closely follows the recommendations made by his former bank colleague and now Secretary of the Treasury, Steven Mnuchin, would allow banks to

skate by and do the bare minimum for a passing grade. Banks would claim CRA credit for investing in sports stadiums and bridges to nowhere. It would also allow banks to earn failing grades in nearly half of their CRA assessment races and still pass their overall CRA exam.

Any serious update to the CRA regulations would set out to strengthen the law. Comptroller Otting's proposal instead does the opposite. Under Comptroller Otting, the Community Reinvestment Act would become the "Community Disinvestment Act." Such a radical change to the CRA demands a heightened level of public scrutiny. Comptroller Otting appears determined to push this through as quickly as possible. The Comptroller is only allowing for a 60-day comment period, which will expire in early March. This is simply unacceptable.

Before the proposal was released, all 34 Democrats on this committee wrote to Comptroller Otting and other bank regulators, calling on them to, at a minimum, provide a public comment period of at least 120 days for any proposal reforming the CRA. Since that time, community banks and others have also asked for a 120-day comment period. In the past, the OCC has provided 120 days, if not longer, for the public to comment on bank capital rules, and there is no reason why this important CRA rule should be treated any differently.

Of course, no one should be surprised. Prior to assuming their respective government roles, Comptroller Otting and Secretary Mnuchin served as CEO, and chairman of the board, respectively, at OneWest Bank, which the Federal Government alleges was engaged in redlining. It has also been widely reported that when Mr. Otting was at the helm, OneWest attempted to game the public comment process when the bank was applying to merge with CIT bank. A 2018 media investigation uncovered hundreds of fake comment letters on the merger with texts originating from OneWest.

There are other issues I am also concerned about, including the OCC's efforts to deregulate megabanks, and its actions to greenlight rent-a-bank schemes that allow lenders to skirt State usury laws.

I look forward to hearing from Comptroller Otting today.

The Chair now recognizes the ranking member of the committee, the gentleman from North Carolina, Mr. McHenry, for 4 minutes for an opening statement.

Mr. MCHENRY. Thank you, Chairwoman Waters. And thank you, Comptroller Otting, for being here.

I would like to take a moment to first recognize the newest member of our committee, Congressman Van Taylor, of Plano, Texas. Van, we welcome you to the committee, and I will also counsel you that not all hearings are quite as interesting as this one.

Isn't that right, Chairwoman Waters?

But, we thank you. I know that we have quite a Texas contingent here on the committee, so I won't make any Texas jokes.

With that, Comptroller Otting, I applaud you and FDIC Chair McWilliams for your efforts to reform and modernize the Community Reinvestment Act. This has been a long time coming. It has been 40 years since the CRA was enacted, and a lot has changed in the banking industry, much of it driven by technology. The rise

of mobile and online banking helps more consumers in communities that the CRA was intended to serve, and this proposal takes those developments into account in the changing nature of banking.

The current CRA regulations are outdated and technologically ineffective. It is an analog approach to a digital world. That needs to change. Your proposal moves this in the right direction. The FDIC and OCC's proposal seeks to modernize the CRA and ensure that it meets the current needs of communities and financial institutions alike. The proposal update will increase the transparency and objectivity that is currently lacking in CRA examinations today and will increase the effectiveness of the statute generally.

We can no longer measure a bank's commitment to its community based off the number of physical branches it has. While branch banking remains important and remains an important part of serving customers, there has been a significant growth in the demand for digital banking services, especially in the post-crisis era. As demographics shift, and millennial customers become more essential to a financial institution's long-term viability, the demand for financial technology increases.

Today, there is a growing focus on a refined online and mobile banking model that incorporates sophisticated data collection capability to deliver more personalized and engaging experiences. As banks' lending presence expands beyond their physical locations because of technology, we need to ensure that our regulation also involves and evolves that changing nature.

These reforms, addressed in the CRA review, will address CRA hotspots by encouraging internet-only banks, such as those headquartered in Salt Lake City, Utah; Wilmington, Delaware; or Sioux City, South Dakota; to push portions of their CRA activities to where they take deposits, including communities that need them the most.

In fact, in 2019, according to a survey conducted by the American Bankers Association entitled, "How Americans Bank," online mobile banking methods are used most often. Approximately 73 percent of consumers prefer financial services provided to them digitally, compared to 17 percent who prefer going to a branch, or 6 percent who use ATMs, or 3 percent who bank over the phone, or 1 percent who bank through the mail. I would like to know who those 1 percent are.

Digital transformation is one of the top trends in the retail banking industry. Retail banks understand the power of fintech and how essential it is to their success. They realize that going digital is more than a marketing strategy. It is a fundamental shift.

So, I am encouraged by the CRA proposal and what it will do to more effectively help low- and moderate-income consumers and communities. I look forward to the hearing today. I thank you for your testimony, and I look forward to the questions.

Chairwoman WATERS. The Chair now recognizes the Chair of our Subcommittee on Consumer Protection and Financial Institutions, Mr. Meeks, for 1 minute.

Mr. MEEKS. Thank you, Chairwoman Waters.

Comptroller Otting, the CRA was a civil rights bill meant to address the legacy of redlining and discrimination in banking, and today there is still ample evidence of continued redlining, banking

deserts, and asymmetrical access to mortgages and loans for low- and moderate-income communities and communities of color.

But your proposal decouples CRA from outcomes for intended communities, discounts the value of direct lending and mortgages to low- and moderate-income communities and communities of color, cuts out community organizations that work directly with these targeted communities, and is just not supported by data. In fact, your proposal is so flawed that covered banks are telling us that they see it as a very bad rulemaking that may be unworkable, and that undermines their CRA work. Fintech banks are telling us it is completely flawed and demonstrates a failed understanding of how their business models work, and community groups say it is a betrayal of the original intent of CRA.

So, I say congratulations on one thing: you have unified them all. I yield back.

Chairwoman WATERS. The Chair now recognizes the ranking member of the subcommittee, Mr. Luetkemeyer, for 1 minute.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

Today, we are here to discuss the Community Reinvestment Act, and I stress the word "Community," because not only do we look at investing in homes and that sort of thing, we also look at investing in communities. I think this is where we need to look at the changes that are being made here and how important they are to the financial services industry from the standpoint that getting credit for a bank, and helping churches and hospitals and schools and small businesses that provide jobs for these communities, is vitally important to be able to have a community that has the services where people want to live and jobs where they want to live. So, I thank the Comptroller for his hard work, and the FDIC for working with him to modernize and clarify the CRA.

Also, in the past, this law has been used to beat banks over the head and has been used inappropriately, and I think he addresses some of these things. The proposal is not perfect, and I think anybody who wants to make some suggestions should quit throwing rocks and start doing things in a productive way by suggesting positive solutions.

With that, Mr. Otting, thank you for being here today. I look forward to the questions.

Chairwoman WATERS. I want to welcome today's witness, Mr. Joseph M. Otting, the Comptroller of the Currency. Mr. Otting has served in his current position since 2017. Prior to his appointment, Mr. Otting served as CEO of OneWest before its acquisition by CIT and served briefly as its leader. Mr. Otting has testified before the committee previously, and I believe he needs no further introduction.

Comptroller Otting, without objection, your written statement will be made a part of the record. You will have 5 minutes to summarize your testimony. When you have 1 minute remaining, a yellow light will appear. At that time, I would ask you to wrap up your testimony so we can be respectful of the committee members' time.

Comptroller Otting, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF THE HONORABLE JOSEPH M. OTTING, COMPTROLLER OF THE CURRENCY, OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)

Mr. OTTING. Thank you.

And good morning, Chairwoman Waters, Ranking Member McHenry, and members of the committee.

Allow me to reintroduce myself to the committee. I was born in Maquoketa, Iowa, a city of 6,000. As of 2017, Maquoketa had a 19-percent poverty rate and a median household income of \$46,000. In Maquoketa, Clinton Machine Company manufactured small engines and, by 1956, became the 10th largest employer in Iowa. By 1999, there were only 35 employees left, and my hometown's largest employer closed its doors. The farm crisis of the 1980s further devastated the community and forced the closing of downtown businesses, which was further influenced by a recession.

I have seen firsthand what happens to farming communities when large businesses shut down and small and family farms do not have access to credit. My first banking job took me to California in 1981. I was fortunate to meet my wife, Bonnie, at another bank. She is a second-generation Hispanic-American of Mexican descent, born and raised in east Los Angeles. My father-in-law labored at a factory and worked hard to support his family.

When I talk about low- and moderate-income communities, I am not talking about some esoteric concept. On the contrary, I am talking about an area where I grew up, America's rural farmland, and an area where my wife grew up, east Los Angeles. Because I know and care about these communities, it is my intent to strengthen CRA, not weaken it.

During my banking career, I saw firsthand how CRA can be improved. The goal for improving CRA rules is very clear: to encourage banks to do more. I am confident that this proposal can achieve that goal by making four basic improvements: clarify what counts; clarify where it counts; measure CRA performance objectively; and make reporting transparent and timely.

I would like to walk you through the process that led to this proposal.

This proposal was informed by agencies' Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) reports to Congress in 2007 and 2017, public hearings 10 years ago, recommendations published by the Treasury Department in 2018, extensive feedback gathered through meetings and tours involving thousands, and more than 1,500 comments in response to our Advance Notice of Proposed Rulemaking (ANPR) in August of 2018. I have personally read each of the 1,500 comments received in the ANPR. This has been a lengthy and transparent process and has been consistent with the letter and the spirit of the Administrative Procedure Act (APA).

All of this work resulted in feedback supporting CRA modernization, with 94 percent of ANPR respondents saying that CRA lacks objectivity, transparency, and fairness; 98 percent think the rules are implied inconsistency; and 88 percent say the framework is hard to understand.

Let me describe what the proposal does not do, because there is a lot of misunderstanding about its intent. One of the key claims

against the proposal is that it would permit redlining. This is blatantly false. Nothing in this proposal changes the agency's authority to enforce fair lending laws to prevent discrimination and redlining. The regulations implementing the Fair Housing Act and the Equal Credit Opportunity Act (ECOA) prohibit discrimination and redlining. These regulations are not changed in any way by this proposal.

The next erroneous assertion is that the proposal contains a single metric to create a bank's CRA rating. That, too, is incorrect. The proposal would require examiners to use a retail lending test for each major type of product, identical to that described in Governor Brainard's speech.

In addition, examiners would evaluate the impact of a bank's CRA activity by measuring the dollar value of that activity in each assessment area and at the overall bank. Then, examiners would apply discretion in considering performance context to assign a final rating. For regional banks, that would involve hundreds of measures, and for larger banks, it would involve thousands, with no single metric.

Another assertion is that the proposal does not faithfully implement the statute. On the contrary, each of the activities listed in the proposal would directly satisfy the statute's purpose. More of the proposal closes loopholes that exist today by granting CRA credit to loans for wealthy people who buy homes in low- to moderate-income (LMI) areas.

Another erroneous assertion is that the proposal would take away the incentive banks have to maintain branches. In fact, this will be the first time in the regulation where a bank will be rewarded for maintaining LMI branches.

Another misinterpretation is that a bank could receive a CRA rating even if it fails to have a satisfactory rating in half of its assessment areas. The proposal specifically asks what thresholds should be used, including whether that threshold should be as high as 80 percent.

And, lastly, let me address the issue of sports stadiums qualifying for CRA, which has been very topical. Under the current law, banks have received credit for financing sports stadiums since 1993, and other renewal projects in LMI communities. This is not new. That is a false statement. The proposal would not change that, but we are open to comments.

What this proposal does is to clarify the approach by providing, for the first time since 1977, a list for communities and banks to understand what qualifies for CRA.

My only ask of those interested in commenting on the merits of the proposal is to actually read the proposal and not rely on sound bites. These issues are too important to be debated based on sound bites.

Thank you for this opportunity.

[The prepared statement of Comptroller Otting can be found on page 70 of the appendix.]

Chairwoman WATERS. Thank you very much. I now recognize myself for 5 minutes for questions.

Let me just get right to the first point. Your proposal only provides a 60-day comment period for stakeholders to review the pro-

posal of the CRA, and we have all asked you if you would extend that for 120 days for review. What have you decided?

Mr. OTTING. We have decided that we will not extend that date.

And as a point of clarification for you, we published that document on December 9th, and by the conclusion, on March 9th, that will be 88 days.

Chairwoman WATERS. Is it true that in the past, the OCC has provided a 120-day comment period on important bank capital rules?

Mr. OTTING. I don't know the answer to that, but the vast majority of comments—

Chairwoman WATERS. Do you consider this to be a very important proposal—very, very important, given that you are making significant changes to CRA? Do you consider it very important?

Mr. OTTING. I do consider it very important.

Chairwoman WATERS. But you don't consider it important enough to have a 120-day comment period?

Mr. OTTING. Sixty days and the regtech should be able to be understood by people.

Chairwoman WATERS. Okay. So, you have decided that you are not going to do that.

Mr. OTTING. That is correct.

Chairwoman WATERS. I am concerned that under your plan, banks that get a failing grade in up to 50 percent of their assessment areas would still pass their overall CRA examination. Is that right?

Mr. OTTING. That is not correct.

Chairwoman WATERS. Okay. And you plan to stick with that?

Mr. OTTING. That is not correct, as I said.

Chairwoman WATERS. It is not correct?

Mr. OTTING. That is correct, ma'am.

Chairwoman WATERS. Fifty percent.

Mr. OTTING. It is not correct.

Chairwoman WATERS. Then, correct me.

Mr. OTTING. Today, as an example, a regional bank that has 276 assessment areas, the banks currently evaluate only—we, as regulators, evaluate 40. That is about 15 percent. We are proposing that we evaluate all 276 going forward. We asked the question: Should we allow 50 percent of the assessment areas to pass or 80 percent? We are looking for feedback and comment from the communities and the banks on that issue.

Chairwoman WATERS. Thank you very much.

Have you been able to reconcile the differences with the Federal Reserve (Fed)?

Mr. OTTING. With whom?

Chairwoman WATERS. With the Fed.

Mr. OTTING. We haven't been able to reconcile the differences with the Fed—

Chairwoman WATERS. So, they are still opposed to your proposal?

Mr. OTTING. I don't know if they are opposed. Governor Lael Brainard—

Chairwoman WATERS. Do they support your proposal?

Mr. OTTING. Governor Lael Brainard—

Chairwoman WATERS. Do you know that they do not support your proposal?

Mr. OTTING. Governor Lael Brainard did not sign onto the proposal.

Chairwoman WATERS. Okay. I am worried that your proposal dilutes the focus of the CRA on meaningful investments in low- and moderate-income communities. For example, under the new proposal—and you alluded to this—athletic stadiums located in low-income community tracts in Opportunity Zones would explicitly be CRA-eligible with little regard for how LMI communities would be helped. Is that correct?

Mr. OTTING. Since 1993, CRA has allowed sports facilities to be included in CRA. We have put it out for comment to get feedback, and the most important thing is—

Chairwoman WATERS. So you don't think that should be changed at all?

Mr. OTTING. The most important thing is we produced a list of 200 items, and the whole point of producing that list was to gain feedback through this process about what people thought was effective and not—

Chairwoman WATERS. Okay.

Your plan is also bad for rural areas, as a loan to a family farm with gross annual revenues of \$10 million would qualify as a CRA. According to the USDA, only about 1 percent of farms had sales of \$5 million or more, let alone the \$10 million you proposed. Therefore, it seems like this approach would divert lending away from small family farms. Are you aware of that?

Mr. OTTING. I am aware. I don't think the \$10 million is a correct number. What we have done is we have raised it from \$500,000 to \$2 million for family farm owners.

Chairwoman WATERS. Okay. So, Mr. Otting, basically, you have decided that you know best about everything that has to do with CRA reform. You do not wish to work with us. We came to the board meeting over at the FDIC, and we let our position be known, in addition to all of the letters and the work that the advocates have been doing, but you have decided you will work with no one, that this is your proposal, this is what you want, and this is what we get. Forget about the Congress of the United States or anybody else; you know better than anybody else.

We told you about what it takes in minority communities and why CRA is so important. We told you about discrimination. You said you had personally never observed it. Do you still maintain that you don't know about discrimination?

Mr. OTTING. I didn't say I don't know about it.

Chairwoman WATERS. You said you had never observed it. Is that right?

Mr. OTTING. I said I had personally never observed it—

Chairwoman WATERS. Okay. Do you still—

Mr. OTTING. But in conjunction with that quote—

Chairwoman WATERS. Do you stick with that, that—

Mr. OTTING. —advised me that—

Chairwoman WATERS. —you have never observed discrimination?

Mr. OTTING. Please let me respond to your question.

Chairwoman WATERS. Is that correct?

Mr. OTTING. Let me respond to your question.

Chairwoman WATERS. You have never observed it?

Mr. OTTING. I have not personally observed it, but my family has.

Chairwoman WATERS. In all of the work that you did with OneWest Bank—

Mr. OTTING. Can I personally answer? Can I answer your question?

Chairwoman WATERS. —you have never, ever, observed discrimination, is that right?

Mr. OTTING. I have personally never observed it, but I would say that I know it happens in America. My family has told me it happens. My friends have told me it happens. In my professional capacity as Comptroller, I have observed it occurring—

Chairwoman WATERS. Thank you very much, but my time is up, and I am so pleased that your family told you about it, and today, I am telling you about it.

Thank you very much.

Mr. OTTING. Thank you.

Chairwoman WATERS. I will now recognize the ranking member, the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. Comptroller Otting, thank you for being here today. The Community Reinvestment Act was passed in 1977. When was the last time it was updated, that we had a major regulatory update to the CRA?

Mr. OTTING. It was created in 1977, and last updated in 1995.

Mr. MCHENRY. In 1995.

Mr. OTTING. Yes.

Mr. MCHENRY. Has much changed in banking since 1995?

Mr. OTTING. Significantly. Originally, when the statute was passed, we didn't have interstate banking. No one could even conceptualize of internet banking or mail banking where people are more and more not going into a branch now and are seeking financial services via the internet.

Mr. MCHENRY. Half the number of community banks, less than half the number of banks in America than we did in 1995. That is number one.

Mr. OTTING. That is correct.

Mr. MCHENRY. Do we have more branches or fewer branches over the last 25 years?

Mr. OTTING. Substantially fewer.

Mr. MCHENRY. Okay. But CRA is designed around physical infrastructure, according to the 1995 regulation. Is that right?

Mr. OTTING. That is correct.

Mr. MCHENRY. So what does that mean? What does that actually mean? Say, you have a bank that is mainly an internet bank, headquartered in Salt Lake City, and they do 10 percent of their business in a State like New York or California. Where do they spend their CRA credits?

Mr. OTTING. They spend their money in Salt Lake City.

Mr. MCHENRY. Why?

Mr. OTTING. Because that is where their assessment area is domiciled because it is considered to be their headquarters.

Mr. MCHENRY. That is not where their business is, though.

Mr. OTTING. That is not.

Mr. MCHENRY. Okay. So how have they changed these regulations?

Mr. OTTING. We are changing the regulation so that if an institute gathers more than 50 percent of their deposits outside their assessment area, those that have 5 percent or more would be deemed assessment areas. With one particular entity in Salt Lake City, 8 percent of deposits are in Los Angeles, 5 percent are in Dallas, and 12 percent are in New York. Those will be deemed assessment areas, and dollars will flow into those communities that aren't flowing there today.

Mr. MCHENRY. So this is mainly a rewrite about technology and a dramatically changed footprint for banking?

Mr. OTTING. One component of it, yes.

Mr. MCHENRY. What are the other components?

Mr. OTTING. We are giving people identification of what actually qualifies for CRA. There has never been a list produced. We are actually focusing banks to do a hundred percent of their assessment areas today, and so, instead of doing a portion of it, we will look at a hundred percent of their assessment areas. And we are giving them an objective way not only for community groups, civil rights groups, and banks to be able to measure those institutions on their performance in the markets to which they—

Mr. MCHENRY. How long have you been the Comptroller?

Mr. OTTING. I have been the Comptroller for about 2½ years.

Mr. MCHENRY. Okay. And has the OCC, the FDIC, and the Fed had a conversation just because of the last 2½ years? How long is this—

Mr. OTTING. It has been going on for 10 years. The statistics, as we quoted—over 90 percent of the people feel it is outdated, it doesn't give clarity, and it doesn't give measurement techniques. It has been screaming out to fix this for 10 years, and people haven't taken action.

Mr. MCHENRY. The joint rulemaking is between the OCC and the FDIC, is that correct?

Mr. OTTING. On this particular rule, correct.

Mr. MCHENRY. Okay. On this particular rule.

And in terms of regulation, what part of the Federal banking footprint does that cover for CRA?

Mr. OTTING. For CRA, it covers 85 percent.

Mr. MCHENRY. Eighty-five percent.

Mr. OTTING. Eighty-five percent of all assets covered under CRA are covered by the OCC and the FDIC.

Mr. MCHENRY. Okay. But the FDIC has that remaining less than 15 percent?

Mr. OTTING. The Federal Reserve has the remaining 15 percent.

Mr. MCHENRY. I'm sorry, the Federal Reserve. I misspoke.

So, along this process over the last 2½ years of your undertaking, have you engaged with the Federal Reserve?

Mr. OTTING. Thousands of times.

Mr. MCHENRY. Okay. Have you and your team incorporated the Federal Reserve's feedback and perspective in this proposed rule?

Mr. OTTING. Not only did we incorporate it, we actually made a big component of it, of the framework that the Federal Reserve ac-

tually came up with. We thought it was good. In the individual assessment areas that will look at a bank's performance in low- to moderate-income by numbers, we will compare that to the low- to moderate-income population and then the overall low- to moderate-income lending in that market, and a bank would have to meet certain standards. That was strictly the Fed. We had a different way at the OCC of how to approach that and, because of their thought process, we integrated that into the Notice of Proposed Rulemaking (NPR).

Mr. MCHENRY. Right. So you are covering 85 percent. You have given a great deal of clarity in this rulemaking on what qualifies for CRA credit. So not only would you do what you must do in terms of regulation, but also the measurement by which you will be held to account. So this is a great deal about regulatory certainty, is it not?

Mr. OTTING. It is.

Mr. MCHENRY. Okay. Thank you for your testimony. Thank you for your openness in this process. Thank you for hearing this feedback. And I thank you and the career staff, especially, for being measured about this proposal.

Mr. OTTING. Thank you.

Chairwoman WATERS. The gentlewoman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Good morning, sir. Thank you for being here.

I would like to follow the line of questioning of the Chair, and I would like to ask you: Do you commit to delaying your proposal until CRA advocates and consumer groups feel their voices have been sufficiently heard and the Fed has also agreed to sign on?

Mr. OTTING. I do not.

Ms. VELAZQUEZ. Comptroller Otting, CRA stakeholders have stated that commenting on the OCC and the FDIC's proposal is difficult due to the lack of data and analysis found in the proposal, particularly as it relates to the threshold for measuring CRA performance.

What do you say to that?

Mr. OTTING. Do you know how the data is currently compiled in CRA?

Ms. VELAZQUEZ. No, I do not.

So that we can have a better understanding, not only the members of this committee but the communities that we represent, particularly my communities, would you share the underlying data that was used and what analysis was conducted in developing this performance threshold?

Mr. OTTING. It is important to note—I asked you the question—

Ms. VELAZQUEZ. I am asking a yes-or-no question. Would you share with this committee?

Mr. OTTING. You have to understand that there is no data today. You have to go individual PE by PE. There are 6,000 of them. The Fed went through those. We went through those and pulled that data together. The information you are asking—

Ms. VELAZQUEZ. I am asking specifically for the data on the rule.

Mr. OTTING. Some of the information comes from the Federal Financial Institutions Examination Council (FFIEC), which is not public information.

Ms. VELAZQUEZ. Why isn't it?

Mr. OTTING. Because it is confidential supervisory information.

Ms. VELAZQUEZ. So what type of analysis was conducted to measure the proposal's input on CRA lending and investment in LMI communities? Can that analysis be shared with this committee?

Mr. OTTING. When we look at a bank's performance in CRA, we look at small business lending, farm lending. We look at the HMDA data that they do the residential mortgage lending, and then we look at the community development, and we try to make an assessment on our new proposal. What do they have on their balance sheet in relationship to their deposits? We have done that analysis. We think that is what got us to get directionally correct on the outstanding satisfactory level, and now we have gone out from the banks to request that information to validate that.

I would be happy to come by your office once we get that data and that analysis completed, but it is not something we would put out for public distribution.

Ms. VELAZQUEZ. Madam Chairwoman, I agree with everything that you have stated before, and I believe that we should request the data and analysis used to create this rule and, if not, if they don't want to share it willingly so that we can do our job, then we should subpoena such information.

Chairwoman WATERS. Will the gentlewoman yield?

Ms. VELAZQUEZ. Yes.

Chairwoman WATERS. Thank you very much.

I don't think that Mr. Otting is serious about his willingness to cooperate with us. As I said before, I think he believes that he knows better than any of us and he does not have to work with the Members of Congress. You are absolutely correct. If we have to subpoena the information, we will do that.

Comptroller, while I believe the CRA must help provide more funding for community development projects like public housing, I am very concerned that the single-metric evaluation measure included in your proposal will lead to a substantial dilution of all of the core CRA requirements, and will enable banks to focus on only a small number of large, easy projects to meet their CRA responsibilities.

What safeguards are included in your proposal to ensure this will not happen?

Mr. OTTING. For every individual assessment area, we will look at the actual volume of units that institution completed, we will look at the volume of units that the competition had done, and we will look at the population of low- to moderate-income, and there is a criteria to which they have to do to meet a satisfactory level. So, it is impossible, absolutely impossible, to do what you described.

Ms. VELAZQUEZ. That is not what the CRA experts who came before this committee stated, and that is why it is so—

Mr. OTTING. It is impossible.

Ms. VELAZQUEZ. I control the time. That is why it is so important that you expand the time to 120 days.

Thank you. I yield back.

Chairwoman WATERS. The gentleman from Missouri, Mr. Luetkemeyer, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Madam Chairwoman.

And I certainly am disappointed that we allow the integrity of the witness to be questioned. I think it is below the comportment of this committee. I think the gentlelady from New York should be called out for something like that, but I will move on.

Mr. Otting, thank you for being here this morning. I am probably one of the two guys on this committee who has actually filled out a CRA report. I did it many years when I was in the bank at home. I understand this does need some changes. It does need some reform. It is not a very good report from the standpoint of how it actually should measure the investments that banks make into the communities. It does not incentivize them the way it is presently structured, and especially not in today's world. So, thank you for what you are doing.

I know one of the concerns that has been leveled this morning is that they think the rule is going to disincentivize mortgage lending in favor of community development. Now, I have a point to make, and then I want to you answer that question.

This is the Community Reinvestment Act. It is not the housing investment act. I realize that the law was put in place to stop redlining, which is a laudable goal, and we should not allow that to happen, but it also was there to incentivize banks to invest in communities because communities are where people want to live, where they have services such as churches and schools and hospitals and community centers, and they want to have small businesses that can actually create jobs so they can live in a community where they want to work.

So, if you don't have those businesses and services incentivized, you don't have the community. That is where I think the Community Reinvestment Act comes in. It wants to build a community and not just focus on housing, which is an important part of this, and if you want to weigh this—as I said in my testimony the other day—if you want to weigh it more heavily one way or the other, that is fine, but to restrict it only to that is totally misrepresenting the intent of what this law should be about.

My question to you this morning, sir, is, how would you answer the question about how you believe that some of these folks believe that it disincentivizes mortgage lending in favor of community development loans?

Mr. OTTING. I don't believe it disincentivizes at all. As we traveled across the United States and talked to community groups and civil rights organizations and banks, we did not want to disrupt people's business models, the way they were serving their community. So, the claim that this will cause less mortgage lending, I don't think is valid.

One of the things we did is we moved from units to on-balance sheets so we could have an actual numerical measure against deposits with those financial institutions that did mortgage origination and sold it, so that we gave them credit, even if they held the mortgage for 1 day, for 90 days of credit. That is one of the open items that we are looking to get feedback on from the notice of proposed rulemaking.

But I do agree with you that, if you really look at the actual results in the Community Reinvestment Act, the biggest component

of the way institutions meet the needs of their communities is through small business lending. It isn't mortgages. It is actually small business lending.

And similar to my community, Maquoketa, when we lost that big factory, families started to move out of the City and people had to drive 30 to 60 miles to get a job. It had a really negative impact on the social infrastructure of our community.

Mr. LUETKEMEYER. I thank you for the comment. It is interesting that the last person who testified or asked questions here is also the Chair of the Small Business Committee, and this is something that I would think would be right square in the middle of where she would like to be right now with you, to help you, to encourage you to continue to structure this thing so there is an incentive to put money into small businesses that can build communities. Seventy percent of the jobs in this country are provided by small businesses. That is where people want to live, where they can actually get a job.

One of the things I have found as I have talked to a lot of other financial services folks around my district and the country was the fact that the previous Administration used this law to really beat the banks over the head with regards to trying to incentivize them and force them to do certain things that were actually against their own business model.

Are you aware of that, and what have you done to stop that nonsense?

Mr. OTTING. I think, unfortunately, CRA has been used by certain organizations—when there is an event, a branch opening a new business, an acquisition or a merger, the uncertainty around the clarification about, is an entity in compliance with their CRA, often can be used by certain groups to extract economic dollars. I do think that by bringing clarity to this, a lot of that will be eliminated. Perhaps some of the groups that are protesting the loudest are recognizing that this clarity will be healthy for community groups, civil rights organizations, and the banks, but not so healthy for them.

Mr. LUETKEMEYER. Thank you for that this morning, and thank you for continuing to work hard on this. I think the clarity you are trying to bring to this is very, very much needed to be able to understand how banks can be incentivized and then given credit for developing the communities that they want to have people live in and work in. Thank you very much.

And I yield back.

Mr. OTTING. Thank you.

Chairwoman WATERS. The gentleman from California, Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mr. SHERMAN. Mr. Comptroller, in about a month or so we will have hearings on the London Interbank Offered Rate (LIBOR). In our private conversations, you have urged us to look at something other than the Secured Overnight Financing Rate (SOFR) so that we don't get a rate that goes down in times of fiscal crisis or downturn. I hope that you will be able to propose a rate that is based on real, verifiable transactions, not surveys.

But while we will listen to you on LIBOR, it is distressing that you will not listen to Congress when it comes just to the timing of when you are going to publish these rules. You are closing the book when we have asked. This is something I have never seen an agency do. It shows a contempt for this committee that is almost inconsistent with me listening to you on LIBOR or us listening to you on anything else.

Now, it is my understanding that you have just recently reached out to a number of banks to request data to support your approach. If the OCC and the FDIC lack sufficient data to support the proposed rule, why are you hell-bent on adopting it on an expedited basis?

Mr. OTTING. Would you mind if I just clarify a point on the LIBOR really quick?

Mr. SHERMAN. No, this is my time.

Please respond to my question.

Mr. OTTING. We do not set the index. That will be set by the industry, but it has to be safe—

Mr. SHERMAN. Again, please respond to my question.

Mr. OTTING. Is your question, why did we just recently reach out to banks for the data?

Mr. SHERMAN. Yes, and knowing why do you want to adopt a rule on such a quick timetable when you still don't have the information.

Mr. OTTING. We do have the information. When we have gone out to the banks is, because they house the actual information—we could get it through other sources—to do a validation of the information that we pulled to make sure that it is accurate. That information—

Mr. SHERMAN. You don't know whether it is accurate, but you are hell-bent on ignoring the request of this committee to extend—

Mr. OTTING. We wanted to do validation. So, that data request is supposed to be concluded by March 10th.

Mr. SHERMAN. Let me continue. You are not willing to wait until you can work out something with the Fed, so you are going to end up with regulatory arbitrage. Some banks will be subject to one rule, and other banks will be subject to another rule.

Has the Fed encouraged you to ignore the request of this committee for additional time to try get this rule right?

Mr. OTTING. We have been on a long journey. We have communicated our effort over the last 2 years with the direction we are going. Regarding regulatory arbitrage, I don't agree with that statement. We will control 85 percent of the CRA activity in the industry today. There are hundreds of billions of dollars that can flow into communities by, I think, completing this—

Mr. SHERMAN. Right. Then if banks don't like your rule, they can go get themselves regulated by the Fed, or if they don't like the Fed's rule, they can rearrange their corporate structure to be regulated by you.

Mr. OTTING. Highly unlikely.

Mr. SHERMAN. Highly unlikely. We will see.

Now have you looked at the additional data that is going to have to be requested and the—

Mr. OTTING. This isn't additional data. It is the data we have. We are just asking them to give us the answers.

Mr. SHERMAN. Once this rule goes into effect, if it were to go into effect in its present form, consumers would have to provide banks with, and banks would have to collect more, information. That is a hassle for consumers, it is a privacy concern for consumers, and it is a cost for banks.

Has that been analyzed—

Mr. OTTING. That is an inaccurate statement. There would not be a requirement for any additional data from consumers, and banks have that data in-house already. They would have to reformat it.

Mr. SHERMAN. There is no additional data collection?

Mr. OTTING. No. Additional data from the banks to the regulators but not from consumers to the banks.

Mr. SHERMAN. And how would this rule apply to—would it reduce lenders' reliance on mortgages to meet CRA requirements?

Mr. OTTING. How would the rule apply to lenders designed to reduce—

Mr. SHERMAN. And then will the effect of this rule be that banks try to comply with CRA, not by buying mortgages but by doing other things instead? What effect is this going to have on home lending?

Mr. OTTING. I think it is going to increase lending because those banks that just traded mortgage-backed securities or mortgage pools and got a hundred percent on the dollar credit for that will not be able to do that in the future. The little secret to CRA was that Bank A bought the mortgage pool, got credit, sold it to Bank B, got a hundred percent, sold it to Bank C, got a hundred percent, and sold it to Bank D. So, \$4 of CRA credit was created—

Chairwoman WATERS. Your time has expired.

Mr. OTTING. —which is only \$1.

Mr. SHERMAN. My time has expired. I look forward to learning more about that.

Mr. OTTING. Thank you.

Chairwoman WATERS. The gentleman from Florida, Mr. Posey, is recognized for 5 minutes.

Mr. POSEY. Thank you, Madam Chairwoman.

I join everyone here in welcoming you, and thanking you for your service. I commend you for taking on the daunting challenge of trying to modernize the evaluation of banks under the Community Reinvestment Act. I apologize for some of the uncivil behavior you have already experienced here and no doubt will continue to experience here. Unfortunately, that seems to be the new leadership standard in the House of Representatives.

I notice you were cut off before you were allowed to answer questions that they asked you, and I would like to yield you time now, if you would like, to follow up on those.

Mr. OTTING. Thank you very much.

I think it is clear that this proposal will increase the number of assessment areas where banks are measured. When you have additional measurement, that will increase additional dollars that will flow into assessment areas across America. At the top of the house of the banks we toured rural areas. We went to Indian Country.

We have now allowed for family farms and for Indian Country to be included in CRA-related activities.

At the OCC, we have a big initiative among minority depository institutions (MDIs). We clarified that minority depository institutions, both loaned by other banks and equity investments, can get CRA credit. I think, under Mr. Meeks' proposal, he is doing some great things, but I think if you really look at the minority depository institutions, they need capital flowing into those banks and this can allow that capital to come in. And we have also offered up instances where we will give a multiplier to those entities where we see certain items that we think that need to occur.

So we are highly encouraged by being able to move this forward. It has been a long-term process, years in the making, and that is why we feel it is very important. For the 13 pages in the red text that anybody can't get through in the next 40 days that we have left in the comment period, come over to the OCC, and Bao Nguyen or Grovetta Gardineer, who are seated behind me today, will sit down with them, as I will myself, and we can walk people through it. We are not asking for something unusual to get through this in the next 40 days.

Mr. POSEY. Thank you, and I appreciate those comments, and I am glad that you had time to make them.

There is an old saying that says what doesn't get measured doesn't get done. I believe that completely, and you no doubt have already found in Washington, D.C., that people generally don't like accountability. The deep state has run this place for a long time. They have done it however they want to do it. It doesn't make any difference who is in charge, and now, there is a new sheriff in town, and you are one of the deputies, and I am deeply grateful to you for taking on the challenge and stepping up and actually trying to modernize this and make it measured. I think it will benefit everybody.

Mr. OTTING. That is right.

Mr. POSEY. Banking was used as a weapon against legal solvent businesses by the last Administration under the auspices of Operation Choke Point where, if the government didn't like your business, they told banks basically that they weren't allowed to do business with you, or they were going to be in big trouble with the OCC. I am sure you are familiar with that, and may have even been a victim of that at some time.

Do you believe this is in violation of the Community Reinvestment Act?

Mr. OTTING. We have had a lot of dialogue on that, in regards to that, based upon a lot of letters from Congress about looking at, if an institution decides not to bank a particular industry, we have offered up to the banks that we do not feel you should isolate and eliminate different industries, but we also believe banks and boards have the ability to make those decisions.

When you read the CRA, it says that the banks should serve the entire community to which they provide banking services, and so this is an area where, I will be honest with you, we are working our way through how to provide good guidance to banks on this issue.

Mr. POSEY. But do you think it was in violation of the Community Reinvestment Act?

Mr. OTTING. I don't necessarily feel, if I elect not to bank a particular company, that it is in violation of the Community Reinvestment Act.

Mr. POSEY. Okay. Although Operation Choke Point shouldn't be a functioning program any longer, I have had some constituent contacts who suggest that banks may choose to withdraw or withhold banking services including lending from services or businesses that, while completely legal, may not have found favor in certain political circles. I am told that the press calls this practice, "de-risking." Can you explain the OCC's policy on such practices, also known as de-risking or de-selecting, as the case may be, and whether we have a policy in place to ensure that banking services are available to all legal businesses on equal terms?

Mr. OTTING. We encourage banks to bank legal businesses that operate within their community but do allow the institutions to make a decision on those particular entities that they bank.

Mr. POSEY. Thank you.

Chairwoman WATERS. The gentleman from New York, Mr. Meeks, who is also the Chair of our Subcommittee on Consumer Protection and Financial Institutions, is recognized for 5 minutes.

Mr. MEEKS. Mr. Otting, do you know or do you believe that CRA came out of the civil rights bill?

Mr. OTTING. I believe CRA was intended to serve the entire community to which it is regulated, and I also believe it was intended to eliminate redlining within communities.

Mr. MEEKS. Do you know that it, in fact, came out of civil rights? In fact, if you look up the words—I have it right here—that it came out of the civil rights bill, which was passed in 1977.

And so the question I have, just listening to you you talk about how you, yourself, have not seen or been a victim of or a part of discrimination, but you have talked to some other folks, but let me just say, it says right here: "CRA laws passed to reduce discrimination in the credit and housing markets including what had passed the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, the Home Mortgage Disclosure Act of 1975, and that, in fact, that the home mortgage disclosure—that CRA seeks to ensure the provisions, the credit to all parts of the community, regardless of the negative wealth or poverty of the neighborhood." It was and is a civil rights bill.

Now I am saying this to you because, if you are not affected by it at all, you have learned by some other folks, then I am telling you so you know what civil rights is and what it means to people of color in this country.

The question then is, do you respect the people in the civil rights movement, the people in the civil rights organizations? Is that respected by them? Because with you, I want to put this into the record. Because what they have been asking for and what you have heard here from a number of individuals is asking for a longer period of time so that we can get this right, because it affects so many people, not just pushing a law on a 60-day period.

I want to submit to the record three letters. The first is a joint trades letter from the Independent Community Bankers of Amer-

ica, the National Bankers Association, the National Association of Affordable Housing Lenders, and the Community Development Bankers Association. These groups combined represent a large part of majority of banks of all sizes in this country.

