THE COMMUNITY REINVESTMENT ACT: REVIEWING WHO WINS AND WHO LOSES WITH COMPTROLLER OTTING'S PROPOSAL

HEARING

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THE COMMUNITY REINVESTMENT ACT: REVIEWING WHO WINS AND WHO LOSES WITH COMPTROLLER OTTING'S PROPOSAL

Tuesday, January 14, 2020

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION
AND FINANCIAL INSTITUTIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:39 p.m., in room 2128, Rayburn House Office Building, Hon. Gregory W. Meeks [chairman of the subcommittee] presiding.

Members present: Representatives Meeks, Velazquez, Scott, Heck, Foster, Lawson, Tlaib, Porter, Pressley, Ocasio-Cortez, Wexton; Luetkemeyer, Lucas, Posey, Barr, Tipton, Williams, Loudermilk, Budd, and Riggleman.

Ex officio present: Representative McHenry.

Also present: Representative Garcia of Illinois.

Chairman MEEKS. The Subcommittee on Consumer Protection and Financial Institutions will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of the subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal."

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

To my colleague, Ranking Member Luetkemeyer, and the members of the subcommittee, welcome to this hearing on modernizing the Community Reinvestment Act (CRA). This hearing is our second on the subject during this Congress, following one we held on April 9, 2019.

The Community Reinvestment Act was enacted into law in 1977 as a direct response to the long, painful legacy of structural discrimination, financial exclusion, redlining, and economic suppression of racial minorities in America. At its core, the CRA is a civil rights bill. It was the fourth of a series of banking bills passed to address systemic discrimination in banking, including the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, and the Home Mortgage Disclosure Act of 1975. These bills built on the findings of the 1961 report from the U.S. Commission on

Civil Rights, and community-led civil action in Chicago to hold banks accountable for rampant discrimination in lending.

Any reforms or modernization must remain true to this legacy. Broadly speaking, there is an agreement that CRA needs to be modernized, that it needs updating in the age of online banking and fintech, that all stakeholders can benefit from greater transparency and predictability in CRA oversight examination, and that there are important opportunities to build on the experience from the past 25 years since CRA was updated.

I was greatly disappointed to learn that Comptroller Otting from the Office of the Comptroller of the Currency (OCC) pulled the plug on the interagency working group to modernize CRA and insisted on plowing ahead with an approach that was widely panned in comments to the Advance Notice of Proposed Rulemaking (ANPR). Indeed, the core framework put forward by the OCC using a simple ratio has been thoroughly picked apart as inconsistent with the original civil rights intent of the CRA, breaking the link between CRA activity and the low- and moderate-income communities and, in particular, communities of color for whom the law was meant to bring redress for decades of systemic discrimination.

A real head scratcher here is the fact that the banks themselves—the banks themselves—are deeply concerned about this proposal and believe that it leads to a worse outcome for everyone than the current CRA framework. The fact that OCC is taking a shotgun approach to the rulemaking, and they issued a request for data to support this new rulemaking after publishing the rule is further evidence of a process that is being railroaded.

Finally, by abandoning the interagency process, Mr. Otting is making it more likely that Congress will have to legislate on CRA and that banks may face a fragmented national CRA landscape going forward with four more of the vastly different CRA regimes, including: one, the current CRA framework for banks with assets under $500 million, which were exempted by the OCC–FDIC proposal; two, the new OCC–FDIC framework for the banks to which it applies; and three, the Fed's framework which may be put forward as a rule. Some States have indicated that they may add CRA-like rules for banks in the event that the OCC's framework is adopted. This is regulatory chaos and should have been entirely avoidable.

I applaud the Federal Reserve (Fed) for putting forward a methodical, data-driven approach to CRA modernization, and strongly encourage them to publish their proposal as a rule to allow comments and to contrast with the OCC's proposal.