And the letter says, "We are, however, concerned, given the complexity of the proposed rule, that the current 60-day comment period is not an adequate amount of time to work with our members to analyze, assess, and understand how the rule will affect their operations and strategies for serving their communities."

And to this end, they respectfully ask for you to extend the date to allow for 120-day comment.

Then, all of the members of this committee, bipartisan, sent you a letter, and I want to submit that for the record.

And the third letter is your response, Mr. Otting. Your response, frankly, shows either a lack of respect for Congress or a lack of respect for those of us who believe in civil rights. It says, "Because the 60-day comment period does not start until publication of the Federal Register, stakeholders will have in effect approximately 90 days to review and comment on the NPR."

That is outrageous, and it is completely disrespectful of individuals who would be affected by this, individuals who would be regulated by this. All of them say, "I don't understand what the rush is."

Chairwoman WATERS. Without objection, it is so ordered.

Mr. MEEKS. Thank you, Madam Chairwoman.

What is the rush, what are you afraid of, or why don't you listen to the people who would be regulated by this and affected by this? We talk about home ownership in your proposal. Number one, let me just tell you something. In low- and moderate-income communities, particularly communities of color, the way you build wealth for those communities, the largest investment that they will make is in their mortgage. I wouldn't be here today but for the investment that my parents made in a mortgage that they then utilized so that I could get an education.

And then, based upon this, the OCC's proposal, only 25 percent of value of retail loans sold within 90 days of origination would be qualified for CRA, which means that it would become a disincentive for individuals in these communities to lend money in these communities to people of color and of low- and moderate-income, exactly the opposite of why CRA was created.

It was to give more access for individuals to prevent redlining and to make sure folks can get into banks and incentivize banks to lend to people so they can get mortgages so they can create wealth for themselves and use that at times to create businesses and others.

Your proposal and your lack of courtesy of extending to 120 days discredits that. It shows disrespect.

I yield back.

Chairwoman WATERS. The gentleman from Michigan, Mr. Huizenga, is recognized for 5 minutes.

Mr. HUIZENGA. Thank you, and I appreciate you being here, Mr. Otting.

I am trying to quickly look over the letter. I think my friend from New York just misspoke, not intentionally, but just misspoke. It is

not a bipartisan letter. It is a bicameral letter. It is a letter that was sent.

Mr. MEEKS. That is correct.

Mr. HUIZENGA. And I am reviewing your response. I fail to see the disrespect that you are showing directly from this letter, but, nonetheless, I do want to hear from you how you—I won't cut you off—are currently, and how you plan to in the future, receive input from the public, as well as Members of Congress and this committee.

Mr. OTTING. Thank you very much.

As I have indicated in my open comments, this has been a long journey, specifically over the last 2 years. We did enormous outreach, traveling to communities across the United States, meeting with groups, sharing the framework of what we were looking to do, eliciting feedback. I will tell you that between the ANPR and the NPR, a lot of that feedback actually framed up to what we came forward with in the NPR.

Mr. HUIZENGA. And that was how long of a process?

Mr. OTTING. We issued the ANPR in August of 2018, but we began way before the ANPR of going out to communities. Prior to that, there was a lot of dialogue going back 10 years within the agency.

Mr. HUIZENGA. This isn't a surprise to anybody who has—

Mr. OTTING. No.

Mr. HUIZENGA.—been involved.

Mr. OTTING. No. And we redirected based on a lot of that feedback about what the final product looks like, and it is also important to note that the term of 60 days gets used here. We actually produced on the internet of both the FDIC and the OCC on December 9th the document. It didn't get published through the Federal Register until January 9th, which was 28 days.

Mr. HUIZENGA. Yes.

Mr. OTTING. Actually, there is 88 days for people to be able to respond. After that period of time, we will take 60 to 75 days to analyze the comments that we get and there will be a lot of outreach during that period of time as well.

Mr. HUIZENGA. Including members of this committee, which I—

Mr. OTTING. Absolutely. I know most of you here. I have been up to your offices numerous time over the last 2 years. I would venture to say I have been to visit each of you at least twice. I think, every time I came to talk to you, I gave you an update on where we were on modernizing CRA.

Mr. HUIZENGA. Okay. I appreciate that.

I want to get to one thing at the very end about my district. I have a unique, I think, mix of both urban and extremely rural and, in fact, one of my counties, which has a sizable minority population, is the poorest county in the State of Michigan, and is, I think, in the top 60 poorest counties in the nation, so it's very difficult to have banking there. There are branches, and I commend those folks who run them for that outreach.

But we know banking has changed, due to the internet predominantly, and I am curious if you could clarify how the proposal is going to deal with that, and how you are going to be tracking

banks and giving them credit for where they are receiving their deposits and where their projects are?

Mr. OTTING. Sure. First of all, the branch network is still a critical component of U.S. banking, and so, by simplifying the rules of how it is measured, we won't have to do a small sample of the assessment areas across America. We will be able to look at every community, including your small communities, and see how the banks that are domiciled in those communities are supporting those communities.

Today, in my example of 276 regional banks, we looked at 40 of their assessment areas. We will look at all 276 going forward, and so your community—we will be able to determine what is going into that community from a CRA perspective. So, there will be more data available.

Also as you talk about the evolution of banking going through the internet, those institutions that take more than 50 percent of their deposits outside their assessment area will also be required to invest back into those communities because they will be deemed CRA assessment areas.

Mr. HUIZENGA. Okay. In my last 30 seconds, do you fear that, without the Fed's support, financial institutions will be unduly burdened with additional and possibly competing CRA regulations?

Mr. OTTING. I'm sorry, could you repeat that?

Mr. HUIZENGA. Do you fear that, without the Fed's support, there may be competing CRA regulations out there?

Mr. OTTING. I don't. We have thousands of rules, regulations, and guidance that differ amongst the agencies. So, no, I do not see it as an impediment at all.

Mr. HUIZENGA. And with my remaining 5 seconds, I appreciate you being here, and the opportunity to continue this conversation. I yield back.

Mr. OTTING. Thank you very much.

Chairwoman WATERS. The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you very much, Madam Chairwoman.

At the outset, Comptroller Otting, let me remind you that you are not the dictator of our financial system.

The reason I say that is because your attitude reflects that. Our committee has had concerns raised to us from community activists about your rule, and you have expressed that those concerns don't matter. We have had requests for you to appear and discuss and lengthen the timeframe for these concerns. You said, "No."

You have actually misspoken when you talked about the Federal Reserve. They were in here last month, and I specifically asked them, "Where is Mr. Otting?" Because you were the center of attraction when we were discussing that bill, and I was very concerned that you failed to show up at that hearing with the other regulators.

Our financial system regulatory process is a collaborative effort, not just yours. We have had concerns from the very banks who are very much concerned, and don't even know how to follow this regulation.

So when some from the other side talk about uncivil action, there is no uncivil action on our side. If there is any, it is you who are

coming in here with an attitude that, "It is my way or the highway."

Now, I am very concerned about one of the fundamental pieces of yours that impacts the very purpose for this Act. If it weren't for the civil rights movement, there would be no CRA. That is the pillar of this Act. And your rule violates the efforts of banks, and restricts their efforts to increase and supply adequate, affordable lending practices for the very people that the Act was passed to protect.

When your proposal discounts loan origination in favor of balance sheet, that right there makes it more difficult for the community banks to serve and extend that help.

And so I can't understand why you are doing what you are doing, when the entire community is asking, "Why?" The banks can't even figure out how to respond. People in the civil rights movement who gave their lives to have such a law placed on the books are asking why. The Federal Reserve, the FDIC, all of whom were here, were all trying to figure out why.

So tell us, why are you acting in such a dictatorial way?

Mr. OTTING. Needless to say, I respect you very much, Congressman. I find somewhat appalling the comments that you made to me. I am doing it in the best interests of communities across America. I do believe that this will increase—

Mr. SCOTT. But why haven't you responded? Why? Do you think everybody who has to implement this—

Mr. OTTING. How many years do you want this to go on?

Mr. SCOTT. No, I don't. My concern is—

Mr. OTTING. I came to your office personally 3 times to walk you through this.

Mr. SCOTT. I think you have. That is why I am so disappointed in you, because I am surprised.

Mr. OTTING. Yes, I have spent an enormous amount of time—

Mr. SCOTT. It doesn't seem like you.

Mr. OTTING. Yes.

Chairwoman WATERS. The witness is requested to provide an answer in writing for the record.

The gentleman's time has expired.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Madam Chairwoman.

And, Comptroller Otting, thank you for being here. I commend you for your work to modernize the Community Reinvestment Act.

And I would ask my colleagues to follow the rules of decorum and not refer to you as a dictator. I think you are showing exemplary patience here today for someone who is totally following all of the rules and procedures under the Administrative Procedure Act. There is a comment period. You are following those rules. There is no dictatorial behavior here. You are just actually modernizing the CRA through the rules and the rulemaking process that is set forth in Federal law.

And there is a comment period. Obviously, we have some of our colleagues who want to provide you some feedback on your proposal. They get that opportunity. You are following those rules.

And let me just make the counterpoint that I think not only are you bringing the CRA into the 21st Century and modernizing it, making it more objective and less subjective for the lenders and the banks, but I think, more importantly, you are bringing the CRA into the 21st Century in a way that will much better help low- and moderate-income communities.

And in Kentucky, that I have the privilege of representing, we have a lot of CRA deserts. We have a lot of rural communities that don't get investment because the CRA is stuck in 1977.

We need what you are doing, because we need CRA to reflect the modern-day realities of low- and moderate-income communities that are not served by this outdated CRA. And you are doing a great job of bringing this into the 21st Century.

Let me ask you this. I really think that the best innovation that you have done in this proposal is to clarify what counts. And you and I talked about this before.

What I think is very, very important in this modernization in your proposal, is that banks who have suffered under a lack of transparency over the years, and they are understandably skeptical that regulators will be able to totally remove that subjectivity and guesswork as to whether an activity is CRA qualifying.

So I want to ask you about that feature of the proposal that says that banks could have projects approved for CRA credit before they are being underwritten, contrary to the current model of approving loans and receiving CRA credit after the fact.

Tell me, what assurances can you give banks and lenders that this proposal will, in fact, clarify in advance what activities will receive CRA credit and allow banks to solicit agency confirmation that an activity qualifies for CRA credit prior to engaging in that activity?

Mr. OTTING. Thank you, Congressman.

First of all, one of the big challenges with CRA often is a bank is concerned about something qualifying, and so they had a tendency to just slide right to the middle of the Bell Curve and only do the most conservative things. And to be creative across America and really, I think, serve the low- to moderate-income community, we want people to stretch and think of new ways to help that community with housing and jobs and activities.

Mr. BARR. And how will that actually improve access to capital in low- and moderate-income communities?

Mr. OTTING. It will do two things. Because everybody around America will know what counts. And a lot of times, you find things being done in New York, that people didn't know about in Los Angeles, and things being done in Seattle, that they didn't know about in Chicago. So now, we have a list saying, here are all of the things that will qualify.

Mr. BARR. I think that is huge. I think that is absolutely immensely beneficial to low- and moderate-income communities. Why on earth would there be criticism of this proposal that is going to invite more capital into low-income communities because banks and lenders are actually going to know in advance—

Mr. OTTING. That is right.

Mr. BARR. —that this qualifies and this gets credit.

That is a great innovation and I commend you for it, and everyone who cares about low- and moderate-income communities should applaud that.

Let me ask you this. The Fed is not part of this. What are you doing to engage the Federal Financial Institutions Examination Council (FFIEC) to work with not just the Fed and your agencies and the FDIC, but also the State bank regulators, to make sure we have harmonization here?

Mr. OTTING. The ultimate goal was to bring this to one rule. We are still hopeful that as we progress this into a rule, that then the Fed can look at it, can observe how it is working, and then ultimately their choice could be they could adopt this or modify it.

But I do think the choices would be stay on the current CRA plan or perhaps move into our plan or modify another plan. But I do not see regulatory arbitrage, I do not see confusion amongst the banks. Generally, the banks are looking for, from their primary regulator, what the rules and requirements are, and we think this brings tremendous—

Mr. BARR. Is there any indication to date that the comments submitted in response to your rulemaking are anything other than authentic?

Mr. OTTING. There is not.

Mr. BARR. And final point, and I made this—

Mr. OTTING. Can I take one question on that, Congressman?

Mr. BARR. Sure.

Mr. OTTING. We don't know, because they can submit anonymous comments. We read them all and see do they have substance. It is not a numbers game. It is really the substance and the actionable items that come in those letters.

Mr. BARR. Thank you. I yield back.

Chairwoman WATERS. The gentleman from Missouri, Mr. Clay, who is also the Chair of our Subcommittee on Housing, Community Development, and Insurance, is recognized for 5 minutes.

Mr. CLAY. Thank you, Madam Chairwoman.

And thank you, Mr. Otting, for being here today.

The Great Recession had a disproportionate impact on communities of color. CRA and laws like it were meant to level the playing field for communities that face systemic discrimination and financial exclusion.

CRA advocacy groups have argued that the OCC's one-ratio rule would dilute CRA activity in low- and moderate-income communities. Are you sensitive to these criticisms and willing to listen to all community and civil rights organizations to revise your approach?

Mr. OTTING. We have had a number of discussions with communities and civil rights organizations. Not everybody takes the same position as the one that you described.

And, Congressman, it has been a few minutes, and I am happy to do it again, to talk about the fact that there is no one ratio in this proposal. That is a myth. It is inaccurate. The average regional bank will have 502 measurement points.

So every community would be measured by units and dollars, and at the top of the house, it would be dollars. So that is a false

statement. I am sorry that—I would be happy to come by and explain that to you if you would like.

Mr. CLAY. Okay. But, look, let's cut to the chase. The overall intent of your revisions—is it your intent to uplift these communities that have been locked out of the recovery, they have been locked out of economic activity altogether? What do you think the overall intent will be of your rule changes?

Mr. OTTING. Absolutely, Congressman. I have a strong belief that by clarifying what counts, clarifying where it counts, how the regulators are going to count it, will allow communities to attract dollars and capital into those communities. I wouldn't be taking this journey if it wasn't for that.

Mr. CLAY. Here is what the National Community Reinvestment Coalition (NCRC) has estimated, that relaxing CRA, like your proposal does, could lead to a potential loss of \$52 billion to \$105 billion in lending to low- and moderate-income communities over a 5-year period. And what do you say?

Mr. OTTING. I say that study was flawed because it made an assessment that 50 percent of the assessment areas would go away. So, I don't think that study is accurate.

I also think NCRC is a biased organization. They receive money in mergers that they extract from the banks. And so, I don't think they can independently assess this rule.

Mr. CLAY. Here is what they say, that implementing your proposal, CRA rulemaking, shows a lack of concern for the potential loss of lending to low- and moderate-income and racial and ethnic minority communities. What do you say to that?

Mr. OTTING. I say we are closing the loopholes where high-income people move into low- to moderate-income areas and get credit for those as mortgages today.

Mr. CLAY. Okay.

Mr. OTTING. And we are going back to the individual assessment areas. And so, every individual assessment area will have a measurement.

Mr. CLAY. How is that accurate, when we look at the constant steady decline of overall family wealth in communities of color, especially in the African-American community? Family wealth is one-tenth of white wealth in this country. How do we level that playing field through your changes?

Mr. OTTING. I think it is disturbing, that trend line on African-American home ownership in this country. We have met, Groveta and I, with the Black REALTORS Association. There is work to be done there. We have to understand why that is occurring.

Mr. CLAY. Here is why it is occurring, because you never get a fair appraisal value, you never get extended credit for businesses or home mortgages. So they have to go into the predatory market. How do we stop that? And how does your rule address that?

Mr. OTTING. I am not sure that is covered under CRA exactly.

Mr. CLAY. It has a lot to do with CRA, by what banks actually do.

Mr. OTTING. Not the items you were describing.

But you obviously have a passion for this. We have spent a fair amount of time on this as well. I would be happy to come over and

spend some time with you. This is an issue we have to get fixed in America.

Mr. CLAY. We have never discussed this. You have never been up to my office, have you?

Mr. OTTING. Not to the best of my knowledge.

Mr. CLAY. I didn't think so. But thank you for your answers.

I yield back.

Chairwoman WATERS. The gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Madam Chairwoman.

Comptroller Otting, I appreciate you taking the time to be here.

And I am a little dismayed with some of the comments that have been made here today, with the word, "dictator" directed toward you, saying that you want to be able to restrict banks' ability to be able to make loans for the people that they are designed to serve.

We had a letter that was passed out that was sent to you by some of our colleagues on the Democrat side.

We would like, Madam Chairwoman, to be able to introduce that into the record with unanimous consent—

Chairwoman WATERS. Without objection, it is so ordered.

Mr. TIPTON. This letter does recognize what I hear you talking about, wanting to be able to move the CRA into the modern age, to be able to update something that is outdated, and to make sure that we are actually addressing some of the concerns in communities.

And one thing that I would like to be able to highlight is, when we are talking about making out that menu of acceptable CRA activities for banks, you had included something that came out of some of our hearings: expanding broadband.

In your opening statement, you talked about living in a rural area. That is my district. We talk an awful lot on this committee about the urban areas, and we should, in terms of creating some economic opportunity. But on a per capita basis, the impact that we feel in those rural communities when we see shrinking numbers of community banks being able to provide services into those areas, it is important that we remember that those people, those families, are important too.

And I think a lot of what you are trying to be able to focus on, what we address in this letter, is to be able to make sure that we are actually achieving some of those goals in those local communities.

But I want you to be able to maybe expand a little bit on some of the certainty that you can certainly create for the banks in terms of what they are going to be investing in, but also to speak about probably what is ultimately most important, what I hope we all agree on: helping the lives of the people who live in those communities through those investments.

You have been cut off a few times. Would you like to be able to speak to that?

Mr. OTTING. No, I think the certainty around the list of what qualifies, it is amazing we have an Act that has been in place since 1977, and you could travel around and ask people and no one could tell you what actually qualifies for CRA.

This was a joint effort between the FDIC, the Fed, and ourselves to come up with that list. It will be a living, breathing document, meaning that we will add to that list, and perhaps subtract from that list, if it is not meeting the needs of low- to moderate-income communities. But also the intake valves, so to speak, when there is a project that doesn't fit on that list, to get a pre-ruling about whether this is something that will benefit low- to moderate-income communities across America.

I know your rural district. I have been over to see you many times. If you have seen banks shrink and consolidate, the assessment areas in rural America have gone away, this forces those banks to go back out into those communities where they have branches and support those local communities.

But just as important on the top of the house, when a bank meets their assessment area requirements, they will then have fungible dollars that they can go to rural America and make those investments in things like you described, that can help those people continue on with the American Dream. So, I do think this is a really fundamental shift in the right direction for all of America.

Mr. TIPTON. And I appreciate that comment because this is a complex issue in terms of trying to be able to define the areas, what is going to actually be acceptable under the CRA.

I can speak to a lot of the banks that I have talked to, investments that they would like to be able to make, investments that they have made that were not actually credited toward CRA, but they had a real commitment to be able to grow those communities and to be able to make sure.

We have had a fair amount of conversation in terms of the comment period. I noted in your response letter to the subcommittee chairman that you said you will continue to monitor the number of comments to determine if an extension is necessary later in the comment period.

Would you like to speak to what you are doing to be able to lessen what you are getting back in some of those comments?

Mr. OTTING. Absolutely. We have 40 days left in the comment period. There are 13 pages in the red text that someone has to read through and understand. And we look for those comments to come in to add value.

It is not a numbers game, meaning form letters, things like that. If they don't add substance to the comments with actionable items, we so note those and we so note what was covered.

But we have already begun the process. I said I read the 1,500 letters. Last week, there were 83 letters that had already been delivered. This morning, I found out there are 152 letters. We are documenting, matrixing, identifying what is coming in, in those comment letters.

So we can learn from those comment letters, things that can make this rule, I think, the best that it can be. I agree with you, this is a complex, emotional issue that requires a lot of—

Chairwoman WATERS. The gentleman's time has expired. The witness is requested to provide an answer in writing for the record.

The gentleman from Illinois, Mr. Foster, is recognized for 5 minutes.

Mr. FOSTER. Comptroller Otting, I understand that you wanted to bring clarity and simplification to CRA evaluations, and I appreciate that. But I am a physicist, and there is a famous quote from Albert Einstein that says that things should be as simple as possible, but not simpler. Okay? And I think there is a danger here.

One of the simple principles that you might consider adding to these is to reward the number of people helped and not simply the dollar volume delivered—also, the number of small businesses helped—that that should be an important part of any numerical metric you come up with.

So, for example, if you go out into some rural area and you build a giant automated factory with no jobs, you haven't really helped any people, and that should not count as money delivered to those communities. But if you count the number of people helped, you come to something that more aligns with, I think, our intent on both sides of the aisle here.

And so, I would like to just go through some specific things that occurred to me just reading through and listening to this discussion.

Why couldn't we, for example, have retained a separate metric for lending and a separate metric for community development investments and services?

Mr. OTTING. Are you asking—

Mr. FOSTER. Instead of just having, like, one number, one big number for the dollar volume, that just separately counts lending into a community and—

Mr. OTTING. We looked at that, we talked about it, and in the end, concluded that we would go to one numerator which gave banks the flexibility to apply their CRA activities to their particular business model.

Mr. FOSTER. Right. But then the difficulty is that they will say, okay, I am going to get all of the numerator out of an investment in a big automated factory or something like that.

Mr. OTTING. So to your point, I didn't respond to that, but the the examiners actually use their judgment, did that particular activity have an impact? And so, we do that today. It is not quantified, but the examiners' observation of impact to the community is an important ingredient of the overall review. Today, we use 80 percent subjective, 20 percent objective. We are flipping that around, but still retaining that overview by the examiner.

Mr. FOSTER. At the 20 percent level? The difficulty is that the subjective thing must vary all over the map, and inspector to inspector.

But another thing, would it make sense to put some sort of concentration cap on transactions or activities as well?

Mr. OTTING. Concentration as in, only so much in residential mortgage, so much in small business?

Mr. FOSTER. For example, yes.

Mr. OTTING. Yes.

Mr. FOSTER. Or specific large projects.

Mr. OTTING. Again, there are different business models amongst banks, and today some banks achieve all of their objectives by small business lending, some do it all by mortgages, and we generally do not dictate what the business model could look like.

However, on the community development, we said, in the markets, it has to be at least 2 percent of your dollar total has to be community development activities.

Mr. FOSTER. Okay. Which is a pretty small fraction, compared to the historical. If you look at what a small community bank—

Mr. OTTING. It depends upon the size of the investment in that market.

Mr. FOSTER. Yes, but if you look at the small community banks in rural areas and so on, they historically did a lot more than 2 percent, and you are replacing it with something less than that.

Mr. OTTING. And we are open in the comments for feedback on that. We obviously got that number by having a lot of discussions with people. And if people came back and thought it should be more, we would consider that.

Mr. FOSTER. Yes. I think there is also a danger that the proposed rule expands eligible and qualifying CRA activities to include some of what banks already do in the ordinary course of business. That dilutes the effectiveness of the CRA to the extent that you do that.

For example, community development activities of loans, investments, and services would no longer have to have, “a primary purpose of community development targeted at LMI individuals or areas.”

And so, there is a danger there that if it is only prorated credit would be given for these instances, but broadening these activities has the danger of perverting banks’ incentives in ways that really will end up being contrary. So, I would be very careful of that change.

Mr. OTTING. On your point, I think what you were making, was if in a hospital was done in a community and it serviced 10 percent low- to moderate-income, then that project would only get 10 percent credit toward their CRA. Is that what you were referencing?

Mr. FOSTER. That is an example, right.

Mr. OTTING. In the 200 list, which referenced giving more credit, that list was accumulation through the Fed, the FDIC, and the OCC of what institutions are currently getting credit for, and then we synthesize that, did it make sense.

Mr. FOSTER. Yes. And again, I think putting into those metrics the number of people helped in the instance of a hospital, even if it mainly served higher-income areas, it provides lots of jobs for people at all levels of income, and that there should be credit for the people helped as well.

Thank you. I yield back.

Mr. OTTING. Thank you.

Chairwoman WATERS. The gentleman’s time has expired. The witness is requested to provide an answer in writing for the record.

The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Madam Chairwoman.

And thank you, Comptroller, for coming to answer our questions today. I have several for you. And I know I have asked you this question before, but I wanted to make sure nothing has changed since we are into 2020.

Are you still a capitalist? Or do you think socialism would be a more favorable economic system for our country?

Mr. OTTING. Congressman, when my great-grandparents came here from Ireland and Germany, they arrived in Ellis Island. They were directed to Chicago, and they were farmers. And I am here today because of the entrepreneurial spirit and the capitalism they deployed.

My in-laws who came from Mexico and came to Los Angeles, their family was taken care of because of capitalism.

I don't know what the strongest point of capitalism is, but I affirm my support of capitalism.

Mr. WILLIAMS. Thank you for that. I appreciate it.

I think there is a lot of good in the new proposal that you have talked about to modernize CRA regulations, and there are a few issues that I want to touch on specifically.

The current CRA regime contains loopholes that allow a bank's balance sheet to appear as if they are engaged in CRA-eligible activity, even though they never actually made the investments in their communities.

So, can you tell us how this new proposal tightens up the CRA requirements to ensure that each institution is actually making impactful investments in the community that they serve?

Mr. OTTING. Specifically, on the mortgage side, is that today a financial institution could go to Southwest Washington, which is deemed a low- to moderate-income area, and I could move into that neighborhood and a bank could get credit for that mortgage.

In the future, both the area and the borrower will be required to be low- to moderate-income. And so, we are able to tighten that down, so to speak, in that regard. So that is probably the most profound change that we have in the new regulations.

Mr. WILLIAMS. Okay. Before I get into more CRA questions, I wanted to raise an issue with you that has been brought to my attention. Many financial institutions are being pressured to stop doing business with industries that have fallen out of favor with some of my colleagues on the other side of the aisle. From the gun industry to private prisons to fossil fuels, banks are under increased pressure to stop working with these completely legal industries.

Mr. Posey touched on this before. And as someone who was personally targeted by Operation Choke Point, I want to just reiterate that all legal industries should have equal access to the financial system.

So what would you tell financial institutions feeling the pressure, as well as the private entities, some of which who have received Federal contracts?

Mr. OTTING. Yes. We believe the banking industry should serve all legal businesses in America. However, we do leave that up to the boards and management of those financial institutions to make those decisions.

Mr. WILLIAMS. Federal Reserve Governor Brainard has raised the point that using nationwide ratios for CRA may not be compatible for the needs of various communities across the country.

In my district alone, we have many rural communities, such as Cleveland, Texas, that will undoubtedly have different needs than those of urban areas in my district, like Austin.

I don't think she is necessarily wrong in her assessment, it appears as if the new proposal takes this into account since there is an asset threshold where each institution will be able to decide whether to abide by the new or old CRA regime.

So can you please respond to the point that Governor Brainard raises, and then elaborate on how the new proposal would add additional flexibility for institutions serving all areas of the country?

Mr. OTTING. We believe this proposal offers the flexibility to make a determination upon the size of the market and the activities in the market. What I mean by that is, if your particular city is an assessment area, we would look at the low- to moderate-income activity in that market in relationship to all the banks, and we would look at the population of low- to moderate-income, and then we would compare that to the bank. So we are rightsizing it, so to speak, for that market.

On the dollar size, what we are looking at is deposits being the numerator and how much of their total CRA activity in relationship to their deposits they are doing at the community. So if you have a big community with lots of activity, you better be doing your share, and you better be doing a percentage of your deposits. If you are a smaller community, obviously, what would be required of you would be significantly less.

Mr. WILLIAMS. Thank you. In closing, I just want to thank you for your leadership, and I appreciate your vision.

I yield back.

Chairwoman WATERS. Thank you very much.

The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Madam Chairwoman.

And welcome to the committee, Mr. Otting.

One thing I would just like to state up front is that I don't think you or your staff, to my knowledge, has been by the office to talk to me about this.

Mr. OTTING. We did come by for the Black Caucus Day, and we sat in the conference room and we had a discussion on CRA.

Mr. LAWSON. Could you explain the Black Caucus Day, because I am not aware of that?

Mr. OTTING. No, no. This was just me coming up to meet with the Black Caucus.

Mr. LAWSON. But you hadn't come to meet with me? I don't want you to think that—

Mr. OTTING. It was a meeting of one on two.

Mr. LAWSON. I don't want you to think that because you met with the Black Caucus that you—

Mr. OTTING. No, no, I met with you and one other Member of it. If you recall, I came up to talk about CRA that day, and two Members showed up, and then you were one of the Members that we had a dialogue with.

Mr. LAWSON. Okay. Well, I have no knowledge of that. I apologize if that happened.

Mr. OTTING. We can follow up and give you the date.

Mr. LAWSON. That would be great.

On December the 11th, you received a letter from the chairperson which stated that CRA is a critical tool to combat redlining

and practices that still exist, in which banks discriminate against prospective customers based primarily on where they live, their race, and background, rather than creditworthiness.

And early on, when you were giving your testimony, you talked about your upbringing and what really happened and one of the reasons why you wanted to make these particular changes.

Could you explain a little bit further what you were trying to illustrate to the committee and how your background led you to formulate these policies that would be critically important to communities of color and disadvantaged communities in terms of CRA and how they work?

And the reason I ask that is I represent an area that stretches probably 240 miles, with a lot of rural communities in between, where this becomes very critical. So I would just like to hear your perspective in coming to this conclusion, and maybe not extending the number of days to 120, but 60 days. Based on your background, how did all of this come about?

Mr. OTTING. First of all, it isn't 60 days. It is 88 days.

Mr. LAWSON. Eighty-eight days.

Mr. OTTING. But what I was making by that point is, I came from a very poor area. My wife grew up in east Los Angeles, which is a very poor area. They were first generation to the United States. And as I was a banker, I was able to go out into communities and deploy capital and lending into those communities and see what could be done by creating jobs and new low- to moderate-income housing and how it brought the vibrancy of the community back with financial counseling.

So I was just making the impression that I, as Joseph Otting, have been in those communities across America and understand the need to get more lending and more capital into those communities.

Mr. LAWSON. Okay. Based on your experience and experiences that you all have been going on in developing the new guidelines, do you feel that the guidelines that are coming up now, that many of these banks would do more to invest and eliminate some of the discrimination that exists for many, many years?

Like you said earlier, there still will be problems, but how is it that your agency will be able to do a better job than what has been extended in the past to combat a lot of this discrimination or redlining?

Mr. OTTING. First of all, we do observe redlining and discrimination. I find it appalling in America today that we still have instances of that. And we have a whole set of rules on equal credit and fair housing that we do an annual review of financial institutions. So, that is how the agency does that.

In relationship to how does CRA play a bigger role, I think was the other question that you had for me, is by measuring exactly what we have the banks do and what we say qualifies. We can look and determine what is being done across communities today.

There is no data today. That is one of the big problems about CRA. If you want the information, you have to go bank by bank by bank through their performance evaluation.

Our goal as a team, is to be able to produce that data, so that a year from now when I am sitting here, you can look at a market

and you can tell me why in Florida is it only this amount of money that is being invested in CRA. And you can't do that today.

Mr. LAWSON. Okay. And quickly, does this apply to the credit unions also?

Mr. OTTING. It does not. It would require legislative action for the credit unions to be included.

Mr. LAWSON. Okay. With that, I yield back.

Chairwoman WATERS. Thank you.

The gentleman from Arkansas, Mr. Hill, is recognized for 5 minutes.

Mr. HILL. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for being here today.

I approach this like my friend, Mr. Luetkemeyer from Missouri, having spent 40 years complying with CRA in various capacities, in the late 1970s and early 1980s and in Texas for a large multibank holding company in their planning department, and then in the 1990s, compliance of a \$3 billion bank reported to me as we rolled out and implemented the Bill Clinton changes to CRA in 1994 and 1995. And then for 15 years as a small, intermediate bank CEO. So I do look at your proposal with sort of a practical sense of where is it better.

I want to first of all say that review after 2 decades is important to reflect the changing landscape of the industry, and I thank you for stepping up as one of your early initiatives and say, based on my experience, you having been a bank CEO in greater Los Angeles, for example, that you see that this needs to be changed.

I have talked to you about the fact that small, intermediate banks bear a disproportionate amount of burden in trying to comply with CRA, and yet some of them are doing the best job of serving their communities. So as you look at the comments, I hope you will keep that in mind, that that balance is important.

Looking at the specific proposal, you answered Mr. Sherman's question and also referenced a little bit to Mr. Williams about double counting CRA credit in the mortgage-backed securities arena, in the housing arena. I understand that, and I certainly watched, with the advent of big data, banks originating a loan, and selling it to a mortgage-backed security, and as you said, \$4 of CRA credit spread around.

But a lot of banks have built their models on originating credit, selling them to the mortgage-backed securities market, and then doing it again. So, that has expanded credit in the United States. I am concerned that they don't get full CRA credit to some degree for someone who is not abusing that practice.

Have you thought about providing a multiplier for banks in that credit risk? Or what are some of the things you are seeing to give nuance to just saying, well, it is just 25 percent? That is not a very sophisticated proposal in a really sophisticated market. Maybe people could get—if they held it over a period of time, over the duration of the loan, they got more credit. What are your thoughts there?

Mr. OTTING. First of all, thanks for the question.

Of the top 10 items that we will go through, between the NPR and the final rule, that is one that is getting a lot of discussion.

People intellectually understand where we are trying to go. The industry gave us that feedback initially about 25 percent, but over the last 2 weeks, we have done a lot of discussions with people, and now we are starting to hear a little bit more concern, should that be a higher number? And so, that will be one of the key things that we will kind of think through as we go to the final rule here over the next 60 to 90 days.

Mr. HILL. I think that is important.

Mr. OTTING. I agree.

Mr. HILL. I look forward to looking at the comments and discussing it more.

During those 15 years that I was a bank CEO, we had two major rural counties, one with 20,000 people in it, and one with 10,000 people. The one with 10,000 people was 50 percent African American, with a very high poverty rate, an over 30 percent poverty rate.

So I share my colleagues' concerns about serving rural communities, and one of the rural proposals said that you are increasing small business loan amounts from \$1 million to \$2 million and small farms from half a million to \$2 million. And that is a real concern in Arkansas because that will mean a lot of smaller banks can't as easily meet their CRA threshold.

Again, getting back to my point about truly small, intermediate bank sizes versus growing big regional banks, what are your thoughts there?

Mr. OTTING. I would like to follow up and have some dialogue on that, because we actually thought the feedback we got from a lot of the small banks is, it doesn't take much to get to a million-dollar crop loan in the environment today because the costs have risen so high, that increasing that would give them the ability to take care of their customers under CRA. By no means did I think it would be a hindrance.

Mr. HILL. Yes.

Mr. OTTING. I would love to follow up and hear your—

Mr. HILL. Please follow up on that.

And the other thing I have gotten a lot of feedback from is your approach to counting volunteer hours and how that is proposed. So, maybe we can have a follow-up conversation on that, too.

Mr. OTTING. I would be happy to.

Mr. HILL. Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Thank you so much, Madam Chairwoman.

I sincerely appreciate your leadership on trying to uplift some of the struggling issues regarding the Community Reinvestment Act, and I thank you so much for coming before our committee again, Comptroller.

In Michigan's 13th Congressional District, I represent the third-poorest congressional district in the country. I consistently try to bring them into the room as I talk about these issues so that we are connected to what the impact truly is on the ground when we make changes here in Washington, D.C.

Most of my residents are left at the mercy of corporate investors who are using both existing and new business models to extract as much wealth as possible, exasperating challenges that are already very much painful for distressed communities.

Despite this, every year our Federal Government gives away billions of dollars in tax revenue incentives that have proven consistently to fail to help our most vulnerable communities, our low-income communities.

We are actually closing schools, and taking away parks, and instead investing in stadiums and luxury hotels. That is exactly what is happening. The system is now being increasingly rigged, and CRA now is at the table in regards to be now so-called used, and I think very much mislabeled, as a way to try to increase affordable housing for our residents.

Mr. Otting, your proposal suggests that Opportunity Zone (OZ) areas would qualify for CRA credit, but it is unclear whether these OZ activities would have to meet CRA low-income definitions. Right now, there are about 1,700 designated OZ census tracts that do not qualify. It is currently under investigation, because some of these census tracts did not qualify under the set standards that they be poor, challenged communities.

Madam Chairwoman, I would like to submit for the record a New York Times article saying, "Trump tax break that benefited the rich is being investigated," as well as a recent article saying, "Treasury watchdog to investigate Trump opportunity zone program," into the record.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. TLAIB. So, yes or no, under your proposal, can banks receive a CRA credit for activities that do not meet the definition under CRA currently for low- and moderate-income?

Mr. OTTING. They cannot.

Ms. TLAIB. So right now, they can't get credit for building a soccer stadium, a for-profit soccer stadium?

Mr. OTTING. You said if it is not in a—

Ms. TLAIB. They cannot get CRA credit in an Opportunity Zone—

Mr. OTTING. If it is not in a low- to moderate-income community, they cannot get credit.

Ms. TLAIB. But right now, Opportunity Zones have been designated in areas—

Mr. OTTING. The clarification is, it could be an Opportunity Zone as long as it is a low- to moderate-income neighborhood. If it is that percentage of Opportunity Zones that are not low- to moderate-income, it would not qualify for CRA.

Ms. TLAIB. Okay. So if it is in a low- to moderate-income community, great, check.

Mr. OTTING. That is right.

Ms. TLAIB. So, if a for-profit hockey stadium gets built, they get credit for that? In a low- or moderate-income community, they will get credit for building a for-profit—

Mr. OTTING. Yes, I appreciate, if you don't mind me answering, so—

Ms. TLAIB. No, go ahead.

Mr. OTTING. So, since—

Ms. TLAIB. Yes or no?

Mr. OTTING. Since 1993—

Ms. TLAIB. It can.

Mr. OTTING. Since 1993—

Ms. TLAIB. Chairwoman, it just needs to be very clear.

Mr. OTTING. —they have given credit for sports facilities.

The beauty of putting this list out and giving people the ability to offer comments is, if you don't like that, you can—

Ms. TLAIB. Please accept this as me submitting comments, saying I have an issue with this.

Mr. OTTING. We have to have written comments.

Ms. TLAIB. I will do that for you, no problem. I will write it out for you. I will give you a number of various projects in Detroit and throughout Wayne County where for-profit prisons should not qualify to get CRA credit; there is a for-profit hockey stadium, where literally a mile down the street, Cass Tech High School doesn't have clean drinking water. Do you see what I am saying here?

The true intent of CRA was not to help the wealthy and those who already do not need help. And you know this.

Comptroller Otting, know that the frontline communities, that is why we are here. Government has to be about people. And right now, they are rigging the system. And CRA, you are allowing them to codify into the CRA that, yes, for-profit prisons and stadiums can actually get CRA credit in low- to moderate-income communities. That is wrong.

Mr. OTTING. Then, that is why we should change it in the comment period.

Ms. TLAIB. Yes. That is why I am telling you right now, if you want me to put it in writing, but I am telling you on behalf of 13 District strong, I am giving you notice that we have a serious problem with you giving credit for these kinds of activities that have nothing do with access to affordable housing.

Mr. OTTING. You say, "me." It has been in place since 1993. I am the first person—

Ms. TLAIB. I understand, but you just codified—no, you are codifying it.

Mr. OTTING. I am the first person who is putting a list together—

Ms. TLAIB. Yes or no, you are codifying it now?

Mr. OTTING. You have become aware of it because I put the list out.

Ms. TLAIB. Oh, no, no, no, I wasn't here, sir. I have only been here a year. I would definitely, even as a State representative, I would have submitted comments and put you on notice. But I am telling you, you are codifying it. It is okay. We are not—

Mr. OTTING. You are missing my point. The only reason you even know about the stadium is because I put the list out for public comment.

Ms. TLAIB. Yes, you can say that, but it doesn't make it right or wrong, right?

Mr. OTTING. I am not arguing whether it is right or wrong.

Ms. TLAIB. Look, I am going to submit questions, Madam Chairwoman, to him directly, and Mr. Otting, I would like for you to answer them in writing.

Mr. OTTING. I came by your office before, and I would be happy to do that again.

Ms. TLAI B. Yes. Coming by my office does not actually make it right. It is still wrong to give credit to for-profit prisons and stadiums for CRA.

Thank you.

Chairwoman WATERS. The witness is requested to provide an answer in writing for the record.

Mr. OTTING. I am not sure of any for-profit prisons that we have given CRA credit for.

Chairwoman WATERS. The gentlelady's time has expired.

Mr. OTTING. Thank you.

Chairwoman WATERS. The witness is required to reply in writing to the Member as soon as possible. Thank you.

The gentleman from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for appearing today.

At the end of your time, I know you were trying to finish an answer. Would you like some additional time to try to finish?

Mr. OTTING. I was just going to comment that I am not aware of a private prison receiving CRA credit.

Mr. KUSTOFF. In relation to that last set of questions, was it the Clinton Administration that put the proposal into action?

Mr. OTTING. The last time it was modified was 1995, but the activities that we put out on the list were actually begun in 1993.

Mr. KUSTOFF. Thank you.

If I could, Comptroller Otting, I know that a couple of my colleagues have asked you about this, but I read an article that was authored or co-authored by former Senator Phil Gramm in The Wall Street Journal a couple of weeks ago, and it discussed the cross-section between CRA credit and attempts by some to target legal businesses and in some case companies with Federal Government contracts, politicizing, if you will, some of the banking services.

And I think we are all aware of what happened during Operation Choke Point by the previous Administration to deny credit to creditworthy customers, if you will, through political intimidation. If you could, though, Comptroller, could you address whether the OCC has done any analysis of industries that are being denied banking or credit services even though they may be financially sound and otherwise creditworthy?

Mr. OTTING. We have not done a study. Our position is that legal businesses should have access to the U.S. banking system, and we leave those decisions up to the management of the boards of the respective banks. However, under CRA, an institution is required to serve the entire community if they are domiciled in that banking community.

Mr. KUSTOFF. Following up on that, what guidance would you give those companies and industries from the OCC in order that they can obtain that financing and stay legal?

Mr. OTTING. We give guidance that legal businesses should have access to the U.S. banking system.

Mr. KUSTOFF. Also, as it relates to farm lending in rural communities—and you have had a number of questions as it relates to those communities, and you talked about your parents—in my dis-

tract, which is the Eight Congressional District of Tennessee, I represent a number of small farmers. And in fact my State, Tennessee, has the largest Farm Bureau membership in the country.

So could you talk about your proposal or the proposal of the OCC and how it could better serve the rural communities through increased farm lending?

Mr. OTTING. Yes. There are a couple of key things as we worked our way through in speaking to family farm owners. One was that the dollar amount used to be half-a-million dollars or less, and family farms were included for CRA. We are moving that to \$2 million. That did a lot of restrictions from banks getting credit for CRA.

In addition to that, we have also now allowed larger organizations that maybe are not with a branch in a respective rural community to be able to do qualified CRA investments in lending into those communities, and we think that will drive more capital and investments in rural America.

Mr. KUSTOFF. Thank you.

And I do think that when we overlook rural America and when we talk about the LMI communities, but obviously some of these rural communities are struggling. We know that job opportunities are few and far between.

Given—and you have talked about this—that physical bank branches are disappearing, we have seen that over a number of years for a number of reasons, including technology, as well as the proposal focus on bank deposits from outside of the physical locations, how do you envision that component directly impacting rural America?

Mr. OTTING. I think we have seen this migration through the internet into certain geographic areas where those deposits are managed by a headquarters operation. What we are trying to do with this rule is those entities that have more than 50 percent of their deposits that are coming outside their assessment areas, assessing where they have 5 percent or more, and then requiring those banks to invest in those communities across America.

So there is movement from branches to internet. And then outside the community, we are trying to create a mechanism so that they invest back into the communities of America. This will be a first step. We will get lots of comments about whether it should be 5 percent or a lower number as we kind of work our way through the rule.

Mr. KUSTOFF. Thank you. My time has expired.

Chairwoman WATERS. The gentlewoman from Massachusetts, Ms. Pressley, is recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Madam Chairwoman, for your continued oversight, especially on an issue as consequential as the Community Reinvestment Act.

A lot has been said about this proposal, that it is rushed, it is not community-informed, it disregards the will of this Congress. However, I believe the words and actions that matter most in this process are yours, Comptroller Otting.

Last week the American Banker reported you as saying, “I have no problem with people challenging this. This is a complicated, emotional issue.”

Yes or no, do you believe opposition to this proposal is couched in emotion or misunderstandings, too complex—

Mr. OTTING. I don't think it is an either/or question. I think it is understanding it, so you can fully understand what we are trying to do, without getting false information from various people, so that you can reach your own conclusion.

Ms. PRESSLEY. So again, do you believe opposition to this proposal is because people—I am just elevating what you said in American Banker—are emotional, or it is too complex for them to understand?

Mr. OTTING. I can answer the question the same way if you would like.

Ms. PRESSLEY. Sure.

Mr. OTTING. But I wouldn't want to use your full 2 minutes.

Ms. PRESSLEY. Okay. Very good.

We recently held a hearing where a panel of CRA experts testified about your proposal, and I asked that expert panel, by a show of hands, how many supported your approach. Of the five-person panel, would you venture to guess how many raised their hand in support of your proposal, this panel of experts?

Mr. OTTING. I saw it, but it is a stacked deck.

Ms. PRESSLEY. Reclaiming my time.

Mr. OTTING. You can use statistics like that, but four of them were Democratic witnesses, so—

Ms. PRESSLEY. Only one witness—

Mr. OTTING. It is because four of the five were Democratic representatives.

Ms. PRESSLEY. How many raised their hands in support of the approach outlined by Governor Brainard? All five.

I find it hard to believe that four out of five issue experts are opposed because this is a complicated, emotional issue, the idea of a single metric, which Governor Brainard warned would encourage more capital-heavy investments instead of smaller.

If, hypothetically speaking, you ran a bank that loaned to people of color, would you choose originating 300 small business loans over making one \$300 million investment if the credit is all the same? Yes or no?

Mr. OTTING. I think you are confused on the issue. We do not have a single metric down to the individual—

Ms. PRESSLEY. I am not confused, and I am not the only one who believes you have a single metric.

So, moving on—

Mr. OTTING. There is—

Ms. PRESSLEY. Mr. Otting.

Mr. OTTING. Here is the document. Show me on what—

Ms. PRESSLEY. Mr. Otting.

Mr. OTTING. Show me on what page, there is a single metric.

Ms. PRESSLEY. Reclaiming my time, do you believe in a duty to serve, yes or no?

Mr. OTTING. Do I what?

Ms. PRESSLEY. Do you believe in a duty to serve? Are you familiar with that?

Mr. OTTING. I do.

Ms. PRESSLEY. Okay. So in 2014 and 2015, under your leadership, how many mortgage loans did OneWest make to Black borrowers in assessment areas, given your commitment to duty to serve?

Mr. OTTING. There was a very small quadrant of small loans that was made that was—that the assessment was made on. But I am the Comptroller of the U.S. Currency, so if you have issues regarding OneWest Bank, you should contact them.

Ms. PRESSLEY. I certainly have issues because there were only—the answer is two.

Mr. OTTING. Yes, but out of how many? Fifty-six, out of 56.

Ms. PRESSLEY. Reclaiming my time. Reclaiming my time, that isn't much of a—

Mr. OTTING. Let's just be realistic about the quadrant. It was a very small quadrant—

Ms. PRESSLEY. Reclaiming my time.

Mr. OTTING. —because we were focused on mortgages—

Ms. PRESSLEY. Comptroller Otting, I have a number of things that I am looking to get on the record from you.

But the point is, that isn't much of a commitment to serving anyone, let alone the communities the CRA was intended to serve.

While you were CEO, OneWest was one of very few banks to receive a low satisfactory score on their service test. So, yes or no, would you trust someone who repeatedly failed a key component of a driving exam with rewriting the rules of the road?

Mr. OTTING. Those were three failed institutions that we brought together. We did not have a long history—

Ms. PRESSLEY. Yes or no?

Mr. OTTING. There is no “yes” or “no” answer to this question.

Ms. PRESSLEY. We disagree on that and many other things, Comptroller, respectfully.

Mr. OTTING. Three failed institutions that we brought together, that we did the best. And I think if you go speak to people in the Los Angeles community, OneWest Bank has done a remarkable job in their community reinvestment.

Ms. PRESSLEY. Again, we could debate that.

It seems your takeaway from your experience with the CRA is not that your bank, or any bank, for that matter, needs to do better, but that you should get more credit for business you were going to do anyway.

Either you want to hear what people have to say or you don't, Comptroller Otting. Your responses to community groups and this Congress alike suggest you don't.

Thank you, and I yield back.

Chairwoman WATERS. Will the gentlelady yield me the balance of her time?

Ms. PRESSLEY. Absolutely, Madam Chairwoman.

Chairwoman WATERS. Mr. Otting, I am going to ask you to think about the stadiums that are being built in the Inglewood area of Los Angeles. I know you know the area. You have the Chargers, you have the Rams, and you have the Clippers. And, of course, gentrification is taking place.

They are now, under your proposal, eligible for loans in a way that they have not been in the past. People are being moved out.

The rents are going up. The cost of housing has exploded. They are being basically forced out of the community. But the stadiums now can get CRA credit.

You don't have to answer now. I am going to move on. And hopefully, someone will yield me time for another question.

With that, the gentleman from Ohio, Mr. Gonzalez, is recognized for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Madam Chairwoman, for holding this hearing.

And thank you, Mr. Otting, for your service to the country and for your participation today.

I want to start with one point, which is I think that it is somewhat comical that the witnesses are always experts. I would like to remind the committee that we had a comedian, I guess, in here, I forget when, who completely embarrassed himself, and it was an enormous waste of time to have his presence here.

And so this notion that every single person we bring forward is somehow an expert, I think, is something that we should reconsider.

So with that, on the stadiums piece, I just want to confirm something. We are in the comment period today, correct?

Mr. OTTING. That is correct.

Mr. GONZALEZ OF OHIO. Okay. So this isn't currently law?

Mr. OTTING. Oh, it has been in the law since 1993.

Mr. GONZALEZ OF OHIO. Okay.

Mr. OTTING. And we go back—that is as far as we could research where a bank was given credit. So, it is currently in the law. It is up for discussion only because we brought it out that it was available.

Mr. GONZALEZ OF OHIO. Yes.

Mr. OTTING. No one had ever raised the issue in the past.

Mr. GONZALEZ OF OHIO. And I want to commend you for that, because over the last few weeks, I have spent quite a bit of time talking about banks throughout my State, and I will tell you in my conversations, I haven't heard objections. I have heard hesitation on certain items—and I will press on that in a second—but I haven't heard anybody say, this is a bad idea, this is going to harm the community.

One of my banks in particular has an outstanding rating, one of the highest ratings, and they have done a great job. And the CRA has, for all of Ohio really, I think, been a huge benefit. And people are excited about the change, they are excited about the objectivity, in particular, because I think in some respects it has been a black box, and sort of the subjectivity of each regulator has made this harder to do.

And so, I commend you for putting the proposal forward. I encourage you to continue taking feedback, obviously, and implement it as necessary.

And on kind of one of the points I heard yesterday when I was talking with a bank, they said, "We like the proposal. We are a little concerned with the timeline. It is a big shift. It is a fundamental shift with respect to how you track and calculate your CRA activities."

So I guess my question would be, what do you think about the timeline component, and how much willingness is there to work with the banks to help them make this adjustment?

Mr. OTTING. We have communicated that we think the timeline transition is 1 to 3 years.

Mr. GONZALEZ OF OHIO. Okay.

Mr. OTTING. For two reasons. One is the technology reporting for the denominator on deposits; most banks report deposits by branch code versus geocode, and so we are going to have—some can do it, some can't. We think we need to work on getting it to geocode. And then, we have also committed that any bank in their 3-year assessment period, we wouldn't start until the new timeline. So we are offering up, as a minimum, a 1-year and potentially a 3-year transition.

All of the financial institutions that I have spoken to in the last couple of weeks, when we have clarified that for them, I think it has given them great comfort that they can make that timeline.

Mr. GONZALEZ OF OHIO. Okay. Thank you.

And then I want to move on to discuss how you view the future of banking as it relates to emerging technologies. So, leave the CRA alone for a second.

I believe the OCC was the first prudential regulator to launch an innovation program. Today, all of the Federal financial agencies have initiatives of some form but that they are all separate. As you know, the U.S. has a much more complex, multiagency regulatory structure than other countries, a fact that many cite as creating a risk to U.S. leadership and financial leadership globally.

Beyond informal discussion, do the agencies need to form an ongoing channel for coordinating on innovation, identifying areas where they should work together and sharing learnings with each other? Is there an argument against doing so?

Mr. OTTING. I don't know if there is an argument against that. I think the agencies do a pretty effective job. If you think about, really, the FDIC and the CFPB just stood those up recently.

Mr. GONZALEZ OF OHIO. Yes.

Mr. OTTING. And I think there is a lot of coordination.

Probably the bigger issues are clarifying and giving legal guidance as to how those entities will be formed. Whether they will be LICs or special charters is probably the next big thing that has to be resolved.

Mr. GONZALEZ OF OHIO. Okay. And then, more broadly, what is the potential for supervisory technology and regtech to reduce compliance costs to banks and, therefore, their customers, and could it help community banks meet the competitive challenges they face, in your estimation?

Mr. OTTING. That is a complicated thing. The regtechs—part of how we take that forward into the future, is we spend a lot of time specifically in the AML/BSA activities, trying to say, okay, now we have the standard high up in enough. We are comfortable they are complying with the law. What technology can they use to make those costs more effective?

Mr. GONZALEZ OF OHIO. Yes, and I am running out of time. I would love to follow up on that specifically. AML BSA, I think we

have an opportunity from a tech standpoint to really improve what we are doing there.

With that, I yield back.

Chairwoman WATERS. The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for joining us here today.

The CRA examinations evaluate bank service to LMI communities in three general areas: lending; investment; and service. And one way for banks to fulfill this service criteria is through nonprofit community programs like financial literacy or volunteering at a food bank, is that correct?

Mr. OTTING. That is correct.

Ms. WEXTON. Okay. During August recess, I visited a community farm in my district where there just happened to be a busload of employees from a local bank who had just been there, and they had been weeding and harvesting and planting and everything like that. That is a local community farm that grows fresh produce for food banks in the area, so it's a great, great community service.

But I am concerned that the proposed plan gives undue weight to quantitative measures at the expense of qualitative measures, and the volunteer hours can really illustrate that in my mind. The plan calls for quantifying an hour of volunteer service using BLS payroll numbers to equate volunteer hours to investments. So I did the math and it looks like for a \$2 million community development loan, one loan for one project, not even a particularly large project, that would equate to 55,555 hours of volunteer service based on the \$36-an-hour rate that was proposed in the NPR.

Can you explain how a single loan like that would compare to tens of thousands of hours of volunteer work in the LMI communities? What is the rationale for that?

Mr. OTTING. That is an abstract question. I would have to understand the community, what the community development loan was used for versus what the volunteer hours were used for.

Ms. WEXTON. But having a 1-to-1 ratio like that, you can understand how that could skew in favor of some of these for-profit development projects that don't really necessarily—

Mr. OTTING. As we indicated, we have metrics, and then we have examiner judgment. At the top of the house, the examiner judgment will look at the activities that qualified, and they have the ability to move or make comments on the ultimate valuation or evaluation based on their subjective evaluation. So, some of the things you described would go into that subjective evaluation.

Ms. WEXTON. I am concerned, because the whole point of changing to these criteria is so that you have an objective criterion, and now you are saying this objective part of it would help make up for that. So I would just urge you to consider coming up with a criterion that would give greater weight to those kinds of community service organizations.

Mr. OTTING. We have used the concept of multipliers, especially if you read the proposal. In the equity for CDFI and low-income housing, we have heard they had a difficult time attracting equity. So maybe a multiplier concept—

Ms. WEXTON. Yes. Thank you. I would suggest that might be a helpful way of doing that.

I do want to talk just very briefly about the financial literacy component of it. In the previous iteration of the CRA analysis, that had been limited to LMI communities and communities of need, but now you are expanding it to any communities, and I am concerned about that because banks can go to, for example, an upscale retirement community in my neighborhood, in my district, and conduct these financial literacy classes, which are really nothing more than marketing schemes for their bank, and that would qualify under the service component of the CRA.

What is the rationale of extending that from the communities of need to just anybody?

Mr. OTTING. As we went out in communities across America, we heard that the need across America is for financial literacy, and people felt that it shouldn't be just restricted to low- to moderate-income people. So, we put that in as a question.

Ms. WEXTON. Reclaiming my time. But do you understand that the purpose of the CRA is to help low- to moderate-income communities?

Mr. OTTING. I do.

Ms. WEXTON. Thank you very much.

I will at this time yield the balance of my time to the chairwoman.

Chairwoman WATERS. Thank you very much.

I started out discussing what was happening in Inglewood. Are you familiar with Inglewood, California?

Mr. OTTING. I am.

Chairwoman WATERS. Do you know about all of the stadiums that be are being built and moving in?

Mr. OTTING. I do.

Chairwoman WATERS. They are now eligible for loans in a concrete way, in ways that they were not in the existing CRA.

Mr. OTTING. That is not correct, Chairwoman.

Since 1993, the banks have allowed CRA credit for stadiums. So, this is not a change to that program.

Chairwoman WATERS. I'm sorry. My time is up. We will get back to this when I have more time.

The gentleman from Tennessee, Mr. Rose, is recognized for 5 minutes.

Mr. ROSE. Thank you, Chairwoman Waters, and Ranking Member McHenry.

And thank you, Comptroller Otting, for being here today. As we have heard a lot today, the Community Reinvestment Act modernization proposal offered by the FDIC and the OCC reflects a significant shift away from the current outdated regime to a new one that should better reflect the realities of today's banking industry. I don't know that the proposal as it is currently written is perfect, but I do know that the current CRA has not kept pace with today's changes in technology, and current regulations and approaches create uncertainty for banks and can serve as barriers to carrying out CRA's intended mission. So I want to applaud you for taking on what obviously is for many a contentious issue.

As I reflect upon my own small business career, and my involvement in community banking back in Tennessee, I am just really struck by the notion that CRA hasn't been updated in a quarter of a century, and I know that if in my business, I had not evolved sufficiently in a quarter of a century, that would mean trouble for my business.

So, again, I applaud you for taking this on, and despite some of the criticisms about the timing for moving it forward, I think it points to the problem with regulatory burdens like CRA, well-intended perhaps in their beginning, but then they become static and concrete and they interfere with the natural evolution and advance of small business. So I applaud you for moving forward, and I think it is time to do so, and I think that this probably is an area that we should revisit more often than every quarter century, and so, again, thank you for doing so.

I know that one of the facets of this proposal that aims to provide certainty to financial institutions is publishing a publicly available list of pre-approved CRA activities that will qualify for CRA credit. No doubt, we have heard some discussion about some of those activities.

Comptroller Otting, how is this initial list going to come together, and is it expected to be an exhaustive list?

Mr. OTTING. Thank you very much. The list came together through the interagency work between the Federal Reserve, the FDIC, and ourselves of what current activities were being given credit under CRA, and so that got accumulated where we put it out in the body of the NPR for comment for people to be able to either react positively or negatively to that. It is the first time since the Act was approved in 1977 that there was any kind of list put forward.

There is a commitment in the NPR to review that list, at a minimum, every 3 years. We will make it a living and breathing thing. But just as important, we have created an intake where people can come to their primary regulatory and seek approval on perhaps items that are not on that list today.

Mr. ROSE. From the comments the OCC and the FDIC have received up to this point, do you think a list like this can help fix the problem of subjective and time-consuming examinations? Is that the crux of it?

Mr. OTTING. I think it helps bring clarity both to the communities and the banks of what items can qualify for CRA, and so, when a community has a particular project they are interested in doing, they know they can go to the banks and talk about getting CRA credit for that, and I think that will dramatically improve that.

The other thing is that often banks will do transactions, that in the middle of their CRA exam, they find out don't qualify, and so it forces people back to the most conservative, middle-of-the-road type CRA investments, and we want to encourage new and innovative ways to do CRA in communities that help low- to moderate-income people.

Mr. ROSE. I have heard some criticisms that this proposal actually disincentivizes smaller loans. Do you agree with that assessment?

Mr. OTTING. I do not, because we have a metric-based in every assessment area that a bank operates in that will measure the units and the dollars.

Mr. ROSE. Can a bank write just one large check to satisfy their CRA requirements under this proposal?

Mr. OTTING. Absolutely not.

Mr. ROSE. I know you have covered this, but I want to give you a chance here in about 40 seconds, this issue of NFL stadiums, to just give you some time to respond to that. It sounds to me like you have pointed out an issue that is of grave concern to people by undertaking this process.

Mr. OTTING. I actually appreciate the interest of people in this item because it goes to prove that getting that list out and getting people's feedback is important for what really works for communities, and it has been done since 1993. So we are not doing anything new with this proposal other than identifying what have been historical practices.

Mr. ROSE. Thank you.

And, Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you.

The gentlewoman from California, Ms. Porter, is recognized for 5 minutes.

Ms. PORTER. Hello, Mr. Otting. Governor Leal Brainard has been running point on the CRA modernization at the Fed. She gave a presentation earlier this month, explaining how the Fed came to its blueprint, why the Fed believes that its version is more true to the purpose of the CRA than the OCC's version. Are you familiar with Governor Brainard, herself?

Mr. OTTING. Yes, I am.

Ms. PORTER. She has been working on economic policy for 30 years. She studied at MIT, and has worked at the U.S. Treasury, the White House, the Brookings Institution, and the list goes on.

Mr. OTTING. I am not aware that she has been working on it for 30 years.

Ms. PORTER. Do you think that Governor Brainard doesn't understand your CRA proposal?

Mr. OTTING. You would have to ask Governor Brainard that question.

Ms. PORTER. Do you think Governor Brainard is somehow economically advantaged by the current CRA framework?

Mr. OTTING. You would have to ask—

Ms. PORTER. She is somehow—

Mr. OTTING. You would have to ask—

Ms. PORTER. Well, no, I am asking for your opinion.

Mr. OTTING. I don't have an opinion.

Ms. PORTER. You don't have an opinion about whether Governor Brainard doesn't understand your CRA proposal or is economically advantaged by your CRA proposal?

Mr. OTTING. You would have to ask her that question.

Ms. PORTER. You recently said in The Wall Street Journal, "If you don't like the OCC's CRA blueprint, you are either economically advantaged by the current structure or you don't understand it."

So, basically, you are either corrupt and on the take or you are not educated or intelligent enough to digest the OCC's proposal. What bucket should I put Governor Brainard in?

Mr. OTTING. I guess you have to make that decision yourself.

Ms. PORTER. Is there a third bucket?

Mr. OTTING. I wouldn't offer up an opinion.

Ms. PORTER. Because you did say that, if you don't like the proposal, if you oppose the proposal—and I oppose the OCC's proposal—you either are economically advantaged by the CRA—which I am not—or I don't understand it. Which do you think applies to me?

Mr. OTTING. You would have to make a determination on how you would want to vote.

Ms. PORTER. Is there a third category you would like to develop for people like me—

Mr. OTTING. Not at this time.

Ms. PORTER. —who don't agree with you?

Mr. OTTING. Not at this time.

Ms. PORTER. How about Chairwoman Waters? She opposes the OCC's CRA proposal. Would you say she is somehow on the—

Mr. OTTING. You would have to make that determination.

Ms. PORTER. I would encourage you to understand that some people who don't agree with the OCC's CRA proposal simply have read the CRA, have studied it, are economic experts or have been on this committee, leading this committee currently, and simply have a different vision of the CRA than you do, and I would ask you to be please be respectful, particularly in the press, about how you talk about those who disagree with you, because rulemaking is a collaborative public process, and each of us, whether we are a Congressperson or we are just a member of the public, has the right to disagree, and it doesn't mean we don't understand or that we are somehow on the take under the current system. It just means we have a different vision.

Mr. Otting, you also said that 9 out of 10 major banks are supportive of the direction the OCC is heading. Are you familiar with the American Bankers Association (ABA)?

Mr. OTTING. I am.

Ms. PORTER. The top 10 banks in the country are all members of the ABA, and yet the ABA itself has put out a statement, which I have here, and I am happy to submit for the record.

May I submit this for the record?

Chairwoman WATERS. Without objection, it is so ordered.

Ms. PORTER. The ABA said, "We continue to believe that the nation would be best served by a final interagency rule that also includes the Federal Reserve which would provide a consistent regulatory framework for all banks."

That is the ABA statement. Yet, you recently said 9 out of 10 of the major banks are supportive of the OCC proposal. I am confused, Mr. Otting. Which major banks were you talking about? Is this like a toothpaste commercial where 9 out of 10 dentists agree?

Mr. OTTING. I think the statement you read is different than whether the banks support it. What they said in that letter is their preference would be that the three regulatory agencies come together on a final rule. That is one comment in that letter. The

other comment is the banks deciding that they would like to move forward. They have issues, and we have asked them to comment on those issues.

Ms. PORTER. Reclaiming my time.

Mr. OTTING. We look forward to those comments in the final—

Ms. PORTER. Reclaiming my time. The American Bankers Association statement will be in the record. So, that will be speak for itself.

But you said 9 out of the 10 major banks are supportive of the direction the OCC is heading. Who are those major banks?

Mr. OTTING. I would be happy to come by and have a dialogue with you if you think that would be appropriate.

Ms. PORTER. You are unable to state for the committee today any banks that support your direction?

Mr. OTTING. We will file a comment letter with the comments of the financial institutions with which I have had discussions.

Ms. PORTER. Thank you.

I yield back.

Chairwoman WATERS. The gentleman from South Carolina, Mr. Timmons, is now recognized for 5 minutes.

Mr. TIMMONS. Thank you, Madam Chairwoman.

And I would like to thank you, Comptroller Otting, for taking the time to come and answer our questions today. This is an important hearing, and I appreciate your presence here.

Mr. OTTING. Thank you.

Mr. TIMMONS. I want to start at the beginning.

Could you discuss what you think the original purpose and intent of the Community Reinvestment Act was and share your thoughts?

Mr. OTTING. Clearly, in 1977, as the Congress was looking at the way banks were serving their communities, they found instances where there were redlining activities and discrimination activities, and they felt that banks should serve their entire communities in which they operate, and some of that activity was actually done by the U.S. Government. And so, the Act was approved in 1977, that encouraged banks to support their entire communities but required the regulatory agencies to do an observation of that, and then, in follow-up succession Acts, it was determined that the written reports needed to be produced to justify the banks' observations.

Mr. TIMMONS. We keep hearing a lot about football stadiums, and you referred to the 1993 date as the time which they were eligible for CRA funds. Could you talk about that history as well?

Mr. OTTING. Just a point of clarification, the first time we could find where an athletic facility got CRA credit was in 1993. So, it wasn't like there was a change at that point in time. It is just the first time we saw the agency start to give credit, and these include soccer fields and AA baseball stadiums and things like that. So, it is not like a professional, but athletic facilities in 1993 is the first time we saw where banks were given credit.

Mr. TIMMONS. What percentage overall would you say goes to these types of projects currently?

Mr. OTTING. Oh, you mean in the total of CRA, there is \$480 billion in annual CRA activity across the nation.

Mr. TIMMONS. Less than 10 percent? Less than 5 percent?

Mr. OTTING. In the basis points.

Mr. TIMMONS. Okay. Thank you.

I want to quickly talk about the list of the activities that are CRA-eligible in your proposal versus what is currently eligible. What are the differences?

Mr. OTTING. A hundred percent.

Mr. TIMMONS. What are the differences currently versus in the proposal? Just big picture.

Mr. OTTING. We actually put on paper what qualifies and then published that list, which had never been previously published.

Mr. TIMMONS. So, this will give banks more clarification?

Mr. OTTING. Yes.

Mr. TIMMONS. And now, they don't have to wonder whether projects they are investing in will qualify or not, and they will be—

Mr. OTTING. Right. Now we did find geographic differences, meaning stuff that was being done in New York that qualified wasn't being done in other places. Stuff was being done in Los Angeles that wasn't being done elsewhere. So, quantifying that list for the nation is what I would say would be different.

Mr. TIMMONS. So, a more—

Mr. OTTING. Robust.

Mr. TIMMONS. A better framework to understand the entire program.

Mr. OTTING. That is right.

Mr. TIMMONS. I have had some concerns from people in my district. We have a couple of substantial banks there. They are concerned that with the proposals surrounding what areas qualify, my community will receive less from those banks. I understand that, but I guess the next question is, will other banks that are currently not investing in our community make up that difference? Could you talk some about that?

Mr. OTTING. I am not aware of where any bank would pull back from an area based upon the revisions to what we are accomplishing. It will increase the areas that banks will be required to do Community Reinvestment Act activity, but I would be happy to either call those banks or have dialogue with you through them to make sure that I understand their concern, but there should not be a community in America, based upon what we are doing, that should see a reduction in their CRA requirements.

Mr. TIMMONS. Okay. Thank you.

I have also heard some concerns from individuals and groups involved in providing affordable housing for LMI communities. What are your thoughts on how affordable housing CRA investments will be affected by the proposal?

Mr. OTTING. First of all, the big challenge that we have heard about housing as we went across the United States and talked to people was attracting capital. Most people will tell, you we can get all the debts we need for low-income housing, but attracting capital has been the complicated part.

So, in the proposal, what we did is we offered up a multiplier for equity that goes into low-income housing projects and CDFIs that, if you provide equity, we have said, should we give 2 times credit or 3 times credit in the numerator for the formula, and that has

been received quite well, I think, by those people who are participating in that industry.

Mr. TIMMONS. And, again, this is a process where feedback will produce a final result.

Mr. OTTING. Right.

Mr. TIMMONS. And that is a very constructive process.

Mr. OTTING. Actually, getting to the multiplier came from the feedback process.

Mr. TIMMONS. Thank you. I appreciate your time.

I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you.

The gentlewoman from Iowa, Mrs. Axne, is recognized for 5 minutes.

Mrs. AXNE. Thank you, Madam Chairwoman,

And I thank you, Comptroller Otting, for being here. I appreciate having another Iowan here.

It is good to hear that we are seeing some unity across the banking industry in support of the real purpose of the Community Reinvestment Act. Of course, let's go back to that: preventing discrimination and ensuring that people and communities are not left out of our financial system and our economy. That is the core of why we are all here.

I am concerned that this proposal will take money away from States like Iowa. We know that this isn't just an urban problem or a rural problem, and we need to recognize that what is going to be helpful for areas here in D.C. might not be helpful in places like Creston, Iowa, in my district. And by the way, the needs in rural opportunity are different, as you well know. Maquoketa has different concerns than Corning, Iowa. Northwest and southwest Iowa are different in many ways.

My concern then is that moving towards a one-size-fits-all proposal never works, certainly not when it comes to equal opportunity. So, Comptroller Otting, are you concerned that by giving all banks the same list of activities that are eligible for CRA credit ahead of time and reducing the importance of qualitative evaluation, as my colleague, Ms. Wexton, referred to earlier, that this proposal is going to reduce the incentive for banks to work directly with communities to make sure they are getting what they actually need from banks?

Mr. OTTING. I do not think that it will do that.

And as a point of clarification, in communities across America—and let's just take a particular regional bank that I know has a lot of branches in your district—they probably don't today identify that as an assessment area, and in the future, no matter where those large banks have, they will have to do CRA activities in those communities, and we will measure that. So, it is our viewpoint that more activity will flow into rural communities across America rather than less.

Mrs. AXNE. I will be anxious to see that because the proposal talks a lot about reducing what are called inconsistencies in CRA evaluations, and I would argue that we should be seeing inconsistency. That is the beauty of the different communities in this country and the differing needs that they have. I would say that the inconsistencies would show a well-run program. If we are saying that

everybody falls into the same category, and we are not looking at these different variables, this whole thing should be based on the variables that are brought to the table. So, therefore, you are going to have inconsistencies in how things operate.

My concern is that this inconsistency is what happens when banks are properly listening to what local communities want and are meeting those needs, and we are going to lose that in this new proposal.

Mr. OTTING. Can I respond to that quickly?

Mrs. AXNE. Sure.

Mr. OTTING. I don't think we lose that because, in preparing the list of everything that is being done, we have actually discovered for a lot of people other things that could qualify in their community, but just as important, we have created an intake valve where someone in your community can come to their regulator and say, "Hey, we are thinking about doing this. It is unique. It is not on the list. Can we get pre-approval before we do it and then find out after the fact it doesn't qualify?"

Mrs. AXNE. I would love to see that part of the proposal in detail.

Mr. OTTING. It is in the ANPR.

Mrs. AXNE. Yes, and I would hope that somebody who is from the Midwest really understands the issues we are facing, not just with this but in general with the economy overlooking parts of this country. And my job is to stand up for States like Iowa and make sure they get what they need. So please, please, make sure that you use those good Iowa roots to ensure that we are protecting people in States like ours.

Moving on, the proposal also makes some changes to the assessment areas that banks have to serve, including creating deposit-based areas. There is obviously a balance here. Having a physical bank to go to is important for a lot of my constituents in Iowa, and there is a lot of research showing that people and small businesses are more likely to want to borrow from their local bank. That said, I absolutely recognize the way people bank has changed and that regulation should reflect that, but the threshold for an area to qualify is 5 percent of the bank's deposits, is that correct?

Mr. OTTING. Yes. Today, there is no criteria for an internet bank to do any CRA other than where their headquarters is, or where they identify an assessment area. So we put in the proposal that if 50 percent or more of your deposits come from outside your assessment area, those markets that are 5 percent or more would be deemed an additional assessment area, but we have put that out for comment and have asked the question, "Is 5 percent the right number?" But this is the first step towards trying to have internet-based providers put dollars back into local communities.

Mrs. AXNE. I am glad you are going to continue to look at that because it is 5 percent of retail domestic deposits, if I am correct, and I would say that we only have four States—California, Texas, Florida, and New York—that even have even 4 percent of the U.S. population. So, for a nationwide bank, I think a small State like Iowa or West Virginia is going to have a tough time qualifying as an assessment area.

Mr. OTTING. It is 5 percent of that bank's deposits, not the banking industry.

Mrs. AXNE. Okay. Well, that is good to hear.
Thank you. I am out of time.

Mr. OTTING. Thank you very much.

Chairwoman WATERS. Thank you.

The gentleman from North Carolina, Mr. Budd, is recognized for 5 minutes.

Mr. BUDD. Thank you, Madam Chairwoman.

Comptroller Otting, it is good to see you today.

Before I dive in on CRA, as you probably know, the House is going to vote on a bill later today to comprehensively reform the consumer credit reporting system. I don't know if you've seen many news reports on this. I doubt you have, because the committee just held one hearing on this, and it was in February of last year, 2019. But I would like to know what the OCC would think about the likely consequences of removing accurate information from those credit reports.

For example, the bill would shorten the time that some information can remain on the credit report from 7 years down to 4 years, and it would virtually remove all predictive data from the credit reports.

So, as quickly as you can, has the OCC looked at the impact on safety and soundness of making such broad changes to the contents of credit reports?

Mr. OTTING. Excuse me for 1 minute. I am not as familiar with it, but the person who would be is right here.

Mr. BUDD. Thank you.

Mr. OTTING. So, we are aware of it, but we haven't issued an opinion on it at this point in time.

Mr. BUDD. Okay. That is a pretty significant bill that we are voting on that has virtually no engagement. It seems like we should have done more in the House to present that evidence to you and have you weigh in on that.

But I want to move on. The regulations in the CRA have not been updated in about 20 years. I think that has been discussed a little earlier today. In fact, they were written even before interstate branching and internet banking even existed. However, critics of CRA reform say that modernization would decrease lending in low- to moderate-income communities. Can you elaborate on whether or not you believe your proposal would increase lending in low- to moderate-income communities, and do you believe that if the regulations stay as they are without reform, that it might actually hinder lending in those communities?

Mr. OTTING. We absolutely do think it will increase lending in low- to moderate-income areas.

Mr. BUDD. The reform would, correct?

Mr. OTTING. Pardon me?

Mr. BUDD. The reform would increase lending?

Mr. OTTING. Yes. It would absolutely increase it for a number of reasons: one, offering accountability by having a measurement system that we can all look at both on units and dollars, by eliminating low- to moderate-income qualifications of loans that actually go to high-income people in those communities across America, and then also increase the reporting that is done in all assessment areas for a bank versus just a small segment of the bank's assess-

ment areas. And we will have tremendous amounts of better data to be able to share with Congress once we complete this.

Mr. BUDD. Thank you.

You mentioned also in a recent Bloomberg article that you appreciated the Fed's framework and even incorporate some of it into your proposal. Can you tell us some details on what aspects of the proposal come from the Fed's ideas and framework?

Mr. OTTING. Yes. In the individual assessment areas, we always felt units and dollars were important, and the OCC and the FDIC were talking about, should we limit the size of a transaction to drive that there is granularity in the actual units. The Fed came up with a process of taking a bank's low- to moderate-income loans, divided by their total loan volume, and then comparing that both to the population and the transactions in the market, and we adapted that into the OCC and FDIC proposal. So, a big part of what Governor Brainard had with us in dialogue is included in the OCC and FDIC proposal.

Mr. BUDD. It sounds like some good common sense. Thank you for that.

And, Madam Chairwoman, I yield back. Thank you.

Chairwoman WATERS. The gentleman from Utah, Mr. McAdams, is recognized for 5 minutes.

Mr. MCADAMS. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for being here today. The CRA was instrumental civil rights legislation from the 1970s meant to address redlining. Its fundamental goal is to ensure that financial institutions have an affirmative obligation to serve the credit needs of local communities in which they are chartered.

And I will repeat what I said when the FDIC and the Fed were here in December: CRA reform must preserve the spirit and intent of the CRA to benefit low- and-middle-income communities and individuals while also updating the CRA for a 21st Century financial system.

I do have concerns about this not being a unified rulemaking with the Fed, and I also believe that we should have a fulsome comment period. It is more important to get CRA reform done correctly than hastily.

A number of our financial institutions have used strategic plans in the past to solicit community input and to develop their CRA plans, and as a former mayor, I participated oftentimes in some of this strategic planning. So, I was glad to see that that was maintained in the proposal. Thank you.

With that, I do have a couple of questions. Comptroller Otting, I have some concerns with the 50 percent, 5 percent system that you're setting up with the proposal. Rather than drive investments and lending into underserved areas, I think what that will ultimately do is shift activities from one hot spot to another hot spot. I really think you are just going to shift focus into high-population States and Cities like New York City, Los Angeles, Texas, and Florida, leaving the rest of the country in the same spot that they are now.

Presuming that a bank must set up new assessment areas where they don't currently have a footprint, how should they be expected to know what the credit needs or community development needs of

an entire State or large MSA are, and wouldn't this just lead to a cookie-cutter, least-common-denominator approach to meeting that obligation?