And finally, I would strongly encourage the OCC and the FDIC to allow as much time as necessary, including a 120-day comment period, to fully consider comments and data analysis of their respective proposals and to explore options to eventually merge their process with the Fed's to allow a continued national harmonization of CRA rules.

With that, I recognize the ranking member of the subcommittee, the gentleman from Missouri, Mr. Luetkemeyer, for his opening statement.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

I would like to start out with a few facts about 1977. In 1977, the Dow Jones closed the year in the 3,000s. Currently, it is almost 29,000. In 1977, a gallon of gas cost 65 cents. Currently, it is $2.59. In 1977, the first Star Wars movie was released, and we still are getting more Star Wars movies today. And last, but not least, in 1977, Jimmy Carter signed into law the Community Reinvestment Act (CRA).

The CRA was originally enacted to ensure that banks were appropriately servicing their communities. However, more than 40 years after its enactment, and 30 years since it was significantly amended, the CRA has become an outdated, onerous regulation that does not reflect today's banking sector.

In a world where handheld computers, internet access, and mobile banking have become norms, establishing CRA assessment areas solely based on geographic location, in my judgment, is an outdated notion. The OCC and FDIC's proposed rule to amend and modernize the CRA would provide clarity and transparency by requiring regulators to develop and publish a list of preapproved CRA activities, allowing banks to accurately assess and meet the needs of the communities instead of waiting for an examiner to make a determination after the fact.

In addition to examining the geographic location of a bank, the proposal would include additional assessment areas based on deposits of a bank, taking into account the technological advances in banking and online banks. By considering deposits, the rule would expand CRA assessment areas of banks, limiting CRA deserts and decreasing CRA saturation in many urban areas.

The proposal contains many provisions aimed at helping banks serve their communities. However, I would like to point out the process this Administration has taken in developing this proposal. The notion of updating the Community Reinvestment Act is not new. Regulators in this Administration and the previous Administration have a long history of collecting information regarding CRA modernization. In fact, the Federal Financial Institutions Examination Council (FFIEC) began conducting field hearings in 2010 on CRA. And in 2018, the Treasury issued recommendations to update the law as well.

Continuing the transparency of this rulemaking process, the OCC issued an advance notice in August of 2018 and received over 1,500 comments before issuing a proposed rule. The OCC has also met with more than 1,100 individuals from consumer and community groups, academia, trade associations, and the banking industry to receive information on specific areas of the CRA that need to be addressed in this rule. And in accordance with the Administrative Procedure Act, the OCC and the FDIC have announced a 60-day comment period for this proposal to solicit even more information and feedback from stakeholders.

I would encourage all parties involved to submit comments on this proposal to ensure it increases transparency for institutions and consumers while improving the ability of banks to serve their community.

While the process throughout this proposal has been transparent, the Federal Reserve ultimately did not join the FDIC and the OCC in this rulemaking. Instead of the prudential regulators joining together to issue one consistent update to the law, an apparent bureaucratic turf war could leave bankers with the uncertainty of a bifurcated rule. Hopefully, by the time this rule is finalized, the Administration will achieve a uniform rule to modernize CRA. And hopefully, today we can learn more about efforts to achieve that goal.

And with that, Mr. Chairman, I look forward to the testimony of the witnesses before us, and I yield back.

Chairman MEEKS. The gentleman yields back.

I now recognize the gentleman from Georgia, Mr. Scott, for 1 minute.

Mr. SCOTT. Thank you, Mr. Chairman.

As we know, last month, the OCC and the FDIC put forward a notice of proposed rulemaking that would make changes to the Community Reinvestment Act. But, Mr. Chairman, our committee has to make sure that any changes that they may offer do not weaken the law's work to undo harmful, racially discriminatory practices in banking. That is what the law was put in place to do, so that we will be able to make sure that we end any discrimination against customers based upon where they live or racial indicators, as opposed to their creditworthiness.

And also, Mr. Chairman, we are moving rapidly into a highly technological age. That makes it even more important that we understand and we make sure that, as we move in this advanced technological age with online lending and mobile banking, that we be extra careful, because we don't have enough of the profound financial literacy out there for people to be able to handle this advanced technology. Our work is before us.