Mr. OTTING. I think they would do it just the way that institutions do it today. They do it usually through community reinvestment officers in those respective markets who tie into the local community, participate in what the needs are of the community, and then take those needs back to the banks and share where the opportunities are.

Mr. MCADAMS. My concern is really the qualitative nature of that engagement. As a former mayor, I know how much these institutions reached out to try and understand community needs, not only with mayors and local officials, but other community members, and I worry the 50 percent, 5 percent paradigm shifts really undermine the qualitative nature of that local engagement.

Moving on to a different topic, when visiting with a number of my stakeholders, they have also expressed concerns with some of the changes to the community development section, specifically regarding the promotion of economic development by financing small businesses.

In the proposal, some of the language on supporting economic development by financing small businesses was eliminated. In light of the critical importance of economic development and job creation, retention and/or improvement for low- and moderate-income individuals and the demonstrated success of these programs to create opportunities, to create jobs, self-reliance, and prosperity for low- and moderate-income individuals in underserved communities, what was the policy reasons for eliminating those provisions from the notice of proposed rulemaking?

Mr. OTTING. I am not aware where we have eliminated—and you are saying in the investment test?

Mr. MCADAMS. In economic development, specifically.

Mr. OTTING. I don't think we did. Maybe we should follow with up with you.

Mr. MCADAMS. Yes, I can share with you some of the language that raised some alarms.

Mr. OTTING. I would very much appreciate it. This is a great time in the comment period to give us feedback.

Mr. MCADAMS. Okay. That is great. That would be very helpful. Thank you.

Lastly, Comptroller Otting, one of the concerns I have and one of the areas that I am focused on in any CRA reform proposal is, what does reform mean for affordable housing and market-rate housing development? Utah, like many places, is facing a growing housing shortage with quickly escalating home prices. So, this is important for me and my State, particularly since the proposal opens up a number of business lines that can count towards CRA obligations, I worry that the focus on affordable housing may fall by the wayside.

Has the FDIC released any analysis on what the proposal would mean for supporting affordable housing development and if we see a shift in CRA activities away from that space?

Mr. OTTING. The list of qualified activities are what was currently being done across the United States today. So we haven't

opened it up. We have just clarified what gives CRA credit today. I think your issue on housing is an important one. As we have traveled around the United States, you used to hear about the need for jobs and activities and then housing. Now it is housing is one, housing is two, and housing is three. So, I think that is a valid point. We can talk more about that when we come by.

Mr. MCADAMS. Thank you. My last question—it looks like we are out of time, but I want to focus on the ability to continue to innovate and not just have cookie-cutter proposals but innovative proposals of the CRA. So we will follow up with that.

Mr. OTTING. Okay.

Mr. MCADAMS. And, with that, I yield back.

Chairwoman WATERS. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for being here today.

I appreciate your work at looking at CRA as a way to update its regulation that, as we have noted here today, has not been updated for quite some time, and I think there has been pretty healthy dialogue also about the concern of implementation. And I would encourage you to look as to ways to take this regulation and find ways to improve the efficiency of the implementation. Because I think that it has been discussed pretty broadly, I am going to pass on asking questions on the implementation today and shift gears slightly to the Volcker Rule.

As you know, Representative Gonzalez and I have led a group of members from this committee in writing to you and the other financial regulators regarding the Volcker Rule and its reform. The letter that I sent was dated December 3rd of last year and argued that the covered funds provision in the Volcker Rule was overly broad and unnecessarily included venture capital and other long-term funds.

Prior to the implementation of the Volcker Rule, banks supplied a significant amount of capital to venture and growth funds, and this was especially true in regions like Wisconsin and across the Midwest that aren't typically the magnets for this type of investment. Exempting venture and growth funds from the Volcker Rule's covered fund definition, I believe would spur increased investment in innovative companies in places like Wisconsin, across the Midwest, and across the country.

Could you comment on your view of the need to fix or revise the Volcker Rule and, if so, what you have been doing to address this?

Mr. OTTING. First of all, I do agree with your comments. As a former banker, we were actively participating in those small tranches of various forms of preferred or common or subordinated debt that these companies needed before they could go out and access the larger dollar amounts that generally were available through Wall Street. I view that as a critical component of capital for growth and expansion of those businesses, and the Volcker Rule took that away.

There has been a high priority amount of work, I would say, on this particular topic. If I could ask you to wait a week, I think you would be really pleased. I wouldn't want to comment publicly until all the agencies have approved it but I would say we are in the

short stroke, so to speak, of accomplishing, I think, the modifications that we have described.

Mr. STEIL. I appreciate the feedback. I will wait anxiously to see what you put out in a week. I appreciate you coming here today. And I yield back.

Chairwoman WATERS. The gentlewoman from North Carolina, Ms. Adams, is recognized for 5 minutes.

Ms. ADAMS. Thank you, Madam Chairwoman.

And thank you, Comptroller Otting, for being here.

CRA is meant to meaningfully address redlining and ensure access to capital in LMI areas, including for small business lending. There continues to be a need for affordable small business loans for low- and moderate-income individuals and those seeking to open small businesses in low- and moderate-income communities.

A recently released CFPB report notes that reductions in access to capital for small businesses have been exacerbated by bank and branch closures, and, thus, there are fewer formal banking options available to small businesses. So, despite the numerous calls to strengthen incentives for small business lending and improving data collection, this proposal fails to do that.

In fact, your proposal's one ratio and credit for large infrastructure projects will lead to banks focusing on big deals rather than small businesses, business or home mortgage lending.

So how does your proposal define small business lending and what specific ways does it seek to increase access to capital for small businesses already located in the LMI communities?

Mr. OTTING. In the proposal, we are raising the dollar amount of small business lending that qualifies for CRA from \$1 million to \$2 million because, as we have traveled around, we heard that was too restrictive for businesses.

And so we think that has a positive impact on dollars that can flow into those communities, specifically in the CDFI arena, which is where a lot of small business lending is being funded by CDFIs that are in those communities, and know the people in those comments. Two very important things are: one, we have clarified that CDFIs will qualify for CRA; and two, we have put forward in the proposal that the equity that goes into CDFI could be multiplied, meaning that if you were willing to put a dollar of equity in, you could get \$2 or \$3.

So, we think we have had a strong vision on small business lending of how we create dollars. I would also just add a comment that we are seeing, as banks do a less effective job in small business lending, that internet lenders are coming into that space in a fairly robust way.

Mr. ADAMS. Okay. I have another question as well. It is paramount that the Community Reinvestment Act is implemented in a manner that is consistent with its original purpose to ensure that all communities, including low- to moderate-income communities, have equal affordable access to the banking system. Concerns have been raised that the proposal decouples the link between CRA and the legacy of redlining—we talked a lot about that—that it was intended to redress and specifically the link to minority communities that have been systemically discriminated against.

So would you explain how your proposal specifically preserves the legacy and the mission of the CRA as it was originally intended?

Mr. OTTING. The CRA—we believe there is nothing that we are changing that changes that mission or requirements. As you know, we have fair housing and equal credit requirements also that we look at financial institutions' activity on an annual basis. If there are any violations of that, we are required to report those to the Department of Justice or HUD. So I don't believe there is any changes in this document that takes you away from the original intent of the 1970 and in my mind actually enhances it because there is greater accountable.

Mr. ADAMS. So, yes or no, do you believe that modern-day redlining occurs?

Mr. OTTING. I do think there is modern-day redlining.

Mr. ADAMS. Okay. Let me ask one other question.

I want to return to the discussion on Opportunity Zones and follow up on the concerns that Ms. Tlaib raised during her line of questioning. You indicated in 2018 that you expected to offer CRA for opportunities on investment. Your proposal includes that. So are you aware of the concerns about the legislation due to the lack of accountability and oversight? Yes or no, are you aware of that?

Mr. OTTING. I'm sorry. I missed the question.

Mr. ADAMS. Are you aware of the concerns about the legislation and its lack of accountability and real oversight?

Mr. OTTING. On Opportunity Zones?

Mr. ADAMS. On Opportunity Zones.

Mr. OTTING. I read comments that people feel like perhaps some of the markets didn't meet the original intent of the legislation, but I do not spend a lot of time on the Opportunity Zone side.

Mr. ADAMS. There have been a lot of issues raised about it. Are you interested in—

Mr. OTTING. We are not impacted by the Opportunity Zones because we don't have jurisdiction nor—it is generally a tax-related issue, and so we are not directly involved in the Opportunity Zones. The only time there is crossover is where we have said that if a low- to moderate-income area is also in an Opportunity Zone—

Mr. ADAMS. I am out of time. Thank you very much.

I yield back.

Chairwoman WATERS. The gentleman from Texas, Mr. Gooden, is recognized for 5 minutes.

Mr. GOODEN. Thank you, Madam Chairwoman.

Thank you, Mr. Otting, for taking the time to attend today's hearing, even if you haven't always felt welcome at times.

Before presenting these questions, I just wanted to highlight the significance of today's hearing and a few pressing concerns around the intent and purpose of the narrative built around today's hearing.

The CRA regulations that have been in place since 1995 lack objectivity, fairness, transparency, and consistency, and they are very confusing. This isn't my personal take, but the concerns voiced by legitimate stakeholders in the 1,500-plus comments on the proposed notice over the past 18 months, and I see your head is nodding in agreement. Ninety-eight percent of the comments said the

current regulations are confusing; 94 percent of the comments said the current regulations lacked objectivity, fairness, and transparency; and 88 percent of the comments said that current legislation lacked consistency.

And, in fact, the current regulations are riddled with loopholes, as we have discussed here, some that even allow for CRA credits for loans to wealthy households in LMI areas, which inevitably leads to the gentrification of those areas, which is something that my colleagues across the aisle have voiced some disturbance with, and I agree with them.

So it is only natural to conclude that we actually do need broad reform of these policies, and we need it to be consistent, transparent, objective, and as clear as possible. And I believe that will fulfill the CRA's true intent and purpose to ultimately serve LMI households and individuals.

However, instead of supporting your reforms, which I think are great, the majority has decided to question everything throughout this stage including the implementation, and I have heard a lot of reliance today on dissident voices. Earlier today, you were questioned about your knowledge of the overwhelming opposition that we had here a few weeks ago. It was difficult for you to get a response out, but only one Republican was there. It was very partisan.

We have heard about this letter that I think was sent to you by Members of Congress. They were all Democrats. So, we have seen a very partisan take on this but, nonetheless, you are here. We are happy you are here and we thank you.

I have a few questions. You mentioned that expansion of qualifying activities will encourage more capital investment lending and services in LMI, rural, and distressed communities. Would you please expand on that?

Mr. OTTING. Yes. There are two ways we think that works, or actually three ways. The first, you identified, not allowing people to get credit for mortgages to high-earning people in low- to moderate-income areas. The second is publishing the list of what qualifies, so communities can look broadly in their community and ask, where could we get credit for CRA which would motivate a bank to take on transactions like that? And the third is at the top of the house, once we look at the individual assessment areas, a bank can choose to move dollars at the top of the house around once they have met a certain criteria and go out to places like Indian Country or family farms or do additional small business lending outside their assessment areas. We think that will populate more activity across America.

Mr. GOODEN. Thank you.

In December, you mentioned there was a lot of support for the reforms from the public, as well as banks, but you also stated there was strong opposition from certain groups. Who are those groups, and why are they against these reforms?

Mr. OTTING. There is a long list, but I Congresswoman Porter tried to put it into two buckets: either they are on the take; or they don't understand it. We spent a lot of time trying to make sure people understood it. As to the comments that you made, objectivity, transparency, all of those things are what you would think people

would want, but there are groups who are economically benefited by not having that objectivity, and when there is a merger or an acquisition, they show up and basically demand money from financial institutions or not support the merger.

Mr. GOODEN. Which leads to those loopholes I mentioned, and I would like to know how you tackled the issue in your reform proposal to kind of take care of getting rid of these loopholes that people are taking advantage of?

Mr. OTTING. I think you do it by having objectivity, because if at any point in time, if we are proficient at our goal, a bank will be able to know every 90 days whether they are in compliance with CRA. It is like capital. If we said to a bank, "We are not going to tell you until after the exam whether you passed the capital exam," people would say that is the stupidest thing they have ever heard in their lives, but that is kind of what we do with CRA.

So, if you can look at your balance sheet every quarter and decide, am I in compliance with the capital laws, why can't we decide every 90 days if you are in compliance with CRA?

Mr. GOODEN. Thank you. I appreciate your time.

And I yield back to the chairwoman.

Chairwoman WATERS. Thank you very much.

The gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. Thank you, Madam Chairwoman.

And, Mr. Otting, I, too, thank you for being here today and I am hoping you are listening to our suggestions and our concerns. I think everybody in this room, on both sides of the aisle, wants to strengthen CRA, to see that it is as effective as possible, doing its mission, to build community, to build wealth, and to eliminate discrimination.

I wanted to first point out opposition to your proposal that is across the industry. It is across community groups, agencies. For example, FDIC Board Member Martin Gruenberg, as some have said here, voted against the proposal, describing it as, "a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act."

It is also notable that the Federal Reserve did not join in this proposal due to remaining concerns about the proposed rule-making. A Federal Reserve Board Governor was quoted as saying, "Given that the reforms to CRA regulations are likely to set expectations for a few decades, it is more important to get the reforms done right than to do them quickly."

I couldn't agree more, and I was hoping that somewhere in your testimony today, you would pause and say, "I have to pause as a banking regulator. I have to listen to these other voices, including advocates who have come before this committee."

So I ask that of you, will you consider taking a pause to take input from these hearings and from these other regulators?

Mr. OTTING. Yes, you have 40 days to complete the—

Ms. DEAN. No, I asked you for a greater pause.

Mr. OTTING. —comment period.

Ms. DEAN. Not the 40 days.

Mr. OTTING. You have 40 days to comment in the period.

Ms. DEAN. Will you consider a longer period of time—

Mr. OTTING. The answer is no.

Ms. DEAN. You will not. Why not?

Mr. OTTING. Because we feel that this has been a multiyear process where we have extracted a lot of feedback and comments—

Ms. DEAN. I will reclaim my times. Other experts in the field do not believe it has been thoughtfully considered.

Mr. OTTING. Everybody is entitled to their own opinion.

Ms. DEAN. Exactly.

I would like to talk about the problems in the proposal that affect my community. I represent suburban Philadelphia, Pennsylvania's Fourth Congressional District. In my home district of Montgomery County, we have seen some of the highest proportions of bank closures, including over 15 percent of locations in the years 2008 to 2016. We know this disproportionately affects low- and moderate-income communities' access to financial production. Do you agree with that?

Mr. OTTING. I would have to see the data. You are asking me to comment—

Ms. DEAN. This is data—

Mr. OTTING. You are asking me to comment on something without being able to see the data and analyze it.

Ms. DEAN. We will be sure to share it with you, but it is actually important to your rulemaking. It is important to your regulation and rulemaking.

Mr. OTTING. I am not sure I totally understand your question.

Ms. DEAN. Excuse me. I will restate the question. In your rulemaking, did you consider the closing of branch banks and what impact that has on low- and moderate-income communities? Surely, you must have.

Mr. OTTING. The answer is yes. For first time ever, ever in the history of the CRA regulations, we are giving banks credit for maintaining or opening LMI branches. That has never been done before.

Ms. DEAN. And yet this rule will continue the closing of bank branches in low- to moderate-income communities. That is the assessment that we have seen.

I will continue. This affects the core of the Community Reinvestment Act's mission. According to the Philadelphia Federal Reserve, the importance of the bank branches and the service they provide lies at the very heart of the Community Reinvestment Act. By eroding incentives to open bank branches in low- and moderate-income communities in your proposed CRA rule, I am afraid you are going to hurt my constituents rather than help them in your reformation of CRA.

Do you understand the connection between access to community banking in areas that are low income and access to wealth, access to capital?

Mr. OTTING. I do know, and I see nothing in the rule that would support your statement.

Ms. DEAN. You should take a look at the research that has been done that shows that you will actually dilute the ability of folks to—

Mr. OTTING. Again, if you would like to send the research over, we would be happy to review it.

Ms. DEAN. I am certain you are well aware of it, sir, and that is what you are actually in the business of doing: collecting the research and understanding the impact of your reform to CRA.

Finally, I want to say something. I find your comments about discrimination puzzling. How is it that a man in your position, 30 years in banking and regulation, said in 2018 before this committee, and then repeated today, that you have not seen discrimination? I don't know how you have been in this country and not seen discrimination. You said in 2018 that you didn't watch TV or read newspapers and you had not seen discrimination.

Are you the best person to reform—

Mr. GREEN. [presiding]. The gentlelady's time has expired. You may submit your additional statement for the record.

Ms. DEAN. Thank you, Mr. Chairman.

Mr. GREEN. You are welcome.

The Chair now recognizes the newest member of the committee, the gentleman from Texas, Mr. Taylor, for 5 minutes.

Mr. TAYLOR. Thank you, Mr. Chairman. I appreciate it.

And thank you, Comptroller. I appreciate you being here.

I just wanted to make sure I kind of understood the Federal process. Now, you are making a rule. It was published, I believe, on January 9th. A letter was written about it on December 11th. So, clearly, before you published it, people knew about it, because they were already asking questions. Are you complying with the Federal laws as they are written in your rulemaking?

Mr. OTTING. We are.

Mr. TAYLOR. Okay. And so it isn't that what you are doing isn't in compliance with the law. It is just that people, I guess, some people here are unhappy with the laws as they are written. Is that a fair—

Mr. OTTING. They are unhappy with the comment period which, as you recall back in August of 2018, before that, we spent months and months and months going around to communities across America and soliciting feedback. We produced an ANPR that had roughly 40 questions that we asked people to give us feedback on. Then, from those questions, we again went out around the communities across America and started to put a framework together and talk to people about that framework.

And so, between August of 2018 and December of this year, which was roughly 14 months, we entertained concepts, thoughts, and opinions, and then produced on December 12th, the actual notice of proposed rulemaking. Then, it was published in the Federal Register on January 9th, offering up a 60-day comment period, which we knew would be long. It turned out to be 88 days in total. And we have been on a long-term process that people want to describe as short-term.

Mr. TAYLOR. So, the 1,500 comments you are referring to, were those collected subsequent to the publication on January 9th or were they—

Mr. OTTING. No. As part of the comment period, we got 1,500 comments, but there were meetings with thousands of other community organizers, and nonprofit civil rights organizations who came to the OCC, and you may or may not know that we went around to markets across America, and hosted bus tours where we

went into low- to moderate-income communities and met with community leaders to find out, what are your needs, and how can the CRA fulfill those needs?

Mr. TAYLOR. With thousands of meetings and bus tours, it seems like there has been a considerable effort to get input.

Mr. OTTING. Enormous, more than I am aware of for any other rule.

Mr. TAYLOR. Wow, that is terrific. I applaud you for that level of effort and engagement, in reaching out to stakeholders. I assume you weren't meeting with bankers. You were meeting with people who were applying for loans. You were meeting with community interest groups.

Mr. OTTING. Most of those 75 percent were community leaders.

Mr. TAYLOR. Wow. Okay. So you are not even really going so much to the people who are having to comply with the CRA and fill out the forms, but you are going to the people—

Mr. OTTING. People who did low- to moderate-income housing, people who did CDFI activities, which is small business lending. The real true people who were in communities doing the activities. That is whom we wanted to hear from.

Mr. TAYLOR. It sounds terrific. I wish we had this kind of effort to bring in input, and clearly you are modernizing an Act that is in desperate in need of it.

In terms of modernization, just shifting slightly, you seem to have indicated that bankers were gaming the system. How are they gaming it? And you refer to the \$1 equals \$4. But could you sort of expand on that?

Mr. OTTING. I don't know if I would say "gaming" is the right word, that structurally they had the ability to do this. And what they were able to do is, when a mortgage is originated either as a single mortgage, a pool of mortgages, or it is created into a security of low- to moderate-income borrowers, banks could trade those items, and every time they traded those items, it was counted as 100 percent for CRA.

And so as we looked at that, we felt that was one of the ways that we wanted to analyze a bank's long-term commitment on their balance sheet as a percentage of deposits. By doing that, we are eliminating that motivation to trade those securities around, that you sell them to me, and I sell them to her, and she sells them back to me, and I get a dollar of credit every time that mortgage traded hands, in accomplishing my CRA. But not one new dollar was going into that community.

Mr. TAYLOR. And so, how are you adjusting that? The difference, I think, is between originating and holding a mortgage, right?

Mr. OTTING. Yes.

Mr. TAYLOR. So, the person who originates it may not be the person who holds it one quarter or the next quarter or the next quarter?

Mr. OTTING. Yes.

Mr. TAYLOR. So, a loan portfolio can move around. How are we changing that?

Mr. OTTING. The person who has it on their balance sheet will get credit for the length of time they have held it, and the person who originates mortgages and sells them off will get credit as if

they have held that mortgage for 90 days even if they have only held it for 1 day.

And that is a part, I would say—we talked about, what are the top 10 things we are hearing about in our dialogue with the financial institutions. They are saying that may be too restrictive, and I think we will get some comments back through the period which will cause us probably to look at that and decide, did we pick the right number, 90 days, should it be 180 days?

We clearly don't want to, by any means, reduce the amount of dollars that are flowing into the community.

Mr. TAYLOR. My time has expired. Thank you.

I appreciate that, Mr. Chairman. I yield back.

Mr. GREEN. The gentleman's time has expired.

The gentleman from Illinois, Mr. Garcia, is recognized for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman.

Good afternoon, Mr. Otting.

First, I want to go on record as taking strong exception to your earlier characterization of the CRA as some sort of an instrument that people in communities use to extract dollars from banks.

I do so because I came to know one of the CRA's champions in Chicago, Gale Cincotta, a community activist, a community builder, who was renowned across this country by people who work in low-income and working-class communities, and to build them up.

The topic at hand, given the proposed measure of CRA-qualifying activities is dollar-based, per your proposal, banks would be encouraged to engage in high-dollar, simpler projects. As we have discussed today, that is likely to include flashy investments like stadium renovations that make it easier for banks to pass their CRA examinations but do little to help the low-income communities CRA was written to serve.

Mr. Otting, there are many smaller, more complex projects worth investing in, in my district. CRA is helping to drive that investment. I would like to tell you a couple of stories.

One, Gabriela Roman is an executive director of the Spanish Coalition for Housing, headquartered in the Hermosa neighborhood in my district. She writes, "We refinanced our main office building at 1922 North Pulaski in 2018 for \$670,000. It took us a long time to find a lender because it was a small deal. We eventually refinanced with a small bank that made the loan a part of their community reinvestment activities. The office serves about 4,000 community residents each year."

Two, Lulu and her husband Rupert live in the Belmont Cragin neighborhood in my district. They have a long history on the northwest side with the housing center, starting in 2013 when the couple purchased their first home, after completing our first-time home-buyer class.

"We were able to take control of our finances with the class and figure out what best fit our income in terms of finding a loan and a property," Lulu said, "and we learned what we can afford and what we cannot."

Lulu's involvement with the center has blossomed from there. She became a block leader, organizing play streets events that provide families safe places for their children and hosting neighbor-

hood meetings to discuss residents' concerns and issues. This is what community building is about.

Lulu's first-time home-buyer class was supported by CRA contributions from financial institutions who considered the donation part of their CRA investment strategy and support. As a small non-profit organization, Lulu would be unable to continue those classes providing necessary education and engagement without CRA contributions.

Mr. Otting, if your proposal is adopted, all banks will need to do to meet their CRA obligations is invest in a few high-dollar projects with scale. I am concerned that projects like the ones that have helped Gabriela and Lulu will be neglected.

Have you considered the likelihood that banks will abandon their investment in worthy projects in needy neighborhoods like the ones I have described?

Mr. OTTING. First of all, I love those stories about Gabriela and Lulu, and I think those stories are told all across America, where people get the chance to be a part of the American Dream.

Mr. GARCIA OF ILLINOIS. And to my question, sir?

Mr. OTTING. First of all, I think maybe you don't totally understand our proposal. In the assessment areas, we are measuring units and dollars. No financial institution can do a couple of large transactions—

Mr. GARCIA OF ILLINOIS. So you are not concerned that it will have the impact that I described, yes or no?

Mr. OTTING. No, I am not.

Mr. GARCIA OF ILLINOIS. You are not. Okay.

You have been a banker. What is the incentive for a bank to say, "I will fund one large project instead of a hundred or a thousand smaller projects?" Isn't it easier just to fund one large one?

Mr. OTTING. The structure that we are proposing will not allow them to do that.

Mr. GARCIA OF ILLINOIS. In my opinion—and I have read it, and I have been an urban planner and a community builder for many decades in Chicago—it will. So, thank you for your answer.

I would like to enter into the record, Mr. Chairman, a report on community reinvestment from The Resurrection Project in Chicago. It provides for affordable housing, financial education, and immigration services on Chicago's southwest side.

Mr. GREEN. Without objection, it is so ordered.

Mr. GARCIA OF ILLINOIS. Thank you.

The report describes \$537 million in community investment that The Resurrection Project has created or preserved. Behind this figure are thousands of homeowners helped, affordable housing units created, spurred economic development on retail strips in that community, and foreclosures prevented.

The CRA helps make this possible. I urge you to rethink your proposal.

Thank you, Mr. Chairman.

Mr. GREEN. The gentleman's time has expired.

The Chair now recognizes the gentleman from Georgia, Mr. Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

Mr. Otting, thank you for your patience. I think we are at the bottom of the ninth, and I am the closer. So, maybe we can wrap this thing up.

I really appreciate you being here. Thank you for what you are doing. There is something that has kind of been lost in the last few years here in Congress, and it is constructive dialogue, where we can speak to each other as adults.

I apologize that some of my colleagues aren't able to do that. But I think it is important that if we are actually going to get to something for the American people, that we can do that. And we are always going to have differences.

I think it is beyond time for us to address these issues with the CRA. And I will get to the CRA in a moment.

But my focus, especially having rural areas, areas that were really, really hit hard during the financial crisis—Georgia lost more banks than any other State. We still have had a problem with de novo banks, new banks starting up. We still have about three counties that don't have a bank branch at all.

Where you have that, you have the lack of capital in lending, and we need to do something to spark that going in.

Now, I need to make sure that everyone has access to capital. And one of the areas that I am concerned about relating to that is valid when made, is there are some businesses out there that I think have been wrongly characterized that are providing funding to areas that other banks either aren't or cannot, because lack of small-dollar lending.

And as you know, because of the *Madden* decision, the court deviated from almost 2 centuries of precedent of when a loan is made, and that loan is sold, that the interest rate of the original loan stays with it. And that is in jeopardy.

Could you explain why is it important for banks to be able to transfer loan risk off their balance sheets into the market?

Mr. OTTING. It creates liquidity. And certain people have the ability to have origination capabilities and be out in geographic markets or vehicles to create that. And then, often there are investors who will look to provide the capital to fund those loans. And all of a sudden, if that whole model is disrupted because, if I am a buyer, and maybe that interest rate is going to change on me, I probably wouldn't buy that asset.

And as you know, we did not support the *Madden* decision. We have an NPR out that we think will modify this, and we are highly confident. There has been some action by a magistrate court last week on an 1848 law that we had provided them, and we are optimistic that we will get this resolved in 2020.

Mr. LOUDERMILK. I appreciate that, especially with the patchwork of interest rates that we have State by State, which I, as a federalist, I do support the ability to do that, but you do have to have consistency, especially with low-dollar lending.

And that is something that is very important, I believe, especially in today's environment, when there have been studies that have been out recently that 40 percent of American families could not afford a \$1,500 emergency right now without borrowing the money. The problem is, we don't have access in many cases to go find sources for that money.

And I appreciate your bulletin encouraging banks to get back to small-dollar lending, but that was almost 2 years ago, and we need a rulemaking. Can we expect the agencies to take action on small-dollar lending?

Mr. OTTING. You can, in 2020.

Mr. LOUDERMILK. Okay. Thank you. That is very encouraging.

I have a little bit of time left, so I do want to touch on something that I think others may have spoke about, which is the CRA.

Mr. OTTING. I just look forward to having a CRA modernization completion party and that we all can come together as a nation recognizing that. I think this rule will support rural America. It will support low- to moderate-income areas across this nation. And we can get the capital and lending out that those communities deserve today.

Mr. LOUDERMILK. I agree that there is a lot that needs to be revised. And there seems to be—there is a fear of change in this City. We have seen it when technology companies have come in with new technology ideas. There is a fear of doing that, even though those technology companies often focus on the low- and moderate-income areas, or as a new term of banked or unbanked and underbanked.

I also think that, unfortunately, you came in to do this during an election year. Had it not been an election year or, quite frankly, who appointed you to this position, you may have met with some criticism, but not the vitriol that you have right now.

I encourage you to continue going with your patience and perseverance, because I think in the long run everyone will see that those that they are afraid of being harmed will actually be benefited from your actions.

Mr. OTTING. I agree.

Mr. LOUDERMILK. Thank you. I yield back.

Mr. GREEN. The gentleman yields back.

Mr. Otting, thank you so much for appearing today. I will yield myself 5 minutes.

Sir, you, on page 11 of your testimony, address the question of “astroturfing.” Are you familiar with the term in your testimony?

Mr. OTTING. I am.

Mr. GREEN. And you focus on advocates who stuff the ballot box. Is there a reason why you have chosen “advocates” as a term for stuffing the ballot box?

Mr. OTTING. Is there a reason—

Mr. GREEN. You focus on advocates. When you refer to advocates—

Mr. OTTING. No, we focus on everybody who wants to make a comment.

Mr. GREEN. Okay. I am pleased to hear you say this because, as you know, you are affiliated with an entity that was once cited for stuffing the box, as you put it.

Mr. OTTING. That is not a true statement.

Mr. GREEN. Okay. Would you kindly explain, please?

Mr. OTTING. Yes. This was by a group in northern California called the California Reinvestment Coalition. They made an accusation that OneWest Bank and myself were involved in that activity, and that is not true. That is slander on their part.

We put a letter up on our website and said, look, if you want to be able to send something out to the regulators saying that OneWest Bank does a good job in their community, you can use this as a foundation, but we would encourage you to customize that.

And they said CRC accused that some people submitted false letters. We were not involved in that process as all. I would never do something like that. And it is no different than the letter CRC sent out yesterday to their members saying, change the letterhead here and send this in to the OCC for comments.

So we will see a lot of comments coming in from the California Reinvestment Coalition with a similar concept. But I can assure you, we would never do anything like that, nor would I ever participate in anything like that.

Mr. GREEN. Thank you.

Given your level of sensitivity to the issue, what have you done to prevent this from occurring?

Mr. OTTING. It is very difficult, to be honest with you, because the comment letters that come in, we accept anonymous comment letters through the process, but what we do is, all letters that come in, we log them in, we look at the issue, we decide if they are actionable, and then we spend time on those letters to understand. So it is a bit of a complicated issue that can occur with the way the structure of the system is today.

Mr. GREEN. With limited time, do you give an admonition on your website?

Mr. OTTING. Do we give a what?

Mr. GREEN. Do you give a warning, an indication, that this type of activity is unacceptable?

Mr. OTTING. We use the Federal system, and so this isn't an OCC system that we use, we actually use, where the proposed rule is posted and then the comments come in. And then we, just like everybody else, including yourself, if you would like to, can go in and look at the comments. And is there a warning on that system? There is not.

Mr. GREEN. Okay. And would you propose having some sort of admonition? Would that be something appropriate?

Mr. OTTING. I think we all should have a responsibility that if you are submitting comments—

Mr. GREEN. I am going to have to ask you if that is a yes or a no. Sometimes, I don't know whether people have said yes or no when they finish, so—

Mr. OTTING. The problem—and I would say yes, but here, if I could. I would be concerned that people wouldn't offer their comments if we required them to identify themselves.

Mr. GREEN. Okay. I will accept your "yes" simply because I have another question.

What do you think of the notion of auditing after?

Mr. OTTING. I think it is very difficult when you will accept anonymous letters from people.

Mr. GREEN. If you audit not for the purpose of ascertaining who sent the information but for determining whether or not the information is so similar that you can conclude that it may not be information that is valid?

Mr. OTTING. We do that today. We categorize letters, was it a new issue or was it a letter that was produced by somebody and then mass produced by people and mailed in? We already do that today.

Mr. GREEN. And what about technology, having the limited experience you have had and with the sensitivity—I knew you would be very sensitive, by the way—

Mr. OTTING. I am not sensitive to it. When someone challenges your character—

Mr. GREEN. I would be, if I were—but, sir, I would be sensitive were I you, so do not be offended.

But my point is, given your level of sensitivity, what about technology? Have you proposed any technology? You are in a key position to propose change, and I am trying to get some sense of what changes you would recommend.

Mr. OTTING. To be honest with you, this isn't an area I have spent a lot of energy on. We are generally the input version. We post the rule, the data comes in, we analyze the comments, and then make a determination if we want to modify the NPR based upon that. I am assuming this is probably something that should be taken up at a government-wide level because it is a government system.

Mr. GREEN. We will. But I do thank you for your comments.

My time has expired.

Without objection, I will enter into the record two documents that appear to contradict the Comptroller's response to Chairwoman Waters' questions.

The first is his own proposal, which states that a bank will get CRA credit for a "loan to a family-owned corn and wheat farm with gross annual revenues of \$10 million to purchase a tractor."

The second document is remarks made from FDIC Board Member Marty Gruenberg opposing the Comptroller's proposal, saying, "This proposal would allow a bank to achieve a less-than-satisfactory rating in nearly half of its assessment areas and still receive a satisfactory or even outstanding rating."

Without objection, they will be placed in the record.

Again, Mr. Otting, I thank you for your testimony.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is adjourned. Thank you, again.

[Whereupon, at 1:26 p.m., the hearing was adjourned.]

A P P E N D I X

January 29, 2020

For Release Upon Delivery
10:00 a.m., January 29, 2020

STATEMENT OF
JOSEPH M. OTTING
COMPTROLLER OF THE CURRENCY
before the
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

January 29, 2020

Statement Required by 12 U.S.C. § 250:
The views expressed herein are those of the Office of the Comptroller of the Currency
and do not necessarily represent the views of the President.

Chairwoman Waters, Ranking Member McHenry, and members of the Committee, thank you for this opportunity to update the Committee on several activities underway at the Office of the Comptroller of the Currency (OCC). As requested, my testimony includes a discussion of the OCC and the Federal Deposit Insurance Corporation (FDIC) proposal to strengthen and modernize the Community Reinvestment Act (CRA) regulatory framework, the condition of the federal banking system, our supervision of regulated entities and the risks they face, our diversity efforts, incentive-based executive compensation policies for regulated entities, and our agencies' priorities, including efforts to enhance compliance with the Bank Secrecy Act (BSA) and anti-money laundering (AML) regulations and our efforts to support responsible innovation in the federal banking system.

Strengthening and Modernizing Community Reinvestment Act Regulations

On December 12, 2019, the OCC and the FDIC jointly issued a proposal to strengthen and modernize CRA regulations.¹ The proposed rule—as published in the *Federal Register* on January 9, 2020²—would apply to all national banks, state banks that are not members of the Federal Reserve System, and federal and state savings associations. The banks regulated by the OCC and FDIC conduct upwards of 85 percent of all CRA activity in the country. The OCC worked closely with the Federal Reserve and FDIC for months leading up to the proposal and the proposal incorporates ideas from all three agencies. However, the Federal Reserve opted not to join this notice of proposed rulemaking.

As staff have worked to develop a proposed rule in accordance with the Administrative Procedures Act, we have relied upon a large body of work conducted over nearly a decade that has identified opportunities to improve CRA regulations. The team considered hearings

¹ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-147.html>.

² See <https://www.federalregister.gov/documents/2020/01/09/2019-27940/community-reinvestment-act-regulations>.

conducted by the three federal banking agencies in 2010,³ recommendations that the agencies reported to Congress in 2017⁴ following a three-year review of regulations as well as recommendations published by Treasury⁵ and feedback gathered by the Federal Reserve.⁶

Development of the proposal also was informed by approximately 1,500 comments responding to the OCC's Advanced Notice of Proposed Rulemaking (ANPR) published in August 2018⁷ and extensive outreach conducted by the agency over the last 18 months. The interagency rulemaking process for CRA provides extensive and ample opportunity for all stakeholders to learn about the proposal, provide comments, voice their concerns, and have their interests heard. Our outreach has included meetings and conversations with thousands of stakeholders of all kinds, including community advocates and civil rights organizations, and

³ "CRA Public Hearings Held Summer 2010." The Federal Financial Institutions Examination Council. July-August 2010 (<https://www.ffiec.gov/cra/hearings.htm>).

⁴ *Joint Report to Congress*. The Federal Financial Institutions Examination Council. March 2017 (https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf).

⁵ "Memorandum: Community Reinvestment Act—Findings and Recommendations." U.S. Department of the Treasury. April 3, 2018 (<https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf>).

⁶ Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act. Board of Governors of the Federal Reserve System. June 2019. (<https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf>).

⁷ See OCC News Release 2018–87 (August 28, 2018); 83 FR 45053 (September 5, 2018). Summaries of these meetings, as well as all comments received on the ANPR, are available at Docket OCC-2018-0008 <https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dc=PS&D=OCC-2018-0008>.

personal visits with a range of stakeholders in Atlanta,⁸ Baltimore,⁹ Los Angeles,¹⁰ New York,¹¹ Washington D.C.,¹² and New Mexico.¹³

The preponderance of feedback from all of those sources clearly supports modernizing the CRA rules. In fact, of the ANPR commenters who addressed the following issues (1) 94 percent stated that the current CRA framework lacks objectivity, transparency, and fairness; (2) 98 percent stated CRA is applied inconsistently; (3) 88 percent said it is hard to understand.

I am a strong supporter of the CRA and believe in its ability to revitalize communities. During my 35 years as a banker, I have personally worked to implement CRA programs alongside community members to meet their needs and drive investment and lending into areas that need it most. I have also seen opportunities to make CRA regulations work better for everyone. I believe we can make CRA regulations stronger by making four basic, but important, changes to the regulations.

First, the proposal would clarify what counts for CRA credit by articulating clear standards and requiring the agencies to publish an illustrative list of qualifying activities. Second, it would update how banks define their assessment areas by retaining areas surrounding branches

⁸ “Comptroller of the Currency Tours Atlanta Areas Where the Community Reinvestment Act Has Benefitted the Community and Where More Can Be Done.” News Release 2019-88. August 9, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-88.html>).

⁹ “Comptroller of the Currency Visits Baltimore Affordable Housing Event.” News Release 2019-90. August 14, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-90.html>).

¹⁰ “Comptroller of the Currency Visits Compton, California, to Discuss How to Increase Community Reinvestment.” News Release 2019-104. September 9, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-104.html>).

¹¹ “Comptroller of the Currency Visits New York Neighborhoods Supported by the Community Reinvestment Act, Discusses Opportunities to Do More.” News Release 2019-95. August 21, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-95.html>).

¹² “Comptroller of the Currency Visits Areas of Washington, D.C., to Discuss Community Reinvestment Success and Opportunities.” News Release 2019-93. August 19, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-93.html>).

¹³ “Comptroller of the Currency Visits New Mexico Pueblos to Discuss Community Reinvestment Act and Bank Services.” News Release 2019-100. August 28, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-100.html>).

and adding additional assessment areas where banks draw large amounts of their deposits. This would maintain the importance of branches in meeting community needs and capture banks with large scale activities outside their facility-based network. Third, the proposed rule would require examiners to evaluate CRA performance more objectively by assessing the distribution of retail lending as well as the impact of CRA activity. It would assess what portion (number of units) of a bank's retail lending is targeted to low- and moderate-income (LMI) individuals and LMI areas as well evaluate the impact of a bank's CRA-qualifying activities by comparing the dollar value of a bank's CRA-qualifying activity with its retail domestic deposits in each assessment area and at the overall bank level. Fourth, the proposal would improve the transparency and timeliness of reporting. Better reporting for banks subject to the new evaluation method would allow stakeholders and bankers to gauge CRA performance throughout the evaluation cycle, speed up regulatory decision making, and reduce the time necessary to produce Performance Evaluations at the conclusion of CRA examinations.

These changes would help achieve specific benefits and relief that stakeholders have expressed are important, such as:

- Removing uncertainty that discourages investment—Subjectivity and lack of transparency leave bankers and stakeholders guessing what qualifies for CRA credit and how much credit they will receive. This limits innovation and restricts the flow of capital to underserved areas. The proposal would fix this problem in part by adopting clear criteria, publishing an illustrative list of qualifying activities, and establishing a clear process for confirming that activities are qualifying and adding the activities to that list.

- **Aligning incentives to focus on LMI borrowers**—Current rules allow banks to receive credit for retail loans to wealthy borrowers in LMI areas, which can contribute to displacement and harmful gentrification. The proposal refocuses CRA credit on LMI borrowers by closing this loophole.
- **Reducing CRA deserts**—Current rules neglect rural needs and those of Indian country by focusing CRA evaluations on urban areas where branches are concentrated. The proposal would address this concern by clarifying that banks can receive credit outside their assessment areas and what specific activities serving rural and underserved areas would qualify for CRA credit. Requiring banks to designate additional assessment areas where they take large amounts of deposits also helps serve areas beyond the facility-based assessment areas.
- **Shortening gaps between performance evaluations and publication**—Today’s process results in performance evaluations that can be more than 1,000 pages long and take months or years to produce. More objective measures and standardized reporting would alleviate this problem.
- **Refocusing on long-term activity**—Today’s approach generally credits activity *initiated* within an evaluation period. The proposed rule instead would look at the sustained commitment of a bank to meet the credit needs within its communities and reward long-term investment that can help make more meaningful and lasting change.
- **Supporting America’s small farms and small businesses**—The eligible size for loans to receive CRA credit has not been updated in 25 years. Raising the eligible

size would help create more jobs and economic opportunity and better support America's small farms and small business.

- Accommodating different bank sizes and business models—The proposal would provide an opt-in for small banks with less than \$500 million in total assets to choose whether to be evaluated under existing performance standards or the revised framework based on their unique business model.

While I believe the proposal would make important strides to improve CRA regulations, it can still be improved by the thoughtful comments of stakeholders. Public comment is an important part of the rulemaking process and works best when comments are informed by the actual proposal rather than misperceptions. The following are examples of misperceptions in the public discourse that I would like to clarify.

The first and most grievous misperception is that the proposal somehow legalizes redlining and would reduce banks' accountability for serving their communities. The proposal actually would make evaluation more objective and transparent and thereby hold banks more accountable for services delivered to their communities. The OCC will continue to have authority under fair lending laws¹⁴ and will continue to conduct regular fair lending examinations of supervised institutions under that authority, separately from CRA, to fight illegal discrimination and redlining. Nothing in modernizing CRA regulations encourages or legalizes redlining. Nothing in the proposed rule limits agency authority to examine for compliance with and enforce fair lending laws.

Another misperception involves claims that the proposal would rely on a single metric to determine a bank's CRA rating. The proposal would require examiners to consider a retail

¹⁴ See the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.*, and the Fair Housing Act, 42 U.S.C. 3601 *et seq.*

lending test, virtually identical to that recently described by Federal Reserve Governor Brainard.¹⁵ In addition, examiners would evaluate the impact of a bank's CRA activity by measuring the dollar value of that activity in each assessment area and at the overall bank level. *Then*, examiners would be required to apply their judgment in considering performance context to assign a final rating. For any reasonably sized bank, that involves hundreds of measures, and for larger banks it involves thousands. The proposed rule is structured to provide a series of checks and balances against weaknesses or abuses that may occur if only one aspect of the rule were considered. For instance, focusing only on the number and distribution of retail loans, as with Governor Brainard's approach, would allow a bank to reduce the actual value of these loans made in an area as long as they were distributed in an acceptable manner. Measuring dollars as well mitigates that concern. Conversely, measuring the distribution of loans limits a bank from satisfying all of its CRA obligations with a single large check. Requiring examiners to apply their expert judgment and consider performance contexts acts as an additional check to ensure CRA performance is evaluated qualitatively as well as quantitatively.

Yet another misperception suggests that the proposal strays too far from the statute and loses its focus on low- and moderate-income people and neighborhoods. On the contrary, the list of approved activities are more true to the statute's original intent and refocuses on LMI individuals by closing harmful loopholes that exist today. The proposal would stop the CRA credit banks receive today for loans to wealthy borrowers who buy homes in LMI areas. In closing this loophole, the proposal responds to specific feedback to reduced incentives that contribute to displacement and harmful gentrification. The proposal would also end incentives for banks to buy and sell the same pool of loans over and over without adding one new dollar to

¹⁵ See <https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm>.

the community as they do today. These are two important ways that the activities being considered in the proposal help refocus CRA activity on LMI people and areas.

Another misperception is the proposal eliminates the importance of branches. Instead, the proposal *maintains* the branch's central role in CRA assessment areas and provides specific credit to banks for maintaining branches in LMI areas and in other areas of need. Today, a reasonably sized bank may have dozens or even hundreds of assessment areas around its branches, deposit-taking ATMs, and headquarters. But, banks only receive a full-scope CRA exam in a fraction of those areas. A review of any midsize or large bank CRA Performance Evaluation will confirm this practice today. Under the proposal, banks would receive the same evaluation in every assessment area. That increases the importance of branches and prevents the practices that exist today that would allow banks to load up on activities where it expects full-scope examinations and neglect areas that will not be examined as closely. In addition, the proposal would provide banks specific credit for maintaining branches in LMI areas and other areas of need.

One other misperception regarding the proposal is the idea that a bank could fail in as many as half of its assessment areas and still pass. The proposal sets no such threshold. Instead, the proposal states that a bank must have at least a satisfactory in a significant portion of assessment areas to get a satisfactory at the bank level and specifically asks for input on whether that threshold should be as high as 80 percent. We look forward to comments on this issue to help us determine a threshold and will revisit this issue after considering comments.

There is another misperception suggesting the proposal creates a new incentive by giving banks CRA credit for financing athletic facilities. In actuality, banks have received credit for financing athletic facilities, including professional sport stadiums, under the current CRA

framework for decades. A review of publicly accessible Performance Evaluations¹⁶ provides ample examples. Many of the examples involve community supporting repairs to local high school and municipal facilities that serve local communities. Some involve creative projects involving multiuse facilities or facilities that provide access to schools or colleges that primarily serve minority and LMI areas. The public reaction to including that item among the list of approved activities, however, demonstrates the value of the proposal's transparency. Under the current approach, such decisions would be made inconsistently and subjectively, but the proposal provides a transparent illustrative list of examples of qualifying activities that is available for all to review. Such transparency is healthy and part of the ongoing process of maintaining a list of pre-approved activities, and I welcome comment on all of the activities on the proposed list.

Another misperception suggests regulatory chaos will ensue if the three federal banking agencies fail to move in lock step. The reality is there are many examples where agencies act independently based on the needs of the institutions they oversee and the communities served by those institutions. Furthermore, the proposal would cover insured depository institutions regulated by the OCC and the FDIC that conduct 85 percent of all CRA activity. It is important to note CRA applies to the insured depository institution and not to its holding company.

Another harmful misperception that should be corrected is that the proposed rule would result in less CRA activity. Not true at all, but that misperception has been created by a handful of groups circulating faulty research,¹⁷ form letters,¹⁸ and encouraging local resolutions¹⁹ based upon these misperceptions. The faulty forecast, developed more than a year in advance of any

¹⁶ Published Performance Evaluations for OCC-regulated banks and thrifts are available online at <https://apps.occ.gov/crasearch/default.aspx>.

¹⁷ "NCRC Forecast: Weakening The Community Reinvestment Act Would Reduce Lending By Hundreds Of Billions Of Dollars." National Community Reinvestment Coalition. September 6, 2018 (<https://ncrc.org/ncrc-forecast-weakening-the-community-reinvestment-act-would-reduce-lending-by-hundreds-of-billions-of-dollars/>).

¹⁸ See <https://ncrc.org/treasurecra/>.

¹⁹ See <https://ncrc.org/local-resolutions-one-tool-in-supporting-appropriate-cra-reform/>.

actual agency proposal to amend the rules, is premised on a Philadelphia Federal Reserve Bank study published in June 2017 describing what *could* happen in Philadelphia if certain areas were made ineligible for CRA credit.²⁰ The proposal, however, does not eliminate eligibility of any assessment areas. In fact, the proposal would create additional assessment areas where banks would be evaluated for CRA performance.

Another concern we have heard is that banks only have a limited number of CRA dollars to spend and broadening assessment areas and increasing lending to new needy areas, such as Native American reservations and distressed areas, will water down activity in existing areas by cutting pieces of the pie smaller and distributing them more widely. This worry assumes the size of the pie remains the same. Based on my experience as a banker and conversations with many bankers, we believe proposed changes would increase the size of the pie and that bankers will be incentivized to do more because there will be greater regulatory certainty about what counts and how much an activity counts for CRA credit.

By clarifying these misperceptions, I hope stakeholders will be able to focus on what is actually in the proposal in developing their comments. We understand that reasonable people can disagree and are entirely entitled to their views. However, the OCC supports public advocacy and discourse and welcomes all comments to make the CRA stronger.

We are also sensitive to concerns expressed by the Chairwoman and colleagues regarding “astroturfing” and the potential for advocates to “stuff the ballot box” when it comes to public comments. Astroturfing can adversely affect public discourse in two ways. First, it can suggest

²⁰ Lei Ding and Kyle DeMaria. [A Practitioner’s Summary: The Effects of the Community Reinvestment Act \(CRA\) on Mortgage Lending in the Philadelphia Market](https://philadelphiafed.org/-/media/community-development/publications/discussion-papers/practitioner-summary_the_effects_of_the_community_reinvestment_act_on_mortgage_lending_in_the_philadelphia_market.pdf?la=en). Community Development Studies & Education Department, Federal Reserve Bank of Philadelphia. June 2017 (https://philadelphiafed.org/-/media/community-development/publications/discussion-papers/practitioner-summary_the_effects_of_the_community_reinvestment_act_on_mortgage_lending_in_the_philadelphia_market.pdf?la=en).

more opposition or support for particular views than actually exists. Second, it can foster misperceptions if form letters and advocacy materials repeat inaccurate information over and over. Astroturfing can come in different forms. In December 2019, we shared concerns with the Chair and Ranking Member of both this committee and the Senate Committee on Banking, Housing, and Urban Affairs regarding practices of one well-known community advocacy group publishing letters purportedly signed by hundreds of its member organizations. After personal conversations, we learned that a number of the heads of the group's most prominent members were not aware of the letter or its contents. While these techniques may result in temporary publicity, the actual impact of such practices on the rulemaking process is limited, because each comment, including those submitted anonymously, is reviewed for the merit and contents of the comment itself. Form letters are easily identified and to the extent they provide valuable insight we use that information in the rulemaking process, but the sheer volume of comments does not alone affect the outcome of the rulemaking process. Conversely, form letters that repeat inaccurate information countless times are of less value to the rulemaking process. For those reasons, we encourage each stakeholder to read the proposal for themselves and provide comments and specific suggestions on the proposed rule to make a final rule even stronger by the deadline of March 9, 2020—88 days after the proposal's initial release.

Condition of the Federal Banking System

The OCC supervises 1,200 national banks, federal savings associations, and federal branches and agencies of foreign banks (banks) operating in the United States. These banks range in size from small community banks to the largest most globally active banks. The vast majority of national banks and federal savings associations, numbering approximately 932, have

less than \$1 billion in assets, while more than 61 have more than \$10 billion in assets. Combined, these banks hold \$12.4 trillion or 68 percent of all assets of U.S. commercial banks.²¹

OCC-supervised institutions manage more than \$55 trillion in assets held in custody or under fiduciary control, which amounts to 43 percent of all fiduciary and custodial assets in insured U.S. banks, savings associations, and uninsured national trust banks.²² The federal banking system holds more than three-quarters of the credit card balances in the country, while servicing about a third of all first-lien residential mortgages. Through their products and services, most American families have at least one relationship with an OCC-regulated bank.

The condition of the federal banking system remains strong and is a source of economic opportunity for local communities and the nation as a whole. In July 2019, the current economic expansion of more than 10 years became the longest in U.S. history, which has benefited banks' overall financial performance. And banks have helped maintain that momentum. Capital and liquidity remain near historic highs. As of September 30, 2019, the overall federal banking system, including community banks with less than \$1 billion in total assets, held record high levels of capital as reflected in their leverage ratios as well as their tier 1 risk-based capital ratios. Tier 1 capital ratios for the federal banking system have increased from 9.4 percent in 2008 to 13.5 percent in 2019. For the same time period, banks with less than \$1 billion in total assets reported an increase in Tier 1 capital ratios from 14.3 percent to 18.5 percent. OCC-supervised banks reported healthy revenue growth with a return on equity of 12.7 percent. Net income increased 8 percent during the last year, although net interest margin was flat through the third quarter of 2019.

²¹ Data current as of September 30, 2019.

²² Data current as of September 30, 2019.

Supervision of OCC-Regulated Entities and the Risks They Face

A core part of the OCC's mission is to identify, assess, and communicate risks facing the federal banking system. The OCC closely monitors risks to the federal banking system on a continuous basis and publishes a summary of risks facing banks twice a year in our *Semiannual Risk Perspective*.²³ The most recent report published December 9, 2019, highlights the state of credit, operational, compliance, and interest rate risks.²⁴ The specific risks highlighted in each report evolve in the context of changing economic, technological, and bank operating developments.

Highlights from the most recent report include:

- Operational risk is elevated as banks adapt to a changing and increasingly complex operating environment. Key drivers elevating operational risk include the need to adapt and evolve current technology systems for ongoing cybersecurity threats.
- Credit risk has accumulated in many portfolios. Banks should prepare for a cyclical change while credit performance remains strong. Preparation includes maintaining robust credit control functions, particularly credit review, problem loan identification and workout, collections, and collateral management.
- Recent volatility in market rates has led to increasing levels of interest rate risk. The complexity of asset/liability management is exacerbated by the recent yield curve inversions.

²³ See <https://occ.gov/publications-and-resources/publications/semiannual-risk-perspective/index-semiannual-risk-perspective.html>.

²⁴ "OCC Highlights Key Risks for Federal Banking System." News Release 2019-145. December 9, 2019 (<https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-145.html>).

- The London InterBank Offered Rate (Libor) will likely cease to be an active index by the end of 2021. Accordingly, the OCC is increasing regulatory oversight of this area to evaluate bank awareness and preparedness.
- Banks face strategic risks from non-depository financial institutions, use of innovative and evolving technology, and progressive data analysis capabilities.

The report also highlights technology management as a special topic in emerging risks, along with a discussion of cybersecurity as a risk that regulators and industry should closely monitor. Malicious external and internal actors use a variety of techniques to circumvent bank cybersecurity controls, and target not only bank staff and processes, but also bank customers and third parties. While banks have generally implemented appropriate security programs, continued vigilance is necessary to adapt to evolving cyber threats. As a result, it is critical that banks implement and maintain appropriate security tools and internal controls to protect their operations and sensitive data. Specifically, we expect banks to maintain basic cybersecurity controls including effective inventory management of information technology systems, strong configuration standards, and comprehensive patch management programs. Strong authentication programs, use of data encryption, and processes to continually test and validate the effectiveness of controls will also assist banks in mitigating potential vulnerabilities and assist them in their preparedness for a cybersecurity stress event.

By being transparent about the risks that we observe facing the banking system and publishing our findings, we believe the industry and bank management are better prepared to identify and manage the specific risks that may affect their institutions.

OCC examiners will use the risks highlighted in the agency's *Semiannual Risk Perspective* to prioritize their efforts over the next six to 12 months. These risks inform specific

bank-level supervisory strategies that are tailored to the specific risks and business models of each supervised institution. That supervision is informed by review of extensive bank specific confidential supervisory information and on-site work. Local expertise is augmented and supported by a nationwide network of policy experts, lawyers, economists, information technology specialists, and others.

The OCC closely monitors the number of outstanding Matters Requiring Attention (MRA) concerns as an additional indicator of bank health. The number of MRAs issued by OCC examiners fell slightly during 2019 and is at its lowest level since 2006. Banks have invested significant time and resources addressing our supervisory concerns, and the decline in outstanding MRAs represent sustained improvements in bank governance, oversight, risk management systems and controls, and operating conditions of the banks. Both MRAs and enforcement action trends are reported semiannually in the agencies *Semiannual Risk Perspective* as well.

OCC's Diversity Efforts

The fulfillment of the agency's core mission of bank supervision depends on its employment of talented staff with high levels of expertise and experience. The OCC is fully committed to maintaining a competent, highly qualified workforce and recruiting the best, diverse talent available from a variety of sources. The agency is focused on maintaining an inclusive culture and workplace environment with a diversity strategy that focuses on leadership commitment, recruitment, development, retention, work-life balance, and an engaging culture.

The OCC has had an agency-wide diversity strategy in place for more than 10 years and regularly aligns those diversity strategic goals with the agency's strategic plan.

As of September 30, 2019, the participation rate of females in the OCC's permanent workforce was 44.3 percent, and the participation rate of minorities in the OCC's workforce was 35.6 percent. The participation rates for African Americans and Asian Americans were 17.6 percent and 9.4 percent, respectively, both above the National Civilian Labor Force (NCLF) rate. The participation rate for Hispanic Americans, at 7.4 percent, is slightly below the NCLF rate. In 2019, a focused effort was launched to uncover any impediments that may exist in the career cycle of Hispanic Americans at the OCC, with the intent to make substantive recommendations to encourage their full participation at the agency.

The OCC benefits greatly from the input of its seven Employee Network Groups (ENG) that advance special emphasis programs: the Network of Asian Pacific Americans; the Coalition of African American Regulatory Employees; PRIDE (the Gay, Lesbian, Transgender, and Bisexual Employees network group); the Hispanic Organization for Leadership and Advancement; The Women's Network; Generational Crossroads; and the Veterans Employee Network. These ENG's serve as a resource for mentoring and engagement, and as a collective voice in communicating workplace concerns and providing input to management around diversity and inclusion programs and activities within the OCC. The groups hold an annual leadership forum with the Comptroller and other key agency stakeholders to align individual group objectives with agency strategic priorities pertaining to recruitment, career development, and retention.

The OCC also has a robust recruitment program to attract highly qualified candidates who reflect a cross-section of the national population, particularly for its entry-level assistant

national bank examiner positions. The recruitment program features ongoing partnerships with colleges, universities, banking associations, and professional affiliations. These efforts include participating in recruitment activities at Hispanic Serving Institutions, Historically Black Colleges and Universities, as well as outreach to student organizations. The OCC also has recruited on campus at minority-serving institutions and sponsored similar activities at colleges and universities with large female student bodies (60 percent or greater). The OCC also participates annually in a wide range of meetings, conferences, and career fairs to develop relationships and gain access to a diverse student applicant pool.

We are particularly pleased that, over the last four fiscal years (2016 - 2019), the OCC, through the federal Pathways Internship Program, has hired 40 students, of whom 40 percent were females and 47.5 percent were minorities. We also have hired 37 financial interns, of whom 56.8 percent were females and 32.4 percent were minorities. Over the same time frame, the agency sponsored 97 minority interns through its National Diversity Internship Program.²⁵

Last summer, the OCC partnered with the District of Columbia's Department of Employment Services to provide paid summer internships to 80 rising seniors from D.C. high schools. The internships provided these minority students exposure to a professional workplace, career-readiness training, and greater awareness of the range of potential career opportunities in the financial service industry and regulation. The program was well-received by the students and agency staff, and the District of Columbia recognized the OCC's program as its intern program of the year. The program also gained the attention of Operation HOPE, a national financial literacy organization, which will provide paid positions to some of these students this summer.

²⁵ The OCC's National Diversity Internship Program partners with the following organizations that focus on developing opportunities for minorities and women in the industry: the Hispanic Association of Colleges and Universities; INROADS; Wire2Net; Minority Access; and The Washington Center.

The OCC will host the program again this year. I am proud to see other federal agencies following the OCC's leadership in this area to offer similar programs that will benefit even more students in 2020. The OCC is providing guidance and assistance to the FDIC, Consumer Financial Protection Bureau, and the Federal Housing Finance Agency to launch their programs and has offered similar assistance to the Nation Credit Union Administration.

The OCC is equally committed to the inclusion of minorities, women, and minority- and women-owned businesses at all levels of the agency's business activities. Payments to minority- or women-owned businesses represented 40.9 percent of the OCC's total contractor payments in fiscal year 2019, on target with the five-year average of 40.8 percent.

Section 308 of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) describes goals for preserving and promoting minority depository institutions. The OCC takes numerous actions to achieve these goals, as described in recent OCC testimony before the Subcommittee on Consumer Protection and Financial Institutions.²⁶ For example, OCC regularly hosts workshops with minority depository institutions (MDI) and larger institutions to facilitate relationship building, information sharing, and successful collaboration opportunities. OCC subject matter experts provide technical assistance to MDIs on various topics, including cybersecurity, legal, accounting, compliance, and safety and soundness issues. The OCC also hosts meetings of its MDI Advisory Committee to assess the current condition of MDIs, what regulatory steps the OCC could take to fulfill the mandate of section 308, and other issues of concern to OCC-supervised MDIs. The OCC holds bank director workshops throughout the United States that address risk governance, credit risk, compliance risk, and other important

²⁶ See Testimony of Beverly Cole, OCC Deputy Comptroller, Northeastern District, before the Subcommittee on Consumer Protection and Financial Institutions, Nov. 20, 2019. <https://www.occ.gov/news-issuances/congressional-testimony/2019/ct-occ-2019-137-written.pdf>

banking issues and encourages MDI directors to attend these workshops, waiving participation fees as an incentive. The OCC's District Community Affairs Officers consult with MDIs on community development, the CRA, and related topics, and the OCC's External Outreach and Minority Affairs staff consult with MDIs on community development financial institution certification and advise them about other federal resources that support their missions.

Incentive-Based Executive Compensation for Regulated Entities

The invitation letter also sought an update regarding incentive-based compensation policies for regulated entities under Section 956 of the Dodd-Frank Act. The OCC supports implementing Section 956 of the Dodd-Frank Act regarding incentive-based compensation for regulated entities and is committed to completing the rule as required by the law. The agency continues to work with other federal agencies to develop a joint rule as required. While that process is underway, the OCC has issued heightened standards for large banks that include provisions that address compensation. Based on our supervisory experience under existing guidelines, most banks have already adjusted their compensation practices consistent with Section 956 and in advance of a joint rule.

OCC Priorities and Objectives

Since becoming Comptroller, I have sought to strengthen the federal banking system as an engine to promote economic growth and prosperity for consumers, businesses, and communities, including low- to moderate-income (LMI) communities, across the country. My priorities have been squarely focused on ensuring that the federal banking system continues to operate in a safe, sound, and fair manner and that the OCC operates as effectively and efficiently as possible; completing the implementation of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Economic Growth Act) to reduce regulatory burden for small

and mid-size institutions while safeguarding the financial system and protecting consumers; modernizing the Community Reinvestment Act (CRA) to increase lending, investment, and banking services where it is needed most (discussed in detail above); encouraging small-dollar lending; and improving the efficiency and effectiveness of Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) compliance.

OCC Operational Efficiencies

When I arrived at the OCC, I immediately made the agency's effectiveness and efficiency a top priority. Ensuring the OCC operates effectively and efficiently allows us to succeed in our mission, to be a responsible steward of every assessment dollar collected, and to maintain a professional and fulfilling workplace for the men and women who serve our nation by supervising the federal banking system. In fiscal year 2019, we were again able to reduce our costs while being mindful of our bottom line. We continue to be fully reserved including our projected three-year capital expenditures, without sacrificing the high-quality supervision and technical expertise that national banks and federal savings associations have come to expect.

Because of these and other efficiencies, the OCC announced in December 2019 that we reduced the assessment rates charged to supervised institutions in all fee schedules by 10 percent for the 2020 calendar year. The reduced assessments went into effect January 1, 2020, and will be reflected in semiannual assessments paid by national banks and federal savings associations. This 2020 fee reduction is in addition to the 10 percent reduction in the General Assessment Fee Schedule rates that the OCC implemented for the 2019 calendar year. The reduction in fees is expected to reduce costs to the federal banking system by \$85 million in 2020. These reductions in rates help to better align the OCC's revenues with the agency's streamlined cost structure and make assessed fees more comparable to state counterparts. State bank supervision fees and

assessments remain significantly less than the OCC's assessment fees because state bank supervisors share their responsibilities with the Federal Reserve (FRB) and the FDIC and are therefore subsidized by reserves maintained and insurances premiums paid to the FRB and FDIC respectively by national banks and federal savings associations.²⁷ Assessments collected by the OCC continue to be sufficient for the agency to succeed in our mission of ensuring that the federal banking system operates in a safe, sound, and fair manner.

Examples of operating efficiencies that have allowed the agency to reduce the fees charged to banks are savings associated with optimizing space and real estate costs, reducing contract service costs, and conducting more remote work to reduce associated travel. While reducing costs, the OCC continues to invest in the future of OCC employees and the capabilities of the agency. For example, the OCC recently completed an agency-wide computer refresh to ensure that employees have current computer operating systems to perform their duties. In fiscal year 2020, the agency funded improvements in video conferencing and bandwidth to improve capabilities enabling employees to perform their jobs more efficiently and maintained funding of the development of a single supervisory system to modernize the tools the agency employees use to supervise bank activities. The improved system, expected by the end of 2020, will enable examiners to spend more time focused on higher priority supervisory work, thereby enhancing the effectiveness and efficiency of the agency's primary activity—bank supervision.

Implementation of the Economic Growth Act and Other Regulations

On November 18, 2019, the OCC completed its work to implement the common sense, bipartisan reforms included in the Economic Growth Act. The Economic Growth Act related rules and other regulations we have finalized will reduce regulatory burden for small and mid-

²⁷ A review of 2018 state assessments by the OCC showed the median of state fees was almost half of OCC rates for banks with similar amounts of assets.

size institutions while safeguarding the financial system, protecting consumers, and encouraging economic opportunity.

The OCC had the responsibility to issue one OCC-specific regulation, in addition to several joint agency rulemakings, to fulfill the requirements of the Economic Growth Act. Finalizing nine interagency rules in about 18 months reflects a significant commitment among the agencies to swiftly implement the Act so that banks, consumers, and businesses could realize the benefits intended by the law as quickly as practical. I applaud the OCC staff members and the cooperation of staff from the other agencies who worked tirelessly to accomplish this significant task.

Thrift charter flexibility. Section 206 of the Act required the OCC to issue rules to provide flexibility to small federal savings associations to broaden their business models and elect to operate with the powers and restrictions of national banks, while adhering to the same duties and restrictions, and retain their thrift charter and governance framework. The OCC published its final rule in May 2019.²⁸ Since that time, nine federal savings associations have made this election.

Examination cycle. Section 210 of the Act expanded eligibility for an 18-month examination cycle, making the extended examination cycle available to more well-managed banks and thrifts that are 1- and 2-rated institutions. This change, together with parallel changes to the on-site examination cycle for U.S. branches and agencies of foreign banks, allows the agencies to better focus their supervisory resources on higher risk financial institutions that are more likely to present capital, managerial, or other supervisory issues and thus enhance safety

²⁸ See <https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-54.html>.

and soundness of the federal banking system as a whole. This regulation was completed in December 2018.²⁹

Short form Call Report. Section 205 of the Act provides for reduced reporting requirements on Call Reports for the first and third quarters for institutions with less than \$5 billion in total consolidated assets. This change expands the number of community institutions that can benefit from the reduced burden associated with the short form Call Report, freeing up employees and other resources to serve customers and the operational needs of the institutions. The agencies published the final rule to implement this provision in June 2019.³⁰

Appraisals of residential real property. Section 103 of the Act provides a tailored exemption from the appraisal requirements for certain residential mortgage loans with a transaction value of less than \$400,000 located in rural areas. This final rule was published in October 2019.³¹

Volcker Rule. Sections 203 and 204 of the Act change the statutory provisions underlying the Volcker Rule, including reducing the number of institutions subject to its requirements and easing restrictions on common names between banks and sponsored funds. These changes provide regulatory relief to institutions that do not pose the types of risks the Volcker Rule was intended to limit. The agencies published the final rule in July 2019.³² Separately, the agencies continue to address issues related to the definition of covered funds and hope to issue a proposal on that subject soon. The FDIC and FRB have indicated they will vote on the rule on January 30, 2020.

²⁹ See <https://occ.gov/news-issuances/news-releases/2018/nr-ia-2018-143.html>.

³⁰ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-65.html>.

³¹ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-109.html>.

³² See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-76.html>.

Community bank leverage ratio. Section 201 of the Act requires the agencies to simplify capital requirements for community banks by allowing them to adopt a simple leverage ratio to measure capital adequacy. The community bank leverage ratio framework removes requirements for calculating and reporting risk-based capital ratios for a qualifying community bank that opts into the framework. The agencies estimate approximately 85 percent of community banks will qualify for this new framework, which will be available for banks to use in their March 31, 2020, Call Report. The final rule was published in November 2019.³³

Supplementary leverage ratio for custody banks. Section 402 of the Act directs the agencies to amend the supplementary leverage ratio (SLR) to exclude certain funds of banking organizations deposited with qualifying central banks, if the banking organization predominantly engages in custody, safekeeping, and asset servicing activities. The OCC approved this interagency final rule in November 2019.³⁴

High-Quality liquid assets. Section 403 of the Act requires the federal banking agencies to amend their Liquidity Coverage Ratio (LCR) rules to treat qualifying liquid and readily-marketable, investment grade municipal securities as level 2B liquid assets. The agencies published a final rule on this provision in June 2019.³⁵

High volatility commercial real estate. Section 214 of the Act limits the types of acquisition, development, and construction loans that may be considered high volatility commercial real estate exposures and subject to heightened capital requirements. The OCC approved this joint final rule in November 2019 to revise the capital rule to conform to this new definition.³⁶

³³ See <https://www.fdic.gov/news/board/2019/2019-09-17-notice-dis-a-fr.pdf>.

³⁴ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-135.html>.

³⁵ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-59.html>.

³⁶ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-134.html>.

Stress testing. Section 401 of the Act requires changes to certain aspects of “company-run” stress testing requirements. The Act raises the minimum asset threshold for banks covered by the company-run stress testing requirement from \$10 billion to \$250 billion in total consolidated assets; revises the requirement for banks to conduct stress tests annually and instead requires them to conduct stress tests periodically; and reduces the number of required stress test scenarios from three to two. The agencies issued final rules in October 2019.³⁷

Tailoring capital and liquidity requirements. In November 2019, the OCC approved a joint final rule to tailor capital and liquidity requirements for banking organizations with more than \$100 billion in assets to more closely match their risk profiles.³⁸ The final rule establishes risk-based categories for determining applicability of requirements under the regulatory capital rule, the liquidity coverage ratio rule, and the proposed net stable funding ratio rule for large U.S. banking organizations. These proposals build upon the agencies’ existing practices of tailoring capital and liquidity requirements based on the size, complexity, and overall risk profile of banking organizations and are consistent with section 401 of the Economic Growth Act that raises the minimum asset threshold for application of enhanced prudential standards from \$50 billion to \$250 billion in total consolidated assets. Importantly, regulatory capital and liquidity requirements for U.S. global systemically important banks do not change under the tailoring proposal.

Permissible interest on transferred loans. On November 21, 2019, the OCC published a proposed rule to clarify that when a national bank or savings association sells, assigns, or otherwise transfers a loan, the interest rate permissible prior to the transfer continues to be

³⁷ See <https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-114.html>.

³⁸ See <https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-128.html>.

permissible following the transfer.³⁹ This proposal would expressly codify the OCC's and banking industry's longstanding and well-established legal understanding and thereby address confusion stemming from a 2015 decision from the United States Court of Appeals for the Second Circuit. In doing so, the proposal would promote safety and soundness by facilitating loan sales, which enable the orderly functioning of the secondary markets and the ability of institutions to manage their liquidity risk. Despite criticism to the contrary, the proposal has no effect on the OCC's historical opposition to rent-a-charter relationships that facilitate predatory lending. As recently as 2018, the OCC reiterated its position that it views such relationships unfavorably. The FDIC issued a similar proposed rule, which applies to state non-member banks.

Small-dollar lending

Millions of Americans rely upon short-term small-dollar credit to make ends meet. Consumers need safe, affordable choices, and banks should be part of that solution. Banks are well-suited to offer affordable short-term small-dollar installment lending options that can help consumers find a path to more mainstream financial services without trapping them in cycles of debt.

To facilitate banks offering responsible short-term small-dollar installment loans to help meet the credit needs of their customers, the OCC published a bulletin in May 2018 setting out three core principles for these products:

- All bank products should be consistent with safe and sound banking, treat customers fairly, and comply with applicable laws and regulations.
- Banks should effectively manage the risks associated with the products they offer, including credit, operational, compliance, and reputation risks.

³⁹ See <https://occ.gov/news-issuances/news-releases/2019/nr-occ-2019-132.html>.

- All credit products should be underwritten based on reasonable policies and practices, including guidelines governing the amounts borrowed, frequency of borrowing, and repayment requirements.

The agency's bulletin also highlighted reasonable policies and practices specific to short-term small-dollar installment lending. While banks initially may not have had the infrastructure to engage in such lending, banks are purchasing loans and loan pools from online lenders and are creating more liquidity for these lenders. Additionally, banks are exploring relationships with lenders offering small-dollar loans that align with the sound lending principles discussed in the bulletin. The agency's position on such alignment remains firm and is not at odds with our current rule-making efforts to establish greater regulatory certainty on the validity of interest rates on loans made by national banks and federal savings associations that are subsequently transferred to others.

Finally, over the course of the past year, the OCC has had discussions with several banks that are considering new small-dollar products. The CFPB's proposal to amend its Payday Lending Rule, issued in February 2019, could accelerate interest in small-dollar products. However, as commenters noted in response to the FDIC's November 2018 request for information, regulatory uncertainty remains. The federal banking agencies are exploring principles-based options to address this uncertainty and to encourage banks to deliver safe, fair, and less expensive short-term credit products that support the long-term financial health of their customers.

Bank Secrecy Act and Anti-Money Laundering

The BSA and AML laws and regulations exist to protect our financial system from criminals who would exploit that system for their own illegal purposes or use that system to

finance terrorism. While regulators and the industry share a commitment to fighting money laundering and other illegal activities, the process for complying with current BSA/AML laws and regulations has become inefficient and costly. To address today's threats and to better use the capabilities of modern technology to protect the financial system from illicit activity, it is critical that the BSA/AML regime be updated and enhanced.

The OCC has taken a leadership role in coordinating discussions with the federal financial regulatory agencies, Treasury's Office of Financial Intelligence, and the Financial Crimes Enforcement Network (FinCEN) to identify and implement ways to improve the efficiency and effectiveness of BSA/AML regulations, supervision, and examinations, while continuing to meet the requirements of the statute and regulations, support law enforcement, and reduce BSA/AML compliance burden.

The agencies have taken several steps toward this shared goal. In October 2018, the agencies issued a joint statement that clarifies the permissibility of sharing BSA resources among banks with a community focus, less complex operations, and with lower risk profiles for money laundering or terrorist financing.⁴⁰ In December 2018, the agencies issued a joint statement as part of interagency efforts to encourage banks to consider the use of innovative technologies for achieving anti-money laundering compliance.⁴¹ Most recently, in July 2019, the agencies issued a joint statement to clarify and explain our existing risk-focused approach to examining for BSA/AML compliance programs.⁴² This statement increases transparency into the existing supervisory approach, with the aim of improving the effectiveness of our examinations and strengthening compliance among our supervised financial institutions.

⁴⁰ See <https://occ.gov/news-issuances/news-releases/2018/nr-ia-2018-107.html>.

⁴¹ See <https://occ.gov/news-issuances/news-releases/2018/nr-occ-2018-130.html>.

⁴² See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-81.html>.

The OCC also recently concluded in an interpretive letter that a bank's automated filing proposal for suspicious activity reports (SARs) involving certain structuring transactions is permissible, subject to the conditions outlined in the letter and representations made by the bank.

The OCC also supports legislative changes that would increase the impact and efficiency of BSA/AML regulation and compliance programs. The OCC generally supports changes that would reduce unnecessary industry burden and compliance costs and allow for more effective information sharing related to illicit finance. These changes also could include requiring a regular review of BSA/AML regulations to identify those that could be strengthened or refined to reduce unnecessary burden. The OCC applauds the work that has been done by the House and Senate Committees to support needed BSA/AML reforms.

In addition to our focus on improving the effectiveness and efficiency of BSA/AML regulations, supervision, and examinations, the agencies have issued a joint statement on providing financial services to customers engaged in hemp-related businesses.⁴³ The Agriculture Improvement Act of 2018 removed hemp as a Schedule I controlled substance. The statement provides clarity regarding the legal status of commercial growth and production of hemp and relevant requirements for banks under the BSA and its implementing regulations. In the statement, the agencies explain that when deciding to provide financial services to hemp-related businesses, banks must comply with applicable BSA regulatory requirements. However, the statement notes that because hemp is no longer a Schedule I controlled substance, banks are not required to file Suspicious Activity Reports on customers solely because the customers are engaged in the growth or cultivation of hemp in accordance with applicable laws and regulations.

Supporting Responsible Innovation

⁴³ See <https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-141.html>.

Responsible innovation enables a vibrant banking system to meet the evolving needs of consumers, businesses, and communities. It promotes economic opportunity and job creation. When done responsibly, innovation increases consumer choice, improves the delivery of products and services, enhances bank operations, and enables financial institutions—including small and rural banks—to more effectively meet the needs of their customers and communities. Moreover, responsible innovation expands services to unbanked and underbanked consumers and promotes financial inclusion.

Innovation has significantly changed how consumers engage with their financial services providers, and the OCC has several programs and activities underway to support responsible innovation.⁴⁴ The OCC supports partnerships between banks and fintech companies that are safe and sound and meet the evolving needs of consumers, businesses, and communities. The OCC's Office of Innovation conducts outreach and provides technical assistance to banks, fintechs, and other stakeholders by hosting "office hours," "listening sessions," and participating in hundreds of meetings, calls, conferences, and events.

The innovation office also works to advance awareness and training for OCC staff on emerging trends to foster a culture that is receptive to responsible innovation and develop staff competencies. In addition, staff conducts research to assess the financial services landscape to inform OCC policy and supervisory actions.

Last April, the OCC proposed a voluntary innovation pilot program to support bank testing of activities that could significantly benefit consumers, businesses, and communities, including those that promote financial inclusion. The program is designed to assist banks in those

⁴⁴ See testimony of Beth Knickerbocker, OCC Chief Innovation Officer, before the Task Force on Fintech, June 25, 2019, for the full scope of OCC's innovation activities (<https://www.occ.gov/news-issuances/congressional-testimony/2019/ct-2019-70-written.pdf>).

situations where regulatory or supervisory uncertainty may be a barrier to deploying a new product, service, or process, and where early regulatory involvement may promote a clearer understanding of risks and related issues. The OCC invited public comment on its pilot program and is in the process of evaluating the comments we received.