Thank you.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the ranking member of the full Financial Services Committee, the gentleman from North Carolina, Mr. McHenry, for 1 minute.

Mr. MCHENRY. Thank you, Chairman Meeks, and thank you for your thoughtful leadership, and I thank you, as well, Ranking Member Luetkemeyer.

I applaud the OCC and the FDIC for proposing a CRA reform package. I am dismayed that the Federal Reserve has been dragging their feet and won't participate in this process. I think it is important that we update CRA. The last time it was updated, it was before most Americans even had dial-up internet, and a smartphone was any phone that wasn't connected by a long wire into a wall. So, needless to say, it was before mobile banking. It was before online banking helped to serve so many in our community. And before the branching strategy of banks changed, and it has changed severely and dramatically in the last 5 to 10 years.

This proposal takes into account all of those changes. I think that is positive. So, I look forward to hearing from the witnesses and stakeholders about how we communicate additions and changes and we get this thing done in a timely fashion.

Chairman MEEKS. The gentleman's time has expired.

Today, we welcome the testimony of, first, Ms. Gerron Levi, director of policy and government affairs at the National Community Reinvestment Coalition. Ms. Levi is an attorney with nearly 20 years of Federal and State Government affairs experience. Her background includes serving in the Maryland General Assembly, where she authored laws on education, crime, and ex-offender re-entry, and she was a member of the National Conference of State Legislators, the National Black Caucus of State Legislators, the National Foundation of Women Legislators, and the American Council of Young Political Leaders.

During her tenure, the Maryland State's Attorneys' Association named her as the Legislator of the Year in 2010. She also served as an assistant director of the Legislation Department of the AFL-CIO, and as a legislative representative for the Laborers' International Union.

Second, Ms. Paulina Gonzalez-Brito is the executive director of the California Reinvestment Coalition (CRC). Ms. Gonzalez has worked for over 20 years leading economic justice and organizing campaigns to expand workers' rights, immigrant rights, and the rights of low-income people, and people in underrepresented communities of color. Under her leadership, CRC has grown to 300-plus members, gained high visibility, expanded its focus areas to include immigrant financial protection and fines and fees work, and negotiated community reinvestment agreements with 5 banks worth more than $25 billion.

She currently serves on the Community Advisory Council of the Federal Reserve Bank of San Francisco, the San Francisco Municipal Bank Feasibility Task Force, and the Board of Directors for the National Association for Latino Community Asset Builders, and she was formerly a member of the CFPB's Consumer Advisory Board.

Third, Mr. Eric Rodriguez is the senior vice president for policy and advocacy at UnidosUS. Mr. Rodriguez oversees the Office of Policy and Advocacy, which is charged with directing the organization's legislative affairs, public policy research, policy analysis, and field advocacy work. He is responsible for UnidosUS's Federal and State legislative priorities and agenda. Mr. Rodriguez has extensive experience overseeing the UnidosUS public policy and advocacy activities on a wide range of issues.

From 2007 to 2008, he served as deputy vice president of the public policy department, and previously directed the Policy Analysis Center. His background also includes work on such issues as tax policy, Social Security reform, welfare reform, workforce development, retirement security, and housing and financial market regulations.

Mr. Rodriguez also serves on the boards of the Food Research and Action Center, the Fair Election Center, and the UnidosUS Action Fund, and he is a member of the National Academy of Social Insurance.

Prior to UnidosUS, Mr. Rodriguez was a Congressional Hispanic Caucus Institute fellow, and served in U.S. Representative Nydia Velazquez's New York office.

Fourth, Ms. Hope Knight is the president and CEO of Greater Jamaica Development Corporation. Ms. Knight has served as president and CEO of Greater Jamaica Development Corporation since 2015—I should say, the Greater Jamaica Development Corporation in New York. In that capacity, she has advanced the economic growth, community bank building, and sustainable real estate development, and has immensely revitalized and strengthened the Greater Jamaica/Queens region.

Appointed by Mayor Bill de Blasio, Ms. Knight also serves on the New York City Planning Commission, a role which supports planning for equitable economic expansion, strengthening of housing affordability, and increasing job growth in New York City.

Prior to leading the Greater Jamaica Development Corporation, she was chief operating officer for the Upper Manhattan Empowerment Zone, overseeing over $150 million in direct capital, leveraging over $1 billion in private capital, and working on projects such as the East River Plaza, the Harlem Stage, and the Victoria Theater. She has also served as vice president at Morgan Stanley in the Institutional Equities Division U.S., and as vice president of strategic planning and e-commerce at Morgan Stanley Japan.

And finally, Ms. Faith Bautista is the president and CEO of the National Diversity Coalition. She is also the president and CEO of the National Asian American Coalition, a HUD-approved home counseling agency, and the nation's leading Asian American nonprofit advocating against foreclosures, advocating for greater economic and small business development, and advancing the growing economic and social power of Asian Americans.

Appointed by President Trump's Administration in 2017, Ms. Bautista is currently serving a 4-year term as one of the 5 members in the U.S. Treasury Department's Community Development Financial Institutions (CDFI) Fund, and the Fund Community Advisory Board, and a member of the advisory board for the Federal Communications Commission on broadband adoption and diversity, and for the California Utility Diversity Council. She serves on the corporate advisory board for First Republic Bank, Royal Business Bank, Citizens Business Bank, and Charter Communications, and she was a former advisor and board member for CTI OneWest Bank.

You will each be recognized for 5 minutes to provide an oral presentation of your testimony. And without objection, each of your written statements will be made a part of the record.

I now recognize Ms. Levi for 5 minutes to give your oral presentation of your testimony.

STATEMENT OF GERRON S. LEVI, DIRECTOR, POLICY AND GOVERNMENT AFFAIRS, NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)

Ms. LEVI. Good afternoon, Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee. Thank you for the opportunity to testify for this important hearing on the winners and losers in the OCC's proposed rule.

I can say without equivocation that the winners would be the nation's largest banks, who would promote glowing CRA ratings to the public because they will have easier ways to meet their CRA obligations. The losers would be low- and moderate-income home buyers, renters, small businesses, small farms in their community, and the CRA ecosystem built to support better economic opportunities for them.

We concur completely with the FDIC's Mr. Gruenberg, for this is a deeply misconceived proposal. The purpose of CRA is unmistakable: Congress aimed to reverse disinvestment associated with years of government policies that deprived low- to moderate-income (LMI) areas and communities of color of credit by the practice of redlining. That was and is the reason for the law, and the legacy is still with us today, and lending discrimination is ongoing.

The statutory design of the CRA and its regulatory framework to date has been about curing for market failures that keep some neighborhoods thinly traded, even when there are profitable lending and investing opportunities available for the financial institutions chartered to serve them in unmet credit needs that are safe and sound to meet.

NCRC's CEO, Jesse Van Tol, has called this a stealth gutting of CRA because it is a fundamental rewrite that significantly changes incentives under the law, but only the agencies fully understand its impacts, the new benchmarks and thresholds, but they fail to share what they know and estimate with the public. Our forthcoming Freedom of Information Act (FOIA) request will ask them to share more.

At the outset, we have a must-do list for the agencies about the process in the name of fairness and transparency. First, extend the public comment period. The proposal is complex and has many interconnected elements. The impact on bank incentives to participate in a range of financing activities cannot be understood and analyzed in 60 days, plain and simple. We thank the members of this committee who have urged the regulators to give the public more time.

Second, release the missing data and analyses. The agencies have estimated the impact of their proposed numeric benchmarks and thresholds using a variety of bank samples and other information. All of the underlying data, analyses, and modeling of the impact on bank ratings and performance should be released. Federal Reserve Governor Brainard laid out some illustrative data and charts last week about their approach, and that is a good start.