Many fintech companies such as marketplace lenders, payment processors, and custody service providers offer products and services that historically have been offered by banks. Since the early stages of our work, these companies have consistently asked the agency about options to conduct their business on a national scale and their potential to become national banks. The OCC strongly supports the dual banking system and believes that fintech companies engaged in the business of banking should have the option to conduct their businesses through a national bank charter when it makes sense for their business model and they meet the standards and criteria for becoming a national bank. Today, fintech companies may choose to consider a full-service national bank charter to engage in the full array of authorized national bank activities, including accepting deposits, or to apply for a limited purpose charter if they are engaged in a limited range of banking activities.

On December 19, 2019, the OCC filed to appeal a decision by the U.S. District Court for the Southern District of New York blocking the agency's issuance of special purpose national bank charters to businesses engaged in banking but that do not take deposits. In appealing the court's decision, the OCC is defending long standing authority granted by the National Bank Act to charter national banks, including special purpose national banks that engage in at least one of the core banking functions—paying checks or lending money or taking deposits.

America's federal banking system plays a critical role in meeting the credit needs of consumers, businesses, and communities across the country. To continue serving as a major

source of strength for the economy, the federal banking system must evolve and adapt to the changing needs of the nation and the marketplace, just as it has for more than 150 years. I expect litigation challenging the OCC's authority to provide a special purpose national bank charter for fintechs will be favorably resolved ultimately so that this additional option will be available to fintechs. Regardless of the particular path that a fintech company chooses to become a national bank, all national banks face rigorous examination and high standards that include capital, liquidity, compliance, financial inclusion, and consumer protection standards.

Conclusion

While the condition of the federal banking system remains strong, we stay vigilant in monitoring economic conditions, bank activities, and emerging risks. We also are advancing several priorities to ensure that banks appropriately invest in the communities that they serve and that our regulatory requirements are properly calibrated. We welcome the Committee's support and interest in these activities.

Chairwoman Maxine Waters
Questions for the Record Full Committee Hearing
“The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?”
Wednesday, January 29, 2020

Witnesses:

- **The Honorable Joseph M. Otting**, Comptroller of the Currency, Office of the Comptroller of the Currency

Importance and Historical Significance of CRA

The Community Reinvestment Act (CRA), enacted into law by Congress in 1977, addresses how banks meet the credit and capital needs of the communities they serve. CRA was passed in response to redlining, a practice by which banks discriminated against prospective customers based primarily on where they lived, or their racial or ethnic background, rather than creditworthiness. The CRA addresses not just historical discrimination in lending, but problems with racism and bias in our current lending system that harm communities and block wealth building opportunities.

1. **Comptroller Otting**, by some estimates, the Community Reinvestment Act has spurred over \$6 trillion dollars’ worth of investment through CRA agreements since its inception.¹ And yet, your proposal systematically dismantles the essential structure of CRA, and consumer advocates say that it would reverse any progress we have done with redlining. Do you believe modern-day redlining occurs?

Response: I disagree with your characterization of the OCC and FDIC proposal to strengthen and modernize CRA regulations. Nothing in this proposal changes the agency's authority to enforce fair lending laws, such as the Fair Housing Act and the Equal Credit Opportunity Act (ECOA), to prevent discrimination and redlining. The regulations implementing those laws are not affected by this proposal. We will continue to conduct fair-lending examinations under the laws that authorize us to do so and use all of our available supervisory tools to fight redlining.

As to whether modern redlining occurs today, recent enforcement actions and public settlements suggests it does.

I also believe that the CRA proposal may help combat redlining more effectively than the current framework by refocusing activity that qualifies for CRA consideration on low- and moderate-income (LMI) individuals and neighborhoods, by objectively measuring how much retail lending performed by each bank is targeted to LMI individuals, and by measuring the value of all CRA qualifying activities.

Unfortunately, discrimination in lending is longstanding in American history and has had a deep impact on wealth inequality and other disparities today. Several investigative reports,

¹ <https://community-wealth.org/strategies/policy-guide/cra.html>

including by Reveal from the Center for Investigative Reporting,² *Newsday*,³ and others,⁴ highlight the ongoing practice of redlining and other forms of discriminatory lending that disproportionately impact communities of color and low and moderate-income communities. It is paramount that the Community Reinvestment Act is implemented in a manner that is consistent with its original purpose to ensure that banks serve the convenience and needs of the communities in which they are chartered to do business, including low- to moderate-income communities.

2. **Comptroller Otting**, how is your CRA proposal consistent with the CRA's original purpose to ensure that banks serve all communities, including low- to moderate-income communities?

Response: Congress enacted the CRA with the purpose of encouraging sound lending to all areas of a bank's community, including LMI neighborhoods. The agencies' proposal would establish a regulatory framework with the goal of encouraging banks to conduct more CRA activities that benefit their entire community, including LMI areas and areas with the greatest needs that may be underserved by the current regulations.

3. **Comptroller Otting**, what steps has the OCC taken under your leadership to reduce discrimination in lending?

Response: The OCC takes very seriously its responsibility to evaluate the performance of OCC-supervised institutions in achieving compliance with the fair lending requirements in ECOA and the Fair Housing Act. The OCC mandates that examiners conduct fair lending risk assessments for every institution during each supervisory cycle. At a minimum, fair lending risk assessments identify and measure fair lending risk under both the Fair Housing Act and ECOA, as applicable based on OCC's supervisory authority. Examiners are empowered to initiate a fair lending examination at any time, using the risk assessment to guide the fair lending examination strategy for each bank. In addition, the OCC employs a risk-based screening process for evaluating HMDA data and scheduling fair lending examinations at identified institutions. When fair lending violations are substantiated, we take enforcement or supervisory action as necessary or appropriate. Additionally, we notify the U.S. Department of Justice or U.S. Department of Housing and Urban Development of potential fair lending violations as required by law.

Expansion of Proposed CRA-Qualifying Activities

There is widespread concern that your CRA proposal decouples the link between CRA and the legacy of redlining it was intended to redress and, specifically, the link to minority communities that have been systematically discriminated against. According to FDIC Board Member Martin Gruenberg, he explained "[T]his proposal would allow a bank to achieve a less than satisfactory rating in nearly half of its assessment areas and still receive a satisfactory or even outstanding rating. Banks would have the flexibility to focus their stronger community reinvestment-qualifying efforts on as few as half of their assessment areas while minimizing their efforts elsewhere."⁵

² <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>

³ <https://projects.newsday.com/long-island/real-estate-agents-investigation/>

⁴ <https://www.nytimes.com/2018/04/14/opinion/blacks-still-face-a-red-line-on-housing.html>

⁵ <https://www.fdic.gov/news/news/speeches/spdec1219d.html>

Your proposal also lists CRA qualifying activities that are highly problematic, including explicitly allowing athletic stadiums to be CRA-eligible.

4. **Comptroller Otting**, should banks that fail in half of their assessment areas really get a passing CRA grade?

Response: The agencies are considering public comments on that issue as they develop a final rule.

It is a mischaracterization of the proposal to suggest that it proposed that banks could receive a satisfactory rating and fail in more than half of its assessment areas. The proposal sets no such threshold. The proposal suggested a range and posed a specific question to solicit comment on the appropriate range. Agencies are considering those comments.

5. **Comptroller Otting**, how does an investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone, fulfill the purpose of CRA to combat redlining that we continue to see in too many communities across America?

Response: The agencies are considering public comments on that issue as they are developing a final rule.

There is a misperception that the proposal would create a new incentive by giving banks CRA credit for financing athletic facilities. Banks have received CRA credit for decades for loans and other financing involving athletic facilities that increase opportunities for economically disadvantaged individuals and areas. A review of publicly accessible CRA Performance Evaluations (PEs) provide many examples, dating back to at least 1993. Many of the examples involve repairs to local high school and municipal facilities that serve local communities. Some involve creative projects involving multiuse facilities, and some involve professional sports stadiums.

Your proposal is problematic for rural areas, as a tractor loan to a family farm with gross annual revenues of \$10 million would qualify as a CRA qualified activity.⁶ According to the USDA, only about 1% of farms had sales of \$5 million or more,⁷ let alone the \$10 million you propose.

6. **Comptroller Otting**, are you concerned that your proposal could divert lending away from truly small family farms?

Response: The agencies are considering public comments on this issue as they develop a final rule.

As proposed to adjust for inflation since 1995 and to recognize that small farms are engines for economic growth in the communities where they are located, the NPR would raise the annual revenue threshold to \$2 million. The NPR also asked commenters for feedback on whether this higher threshold would appropriately incentivize banks to engage in small farm lending activities or if other changes

⁶ OCC CRA Proposed NPRM, §§ 25.04(c)(7)(i) and 345.04(c)(7)(i).

⁷ https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Economics.pdf.

should be made to the revenue size threshold.

The NPR would also include a new community development criterion for family farm (as defined by the Farm Service Agency of the USDA in 7 CFR 761.2(b)) purchases or leases of farm land, equipment, and other inputs or the sale and trade of family farm products, as well as for technical assistance and supportive services. There appears to be a common misperception based on an example in the NPR that the agencies proposed a revenue threshold of \$10 million for family farms. Instead, the proposal provides that an activity qualifies under the family farm criterion if it meets the Farm Service Agency's family farm definition, which is not based on the revenue size of the farm or the size of the loan or investment.

The agencies believe we should provide more support to America's farmers who are not only frequently residents of rural and underserved areas, but provide critical service and goods to feed that nation. Increasing credit under CRA regulations is one way to accomplish that.

Your proposal revises the definition of a small business as one with revenues of up to \$2 million and annually adjusts for inflation. This is a marked increase from the \$1 million limit currently. The CFPB estimated that 95% of small businesses had revenues of \$1 million or less.⁸

7. **Comptroller Otting**, would your proposed change in the small business revenue size that qualifies a loan as CRA-eligible divert CRA-qualified lending away from the smallest businesses?

Response: The agencies are considering public comments on this issue as they develop a final rule.

As proposed the NPR would increase support for small businesses by raising the small business revenue size threshold. To adjust for inflation since 1995 and to recognize that small businesses are engines for economic growth in the communities where they are located, the NPR would raise the annual revenue threshold to \$2 million. The NPR asked commenters for feedback on whether this higher threshold would appropriately incentivize banks to engage in small business lending activities or if other changes should be made to the revenue size threshold.

Lack of Consensus on OCC CRA Proposal

In December 2018, when the OCC and FDIC issued a Notice of Proposed Rulemaking (NPRM) on Comptroller Otting's proposal, the Federal Reserve did not join this proposal. FDIC Board Member Martin Gruenberg voted against Comptroller Otting's proposal, describing it as, "a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act." And in remarks this month, Federal Reserve Board Governor Lael Brainard, said that, "Given that reforms to the CRA regulations are likely to set expectations for a few decades, it is more important to get the reforms done right than to do them quickly. That requires giving external stakeholders sufficient time and analysis to provide meaningful feedback on a range of options for modernizing the regulations."

⁸ https://files.consumerfinance.gov/f/documents/cfpb_blower-written-statement_symposium-section-1071.pdf

8. **Comptroller Otting**, since you were unable to persuade the Federal Reserve to sign on to your proposal, are you concerned that your proposal could lead to regulatory arbitrage, with companies seeking to exploit loopholes from diverging regulators?

Response: I am not concerned the proposal will lead to regulatory arbitrage.

The OCC, FDIC, and FRB have each historically issued regulations that apply solely to the institutions that they regulate with minimal disruption to the banking system. For example, the OCC has issued at least 86 substantive rules that apply solely to national banks while the FRB has issued at least 19 rules applying to state-chartered member banks. Even where the OCC, FDIC, FRB, and other federal financial institution regulators operate under common statutory authority, and therefore could issue joint rules, there are instances where the implementing regulations are not identical. For example, the OCC, FRB, and FDIC all have different regulations implementing the Bank Merger Act and Change in Bank Control Act, with each agency describing its consideration of statutory factors somewhat differently.

Notably, there was no regulatory arbitrage when the banking agencies acted independently on CRA rulemaking actions during the early to mid-2000s. The OCC's and FDIC's current CRA modernization NPR aims to increase transparency and objectivity of what safe and sound banking activities will receive CRA credit.

Finally, the NPR would cover insured depository institutions regulated by the OCC and FDIC, and those institutions conduct about 85 percent of all CRA activity in this country.

9. **Comptroller Otting**, do you agree with Governor Brainard's comments that CRA reform should not be rushed and that it is important to get the details right?

Response: Yes, but I would not characterize a multiyear process that has been informed by more than a decade of dialogue as rushed. The NPR that has been underway for more than two years and is the culmination of 10 years of feedback on, and review of, the CRA regulations. Feedback relied upon by the agencies in developing the NPR included the approximately 1,500 comments received in response to the OCC's CRA ANPR, which was published on the OCC's website in August 2018. In addition, the agencies considered hearings conducted by the OCC, FDIC, and FRB in 2010, recommendations received during the EGRPRA process that the agencies reported to Congress in 2017, and extensive outreach conducted by the OCC and other agencies over the last 18 months. The interagency CRA rulemaking process has provided extensive and ample opportunity for stakeholders to learn about the proposal, provide comments, and have their interests considered.

10. **Comptroller Otting**, are you worried that your proposal could exacerbate discrimination in lending at a time when the data shows there is modern-day redlining in over 60 metro areas throughout the country?

Response: Nothing in the proposal weakens that agency's authority or commitment to fight illegal discrimination. The OCC takes very seriously its responsibilities both to evaluate the performance of OCC-supervised institutions under the CRA and to ensure compliance with the fair lending requirements in ECOA and the Fair Housing Act, which

address discrimination and redlining.

11. **Comptroller Otting**, your proposal allows banks under \$500 million in assets to remain on the current oversight framework, while larger banks for which they are the regulators will migrate to the new framework, and we can expect that the Fed may move forward with their own rulemaking. What risks do you see from having potentially three different regulatory regimes for CRA going forward?

Response: The agencies are considering public comments on this issue as they develop a final rule.

The current CRA framework has three different regulatory regimes—one for small banks, one for intermediate small banks, and one for large banks.

The OCC's and FDIC's proposal aims to increase transparency and objectivity regarding what safe and sound banking activities will receive CRA credit. The NPR is not expected to drive banks to fundamentally change their business models.

As proposed, it is noteworthy that 473 (or 63 percent) of FRB-regulated banks, those with assets of \$500 million or less, would be evaluated for CRA purposes under a substantively similar framework as similarly sized banks regulated by the OCC and FDIC that do not elect to be evaluated under the general performance standards. Moreover, the CRA performance of only 272 Federal Reserve-regulated banks with assets above \$500 million would be evaluated under a CRA framework that is substantively different from the OCC and FDIC proposal. Those banks represent less than 15 percent of U.S. banking deposits and assets and less than 15 percent of CRA activity in this country.

12. **Comptroller Otting**, homeownership and the right to live in dignity in safe neighborhoods was a key pillar of the civil rights movement. Today, we see that homeownership among African American and other minorities continues to lag far behind. How would the OCC's proposed changes to CRA affect homeownership for minority groups that suffered the most from the financial crisis?

Response: Keep in mind that the grievous situation you described has been allowed to continue and develop under the current CRA regulatory framework, not the proposed one.

The NPR proposal would strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, and consistent. The additional clarity and certainty for all stakeholders would encourage banks to serve their entire communities, including LMI and minority neighborhoods, more effectively.

The proposal encourages home ownership among LMI populations, which often includes a large number of minorities, by increasingly focusing credit on loans and activities that serve LMI people and areas.

OCC Rollbacks & One-Ratio Rule

A troubling aspect of the OCC's and FDIC's NPRM is the heavy reliance on a simple ratio of qualifying activity to commercial deposits in evaluating a bank's overall CRA performance. The current CRA exam structure recognizes that CRA investments may vary between communities because banks take deposits from a wide range of neighborhoods with a wide variety of needs. The CRA's adaptability and inclusion of local community input about community needs in the process are crucial to its effectiveness. By relying so heavily on a simplified, non-targeted numerical benchmark, the OCC's approach could lower the bar for compliance and reduce community input in the process.

13. **Comptroller Otting**, the Great Recession had a disproportionate impact on communities of color. CRA, and laws like it, were meant to level the playing field for communities that faced systemic discrimination and financial exclusion. CRA advocacy groups have argued that the OCC's "one ratio" rule would dilute CRA activity in LMI communities. Have you worked with community and civil rights organizations and listened to their concerns?

Response: Yes, I have personally discussed these issues with heads and senior staff of many national civil rights and other community advocacy organizations including NAACP, National Urban League, National Diversity Coalition, National Asian American Coalition, Latino Economic Development Counsel, National Association of Real Estate Brokers, and National Congress of American Indians, among others. In addition, other OCC senior leaders and I visited with a wide range of stakeholders in Atlanta, Baltimore, Los Angeles, New York, Washington D.C., and New Mexico. The input we have received from these meetings has been constructive and was instrumental in informing many of the features included in the NPR.

We continued to seek their comment during the comment period and are considering their thoughtful input.

14. **Comptroller Otting**, the National Consumer Reinvestment Coalition has estimated that relaxing CRA could lead to a potential loss of \$52 to \$105 billion-dollar in lending to low- and moderate-income communities over a 5-year period. What do you say to critics of your proposal who have stated that implementing the OCC's proposed CRA rulemaking shows a lack of concern for the potential loss of lending to LMI and racial and ethnic minority communities?

Response: The notion that the NPR will lead to a decline of lending activity is based on an analysis developed more than a year in advance of the NPR and is based on a misperception about the NPR. This analysis was based on a Philadelphia Federal Reserve Bank study published in June 2017, which described what could happen in Philadelphia if activities in certain areas became ineligible for CRA credit. The NPR, however, does not eliminate eligibility for activities in any geographic areas. In contrast, the proposal would require certain banks to create additional assessment areas, expanding the geographic areas where the agencies would evaluate banks' CRA performance. The objective of the NPR is to create a framework and incentives to increase CRA activity, not to decrease it.

In addition, the agencies believe that by establishing clear benchmarks based on historical performance, the NPR would allow the agencies to set benchmarks at levels high enough

to increase the level of qualifying lending, investment, and services and adjust those benchmarks on a periodic basis. Increased qualifying activities would benefit all populations and areas specified in the qualifying activities criteria. In addition, by eliminating the positive consideration currently provided for home mortgage loans to middle- and upper-income individuals in LMI areas, the NPR would avoid giving credit for activities that may contribute to displacement.

15. **Comptroller Otting**, if regulators finalized different regulations to implement the Community Reinvestment Act, could this lead to regulatory arbitrage in the marketplace?

Response: As stated above, I do not believe that it would lead to regulatory arbitrage if the OCC, FDIC, and FRB fail to move in lockstep. There are many examples where agencies act independently based on the needs of the institutions they regulate and the communities those institutions serve. Furthermore, the proposal would cover banks regulated by the OCC and the FDIC that conduct 85 percent of all CRA activity.

16. **Comptroller Otting**, leading up to the last financial crisis, when the Office of Thrift Supervision lowered standards for thrifts compared to other banks, was that kind of regulatory arbitrage helpful or did it lead to a race to the bottom? Should consistent application of the CRA be one of the highest priorities regarding any changes to its implementing regulations?

Response: Regulatory arbitrage that leads to a race to the bottom is not helpful; however, as noted above, the CRA is very unlikely to be a reason a bank chooses to change charters and the NPR is intended to enhance the regulations by providing clarity, consistency and transparency.

Comment Period Length for OCC CRA Proposal

The OCC's proposal provides only a 60-day comment period for stakeholders to review the proposal and submit comments. Given the importance of CRA, I and all other Committee Democrats asked regulators to provide, at a minimum, 120 days for review. State bank supervisors and even the banking industry, including the Independent Community Bankers of America, share our concern that you are rushing the process and have asked that you extend the comment period. In the past, the OCC provided a 120-day comment period on important new bank capital rules, then extended the period by 60 more days. Federal Reserve Governor Brainard explained recently, "If the past is any guide, major updates to the CRA regulations happen once every few decades. So it is much more important to get reform right than to do it quickly."

17. **Comptroller Otting**, why did the NPR only allow for 60 days for public comment?

Response: The OCC and the FDIC posted the NPR on December 12, 2019, 28 days prior to publication in the Federal Register, making the NPR publicly available for review and comment for 88 days. On February 19, the agencies extended the original comment period due date from March 9 to April 8. This effectively gave the public almost four months to provide comments and resulted in more than 7,500 comments

18. **Comptroller Otting**, will you reconsider your decision to not extend the comment period, and examine the comments you have already received from a wide range of stakeholders to provide at least 120 days after your proposal was first published in the Federal Register?

Response: The comment period ended April 8 and the agencies are carefully considering the 7,500 comments received.

Topline Dollar Volume Metric in OCC CRA Proposal

The OCC's approach could reduce most or all of a bank's CRA evaluation to a simple mathematical formula and could contribute to, not mitigate, CRA grade inflation. Already 98% of banks pass their CRA exams – a pass rate that suggests higher levels of lending, investment and financial services in low-and moderate-income (LMI) and underserved communities than actually exists, especially since more than 60 metro areas across the country continue to witness redlining.⁹ Reliance on a topline dollar volume metric approach could diminish the local analysis bank examiners undertake, including the geographic distribution of bank lending across various neighborhoods, borrower profiles and whether the bank has first met the mortgage, small business, affordable housing and other credit needs of their local community before receiving CRA credit for what could be more profitable activities around the country.

19. **Comptroller Otting**, do you believe that focusing on a topline dollar volume metric could diminish several necessary aspects of the CRA's purpose?

Response: No, the proposal provides a nuanced method of evaluating a bank's CRA performance that considers distribution and units as well as the impact in dollars of those activities.

By establishing clear benchmarks based on historical performance, the proposed rule would allow regulators to set benchmarks at levels high enough to increase the level of qualifying lending, investment, and services and adjust those benchmarks on a periodic basis.

Moreover the proposal preserves performance context and requires examiners to consider performance context and evidence of discriminatory or other illegal credit practices before assigning a final rating.

20. **Comptroller Otting**, do you believe that a topline dollar volume metric to determine how a bank's lending and investing activities are distributed throughout their community is problematic?

Response: The proposal did not include a "topline" dollar metric to evaluate distribution of retail CRA activity. The proposal includes a nuanced retail distribution evaluation method similar to what was described by Governor Brainard in her speech to the Urban Institute.

The OCC's ANPR suggests a redefinition of "community" under CRA so that banks can get CRA credit "in the aggregate, at the bank level, in addition to activities in its traditional assessment areas or local geographies." The law explicitly requires that banks demonstrate that they "...serve the convenience and needs of the communities in which they are chartered to do business." The OCC suggests grading banks and dispensing CRA credit for far-off activities, however worthy they may be on their face, without first requiring that the bank meet the needs of the local communities

⁹ <https://www.revealnews.org/article/for-pcople-of-color-banks-are-shutting-the-door-to-homeownership/>

where it takes deposits and without any examination of whether those far-off loans and investments serve the convenience and needs of the communities where they are being made.

21. **Comptroller Otting**, do you agree that banks should first meet the needs of their local communities where they have bank branches and are accepting deposits, before getting CRA credit in other areas?

Response: Banks should meet the needs of the local communities where they have bank branches and where they are accepting a significant amount of deposits. The proposal would help to ensure that banks respond to these local needs by requiring banks to delineate facility-based and deposit-based assessment areas and evaluating banks' performance in each. Banks would receive a rating for each assessment area that would depend entirely on activities within the assessment area. A bank would have to receive at least a satisfactory rating in a significant portion of its assessment areas and in those areas where it holds a significant amount of deposits to get a satisfactory rating at the bank level. We believe it is important to allow banks to receive credit beyond the immediate geographies surrounding bank branches because in the current banking environment banks often take deposits and make loans well beyond those geographic areas. In addition, this approach would provide incentives for greater CRA activity in identified areas of need, including underserved areas, rural areas, distressed areas, and Indian country.

22. **Comptroller Otting**, do you agree that examiners should determine even outside their local areas if the lending and investing are meeting the local credit needs, and not providing CRA credit to banks that cherry pick the most profitable activities they can find around the country?

Response: The proposal's qualifying activities criteria are intended to ensure that a bank's activities, whether within or outside an assessment area, are responsive to local credit needs and would prevent such "cherry picking." The proposal also would require examiners to consider performance context, which includes, among other things, the responsiveness of the bank's qualifying activities to the needs of the community; credit needs and market opportunities identified by, for example, a Federal Home Loan Bank Targeted Community Lending Plan; and demographic factors, such as housing costs and unemployment rates.

FDIC Board Member Gruenberg outlined several concerns with the proposed evaluation metric in the OCC and FDIC's NPR, including that, "First, under this single metric approach, a bank must calculate the value of its CRA qualifying activities, at the bank and assessment area level, based on the dollar value of qualifying activities originated, made, and purchased by the bank. The problem with this approach is that adding up the dollar value of qualifying activities -- lending, community development investments, and community development services -- into a single metric undermines the evaluation of the bank's performance in each of these areas. It is a 'count the widgets' approach that does not take into account the quality and character of the bank's activities and its responsiveness to local needs."¹⁰

¹⁰ <https://www.fdic.gov/news/news/speeches/spdec1219d.pdf>

23. **Comptroller Otting**, do you have a response to Mr. Gruenberg's concerns?

Response: I provided that response in my statement during the public FDIC board meeting, which voted 3-1 to approve the proposal and which you attended.

24. **Comptroller Otting**, do you agree that focusing on a topline dollar volume metric would diminish several necessary aspects of the CRA's purpose, for example, allowing banks to overlook or redline underserved communities with impunity?

Response: I answered this question above, but it is worth stressing that nothing in the proposal diminishes the agency's authority or commitment to fighting discrimination and redlining.

CRA Rating for Failing Banks under OCC CRA Proposal

FDIC Board Member Gruenberg raised another concern with the OCC and FDIC's NPR to modernize CRA, specifically that, "[T]his proposal would allow a bank to achieve a less than satisfactory rating in nearly half of its assessment areas and still receive a satisfactory or even outstanding rating. Banks would have the flexibility to focus their stronger community reinvestment-qualifying efforts on as few as half of their assessment areas while minimizing their efforts elsewhere."

25. **Comptroller Otting**, why should banks that achieve a less than satisfactory rating in nearly half of its assessment areas be able to receive a satisfactory or outstanding rating overall, as they would under the NPR?

Response: The agencies are considering public comments on this issue as they develop a final rule.

The proposal sets no such threshold. Instead, the proposal states that a bank must have at least a satisfactory or outstanding in a "significant portion" of its assessment areas and in those assessment areas where it holds a significant amount of deposits to get a satisfactory at the bank level and specifically asks for input on what that threshold should be, listing 50 and 80 percent as possible options. We look forward to reviewing comments received on the appropriate threshold.

Since 2016, banks have negotiated \$86 billion in community benefit agreements (CBAs) with local stakeholders because of CRA and its community input provisions during mergers/acquisitions, resulting in banks providing more mortgages, small business and community development loans and investments in LMI communities around the country. In the past, you have admitted that part of your CRA reform plan is to make it harder for community groups to "hold [bankers] hostage" when bank merger and expansion deals are up for regulatory approval.

26. **Comptroller Otting**, do you agree that a bank's CRA rating should remain a key consideration in whether a bank is allowed to merge?

Response: Yes, by statute, the OCC must consider a bank's record of CRA performance in evaluating an application for a merger. See 12 U.S.C. §§ 2903(a)(2), 2902(3). This record may be the basis for conditionally approving or denying a filing. Consideration of a bank's CRA rating is, and should continue to be, a key consideration in whether a bank is allowed

to merge.

27. **Comptroller Otting**, Under what circumstances, do you believe it is important to have a public hearing in the case of a bank merger?

Response: In general, the OCC relies on any written public comments in reaching a decision on a merger filing. The OCC generally grants a hearing request if the agency determines that written submissions would be insufficient, a hearing would otherwise benefit the decision-making process, or a hearing would be in the public interest.

Prior Banking History of OCC Comptroller

Community experts have expressed concern about Comptroller Otting's prior conduct with the CRA and lending to low- and moderate-income and minority communities.

28. **Comptroller Otting**, when you were President and CEO of OneWest Bank from 2010 to 2015 your bank was criticized for aggressive foreclosure tactics in California against predominantly minority homeowners during the mortgage crisis. In 2019, the U.S. Department of Housing and Urban Development approved a settlement based out of a lawsuit filed by your organization against the bank on allegations that the financial institution engaged in redlining in Southern California. Can you comment on these charges, and your prior banking relationship with LMI and minority consumers?

Response: Questions regarding that settlement should be directed to the bank.

29. **Comptroller Otting**, can you comment to the skepticism from community advocates working on behalf of minority consumers about your track record?

Response: During my 35 years as a banker, I have meticulously followed the law and worked to ensure fair treatment and fair access for all consumers, particularly minority consumers. I also am proud to have played significant roles in several charitable and community service organizations.

30. **Comptroller Otting**, community groups have also been critical of your 'invitation only' bus tour on CRA modernization for not being truly open to the public, with only some groups invited to attend. Why did you not allow organizations such as the California Re-investment Coalition to attend the bus tour? PA

Response: The OCC has met with CRC and NCRC on several occasions throughout this process to ensure their voice and comments were heard. We worked with local organizations to invite attendees for those tours, which included CRC and NCRC member organizations.

31. **Comptroller Otting**, can you please provide more information on your CRA process and how you have allowed for meaningful public engagement with LMI and minority communities?

Response: The rulemaking process the OCC has followed is consistent with previous rulemakings and the Administrative Procedures Act. The process has included an Advance Notice of Proposed Rulemaking as well as an NPR. To promote awareness and encourage

broad-based stakeholder participation and comments, we conducted additional outreach including calls, meetings, tours, speeches, and placing articles to promote awareness and understanding of the proposal. Our outreach provided an opportunity to collect diverse perspectives from community and industry representatives to assist us with drafting a meaningful and reflective rule inclusive of LMI and minority communities. Our public engagements included prominent civil rights organizations, faith-based institutions, community development practitioners and researchers. See Attachment 1 for a non-exhaustive list of groups that met with the Comptroller, Senior Deputy Comptrollers, and other OCC officials to discuss CRA modernization.

Banking Industry's Response to OCC's Proposal

Banking industry groups including the Community Development Bankers Association (CDBA), the Independent Community Bankers of America (ICBA), National Association of Affordable Housing Lenders (NAAHL), and the National Bankers Association (NBA) have written to the OCC and FDIC in support of a 120-day comment period. The Conference of State Bank Supervisors have also requested an extension of the comment period, noting that “this [60-day] deadline is actually shorter than the [75-day] comment period afforded on the OCC’s advance notice of proposed rulemaking on CRA reform which is concerning given that the proposed rule actually contains detailed, substantive provisions understanding the impact of which requires a more complex, lengthy assessment.”

32. **Comptroller Otting**, given that even the banking industry thinks you are moving too quickly, will you commit to having a more open, transparent rulemaking process with a sufficient amount of time to weigh in on your proposal?

Response: On February 19, 2020, the OCC and the FDIC announced a 30-day extension to the original 60-day comment period for the NPR. Further because the proposal was posted on the agencies’ websites on December 12, 2019, the public had 118 days to comment. The comment period closed April 8 and the agencies are reviewing more than 7,500 comments that have been submitted.

Underlying Data Used for OCC CRA Proposal

The Federal Reserve has stated that they considered thousands of performance evaluations to determine how banks would fare under the current system and under their concept, and that they are willing to share these data.

33. **Comptroller Otting**, please provide a summary and analysis of the data the OCC relied upon on in developing your proposal, including all data you told Representative Velázquez at the January 29 hearing before our Committee you would provide. This would include but is not limited to all data relating to small business lending, farm lending, mortgages, and community development.

Response: In developing the proposal, the OCC relied on a variety of public sources of information such as CRA Performance Evaluations (PEs), Call Report information, FFIEC CRA data on small business, small farm, and community development loans, and Home Mortgage Disclosure Act (HMDA) data. In some instances, the OCC also utilized a proprietary database of credit bureau information. Staff evaluated this information and made recommendations for changes to the CRA based on their best judgment and analysis. The proposal includes descriptions of the methodology the regulators applied to the data to

develop the assumptions and recommendations in the proposal. See, e.g., 85 Fed. Reg. 1221-22.

The empirical benchmarks used for the performance measure referenced in section 25.12 were generally based on the agencies' analysis of currently-available historical data, including FFIEC CRA data, HMDA data on home mortgages to LMI borrowers, Call Report data of on-balance sheet value of home mortgages, consumer loans, small business and small farm loans, and credit bureau data on the outstanding balances of consumer loans. The agencies also collected additional information about community development investments from a sample of historical CRA PEs and used these sources collectively to estimate what each bank's average CRA evaluation measure would have been from 2011-2017 under the framework in the proposal for all banks that filed a Call Report.

To perform the analysis necessary to set the initial benchmarks, the agencies first identified the categories on the Call Report that could include qualifying loans and investments and then used additional data sources such as the existing FFIEC CRA, HMDA, and credit bureau data to estimate what portion of the activity reported on the Call Report would be qualifying activities under the proposal. To estimate the dollar volume of on-balance sheet activity that would be qualifying activity, the agencies did the following:

- For investments, the agencies used investment information gathered from the sample of historical CRA PEs to calculate the sum of the balances of prior investments as of the beginning of the evaluation period plus the average annual new investments over the evaluation period. The agencies then calculated the median investments-to-domestic-deposits ratio by asset size bucket (i.e., assets greater than \$100 billion, \$5 to \$100 billion, and less than or equal to \$5 billion) for the CRA PE sample. This median ratio was then used to impute community development investments for all institutions subject to CRA, by multiplying a bank's deposits in a given year with the ratio corresponding to its asset size bucket.
- For home mortgage loans, by bank and year, the agencies identified all HMDA reportable loans originated and held within the calendar year to LMI individuals, and then divided the sum of the dollar volume of those loans by the bank's total dollar volume of loans originated and not sold within that calendar year. This provides an estimate of a bank-year-specific proportion of identified qualifying loans that was used to calculate the bank's proportion of on-balance sheet qualified home mortgage loans. For banks that are not HMDA filers, the agencies used the median proportion of qualifying home mortgage loans of all HMDA filers for that year.
- For small business and small farm loans, as defined under the current regulations, the agencies used the FFIEC CRA data to estimate the proportion of the bank's on-balance sheet small business and small farm loans that qualify for CRA credit because they are originated to businesses or farms with revenues of less than \$1 million or in LMI census tracts that are less than \$1 million. Because the proposal would increase the size of small loans to businesses and small loans to farms that would be qualifying from the current small business loan threshold of \$1 million and small farm loan threshold of \$500,000 to \$2 million and banks do not separately report the on-balance sheet value of loans between the existing thresholds and \$2 million, the agencies used, based on additional data sources, a fraction of the dollar volume of loans that were reported on

the Call Report as less than \$500,000 or \$1 million to estimate the dollar volume of loans that were less than \$2 million.

- For credit card, automobile loan, and other consumer loan balances, to estimate the proportion of a bank's on-balance sheet consumer loans that are qualifying, the agencies used credit bureau data. The agencies combined the credit bureau data with FFIEC's demographic information at the census tract level to identify whether a given account holder resides in an LMI census tract. Since the credit bureau data does not include income level, the agencies calculated the proportion of credit card loan balances attributable to residents of LMI tracts and used that proportion to represent the proportion of balances attributable to LMI borrowers.
- For community development loans, the agencies relied on the FFIEC CRA data that contains information on the dollar amount of community development loans originated that year.

By using these data sources, including the sample of CRA PEs, and these methods, the agencies were able to approximate what the CRA evaluation measure under the proposed framework would have been for all banks from 2011-2018.

On January 10, the OCC issued a request for public input (RFI) to aid the OCC and the FDIC in determining how your CRA proposal could be revised to ensure that the final rule achieves the purposes of the CRA.¹¹

34. **Comptroller Otting**, the recent RFI issued by the OCC suggests that this data may inform the OCC's final rule. Why wasn't this important data sought before the development of the proposed rule?

Response: As stated above, in developing the proposal, the OCC relied on a variety of sources of information such as CRA PEs, Call Report data, FFIEC CRA data, HMDA data, and credit bureau data. The information the OCC relied on to formulate the proposal allowed the OCC to offer a reasonable range of potential thresholds and percentages for the proposed standards. The additional data collected as a part of the RFI will help determine if the benchmarks and thresholds in the NPR need to be revised or refined.

35. **Comptroller Otting**, will the public have enough time to meaningfully comment on a proposal without access to this information, as that comment period ends the day after CRA comments are due?

Response: As stated above, the OCC was able to propose benchmarks and thresholds based on a wide spectrum of largely publicly-available information. The RFI data are meant to merely refine those numbers. Commenters on the proposal could have concurrently provided their own thoughts and ideas on what the best numbers for thresholds and percentages are based on commenters' own data and experiences.

In addition, commenters had ample time and the ability to comment meaningfully, as the agencies extended the original deadline for comments on the NPR from March 9 to April 8. This provided the public almost 4 months to provide comments.

Statements from January 2020 Hearing with Comptroller Otting

¹¹ <https://www.occ.gov/news-issuances/federal-register/2020/85fr1285.pdf>.

At the January 29, 2020 hearing with Comptroller Otting before our Committee, Comptroller Otting testified that he met with “thousands of community organizers, nonprofit civil rights organizations.”

36. **Comptroller Otting**, can you provide a list of organizers and civil rights organizations you met with?

Response: Please see Attachment 1 for a non-exhaustive list of groups that met with the Comptroller, Senior Deputy Comptrollers, or other OCC officials to discuss CRA modernization. At that hearing, Comptroller Otting testified that 75 percent of those he met with about the OCC’s CRA proposal “were community leaders.”

37. **Comptroller Otting**, can you provide an explanation of a community leader?

Response: I have met with countless individuals representing their own and official views of their organizations, many of whom are listed in attachment 1.

38. **Comptroller Otting**, can you denote which individuals you met with are community leaders?

Response: As noted in my response to question 36 above, Attachment 1 is a non-exhaustive list of individuals and organizations I have met with to discuss the CRA proposal. That list is representative of the community leaders included in our discussions.

39. **Comptroller Otting**, do you wish to update your response with regard to the number of community organizers and non-profit civil rights organizations you met with to discuss the CRA?

Response: No.

At that hearing with Comptroller Otting before our Committee, Comptroller Otting testified that his CRA proposal will not require collecting additional consumer data from banks, stating, “There would not be a requirement for any additional data from consumers, and banks have that data inhouse already.”

40. **Comptroller Otting**, do you wish to update your response with regard to your assertion that the OCC CRA proposal will not require any additional data from consumers?

Response: The proposal imposes data collection, recordkeeping, and reporting requirements on banks to comply with the CRA. It does not impose requirements on consumers.

At that hearing with Comptroller Otting before our Committee, Comptroller Otting testified that the OCC CRA proposal is going to increase lending because “banks that just traded mortgage-backed securities or mortgage pools and got a hundred percent on the dollar credit for that will not be able to do that in the future.”

41. **Comptroller Otting**, is this assertion true for loans sold to GSEs?

Response: The agencies are considering public comments on this issue as they develop a final rule.

The current approach to evaluating CRA activity focuses on originations and transitions. The proposal focuses on the on-balance sheet value of that activity, and eliminating the double and triple credit described above. In addition, the proposal includes credit for originating new qualifying mortgages.

42. **Comptroller Otting**, if this is not correct for GSEs, do you wish to update your response, given the share of total mortgages held by GSEs?

Response: See response above.

43. **Comptroller Otting**, please provide the underlying data and a summary of your methodology you relied upon to reach the conclusion that the proposal will increase lending by banks.

Response: The agencies are considering public comments on this issue as they develop a final rule.