Third, complete and finalize the agency request for information (RFI) on data released on Friday, that in cruel irony closes for comment the day after the overall rulemaking. The data RFI will inform critical pieces here of the CRA evaluation measure or dominant single metric and presumptive ratings, including how to measure bank capacity. We really need to know this so that we can meaningfully comment on how severe the rationing of CRA credit will be.

On to the substance. The CRA evaluation measure is an overly determinative single metric that ensures rationing of CRA credit. The public comments on all sides were clear: no single metric. The agency has added a supplement, but we have a single dollar volumetric triggering presumptive CRA ratings, and more inflation is built into it. The presumptive CRA ratings are arbitrary benchmarks that undermine the economic rationales for CRA, and the agency should really show their work on them. The expansion of CRA qualifying activities extends credit to bank activities done in the ordinary course of business and upends exam incentives that keep LMI considerations at the heart of the law.

The new deposit-based assessment areas again have a lot of the arbitrary triggers in them and their data limitations. For example, how many credit deserts would be picked up, if any, by that proposal?

The retail lending distribution test, pass-fail, has arbitrary triggers as well on demographics and peer competitors and is overall a weaker incentive for banks to facilitate home ownership, small business, and small farm lending. The service test is virtually eliminated, and the 1 percent credit for bank branches in LMI areas is inadequate, and exams for affordable financial services and products is wiped out.

I look forward to discussing more about this proposal, but the largest U.S. banks made more than $120 billion in 2018, an all-time high. CRA standards for local LMI reinvestment should be strengthened and not weakened, plain and simple.

Thank you.

[The prepared statement of Ms. Levi can be found on page 183 of the appendix.]

Chairman MEEKS. Thank you for your testimony.

Ms. Gonzalez-Brito, you are now recognized for 5 minutes.

STATEMENT OF PAULINA GONZALEZ-BRITO, EXECUTIVE DIRECTOR, CALIFORNIA REINVESTMENT COALITION (CRC)

Ms. GONZALEZ-BRITO. Thank you, Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee, for holding this important hearing and inviting CRC to testify.

Good afternoon. My name is Paulina Gonzalez-Brito. I am Chicana, the daughter of immigrants from my ancestral land of the Purepecha people in Mexico.

CRC is the largest statewide reinvestment coalition in the country, with a membership of over 300 organizations that serve low-income communities and communities of color. I am also a proud member of the National Association for Latino Community Asset Builders (NALCAB), and CRC is a proud member of the National Community Reinvestment Coalition.

You should know that CRC works. While the CRA can be improved, Comptroller Joseph Otting's proposal is a deregulatory scheme designed to help the largest and most powerful banks. It will weaken CRA rules, undermine the purpose of the statute, and will ultimately harm low-income communities and communities of color.

When Comptroller Otting was CEO, OneWest had one of the worst reinvestment records in the State. CRC tracks reinvestment data in California, and in 2013, out of 12 banks analyzed, OneWest ranked 10th or 11th from the bottom. As one example of OneWest's lack of reinvestment activity under Mr. Otting's leadership, the bank made very few small business loans. In the final quarter of June 2015, under Mr. Otting's leadership, OneWest did one-tenth of the amount of small business lending in comparison to banks of the same size.

As another example, during Mr. Otting's leadership, OneWest had 15 percent of its branches in low- to moderate-income (LMI) communities compared to 30 percent for the rest of the industry.

Mr. Otting has written this CRA rule so that banks like the one he led that do little reinvestment can ace their CRA tests. For example, the Comptroller's proposed CRA rule benefits banks by loosening the rules around small business lending and by devaluing the importance of branches in LMI census tracts.

On redlining, Comptroller Otting certainly does have experience. While Mr. Otting was CEO of the bank, OneWest had 70 branches, but only one branch was located in a Native American majority census tract, and there were no branches, none, in African American majority census tracts.