The data and method the OCC relied on to determine the empirical benchmarks used for the performance measure referenced in section 25.12 are explained above in response to Question 33. As stated in the preamble, by establishing clear benchmarks based on historical performance, the proposed rule would allow regulators to set benchmarks at levels high enough to increase the level of qualifying lending, investment, and services and adjust those benchmarks on a periodic basis. Also by evaluating bank performance in each of its assessment areas versus a sample and requiring the bank to meet assessment area and bank-level thresholds, there is greater incentive for bank to do more.

Rent-A-Bank Schemes

In November, the FDIC and OCC issued a proposed rule “to clarify that when a national bank or savings association sells, assigns, or otherwise transfers a loan, interest permissible prior to the transfer continues to be permissible following the transfer.” Stakeholders and experts have warned this proposed rule could allow rent-a-bank schemes that are designed to evade state usury caps to flourish.

44. **Comptroller Otting**, are you concerned that your rule would allow for rent-a-banks to proliferate and evade state usury caps? Why or why not?

Response: The proposal would clarify and reaffirm the longstanding—indeed, centuries old—understanding that a bank may make a loan, charge interest as permitted by the law of the state in which the bank is located, and subsequently transfer that loan without affecting the permissibility of the interest term. The primary problem the OCC seeks to address is the legal uncertainty resulting from the *Madden v. Midland Funding, LLC* decision,¹² and the OCC has observed considerable evidence of this uncertainty. Based on its own supervisory experience, the OCC believes that this legal uncertainty has the potential to disrupt banks’ ability to serve consumers, businesses, and the broader

¹² 786 F.3d 246 (2d Cir. 2015).

economy in an efficient and effective manner, particularly in times of stress. The legal certainty that the rule will provide may facilitate responsible lending by banks, especially in the current environment where access to credit by creditworthy consumers is essential. The rulemaking is not intended to create opportunities for predatory lenders to export high interest rates through rent-a-charter relationships with banks, and the OCC would continue to vigorously oppose such relationships.

Last month, the FDIC and OCC issued a proposed rulemaking to clarify that when a loan that is non-usurious when originated by a bank, it remains non-usurious if the loan is sold, assigned, or otherwise transferred to a non-bank. In 2015, the Second Circuit held in *Madden v. Midland Funding*, that non-bank debt collectors that had purchased debt originated by a national bank could not benefit from the bank's exportation power. The OCC stated the proposal is intended to "address confusion resulting from" the Madden decision. Consumer groups and legal experts have raised serious concerns that the proposal will encourage predatory rent-a-bank schemes that are designed to evade state usury caps.

45. **Comptroller Otting**, what is the OCC's intentions with this proposed regulation?

Response: The comment period on the OCC's notice of proposed rulemaking (NPR) closed on January 21, 2020. The OCC received more than 60 comments representing a wide-range of perspectives and is carefully considering the issues raised by these comments. We are in the process of considering those comments.

46. **Comptroller Otting**, is your rule intended to administratively override the Second Circuit decision in the *Madden* case?

Response: The OCC's intention is to address the legal uncertainty created by the Madden decision. The OCC does not believe its action is precluded by the Madden decision or relevant Supreme Court precedent.

47. **Comptroller Otting**, is it acceptable for banks to effectively rent out their charter to third-parties hoping to evade state usury limits, and if not, what will stop them from doing that under your proposed regulation?

Response: It is not acceptable for banks to enter into rent-a-charter relationships, which can pose safety and soundness risks or violate applicable law. The OCC has a long history of opposing predatory lending, including through relationships between banks and third parties. Most recently, the OCC has stated that it views unfavorably an arrangement in which a bank partners with an entity whose sole purpose for entering the partnership is to evade otherwise applicable state law usury caps.¹³ The OCC also has longstanding guidance conveying its position that abusive lending practices – including those that could harm customers or increase risks to the bank – are unacceptable in the Federal banking system, and the agency has issued guidance alerting national banks to abusive and

¹³ OCC Bulletin 2018-14, Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending (May 23, 2018).

predatory lending practices.¹⁴ These guidance documents address both direct lending by banks and lending through relationships with third parties. Nothing in the OCC's NPR represents a change of agency position; the OCC will continue to vigorously oppose these relationships. However, the OCC also acknowledges that not every relationship between a bank and a third party is a rent-a-charter relationship. Appropriate third-party relationships play an important role in banks' operations and the economy, and the OCC has issued guidance articulating its view on how banks can appropriately manage the risks associated with these relationships.¹⁵

48. **Comptroller Otting**, if the OCC does permit a bank to rent out the charter, is the OCC going to supervise the payday lender to ensure that it is in compliance with OCC regulations and applicable US laws?

Response: As noted above in the response to question 47, this proposal does not change the OCC's position on rent-a-charter relationships.

49. **Comptroller Otting**, the OCC joined with the FDIC to file an amicus brief in support of a lender that used a Wisconsin bank to camouflage an illegal \$550,000 loan that charged 120% to a business in Colorado in violation of Colorado state law. Why is the OCC supporting what appears to be a predatory non-bank lender?

Response: The OCC filed its amicus brief to clarify its position regarding the proper interpretation of 12 U.S.C. § 85, which gives national banks the authority to "charge on any loan . . . interest at the rate allowed by the laws of the State. . . where the bank is located." As stated in the brief, the case raises issues that go "to one of the core elements of the banks' ability to engage in safe and sound banking: their ability to sell loans. . . . [T]he ability to sell loans (and transfer enforceable rights to the buyer) is necessary for banks to be able to satisfy depositor withdrawals or repay large debts; to maintain adequate levels of capital and liquidity; to diversify their funding sources and interest-rate risks, and to have funds available for further lending to consumers."

50. **Comptroller Otting**, why is your agency advancing policies that could allow predatory payday lenders to evade reasonable restrictions my state of California has implemented to protect our state residents?

Response: This assertion is completely false; the OCC is not advancing policies that would allow predatory payday lenders to evade applicable consumer protection laws. See the response to question 47.

Deregulating Megabanks

Over the past 18 months, federal prudential regulators have proposed rules to reduce leverage capital requirements for the biggest systemically significant banks, slashed liquidity requirements for all but the nation's largest banks, cut back on resolution planning requirements for large banks,

¹⁴ OCC Advisory Letter 2000-7 (July 25, 2000) (applied to Federal savings associations effective Nov. 20, 2013); OCC Advisory Letter 2000-10 (November 27, 2000) (applied to Federal savings associations effective Jan. 6, 2012).

¹⁵ OCC Bulletin 2013-29, Third-Party Relationships: Risk Management Guidance (Oct. 30, 2013); OCC Bulletin 2020-10, Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29 (Mar. 5, 2020).

weakened stress testing by removing key leverage ratio requirements, cut back on effective capital requirements for large bank derivatives dealers, drastically reduced Volcker Rule protections against proprietary trading, and recently you proposed to eliminate key margin requirements for large international banks engaged in derivatives transactions.

51. **Comptroller Otting**, in October 2019, regulators issued a proposed rule modifying the swap margin rule and eliminating the requirement that banks collect initial margin when transacting with their affiliates, which would be a \$40 billion giveaway to megabanks at the expense of financial stability and U.S. taxpayers. Given that banks are making record profits, do they really need more giveaways at the expense of taxpayers?

Response: Since the swap margin rule was implemented, supervisory experience has shown that inter-affiliate swaps are used by covered swap entities for internal risk management purposes, whereby a banking organization transfers risk to a centralized risk management function, which is considered to be a prudent risk management practice. As more covered swap entities have come into scope, the amount of inter-affiliate initial margin collected by covered swap entities has increased. This has led the affected banking organizations to borrow increasing amounts of cash in the debt markets to fund eligible collateral, placing additional demands on their asset-liability management structure and increasing their liability exposure to depositors and other creditors in the market. The proposed removal of the inter-affiliate initial margin requirement would provide these banking organizations with additional flexibility for internal allocation of collateral. As stated in the proposal, the agencies believe that such risk management practices often improve the safety and soundness of a covered swap entity, and therefore, to encourage such prudent risk management, propose to exempt inter-affiliate swaps from the rule's initial margin requirements. The proposal does not remove the requirement that covered swap entities must collect and post initial margin with other non-affiliate covered swap entities.

52. **Comptroller Otting**, do you believe that big banks were excessively regulated before this Administration took office? Given that bank lending and bank profits were growing rapidly at the time this Administration took office, why do you believe that?

Response: The federal banking system is an engine for creating jobs and economic opportunity. When the federal banking system is running well, it can power growth and prosperity for consumers, businesses, and communities across the country. Our job as bank supervisors is to strike the right balance between supervision that effectively ensures safety, soundness, and compliance, while—at the same time—enables economic growth. To achieve that balance, we need to avoid imposing unnecessary burden and creating an environment so adverse to risk that banks are inhibited from lending and investing in the businesses and communities they serve. Regulation does not work when it impedes progress, and banks cannot fulfill their public purpose if they cannot support and invest in their customers and communities.

Our nation's banks are a source of strength for the nation and vital to meeting the financial needs of consumers and communities across the country, while supporting U.S. businesses and interests globally. In the decade leading up to recent events, banks built their capital and liquidity to historic highs, precisely for times like these, to serve the consumers, businesses, and communities that depend on them. The OCC, along with the other federal

banking agencies, has provided guidance to banks that now is the time to use the strength they have built over the last decade to support those consumers, businesses, and communities, including by easing terms on new loans and modifying or restructuring existing borrower debt obligations because of temporary hardships resulting from COVID-19-related issues.

53. **Comptroller Otting**, do you believe the economy is doing well today? If so, why are you making it such a priority to slash regulatory risk controls at large banks? Wouldn't most economists say that the peak of an economic cycle is a time when bank regulations should be made stronger, not weaker?

Response: As noted in the response to question 51, as bank supervisors our job is to strike the right balance with supervision that enables banks to create jobs and promote economic opportunity in a safe, sound, and fair manner. To achieve that balance, we need to avoid imposing unnecessary burden and creating an environment so adverse to risk that banks are inhibited from lending and investing in the businesses and communities they serve.

54. **Comptroller Otting**, aren't these regulatory changes things that would tend to increase bank profits and the equity returns received by their shareholders, including their executives? Do you believe that this should be the priority over protecting the public from the economic consequences of a future financial crash?

Response: See response to question 52. Over the past decade, banks have increased their capital and liquidity levels, and measures of regulatory capital and liquidity remain high by historical standards. These levels make banks well-positioned to use the strength they have built to support those consumers, businesses, and communities affected by COVID-19-related issues.

According to data from the Federal Reserve Bank of New York, Tier 1 leverage ratios at the largest banks have dropped steadily in recent years -- over 60 basis points since their peak in 2016. Stakeholders contend this represents losing over one-quarter of the gains in bank leverage capital since 2008. As you know, leverage ratios are the broadest metric of the capital banks have available to absorb losses over their entire asset base.

55. **Comptroller Otting**, do you agree with this assessment, and if so, will the OCC reconsider efforts to reduce capital and leverage requirements for G-SIBs, and will you consider activating the countercyclical capital buffer?

Response: As of December 31, 2019, the lead depository institution of U.S. G-SIBs reported Tier 1 leverage ratios ranging from 7 percent to 11 percent, well above the required threshold of 5 percent to be categorized as well-capitalized under the Prompt Corrective Action (PCA) framework. The December 31, 2019 Tier 1 leverage ratios of some G-SIBs increased from the ratios reported as of March 31, 2016, while other G-SIBs' ratios have declined. The change in Tier 1 leverage ratio during the period is approximately in the range of a decrease of 150bps to an increase of 80bps.

Leverage ratios at G-SIB depository institutions remain high relative to historical levels, as regulatory reforms enacted after the financial crisis continue to support the resilience of

the largest financial institutions. OCC requires that the largest banks meet much higher standards in the amount and quality of capital on their balance sheets and in the ways they assess and manage their financial risks. GSIB depository institution subsidiaries are also subject to enhanced supplementary leverage ratio (eSLR) standards. Under the eSLR, GSIB depository institution subsidiaries must maintain a 6 percent supplementary leverage ratio to be considered “well capitalized” under the PCA framework.

The OCC will base its decision to adjust the countercyclical capital buffer (CCyB) amount on a range of macroeconomic, financial, and supervisory information indicating an increase in systemic risk in addition to the consideration of leverage in the financial sector. The factors to be considered include the ratio of credit to gross domestic product, a variety of asset prices, other factors indicative of relative credit and liquidity expansion or contraction, funding spreads, credit condition surveys, indices based on credit default swap spreads, options implied volatility, and other measures of systemic risk. I am not considering setting a nonzero CCyB in the current emergency.

56. **Comptroller Otting**, the post-stress leverage ratio has been the key binding constraint on many of the nation’s largest banks in previous stress test cycles. Given the decline in bank leverage ratios, will the OCC reconsider the removal of leverage ratio requirements from bank stress tests?

Response: The OCC’s bank Annual Stress Test (12 CFR Chapter I, Part 46) does not have any thresholds or requirements in order to “pass” the stress testing related to the leverage ratio. For the OCC Annual Stress Test, there are no OCC imposed constraints, and there is no “pass” or “failure” determined by the OCC. Instead, the OCC uses information from the Annual Stress Test as another input to its on-going supervisory assessments. As noted in the most recent Annual Stress Test data collection notice, “The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward looking information to the OCC regarding a covered institution’s capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution’s stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.”

57. **Comptroller Otting**, in his farewell speech, former Fed Governor Tarullo said, “[O]ur researchers, like those at some other official-sector entities, have been using more formal economic analysis to estimate the level of capital requirements that best balances the benefits associated with reduced risk of financial crisis with the costs of banks funding with capital rather than debt. A recent study by three Federal Reserve Board researchers concludes that the tier 1 capital requirement that best achieves this balance is somewhere in the range of 13 percent to 26 percent, depending on reasonable choices made on some key assumptions. By this assessment, current requirements for the largest U.S. firms are toward the lower end of this range, even when one takes account of the de facto capital buffers imposed on most firms in connection with the stress test.”¹⁶ For U.S. G-SIBs, what

¹⁶ <https://www.federalreserve.gov/newsevents/speech/tarullo20170404a.htm>. The study referenced is Simon Firestone, Amy Lorenc and Ben Ranish (2017), “[An Empirical Economic Assessment of the Costs and Benefits of Bank Capital in the U.S. \(PDF\)](#),” Finance and Economic Discussion Series 2017-034 (Washington: Board of

is their current level of tier 1 capital, and based on the Federal Reserve's research referenced by Mr. Tarullo, do you agree that these standards should be increased, at least for the G-SIBs?

Response: Measures of regulatory capital standards remain high by historical standards. Tier 1 capital has more than doubled since the first quarter of 2009, an increase of approximately \$950 billion. The post-crisis amendments to the capital regulations strengthened the definition of tier 1 capital by increasing the requirement for common equity tier 1 capital, the most loss-absorbing form of capital comprised primarily of common equity and related surplus and retained earnings.

Currently, I have not considered increasing the current level of Tier 1 capital requirements of G-SIB depository institution subsidiaries. During this current period of financial stress, banks need to continue lending to creditworthy households and businesses, and the current capital level of the banking system is supporting that lending. Moreover, the recent study by three Federal Reserve Board researchers referenced five similar studies that concluded that the optimal Tier 1 capital can range from 9 percent to 23 percent. The current U.S. G-SIB Tier 1 risk-based capital ratios are at a healthy level relative to the various capital impact economic studies.

Volcker Rule

The Volcker Rule, which bans proprietary trading and ownership of private funds by publicly insured banks, is one of the most important rules that your agencies are charged with enforcing. Yet there has been a very disturbing lack of public disclosure concerning how exactly your supervisors are enforcing this rule, or indeed whether they are enforcing it stringently at all.

58. **Comptroller Otting**, to my knowledge, there has been only one case where a bank was actually penalized for violation of the Volcker Rule. Deutsche Bank publicly admitted that it had been unable to properly comply with the rule and paid a \$20 million fine. In the six years since the Volcker Rule regulation was finalized at the end of 2013, have there been any other cases where a bank was found to have violated the rule and penalized for it?

Response: The OCC's supervision and examination of national banks subject to the Volcker Rule includes considerable and detailed examination of Volcker Rule compliance. If the OCC determines that a violation has occurred, the OCC could take either an informal supervisory action or a public enforcement action, depending on the severity of the violation. Informal supervisory actions are considered confidential supervisory information and are not made public. If a national bank did not remediate its activity following informal supervisory criticism, the OCC would consider further action, including a public enforcement action.

59. **Comptroller Otting**, despite the ban on proprietary trading under the Volcker Rule, the major trading banks at the center of Wall Street continue to earn about one quarter of their revenues from trading activities, which is about the same amount they earned in the years prior to when the Volcker Rule regulation was finalized in 2013. In light of this, how can the public understand what the impact of the Volcker Rule has been on actual trading

activities at banks?

Response: In the OCC's experience, one impact of the Volcker Rule was the immediate shuttering of the standalone proprietary trading desks that existed at several banking entities prior to passage of the Dodd-Frank Act. Another impact has been to bolster the required compliance processes surrounding the permitted trading activities that banking entities may continue to conduct consistent with the statute. For example, the regulation requires that banking entities engaged in the most significant trading activities maintain a market-making compliance program. Like section 13 of the Bank Holding Company Act (the Volcker Rule statute), the regulation permits specified types of trading activities – in particular, market-making, underwriting, and risk-mitigating hedging. All bank trading activities must be conducted pursuant to one of these permitted activities or one of the limited exclusions in the rule. The statute and implementing regulation allow banks to earn revenues for these permissible activities. These activities frequently provide critical liquidity to financial markets, particularly in times of market stress.

60. **Comptroller Otting**, do you have any concern that by easing the Volcker Rule for Wall Street, and dialing back swap margin requirements, and reducing the leverage ratio for megabanks, among other changes, does not push the system a little closer to another costly crisis?

Response: Banks have more than doubled their capital and liquidity levels over the past decade and are now substantially safer and stronger than they were prior to the 2008 financial crisis. Changes to these regulations will provide necessary clarity to certain provisions of the rules and are consistent with applicable statutes and safety and soundness. Moreover, these changes improve banks' ability to provide critical services during times of market stress, such as by providing liquidity to the financial markets.

In August 2019, federal regulators, including the Federal Reserve, finalized significant revisions to the Volcker Rule.¹⁷ Critics have characterized the rule as effectively undoing the Volcker Rule's prohibition on speculative proprietary trading with federally insured deposits.¹⁸ The rule states that additional Volcker Rule reforms will be addressed in a future rulemaking. In January, federal banking agencies proposed additional revisions to the Volcker Rule by eliminating the venture capital 3% ownership threshold which limits the amount of money banks can invest in venture capital funds.

61. **Comptroller Otting**, why has the OCC decided to support the change to the Volcker rule, given that the rule was intended to limit banks from engaging in risky investment activities that could plunge the economy?

¹⁷ Federal Reserve, OCC, FDIC, SEC, and CFTC, joint statement, "Agencies Finalize Changes to Simplify Volcker Rule," press release, Oct. 8, 2019.

¹⁸ For example, see Pete Schroeder, "U.S. regulators hand Wall Street a major win with stripped-down 'Volcker Rule,'" Reuters, Aug. 20, 2019. Also see Statement by FDIC Board Member Martin Gruenberg, Aug. 20, 2019 ("The final rule before the FDIC Board today would effectively undo the Volcker Rule prohibition on proprietary trading by severely narrowing the scope of financial instruments subject to the Volcker Rule. It would thereby allow the largest, most systemically important banks and bank holding companies to engage in speculative proprietary trading funded with FDIC-insured deposits.")

Response: The 2019 final rule streamlined and clarified the proprietary trading provisions. These changes are consistent with the Volcker Rule statute and safety and soundness. The recent proposal to revise the Volcker Rule “covered fund” provisions is still pending and subject to public comment. We look forward to reviewing and considering all comments received. The Volcker Rule proprietary trading and covered fund restrictions are in addition to the generally applicable limitations on national bank investment and trading activities under 12 U.S.C. § 24(Seventh) and implementing regulations. Any activity in which a national bank engages must first be permissible for a national bank under existing statutory authority, as well as consistent with safety and soundness standards. The finalized and proposed changes to the Volcker Rule regulations would not alter these fundamental requirements for national bank activities.

62. **Comptroller Otting**, what data or specific insights does that OCC have to suggest that weakening the Volcker Rule will not lead to another financial catastrophe similar to the one American taxpayers experienced in 2008?

Response: See response to question 60.

63. **Comptroller Otting**, Wall Street and other officials in the Trump administration have complained that the Volcker rule, stress tests, and other pivotal parts of Dodd-Frank are overly restrictive and prevents banks from new investments. Can you describe what risks are undertaken when banks engage in risky investment activities without federal oversight, such as investing or sponsoring hedge funds, private equity funds, or venture capital funds? Response: All national bank activities are subject to oversight by the OCC. All activities must be conducted consistent with generally applicable safety and soundness standards and OCC regulations that limit national banks’ ability to invest in private funds. Depending on the form of an investment, otherwise permissible private fund investment and sponsorship activities would primarily involve price and operational risk, although they could also raise reputational and other types of risks.

In January 2020, you proposed allowing banks to invest in the same risky assets that contributed heavily to the financial crisis and to become more entangled in private equity and hedge funds. At a time when prudent regulators should be working to uphold consumer protections, we continue to see a series of deregulatory actions by Trump appointees that benefit Wall Street at the expense of Main Street.

64. **Comptroller Otting**, what data or evidence do you have that this rule will not imperil the economy and increase the risk of another financial crisis?

Response: Please see response to question 60.

Diversity and Inclusion

Based on feedback from the nation’s largest banks to an inquiry led by myself and Rep. Beatty, the Committee found that while the U.S. population is over 50% women and 40% minorities: the boards of directors of the largest banks are comprised of only 29% women and 17% minorities; there is no U.S. global significantly important bank (G-SIB) with a female or minority CEO at the helm; chief diversity officers do not report directly to the CEO at any G-SIB; only 4 out of 8 megabanks spent more than \$1 billion on diverse suppliers in 2018; and, while \$1.4 billion is the average spent by U.S. G-SIBs on supplier diversity, less than 1% of megabank spending is devoted to diverse asset managers and suppliers, and only 4% of externally managed assets go to diverse-

owned firms.¹⁹

65. **Comptroller Otting**, these institutions, and especially their leadership, do not look like the communities they serve. What steps can the OCC and other bank regulators take to change these statistics?

Response: Through our annual requests for voluntary diversity-self assessments in addition to our Financial Regulatory Agencies Diversity and Inclusion Summits and webinars held with banking trade associations, OMWI will continue to urge OCC-supervised institutions to take definitive steps to ensure their workforce demographics, including executive management, reflect the composition of the communities they serve. OMWI also encourages public reporting of institutions' diversity self-assessments to achieve greater transparency.

The OCC engages in a number of outreach activities with our regulated institutions to encourage their consideration and inclusion of minority and women-owned businesses. OMWI has participated in outreach activities such as the National Minority Supplier Development Council Conference and Business Opportunity Exchange, Women's Business Enterprise National Council National Conference and Business Fair, Congressional Black Caucus Foundation Annual Legislative Conference, District of Columbia Procurement Technical Assistance Center Small Business Summit and National 8a Association Small Business Conference, to name a few.

66. **Comptroller Otting**, is there any reason why every federally-insured bank should not have an internal policy to promote diversity and inclusion, in their hiring practices, in their contracting practices, and so on?

Response: An important and intentional use of the information received through the diversity self-assessments is to highlight leading diversity and inclusion practices. Our analyses of the self-assessments determined that the development and implementation of formal, board-approved internal policies to advance and promote diversity and inclusion within institutions is clearly a leading diversity practice. Further, such leading practices routinely address diversity and inclusion as critical components of employment and hiring practices as well as contracting and procurement practices.

67. **Comptroller Otting**, what new steps can regulators and Congress take to promote diversity and inclusion in banking?

Response: The OCC will continue to explore ways to engage with its institutions to encourage greater awareness and implementation of necessary diversity and inclusion policies and practices. We will endeavor to engage directly with the chief diversity and inclusion officers of our largest institutions to gain in-depth knowledge of and participate in discussions focused on their comprehensive diversity and inclusion policies and practices.

¹⁹ FSC Press Release, "[Committee Finds More Work is Needed to Improve Diversity at Megabanks](#)," Aug. 13, 2019

Ex-Offenders with Minor Offenses Seeking Employment

In November 2019, the FDIC issued a proposal seeking public comment to codify its Statement of Policy related to Section 19 of the Federal Deposit Insurance Act, which provides criteria for individuals seeking employment in the banking industry with certain minor criminal offenses. In addition, the NCUA Board approved a final interpretive ruling and policy statement allowing people convicted of certain minor offenses to return to work in the credit union industry without applying for the Board's approval.

68. **Comptroller Otting**, what is the OCC's position on individuals seeking employment in the banking industry with certain minor criminal offenses?

Response: The OCC supports the "de minimis" offense exception for minor criminal offenses outlined in the FDIC Statement of Policy on Section 19. For these minor criminal offenses, FDIC's approval is automatically granted and no Section 19 application is required. The de minimis exception applies: if there is one conviction or program entry of record based on a covered offense [covered offenses include but are not limited to: the issuance of insufficient funds checks of moderate value; small dollar, simple theft; and, isolated minor offenses committed by young adults]; the maximum sentence that could have been imposed for the crime at the time of the offense was imprisonment for a term of one year or less or a fine of \$2,500 or less and, the individual served three (3) days or less of jail time; and, the conviction or program entry was entered at least five years before an application would be required; and, the offense did not involve an insured depository institution or insured credit union.

The OCC supports the FDIC Notice of Proposed Rulemaking proposal to convert the FDIC Statement of Policy on Section 19 into regulations to provide for greater transparency and clarity in the processing of section 19 applications.

69. **Comptroller Otting**, in your view, what can Congress do to give ex-offenders who have minor offenses a second chance and get a job in the banking or credit union industry?

Response: The FDIC Notice of Proposed Rulemaking on Section 19 sought input from the banking industry and the public on any aspect of Section 19, including the de minimis exception criteria and whether it should be expanded. On March 16, 2020, the extended period ended for receiving comments from the banking industry and public to learn of any problematic issues ex-offenders may be having with the FDIC's Section 19 process to obtain approval for employment in the banking or credit union industry. The comments the FDIC received contain several suggestions, including ways the de minimis exception can be modified to expand access to employment for individuals presenting minimal risk. We look forward to reviewing the FDIC's revised proposed rule after it considers the submitted comments to the FDIC Notice of Proposed Rulemaking on Section 19.

Regulatory Gaps and Big Tech

A growing number of concerns have been raised about the impact technology is generally having in the banking space, including questions about its impact on the traditional separation of banking and commerce. For example, this Committee continues to be focused on Facebook's plan to establish a new currency, Libra, and potentially creating a bank with more than 2 billion account holders with little to no regulatory oversight. In response to an application for an Industrial Loan Company (ILC) charter by a Japanese online retailer, the American Bankers Association and Bank

Policy Institute expressed concerns with the application, writing, “The public and the FDIC would benefit from thorough public input and analysis, as the Application threatens to undermine two long-standing pillars of U.S. bank regulation—the separation of banking and non-financial businesses, and the value of consolidated supervision of banking organizations.”

70. **Comptroller Otting**, do you believe there should be a separation of banking and commerce in the United States? Why or why not? If you do, what actions can regulators and Congress take to maintain or enhance the separation of banking and commerce?

Response: The separation of banking and commerce, including its desirability, extent, and operation, has been an important and long-running topic in policy debates. It remains a topic worthy of continued study. The ability of banks to affiliate with non-banks has served as an important tool to absorb financial shock emanating from outside of the banking system. For example, the ability of banks to affiliate with broker-dealers proved essential to mitigate some of the worst aspects of the 2008 financial crisis. Moreover, as the financial services industry evolves, new developments in technology have made obsolete or blurred some of the traditional dividing lines. In determining where to place these lines in light of new technologies, the OCC believes it is important not to stifle innovation that could otherwise lead to better access to banking services, particularly for those currently without access. The lines between banking and commerce should be drawn so that national banks can increase inclusivity by taking advantage of new technologies and partnering with fintech companies.

71. **Comptroller Otting**, the Federal Reserve issued a report in 2016 calling on Congress to eliminate the ILC loophole that generally exempts ILCs from the Bank Holding Company Act. Though the OCC does not have chartering authority of ILCs, in the interest of the safety and soundness of our nation’s financial system, would the OCC support this recommendation?

Response: The FDIC recently issued an NPR proposing new rules that would apply to ILCs that become a subsidiary of a company not subject to consolidated supervision by the Federal Reserve. The proposal would require each such parent company and the subsidiary ILC to enter into written agreements with the FDIC that contain certain commitments to be undertaken by the parent company to ensure the safe and sound operation of the ILC. The proposal would also prohibit the industrial bank from taking certain actions without the FDIC’s prior written approval. The Comptroller supports the FDIC’s efforts to ensure strong holding company support for any ILC that it charters, and believes these safeguards support the safety and soundness of our nation’s financial system.

72. **Comptroller Otting**, what is the current status of any review under way by your agencies regarding Facebook’s Libra project, both as an individual agency and as a member of FSOC? Do you have the authority to prohibit banks and credit unions from accepting Libra as a form of deposit or payment?

Response: The OCC is closely monitoring the development of Libra, but does not regulate Facebook or its activities. The OCC has established a cross functional internal working group to monitor crypto asset-related marketplace developments (including the Facebook Libra project) and the impact on the federal banking system. This working group includes representatives from OCC policy, legal, and supervision units, as well as

its Office of Innovation. The OCC also coordinates with other federal regulators and is an active participant in the Financial Stability Oversight Council (FSOC)'s Digital Asset Working Group. In addition, the OCC participates in discussions involving crypto assets through various international bodies, such as the Financial Innovation Network of the Financial Stability Board and the Task Force on Financial Technology of the Basel Committee on Bank Supervision.

The OCC has broad statutory authority to oversee national banks and federal savings associations (collectively, banks) and to prevent banks from engaging in unsafe and unsound banking practices and ensure that banks provide fair access to financial services and treat customers fairly. Examiners will review new, modified, or expanded bank activities as part of regular supervisory and examination activities, consistent with the OCC's approach to risk-based supervision and the activity's effect on a bank's risk profile and risk management systems. In light of this, the OCC would have the authority to prohibit bank acceptance of Libra as a form of deposit or payment if it were to determine that such activities constituted an unsafe or unsound practice or were legally impermissible.

Faster Payments and Fintech

In August, the Federal Reserve Board announced plans to develop a new payment and settlement service by 2023 or 2024, called the FedNow Service. An interbank 24x7x365 real-time gross settlement service that would process individual payments within seconds. A real time payments system can be the difference between making rent and putting food on the table or not doing so for many underserved populations in our districts. Instant payments also can help numerous families across the country avoid paying hefty fees related to late payments due to their funds being withheld for several days. This initiative is broadly supported by community banks, credit unions, small businesses, fintech companies and consumer groups.

73. **Comptroller Otting**, what is your view on the Fed getting the FedNow Service up and running?

Response: The OCC recognizes the benefits that faster payments can bring to consumers, businesses, and communities, especially now, in light of the economic pressures placed on the U.S. economy in the COVID-19 emergency. To that end, the OCC continues to be supportive of faster payments innovations as long as banks implement faster payments in a responsible way, consistent with safe and sound banking practices. I do not support the FedNow initiative.

Derisking

Over the last decade, institutions and even whole nations and regions have lost access to financial services, including cross-border payment facilitation. This appears to be the unintended outcome of the increased focus on risk-based compliance, especially with respect to Bank Secrecy Act/Anti-Money Laundering (BSA/AML) enforcement. Unquestionably, the execution and enforcement of these laws and regulations are essential for our national and economic security. The effects of so-called "de-risking," however, have been devastating for those cut or priced out of the system, negatively affecting small and local businesses, national economies, trade relations, and even regional stability. For example, in the Caribbean, nations like Antigua and Barbuda and Saint Lucia have seen significant reductions in access to the correspondent banking services that are critical to

their globally connected economies.

74. **Comptroller Otting**, what are your agencies doing to address this de-risking impact? What steps can examiners take to reverse this trend while still enforcing our laws to promote national security?

Response: The OCC does not direct banks to open, close, or maintain individual accounts, nor does the agency encourage banks to engage in the termination of entire categories of customer accounts without considering the risks presented by the customer or the bank's ability to manage the risk. In order to comply with applicable laws and regulations, banks are expected to identify and assess risks associated with customer businesses and transactional activity and to design and implement comprehensive policies, procedures, and processes to effectively address such risks, including in the BSA/AML area. Banks maintaining customer relationships with businesses or consumers should understand and effectively manage the risks associated with those businesses or consumers and comply with applicable laws and regulations.

The OCC makes a concerted effort to consistently communicate our position on acceptable risk management practices and supervisory expectations to the banking industry including in the BSA/AML area, through a variety of formats including public statements and bulletins on the OCC website. For example, the OCC recently joined with the other federal regulators responsible for BSA/AML supervision of banks to issue the Joint Statement on the Risk-Focused Approach to BSA/AML Supervision (available at <https://www.occ.gov/news-issuances/bulletins/2019/bulletin-2019-33.html>). This message is also consistently communicated to banks during examinations and meetings that specifically address customer risk management practices and in our outreach efforts conducted at industry conferences, trade association events and one-on-one meetings with bankers' associations.

Additionally, the OCC regularly meets with representatives from various industry groups to learn about any concerns they may have related to the provision of banking services. These meetings provide an opportunity both to understand the interaction of banks with their customers and to communicate our position on acceptable risk management practices and supervisory expectations.

Use of Alternative Data in Credit Underwriting

Financial regulators recently issued a joint statement on the use of alternative data in credit underwriting by banks, credit unions, and non-bank financial firms.²⁰

75. **Comptroller Otting**, in the use of alternative data, how do policymakers ensure consumer's permission to access this data is not abused? For example, how do we ensure that the data is not used for a purpose the consumer never intended such as targeted marketing after providing an initial, general consent to the company?

Response: Disclosures regarding use of consumer data generally must comply with all

²⁰ <https://www.consumerfinance.gov/about-us/newsroom/federal-regulators-issue-joint-statement-use-alternative-data-credit-underwriting/>

applicable laws and regulations (e.g., the Gramm-Leach-Bliley Act) including applicable opt-in, opt-out, and revocation requirements. In the course of its regular supervision, the OCC conducts compliance risk management examinations to assess banks' policy and procedures for obtaining and recording evidence of consumers' consent for using their alternative data.

To protect against data being used for a purpose that the consumer did not intend, bank policies and procedures should address monitoring and reviewing use of consumers' alternative data for consistency with consumers' initial informed consent and the inclusion of the use of alternative data in the scope of compliance audits.

76. **Comptroller Otting**, the interagency statement states that, "Based on that analysis, data that present greater consumer protection risks warrant more robust compliance management." What kind of alternative data, or uses of that data, are your agencies referring to that has "greater consumer protection risks"?

Response: The types and uses of alternative data are constantly evolving, so uses that present greater consumer protection risks also change over time. At this time, consumer protection risks that could arise from alternative data, or use of that data, include fair lending and privacy concerns. Banks' compliance risk management systems should be designed to identify the relevant risks and assess which of those may pose the greatest risk to consumers or the bank. Banks should incorporate mitigation of those risks into their policies and procedures.

77. **Comptroller Otting**, the statement does not discuss racial or gender disparities that may exist in alternative data, especially when combined with artificial intelligence and machine learning. What steps will your agencies take to prevent the use of opaque algorithms or AI that may result in discriminatory outcomes in credit underwriting and other uses of alternative data?

Response: See response to question 76.

Mobilizing Finance Against Slavery and Human Trafficking

One area of interest for this Committee is how the financial sector can better combat the crime of human trafficking. A recent report— "A Blueprint for Mobilizing Finance Against Slavery and Trafficking," prepared by the Financial Sector Commission on Modern Slavery and Human Trafficking— identified the need to strengthen AML tools in relation to addressing modern slavery and human trafficking. In particular, the report highlighted the importance of developing transaction analysis tools to better "identify proceeds of modern slavery and human trafficking in all areas of financial sector activity", especially as it relates to more difficult cases which often involve labor trafficking, debt bondage and forms of modern slavery and human trafficking occurring in the developing world. Furthermore, the report stated, in the case of financing involving sectors with known higher risks of forced labor, anti-slavery and anti-trafficking measures could be developed as part of the loan conditions.

78. **Comptroller Otting**, what is your agency doing to encourage the development of these analytical tools and investments in data innovations, with a specific emphasis on identifying activity related to human trafficking?

Response: The OCC supports responsible innovation in the banking industry, including bank relationships with fintech firms, that can assist in the delivery and development of financial products, services, or processes that enable banks to serve their customers and communities or perform compliance obligations more effectively and efficiently, while combating illicit financial activities, including human trafficking.

Our commitment is reflected in the 2018 issuance of the Interagency Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing. We joined FinCEN and the other federal banking agencies in issuing this statement to encourage our supervised financial institutions to consider, evaluate and where appropriate, responsibly implement innovative approaches to meeting their BSA/AML compliance obligations.

Banks are required to establish and maintain BSA/AML compliance programs that include effective systems of internal controls to manage money laundering risks associated with their account relationships. These controls include policies, procedures and processes to monitor and identify suspicious activity associated with illicit activities. These BSA program policies, procedures and processes are intended to detect the suspicious activities of human traffickers and other criminals who seek to launder the proceeds of their illicit activities.

As we noted previously, the OCC supports and encourages responsible innovation in our supervised institutions. Recently, many of our institutions have begun exploring the implementation of artificial intelligence and machine learning solutions. These solutions have the potential to increase the efficiency and effectiveness with which they monitor, identify, and investigate suspicious activity associated with financial crime, including human trafficking. Machine learning models potentially can increase the number of data points that banks can use to more precisely identify illicit activity and artificial intelligence offers opportunities to track more closely trends and behaviors that allow banks to differentiate suspicious activities that require additional monitoring and investigation, including human trafficking where indicators can be similar to other types of illicit activities and behaviors. The OCC is committed to continuously improving our guidance and supervision processes to support these approaches that offer the potential for more effective detection and prevention of financial crime, including human trafficking.

79. **Comptroller Otting**, what is your agency doing to support better identification of risks relating to human trafficking within the financial sector and the steps needed to mitigate these risks?

Response: As discussed previously, we actively encourage our banks to apply new and innovative approaches which may be in the form of implementing or developing new technologies or processes targeting this type of activity. We also support our institutions through various information sharing initiatives, working with them as they apply mechanisms such as section 314(b) of the USA PATRIOT Act, to enrich their investigation and reporting processes, thus providing law enforcement with more meaningful information. Through outreach events and examinations, we encourage our banks to assess their transaction monitoring scenarios to include emerging risk scenarios such as human trafficking. We also train our examiners through internal and external training activities such as industry conferences, to understand money laundering

typologies including those related to human trafficking. In fact, we conducted an internal webinar for our examiners, led by law enforcement, on human trafficking in 2019.

Housing Counseling

HUD-approved housing counseling agencies work primarily with low-and-moderate income households, preparing homebuyers for responsible homeownership and helping financially challenged homeowners work with their mortgage servicer to get a loan workout or other solution. Recent studies have shown very positive outcomes that are achieved by families who receive housing counseling, including significantly lower default rates and more successful loan modifications. However, due to shrinking funding, housing counseling agency capacity has been shrinking rather than growing to meet the need.

80. **Comptroller Otting**, given the effectiveness of housing counseling in helping low- and moderate-income households to help themselves to responsibly become homeowners, what are you doing as a regulator to promote the use of housing counseling for potential customers of your regulated entities?

Response: The OCC agrees that HUD-approved housing counseling agencies provide valuable assistance to homebuyers, especially disadvantaged and minority households. Indeed, one study conducted by the HUD's Office of Policy Development and Research has shown how homeownership education and counseling can promote sustainable homeownership by helping people distinguish between financing options, stay current on their payments, or avoid foreclosure if they become delinquent on their payments.

Another study by the Urban Institute that was partially funded by NeighborWorks America (NWA), showed that, in one measure, delinquency rates for NeighborWorks loans are 16 percent lower than rates for non-NeighborWorks loans. Moreover, the study showed NeighborWorks clients who receive pre-purchase education and counseling services are more likely to be African American, Hispanic, low income, and female than the general population of home purchase borrowers. The OCC, as a board member agency and chair of NWA from 2013 to 2019, strongly supports the organization's housing counseling programs.

The current CRA regulation allows for consideration of banks' support of homeownership counseling programs and financial education for LMI individuals and communities. Housing counseling services, like those of NeighborWorks America, qualify for CRA credit. Homeownership counseling is listed as one of the examples of community development services under Question and Answer § __.12(i) – 3).

The OCC/FDIC CRA NPR would go one step further in demonstrating its support for housing counseling, by specifically including the activity in the rule itself. And, the proposed list of qualifying CRA activities in the CRA NPR provides examples of these activities, including bank support for homebuyer counseling, whether direct or indirect, or in the form of grants. Also listed is providing homebuyer education to potential buyers of single-family housing developed under a state program for middle-income individuals and families in high-cost areas.

But in addition to regulation, we support homeownership counseling to disadvantaged communities through other channels. For example, our examiners and community affairs

officers consult with banks on ways they can support community development in their areas. Our staff frequently organize forums where banks and community organizations, including housing counseling agencies, meet to discuss best practices and local partnerships. We also produce publications that promote bank-community partnerships and educate banks about different ways they can be engaged in local financial literacy, homeownership counseling, and foreclosure prevention initiatives. These and similar publications can be downloaded from our public website at www.occ.gov.

Appraisals

Banking regulators have recently determined that raising appraisal thresholds would not be in the public's interest. Specifically, in 2017, after a multiyear review that included several public hearings and open comment requests, banking regulators submitted a "Joint Report to Congress on the Economic Growth and Regulatory Paperwork Reduction."²¹¹⁷ The Joint Report stated:

"The agencies also considered safety and soundness and consumer protection concerns that could result from a threshold increase for residential transactions. The last financial crisis showed that, like other asset classes, imprudent residential mortgage lending can pose significant risks to financial institutions. In addition, the agencies recognize that appraisals can provide protection to consumers by helping to assure the residential purchaser that the value of the property supports the mortgage amount assumed. Overall, the agencies believe that the interests of consumers are better served when appraisal regulations are coordinated among government agencies."

Yet, in September, the federal banking agencies issued a final rule to increase the residential appraisal threshold from \$250,000 to \$400,000, which was approved with the CFPB's concurrence. Under the rule, 72%, or nearly 3 out of 4, home mortgage transactions in the U.S. are now exempt from appraisal requirements, putting taxpayers at serious risk for any future calamity related to the housing market. Furthermore, over 500 comments were received on the proposed rule with a majority in strong opposition to increasing threshold amounts, including 38 consumer and public interest organizations. Many of these organizations requested a public hearing to discuss this issue, but their suggestion was dismissed.

In addition, the NCUA recently issued a similar proposed rule which would align its appraisal requirements with the federal banking agencies as well as approved a final rule which increases the non-residential appraisal threshold level to \$1 million, a move that contradicts the final rule that increased the commercial real estate appraisal threshold level to \$500,000 for federally regulated banks. I understand this is the first time in history that the NCUA has stepped ahead of the banking agencies on appraisal requirements.

As we attempt to reconcile apparent inconsistencies between the Joint Report to Congress and your recent regulatory actions to increase appraisal thresholds, please respond to the following:

81. **Comptroller Otting**, did your agency take any supervisory or enforcement actions during or after the financial crisis that related to appraisal and underwriting deficiencies? If yes, does this not suggest there were safety and soundness concerns relating to appraisals in the lead up to the financial crisis a decade ago?

²¹ https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf

Response: The OCC took both supervisory and enforcement actions before, during, and after the financial crisis that addressed appraisal and underwriting deficiencies. Appraisal related deficiencies may or may not be related to credit underwriting. For example, the OCC may have noted deficiencies in an institution's policies governing appraisals, in valuing other real estate owned, or the quality of its internal appraisal review program.

In many instances, supervisory Matters Requiring Attention (MRAs) and enforcement actions address appraisal deficiencies caused by broader deficiencies in credit risk management and credit administration as opposed to solely appraisal related issues.

In most instances, MRAs communicate concerns regarding deficiencies that bank management can remediate in the normal course of business and do not raise a material safety and soundness concern. Safety and soundness concerns are generally accompanied by material violations of law and escalating deficient practices that require enforcement action to remediate the problems.

82. **Comptroller Otting**, appraisal problems was a contributing factor to the last financial crisis identified by the FDIC's Inspector General report entitled, "Comprehensive Study on the Impact of the Failure of Insured Depository Institutions." In fact, the word "appraisal" is used 345 times in the report. Did your agency review this report or related Material Loss Review reports examining bank failures during the financial crisis in determining there are no safety and soundness concerns relating to appraisals? If not, why not?

Response: The OCC reviewed and considered the report. As it regards appraisals, the report principally assessed examiner implementation of the 2010 Interagency Appraisal and Evaluation Guidelines, which were issued subsequent to and a resulting from the financial crisis. As noted in the report, the OCC concurred with the two recommendations that were directed to all three regulators. With respect to strengthening appraisal program examiner documentation requirements, the OCC indicated that while it believed that its existing supervisory examination strategy and core assessment processes satisfied the recommendation, the OCC had plans to improve its guidance by including a section specific to appraisals in the commercial real estate and mortgage handbooks that are currently undergoing revision. Both the commercial real estate and residential real estate handbooks now contain sections specific to appraisals.

With respect to enforcement actions, the OCC indicated that it welcomed the opportunity to enter into dialogue with the FDIC and FRB to compare the relative effectiveness of the regulators' respective enforcement policies and practices.

Regarding the related Material Loss Review (MLR) reports, the OCC was pleased that the Inspector General report recognized that the supervisory agencies frequently identified deficiencies or weaknesses in failed institutions' appraisal programs. It also noted that the MLR Reports did not identify as a concern examiners' failure to comply with regulatory guidance on appraisals.

83. **Comptroller Otting**, please provide aggregate year-by-year data on examiner findings regarding appraisals and evaluations since enactment of Title XI of FIRREA.

Response: The OCC uses Matters Requiring Attention (MRA) to communicate concerns

about a bank’s deficient practices. Examiners communicate such concerns to management and the board when the concerns are discovered. An MRA may contain multiple concerns. A concern describes the deficient bank practice and how it deviates from sound governance, internal control, or risk management principles, or results in substantive noncompliance with laws or regulations, enforcement actions, or conditions imposed in writing.

The OCC maintains MRA data back to 2001. The OCC’s aggregate data on examiner MRA findings regarding appraisals and evaluations is reflected in the table below:

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
10	30	43	52	79	150	123	210	258	202	203	289	229	144	134	101	87	69	53

84. **Comptroller Otting**, with respect to oversight of individuals conducting evaluations, what recourse does a consumer have who may have issues arising from an evaluation product, which currently has no regulatory oversight?

Response: Real estate evaluations are currently subject to regulatory oversight. Evaluations on consumers’ principal dwellings are covered by the CFPB’s regulation Z. Moreover, the OCC oversees both residential and commercial evaluations used by national banks and federal thrifts. Evaluation programs are reviewed to ensure that they are consistent with safe and sound banking practices. We have issued guidance to help institutions understand how to structure evaluation programs so that they result in safe and sound lending.

If a consumer has a complaint about an evaluation product, multiple avenues of recourse are available. The consumer can submit a complaint to the OCC’s Consumer Assistance Group through its website <https://www.helpwithmybank.gov/index.html> or they can submit a complaint to the CFPB.

List of Groups – Response to Question #36

- ABODE Communities
- Access to Capital for Entrepreneurs
- Affordable Housing Developers Council
- Affordable Housing Partnership Homeownership Center
- Affordable Tax Credit Coalition
- AFL-CIO
- American Bankers Association
- Americans for Financial Reform
- Answer City Church
- Arbor Housing and Development
- Asian Americans for Equity
- Asians in LA
- Association for Enterprise Opportunity
- Association for Neighborhood & Housing Development (ANHD)
- Atlanta Neighborhood Development Partnership
- Atlanta Police Foundation
- Baltimore Community Lending, Inc.
- Banana Kelly
- Bipartisan Policy Center
- Bridge Street Development Corp
- Bright Community Trust
- Bristol Bay Development Fund
- Building Alabama Reinvestment
- Business Outreach Center
- Business Resource Group
- California Bankers Association
- California Reinvestment Coalition
- CAMEO
- CASA
- CCCS of the Savannah Area, Inc.
- CDC Small Business Finance
- Center for Financial Services Innovation
- Center for NYC Neighborhoods
- Center for Responsible Lending
- Central Atlanta Progress
- Centrant Community Capital
- Centre for Homeownership & Economic Development Corporation
- CFORM-Covenant Community Development Corporation

- Chi Ishobak
- Church Community Housing Corporation
- Citizen Potawatomi Community Development Corporation
- City of Cleveland - Dept. of Community Development
- City of Cleveland Heights, Ohio
- City of Memphis - Division of Housing & Community Development
- Clearinghouse CDFI
- Collective Empowerment Group
- Common Capital
- Community Capital New York
- Community Connections
- Community Development Bankers Association
- Community Development for All People
- Community Housing Works
- Community Lift
- Community Link
- Community Reinvestment Alliance of South Florida
- Community Reinvestment Fund, USA
- Community Resources Technicians
- Community Service Network Inc.
- Conference of State Bank Supervisors
- Connecticut Bankers
- Consumer Action
- Consumer Bankers Association
- COR Community Development Corp
- Council for Affordable and Rural Housing
- County Corp
- Credit Builders Alliance
- Delaware Bankers
- Detroit Shoreway Community Development Org.
- Devotion NYC
- Douglas Bystry, Clearinghouse CDFI
- Economic Innovation Group
- Enterprise Community Investments
- Enterprise Community Partners
- FACC
- Fair Housing Center
- Fair Housing Center of Metropolitan Detroit
- Fair Housing Center of Northern Alabama
- Fenway Community Development Corporation
- Fifth Avenue Committee

- Financial Services Forum
- FL Alliance of Community Development Corporations
- Florida Bankers Association
- Florida Housing Coalition
- Four Bands Community Fund
- Fullerton High School
- Genesis Community Loan Fund
- Georgia Bankers Association
- Good Neighbor Foundation-HomeOwnership Center
- Greater Baltimore Community Housing Resource Board
- Greater Jamaica Development Corp.
- Greater Washington Urban League
- Habitat for Humanity of Greater Dayton
- Habitat for Humanity Stanislaus County
- Harlingen CDC
- Hartford Community Loan Fund
- Home Repair Resource Center
- HomeFree USA
- HomeFree USA, Inc.
- Homes on the Hill, CDC
- Homestead Loan Fund
- Housing Assistance Council
- Housing Education and Economic Development
- Housing Opportunities Made Equal of Virginia
- Housing Partnership Network
- Housing Vermont
- HousingNOLA
- Idaho Bankers Association
- IEWBC
- Independent Community Bankers Association
- Indiana Bankers
- Invest Atlanta
- Iowa Bankers
- Jesse Miranda Center
- Jesse Miranda Center for Hispanic Leadership
- Junior Achievement
- Just Opportunity
- Kansas Bankers
- Kentucky Bankers Association
- Kewa Pueblo
- Kingsley House Inc.

- Kresge Foundation
- Latino Economic Development Center
- Latino Memphis
- Lawrence CommunityWorks, Inc.
- Life House
- LiftFund Inc.
- Linc Housing
- Local Initiatives Support Corporation (LISC)
- Los Angeles World Affairs Council
- Louisiana Bankers
- Louisville Affordable Housing Trust
- Lutheran Social Services Southern California
- Macedonia Community Development Corporation
- Maine Bankers
- MANNA, Inc
- Marshall Heights Community Development Organization
- Maryland Bankers
- Maryland Consumer Rights Coalition (MCRC)
- Mass. Association of Community Development Corp. (MACDC)
- Massachusetts Affordable Housing Alliance
- Massachusetts Bankers
- Miami Valley Fair Housing Center, Inc.
- Michigan Bankers Association
- Mission Ebenezer Family Church
- Missouri Bankers
- Mustard Seed Development Center
- Mvskoke Loan Fund
- NAACP
- National Alliance of Community Economic Development Association
- National Asian American Coalition
- National Association of Affordable Housing Lenders (NAAHL)
- National Association of Real Estate Brokers
- National Association of State and Local Equity Funds
- National ATM Council
- National Black Farmers Association
- National Center for Digital Equity
- National Community Reinvestment Coalition (NCRC)
- National Community Stabilization Trust
- National Congress of American Indians
- National Consumer Law Center
- National Council of State Housing Agencies

- National Digital Inclusion Alliance
- National Disability Institute
- National Diversity Coalition
- National Financial Corporation
- National Foundation for Credit Counseling
- National Housing Conference
- National Housing Trust
- National NeighborWorks Association
- National Trust Community Investment Corporation (NTCIC)
- National Urban League
- Native American Farmers Association
- Native American Finance Officers Association
- Native CDFI Network
- Native360 Loan Fund
- Nazareth Housing Development Corp.
- Neighborhood Housing Services of Baltimore
- Neighborhood Housing Services of Los Angeles County
- Neighborhood Housing Services of South Florida
- Neighborhood Renaissance, Inc.
- NeighborWorks America
- Network for Developing Conscious Communities
- Nevada Bankers Association
- New Economy Project
- New Hampshire Bankers
- New Jersey Bankers
- New Jersey Citizen Action
- New Level Community Development Corp
- New Markets Tax Credit Coalition
- New Mexico Department of Indian Affairs
- New School
- New York Bankers Association
- New York State Wide Senior Action Council
- Newtown Community Development Corporation
- NHS Jamaica
- North Carolina Bankers
- Numerous Republican and Democratic Members of Congress and their staffs
- Oasis Center International
- OASIS Center International
- Ohio Bankers League (Ohio Bankers)
- Ohio CDC Association

- Ohio Fair Lending
- Oklahoma Bankers
- Operation Hope
- Opportunity Finance Network (OFN)
- Opportunity Fund
- Oregon Bankers Association
- Pace LA
- PCRC
- Pennsylvania Bankers
- People Trust Community Loan Fund
- Pittsburgh Community Reinvestment Group
- Primary Care Development Corporation
- Prosperity Now
- Pueblo of Santa Ana
- Real Estate Education And Community Housing Inc.
- Rebuild Durham Inc.
- Reid Temple AME Church
- Reinvestment Partners
- Rhode Island Bankers
- Richmond NHS
- S J Adams Consulting
- San Felipe Pueblo
- SCDHC
- Self-Help Enterprises
- Shelby County Trustee - Financial Empowerment Center
- Slavic Village Development
- Southeast Houston CDC
- Sweet Auburn Works
- Tennessee Bankers
- Texas Appleseed
- The Clearing House/Bank Policy Institute
- The Dorsey Group, LLC
- The Fifteenth Avenue Baptist CDC
- The Institute of Minority Economic Development
- The Power is Now
- Titusville Development Corporation
- Trinity Empowerment Consortium
- U.S. Chamber of Commerce
- U.S. Pan Asian American Chamber of Commerce
- Unidos US
- United Housing

- University Neighborhood Housing Program
- Urban Edge
- Urban Revitalization Coalition
- US Hispanic Chamber of Commerce
- Vermont Bankers
- Vermont Municipal Bond Bank
- Veterans Association of Real Estate Professionals
- Victory Outreach Riverside
- Village Capital Corporation
- Washington Bankers
- Western States Bankers Association
- White Wing Education Community
- Women's Foundation for a Greater Memphis
- Woodstock Institute
- Working Solutions

January 29, 2020

Congressman Emanuel Cleaver, II
Questions for the Record for Comptroller Otting

J.P. Morgan and Race-Based Discrimination

Chairman Green and I sent a letter to the CEO of JPMorgan Chase, Jamie Diamond, asking him to coordinate with your agency, and a range of other agencies, to investigate allegations of race-based discrimination targeting both minority employees and minority customs highlighted in a New York Times article.

- *The letter was sent December 19, 2019, requesting “an immediate investigation in coordination with appropriate regulators, into potential violations of law and regulation, including, but not limited to, the Civil Rights Act; the Equal Credit Opportunity Act; and the Fair Housing Act.”*
- *The letter further requested J.P. Morgan furnish to you and other regulators relevant information and respond to questions Chairman Green and I believe are at the core of the New York Times reported allegations.*

I received an initial response to my letter, which I have included.

Unfortunately, that letter from JPMorgan did not respond to core questions I asked that, I think, could potentially exonerate the company or prove the allegations correct.

Your agency is also in receipt of that letter and were before the committee to talk about CRA, which is how banking institutions meet the credit needs of the areas they serve, particularly in low- and moderate-income neighborhoods.

Can you please provide an assessment of JP Morgan compliance with CRA as their prudential regular?

Response: The OCC’s most recent assessment of the bank’s performance under the Community Reinvestment Act is satisfactory. The public evaluation was provided to the bank on May 29, 2018 and covered the assessment period of 2011-2013 (<https://www.occ.gov/topics/consumers-and-communities/cra/performance-evaluations-by-month/2018/cra-performance-evaluations-jul-2018.html>).

Did your agency uncover these allegations of discrimination, which possibly violate law and regulation, before they were reported by the press? LBS

- **If yes, when exactly did you uncover these allegations, what reporting mechanism was used to receive these allegations, and what action did you initially take?**
- **If no, have you conducted an internal review of how your agency missed these allegations before they were reported in the press to better fulfill your bank supervisory responsibilities?**

Response: The OCC reviews and tests for discrimination through examinations covering the fair lending laws, including the Fair Housing Act and ECOA, and implementing regulations, complaint management programs, and product governance. No instances of discriminatory practices were identified during these examinations.

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OCC examiners also review complaints received through the OCC's Customer Assistance Group and internal/external whistleblower complaints upon receipt. There were no substantiated claims of racial discrimination.

Has your agency, as their prudential regulator, initiated an investigation into all aspects of the allegations made in press reports?

Response: The OCC receives frequent status updates on the bank's ongoing internal review, which is being conducted by a group of executive sponsors and an operating team composed of business and control functions that report to the Audit Committee of the Board of Directors.

In the wake of these reporting's has OCC undertaken a review of the mechanisms it uses to receive complaints of race-based discrimination internal to a regulated entity as well as allegations of discrimination directed at customers?

Response: The OCC has a process for customers and whistleblowers to contact the OCC's Customer Assistance Group (CAG) with concerns or complaints about OCC-supervised institutions. CAG helps facilitate communications between bank customers and national banks and their operating subsidiaries in connection with customer complaints. Complaints are also tracked by institution and topic. Whistleblower complaints are tracked and reviewed through a separate process. Additionally, OCC examiners consider applicable complaint data when performing a bank's fair lending risk assessments, which are performed once during a supervisory cycle. OCC examiners also consider the nature, scope, and volume of the bank's lending-related activities, the quality of the bank's risk management systems, findings in previous risk assessments, and whether there have been recent changes in products, systems, or processes that may affect fair lending risk. The fair lending risk assessments and other factors, including additional analysis and supervisory history, are used to identify where OCC will conduct in-depth fair lending examinations and the focal points for those examinations.

When exactly can Chairman Green expect a response from you on this matter?

Response: The OCC defers to JP Morgan Chase on the timing of their response.

I have previously called for Financial Institutions to make public data on the diversity and compensation levels within their institutions. As a prudential regulator, is there any harm to safety and soundness for companies to make public their EEO-1 filings and compensation data?

Response: As required by Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Interagency Policy Establishing Standards for Assessing the Diversity Policies and Practices of Regulated Entities was published in 2015 and provides standards that encourage financial institutions to voluntarily submit workforce and supplier diversity information to their primary financial regulator and to the public. Whether to make such information public is each institution's business decision.

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Opportunity Zones

Turning back to the core CRA issue that brings you here. Your notice of proposed rulemaking includes language to “incentivize banks to help meet the needs of ‘low and moderate income’ individuals and tracts located in opportunity zones.”

Your NPRM cited as an example of an appropriate investment for CRA credit as “Investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract”

Since you have decided to include Opportunity Zones language in this NPRM, who will you address the overarching concerns surrounding gentrification possibly triggered by such an investment?

Response: The agencies are considering public comments on this issue as they develop a final rule.

As proposed, the NPR would include as CRA-qualifying activities investments in qualified opportunity funds, as defined in 26 U.S.C. § 1400Z-2(d)(1), that benefit qualified opportunity zones located in low or moderate-income (LMI) census tracts, as defined in 26 U.S.C. § 1400Z-1(a). Opportunity zones are economically distressed areas designated by states and must be approved by the Secretary of the Treasury. According to the Internal Revenue Service (IRS), opportunity zones are designed to spur economic development and job creation in economically distressed communities by providing tax benefits to investors who invest eligible capital into these communities. We welcome all comments on the inclusion of investments in qualifying opportunity funds that benefit LMI qualified opportunity zones as qualifying activities. In addition, this proposal would close a loophole in the current framework that has been criticized as rewarding gentrification. Specifically, the NPR would no longer allow banks to receive favorable CRA consideration toward its propose CRA evaluation measure for mortgages made to middle- and upper-income borrowers in LMI areas. Today, banks can receive credit for those loans. By closing that loophole, the proposal would help fight harmful gentrification.

Do you contemplate addressing the other outstanding public concerns around the Opportunity Zones program since you decided to include this program?

I am not sure if you are aware, but last year there were several concerning reports about how opportunity zones were being designated.

Those reports uncovered that there was possible political influence being brought to bare in the inclusion of some areas in the track location and now the Inspector General is investigating these claims in response to a letter I sent to them.

Response: The IRS has rule writing authority for the Opportunity Zone program. We direct all questions and concerns about the program to them.

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Is your timeline for completing this rule making going to ignore the Inspector General investigation, which may extend past that period and potentially impact this item within your NPRM?

Response: We do not anticipate delaying the issuance of a final rule based on the timing of the Inspector General's report.

- If not how do you plan to comply with this investigation?

Response: To date, the OCC has had no role in this investigation.

Housing and CRA

As you likely know, CRA was enacted in 1977 as it became clear that simply making discrimination illegal through the Fair Housing Act of 1968 was not enough to reverse the legacy of discrimination within housing and community investment.

Are you aware that housing advocates, who view this as a core Civil Rights issue are feeling squeezed by your tight timeline?

- How do you plan to address their concerns?

Response: On February 19, 2020, the OCC and the FDIC announced a 30-day extension to the original 60-day comment period for the NPR. Further because the proposal was posted on the agencies' websites prior to its publication in the Federal Register, the public will have had 118 days to comment when the comment period closed on April 8, not 90 days. This comment period is longer than the comment period for the vast majority of the banking regulators' proposed rules over the past five years and is consistent with the objective and requirement of ensuring stakeholders have a fair opportunity to comment. I appreciate the 7,500 comments that stakeholders submitted. We are in the process of reviewing them now.

Are you at all concerned that your efforts to reform a program, that I agree needs reform, may harm those it intends to benefit?

- How do you intend to address this?

Response: The proposal would strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. Currently, the subjectivity and lack of transparency surrounding CRA leaves bankers and stakeholders guessing what activities qualify for CRA credit and how much credit they will receive. This uncertainty limits innovation and restricts the flow of capital to underserved areas. The proposal would reduce uncertainty and could encourage banks to conduct more CRA lending, investments, and services. Specifically, the proposal would clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. The additional clarity and certainty for all stakeholders would encourage banks to serve their entire communities, including LMI individuals and neighborhoods, more effectively.

Coronavirus**What actions, if any, is the OCC undertaking to monitor the coronavirus and its impact to markets and regulated entities?**

Response: The OCC has issue more than 40 statements, interim final rules, and pieces of guidance to ensure banks continue to operate in a safe and sound manner and have additional flexibility to meet the needs of the consumers, businesses, and communities it serves. All of those actions are available at <http://occ.gov/covid-19>.

The OCC is also working very closely with our regulatory counterparts through the Financial Stability Oversight Council (FSOC), Federal Financial Institutions Examination Council (FFIEC), Financial and Banking Information Infrastructure Committee (FBIIIC), and directly with fellow banking regulators at the FDIC and Federal Reserve Bank.

QUESTIONS OF REP. BILL HUIZENGA

House Financial Services Committee

Hearing on The Community Reinvestment Act: Is the OCC Undermining the Law's Purpose and Intent?

January 29, 2020

To the Honorable Joseph M. Otting:

I have met with various stakeholders that have identified the following questions with respect to the CRA NPR. A lack of clarity surrounding these issues may complicate and limit the ability of stakeholders to analyze the proposed framework, so please compare it to their existing CRA programs and provide constructive comments on the proposal.

Assessment Areas

Deposit-Based Assessment Areas

Deposit Swings. Under the proposal, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits. How do the agencies plan to address situations where there are significant changes in deposit concentrations, such as when a large corporate client moves accounts into or out of the assessment area? Will the agencies provide a timeframe under which the deposit concentration remains at 5% before a new Assessment Area is triggered?

Response: The agencies are considering public comments on this issue as they develop a final rule. As proposed, a bank would make the 5 percent determination—and thus delineate its deposit-based assessment areas—at the beginning of its exam cycle. The proposal does not include a timeframe before a new assessment area is triggered. Once assessment areas are delineated, the proposal would allow banks to change their delineations once during an evaluation period to account for such fluctuations, with exceptions for mergers or consolidations. We look forward to reviewing comments received on this topic.

Small Number of Large Depositors. Some banks have high-net-worth clients who maintain large deposits outside of the bank's facility-based assessment areas. How does the proposed rule give consideration to the number of depositors, in addition to dollar volume? If the number of depositors represent less than 5% of all depositors at the bank even though the volume of deposits is greater than 5%, would there be a requirement to establish a deposit-based assessment area?

Response: The agencies are considering public comments on this issue as they develop a final rule. As proposed, deposit-based assessment areas would be determined at the beginning of the evaluation period based on the volume of deposits, not the number of depositors. We look forward to reviewing comments received on this topic.

Brokered Deposits. Brokered deposits would be excluded from the definition of “retail domestic deposits” used to determine deposit-based assessment areas and calculate a bank’s CRA performance ratio. In issuing the proposal, how did regulators take into account the FDIC’s rulemaking that is underway regarding brokered deposits? Did you run potential scenarios based on potential changes associated with that rulemaking?

Response: The agencies are considering public comments on this issue as they develop a final rule.

The proposal would define retail domestic deposits as a bank’s total domestic deposits of individuals, partnerships, and corporations, as reported on its Consolidated Reports of Condition and Income, but exclude brokered deposits. As discussed in the proposal, the agencies excluded brokered deposits, which are not associated with any individual or community, to refine the Call Report definition used in the proposal to reflect more accurately the deposits a bank collects from identifiable individuals and communities. We invite comments on this issue. The agencies did not consider *potential* changes to the FDIC’s regulatory treatment of brokered deposits, but will consider any impacts a final rule may have on the CRA regulations.

Performance Measurement

Inclusion in Performance Measurement. How would such activities be factored into a bank’s performance evaluation? Will CRA qualifying activities both inside and outside of the assessment area be included in the calculation of a bank’s activities? CCO/BSP

Response: The agencies are considering public comments on this issue as they develop a final rule. As proposed, qualifying activities outside of assessment areas would always be factored into a bank’s performance evaluation. Specifically, those activities would count in the calculation of the bank-level “CRA evaluation measure” (*i.e.*, the measure of qualifying activities divided by deposits), which is one component that would be used to determine a bank’s overall, bank-level CRA rating. A bank’s qualifying activities outside of its assessment areas would not be included in the *bank’s assessment area-level* CRA evaluation measures, which is another component that would be used to determine the bank’s assessment area-level rating.

Distribution Tests

Major Retail Product Line. Under the proposal, a major retail product line composes at least 15 percent of the bank-level dollar volume of total retail loan originations during an evaluation period. When determining if a “major retail product line” accounts for 15% or more of an AA’s production, is an institution to evaluate consumer lending broken down by specific product (*i.e.*, auto, credit card, etc.) or by bulk product line production?

Response: The agencies are considering public comments on this issue as they develop a final rule. A bank would make the determination of what is a major retail lending product line at the bank level based on the specific product (*i.e.*, based on the specific product lines listed under the proposal’s definition of Consumer Lending Product Line).

Time Period. Under the proposal, a bank would be evaluated under the distribution tests for major product lines with 20 or more originations in the assessment area during the

evaluation period. How would this work in practice since CRA evaluation periods are not exact time frames? If a bank receives an Outstanding rating and its evaluation period extends from 3 years to 5 years and the bank originated more than 20 loans over 5 years in that product line, would that product line be included for consideration?

Response: The agencies are considering public comments on this issue as they develop a final rule. As proposed, the product line in this example would be included for consideration under the framework proposed in the NPR. The proposal specifically invites commenters to provide feedback about whether 20 loans is the appropriate threshold.

Affiliates. Please clarify how affiliates would be treated under the proposal. Which affiliates are covered? What affiliate activity is covered?

Response: The agencies are considering public comments on this issue as they develop a final rule. As described in the preamble to the proposal, the agencies recognize that there are limited instances where the bank is substantively engaged in an activity, but the activity is done in the name of another party, such as an affiliate. In these situations, the bank provides the economic resources, and the agencies' current practice is to recognize these activities as being conducted by the bank, at the bank's option. Under the proposed rule, if a bank currently conducts its community development investments through an affiliate it would be able to continue to use that affiliate for that purpose under the proposal. As such, these affiliate qualifying activities would be included in the bank's CRA evaluation measure and retail distribution tests. We look forward to reviewing comments on whether and how affiliates' qualifying activities should be considered under the CRA.

House Committee on Financial Services

Hearing: The Community Reinvestment Act: Is the OCC Undermining the Law's Purpose and Intent?

January 29, 2020

Questions for the Record from U.S. Representative Blaine Luetkemeyer (R-MO)

Witness: The Honorable Joseph M. Otting, Comptroller of the Currency, Office of the Comptroller of the Currency

One or two large corporate depositors could cause significant distortions as it relates to the 5% concentration. A large corporate client could cause a bank to meet the threshold in one quarter but not another due to changes in their business operations and cash management. How would the proposal take these situations and corporate cash flow needs into account?

Response: The agencies are considering public comments that expressed similar concerns as they develop the final rule. One possible means would be to allow the banks to revise assessment areas more frequently during an evaluation period or by clarifying the definition of deposits.

Please clarify the circumstances under which banks could obtain CRA credit for qualifying activities outside of their assessment area(s). How will banks know when they have met the threshold for being able to go outside of an assessment area? Would that trigger apply at the assessment area level? The bank level?

Response: The agencies are considering similar public comments as we develop a final rule. As proposed, qualifying activities outside of assessment areas would always count in the calculation of the bank-level "CRA evaluation measure" (i.e., the measure of qualifying activities divided by deposits), which is one component used to determine a bank's CRA rating. There is no threshold that a bank would have to meet at the assessment area-level or bank-level before receiving bank-level credit for qualifying activities outside of their assessment areas for inclusion in the bank-level "CRA evaluation measure."

Small business lending would be defined as loans of \$2 million or less. Would banks have the option to report such loans as community development loans if they meet the community development criteria set forth in the proposal? If not, have regulators analyzed the extent to which this would impact the ability of banks to meet the 2% community development minimum, particularly for institutions located in areas where there are limited community development opportunities?

Response: The agencies are considering public comments on this aspect of the proposal as they develop a final rule. As proposed, loans that meet both a community development criterion and the small loan to business criterion could receive credit in the bank's bank-level and/or assessment-area-level CRA evaluation measures as either community development loans or as retail small loans to businesses, but not both. If a bank elected, the quantified value of these loans

could instead count towards satisfying the two percent community development minimum. A bank also may receive credit for loans that exceed the proposed \$2 million dollar limit to small businesses as community development loans if they meet criteria for those loans, but they would not be considered CRA-qualifying small business loans.

Questions for the Record

Hearing: “The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?”

Date of Hearing: January 29, 2019

Member: Rep. Ben McAdams

Comptroller Otting, I believe CRA reform can drive innovation and provide thoughtful ways to serve the communities. When reviewing the proposal, much of the evaluation is focused on inputs – how many loans did you make, what was the total loan value. But not enough focus is on outputs – how many jobs were created, how did the activities improve the community, what did investments do to lower housing costs or increase employment rates.

- Can you speak to this and ways CRA reform can drive innovation and focus on results, not just inputs?

Response: By increasing transparency and consistency, the proposal would allow banks to focus on conducting innovative and impactful qualifying activities instead of spending resources trying to comply with a dated, opaque, and inconsistently applied regulatory framework. Specifically, the proposal would clarify which activities qualify for CRA credit and provide a method for banks to request confirmation, in advance, that an activity qualifies for CRA credit. It would also create a more objective method for measuring CRA performance and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. A more objective CRA performance measurement and more transparent and timely reporting would hold banks more accountable for meeting the needs of the communities they serve, including LMI borrowers.

Further, under the proposal, examiners would continue to assess performance context before determining a bank’s final rating. In assessing performance context, the OCC considers and documents the effect of many factors including the innovativeness, complexity, and flexibility of the bank’s qualifying activities, as well as the responsiveness of the bank’s qualifying activities to the needs of the community.

Community Development activities

Comptroller Otting, to follow up on the conversation during the hearing regarding certain community development activities, I seek clarification on whether or not those activities will continue to qualify for CRA credit under the revised CRA regulations proposed in the Notice of Proposed Rulemaking (NPR) published in the Federal Register on January 9, 2020.

Current CRA regulations define four categories of “community development” (set forth in the OCC’s CRA regulations at 12 CFR 25.12(g)(1)-(4)), including the promotion of economic development by financing small businesses. The current CRA regulations are further explained and interpreted by the Interagency Questions & Answers on CRA (Interagency Q&A), which give guidance and examples of how a bank’s loan, investment, or service can “promote economic development.” The Interagency Q&A’s list of activities at Section ____ .12(g)(3)-(1) specifically includes activities that (1) “support permanent job creation, retention, and/or improvement” (a) for low- or moderate-income (LMI) persons, (b) in LMI geographies, (c) in

areas targeted for redevelopment by federal, state, local, or tribal government, (d) by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses, or (e) through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; or (2) that support Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs or job training or workforce development programs.

In Utah, several financial institutions have for years made these types of “promotion of economic development” loans and investments in small businesses through intermediary funds. Several innovative and impactful non-SBIC investment funds have been created in Utah that have collectively invested in small businesses that have resulted in the creation, retention, and/or improvement of thousands of jobs in Utah and have been significant contributors to Utah’s vibrant small business ecosystem and economic development. It is my understanding that those funds worked with banks and federal banking regulators in advance of fund creation to ensure CRA credit for investments in those funds, and that the funds have consistently over 15+ years provided extensive documentation of the jobs created, retained, and/or improved to bank investors and their respective bank regulators. Such funds include Kickstart Seed Fund, University Opportunity Fund, and the University Growth Fund (it is my understanding that other such innovative funds exist outside of Utah, including Core Innovation Fund in California). It is my understanding that all of these innovative funds were made possible in large part through investments from financial institutions as part of their CRA programs, and that the financial institutions received CRA credit for those investments. Under the NPR, it is not clear that bank loans to or investments in these types of non-SBIC funds would continue to qualify for CRA credit because those types of funds are not included on the list of qualifying activities, although other similar types of funds are specifically included in qualifying activities (SBICs, CDFIs, and Opportunity Zones, etc.).

- Can you provide clarity on whether the NPR would continue to grant CRA credit for a bank’s investment in non-SBIC funds (such as Kickstart, University Growth Fund, and Core Innovation) that promote economic through documented job creation, retention, and/or improvement, or whether these types of funds are now excluded from receiving CRA credit?

Response: OCC cannot comment on specific funds, but activities supporting small business financing utilizing intermediaries can be considered for CRA credit under section 25.04(c)(3) of the proposed rule. Federal, state, local, and tribal government programs, projects and initiatives that finance small business/small farm loans can be considered for CRA credit under proposed section 25.04(c)(8). An activity that satisfies any element of proposed section 25.04 of the proposal would be a qualifying activity. The proposal also specifically requests comment on any additional qualifying activity criteria the agencies should consider. We look forward to reviewing comments received on this issue.

- If the intent is to still give CRA credit for loans to or investments in those types of funds, does the OCC intend to add those funds back to the list of qualifying activities so that there will be no doubt as to continuing CRA qualification?

Response: The illustrative list provides examples of activities that meet the criteria in the proposal and activities that do not meet the criteria. An activity would not need to be on the non-exhaustive, illustrative list to be a qualifying activity. The agencies may also update the list when an activity is confirmed to be or determined not to be a qualifying activity. Banks would be able to request this determination through the process outlined in proposed section 25.05. The OCC welcomes any feedback on whether additional examples should be added to the list.

The section of the NPR that gives rise to this confusion (on page 1213 of the Federal Register) states the following:

“The proposal does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments. This aspect of the economic development component of the current CD definition was not retained because the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, *other than by determining if the activity would create additional low-wage jobs*” (emphasis added).

At other places in the NPR, the proposal states that it “would expand the scope of the activities that qualify for CRA credit.”

- If the NPR intends to expand the types of activities that qualify for CRA credit, it would seem that job creation would and should remain part of CRA-qualifying activities.
 - Job creation, retention, and/or improvement for LMI persons, in LMI areas, and by investing in startups are all extremely important in Utah. The creation of jobs at all levels, including at the LMI, can be an integral part of a community’s economic development.
 - The NPR’s list of qualifying activities include SBICs, which are included in the current CRA regulations as an example of an investment that promotes economic development through job creation (SBICs are required to report job information to the SBA). For many new and innovative funds, the significant cost and time involved in pursuit of an SBIC license may not be feasible (especially with well-publicized delays in the licensure process). These non-SBIC funds can be as impactful in job creation as SBICs, so should not necessarily be disadvantaged by denying CRA credit to banks that invest in such funds.
- Is it the intent of the OCC to eliminate CRA credit for “job creation, retention, and improvement” elements of “community development” activities, or is the OCC stating that job creation for LMI people or in LMI areas or through investing in startups is not a sufficient benefit or measure of economic development for purposes of CRA credit? Or does the OCC intend to seek other ways to measure the job creation, retention, and improvement elements associated with those activities?

Response: Although the proposal does not retain the language of “job creation, retention, and improvement,” it does seek to identify activities that achieve these elements through other, more objective criteria and to ensure those activities qualify for CRA credit. The concept of job creation, retention, and improvement is not clearly defined under the current regulations and whether an activity meets this current standard depends largely on the variable judgment of individual examiners. Since agencies could not identify an objective and consistent method of demonstrating job creation, retention, or improvement for LMI individual or census tracts, that standard was not carried forward.

However, the agencies included several other criteria intended to identify and provide credit for activities that do in fact promote job creation, retention, and improvement. For example, the proposal would expand credit for loans to small businesses and small farms, particularly in LMI areas, in recognition of the fact that they are engines of economic growth and job creation. The proposal also specifically requests comment on what additional criteria the agencies should consider in determining which activities would qualify. We look forward to reviewing comments received on these issues.