During his tenure, over a 2-year period, the bank originated only two mortgage loans, that is two, to African Americans in the greater Los Angeles area. That is hard to believe, given the size of L.A.'s African-American population.

It would be bad enough if OneWest merely did a poor job meeting community credit needs as required by the CRA. But, in fact, the bank that Joseph Otting ran also substantially damaged community credit needs through mass foreclosures. Most of this harm was inflicted on communities of color. Between 2011 and 2015, when Mr. Otting was CEO of OneWest, the bank foreclosed in neighborhoods of color 3 times as often as it made mortgages in neighborhoods of color.

We are concerned that the Comptroller's proposal will lead to a return to redlining and more harm to communities, given its focus on the one ratio that prioritizes quantity over quality and overall numbers over serving local community needs.

CRC and over 100 organizational opponents of the OneWest-CIT merger raised many of these concerns during the public comment process for the CIT-OneWest merger. As part of the merger, Mr. Otting solicited letters of support from his Wall Street contacts via a form letter on the bank's website. Our analysis of those letters observed a number of anomalies. Our suspicions were confirmed when CRC received a call from a supposed supporter of the merger who was upset his email address had been used to support a bank merger he knew nothing about. He said, "My identity has been stolen."

Our subsequent FOIA request to the OCC uncovered documents reflecting email exchanges with the OCC from individuals upset that they had been listed as supporters for a merger they had never heard about. The letters at issue, supposedly submitted by these supporters, appear to be the same form letter that Mr. Otting had urged his Wall Street contacts to submit via the bank's website.

What does this mean for the integrity of the CRA public comment period overseen by Mr. Otting himself?

We also have concerns, based on Mr. Otting's public statements, regarding his ability to fairly receive and incorporate public input. Comptroller Otting was quoted as saying, "Certain community groups know how to hold you hostage during that process, and they use your lack of compliance in between the reviews to be able to do that."

Perhaps, most alarmingly, Comptroller Otting was quoted as saying, "We won't tolerate groups that do not provide services to these communities to disrupt the process and affect our decisions." Perhaps, he doesn't believe in democracy.

These comments suggest that the Comptroller cannot be trusted to objectively consider public comments from community groups, just as he is soliciting public comments on plans to weaken the nation's primary anti-redlining law. The proposed rule led by Comptroller Otting will do great harm to communities of color and low-income communities while advancing the interests of big banks who have little interest in reinvestment.

I thank you for the opportunity to discuss our concerns today.

[The prepared statement of Ms. Gonzalez-Brito can be found on page 52 of the appendix.]

Chairman MEEKS. Thank you for your testimony.

Mr. Rodriguez, you are now recognized for 5 minutes.

STATEMENT OF ERIC RODRIGUEZ, SENIOR VICE PRESIDENT, POLICY AND ADVOCACY, UNIDOSUS

Mr. RODRIGUEZ. Good afternoon. Thanks to the chairman and ranking member, as well as the members of the subcommittee, for the opportunity to testify today. Our remarks will echo many of the concerns already raised.

My name is Eric Rodriguez. I am a senior vice president of Policy and Advocacy for UnidosUS, formerly the National Council of La Raza. UnidosUS is the largest Hispanic civil rights and advocacy organization in the United States. For over 25 years, I have worked on issues such as the Community Reinvestment Act that lie at the intersection of economic inequality and civil rights.

UnidosUS is a unique civil rights organization in three critical ways. One, we combine advocacy with research and analysis of the Latino community. Two, we leverage our policy expertise with on-the-ground experience, administering culturally competent housing and financial capability programs that are proven to reduce wealth and income disparities in communities. And three, we partner with both government and industry to change practice in ways that advance economic interest of the Latino community.

First, I want to touch on very quickly the important history of CRA, then we'll highlight just a few of our concerns with the plan by the OCC and the FDIC that we also believe would really weaken the intent of the CRA. And last, we will recommend an alternative approach.

The first thing is, discrimination and disparate impact in banking has been persistent throughout our history and often exacerbated by our public policy. For example, in the 1930s, the Home Owners' Loan Corporation created a universal risk appraisal method that classified neighborhoods based on occupation, income, race, and ethnicity of residents, literally drawing red lines where people of color constituted the majority. Limiting access to credit has consistently undermined the vitality and the mobility of people, of color and the neighborhoods where they live.

In many ways, Chicago served as the birthplace for the resistance movement against redlining decades ago. In 1969, the Westside Coalition of Community Organization, in a Polish neighborhood with a growing Puerto Rican population, identified the problem well. Members of the community had been denied loans despite good credit histories. They protested until the group secured a meeting with the bank's president and the chairperson of the board or directors, and this began and sparked a nationwide campaign to place equitable community reinvestment on the national agenda.

Subsequent research documented nationwide redlining and bolstered the case for action, and Congress then acted with the passage of two important and critical bills: the Home Mortgage Disclosure Act of 1975 and the Community Reinvestment Act of 1977.

Over 40 years, CRA has encouraged regulated banks to lend to LMI communities of color. CRA helped to revitalize neighborhoods by increasing mortgage and small business lending. In our research, based on a national survey of mortgage origination data from 2014 to 2018, we found that the CRA had bolstered home lending for Latinos, and facilitated between 15 percent and 35 percent of home loans to Latinos in LMI census tracts. This was about 2 to 3 times the share of loans to their white peers in the same census tracts.

The OCC and FDIC's recent proposal seeks to update the CRA. We certainly agree CRA should be modernized. But we have grave concerns with their approach, and I will just highlight a few. First, in order to enforce the CRA, regulators currently look at banks' assessment areas defined in the regulations regarding where bank branches are or some physical presence located to gauge whether a bank is, in fact, meeting the credit needs of its community.

With the growth of banking on the internet and smart devices, the current approach for delineating assessment areas should certainly be expanded but not at the expense of physical branch locations.

As discussed in our own research, the future of banking report, coauthored with policy, linked physical presence still has an impact on whether residents of LMI communities have access to mainstream banking. Research also shows a direct correlation between the number of bank branches located in the neighborhood and the availability of credit.

Second, the plan would allow for community development activities that are outside of the original intent of the CRA. These activities do not serve the credit needs of their communities. We are troubled by the laundry list of qualifying regulatory criteria proposed. The new approach would weaken the impact of CRA on LMI communities.

Third, the proposal does not articulate how regulatory agencies would solicit, review, and weigh public comments of community organizations. In essence, the plan would strip "Community" out of the Community Reinvestment Act.

In the 4 decades since CRA was proposed, the law has increased bank lending in LMI communities. For Latinos, it is still important and relevant. In 2017, an FDIC national survey of unbanked and underbanked households found that while 6.5 percent of households overall were unbanked, 14 percent of Latino households, and 16.9 percent of Black households were underbanked.

A better approach to modernizing the CRA would be for regulators to negotiate with the civil rights community and lawmakers and work with the Federal Reserve to ensure one uniform set of rules for financial institutions to follow. Rules of the road that are flexible enough to meet the challenges of a changing marketplace while continuing to effectively address disparities is the goal we all share.

Thank you.

[The prepared statement of Mr. Rodriguez can be found on page 215 of the appendix.]

Chairman MEEKS. Thank you for your testimony.

I now recognize Ms. Knight for 5 minutes.

STATEMENT OF HOPE KNIGHT, PRESIDENT AND CEO, GREATER JAMAICA DEVELOPMENT CORPORATION (GJDC)

Ms. KNIGHT. Good afternoon, Chairman Meeks, Ranking Member Luetkemeyer, and members of the subcommittee. Thank you for the opportunity to testify today.

My name is Hope Knight, and I am president and CEO of the Greater Jamaica Development Corporation (GJDC). GJDC is a not-for-profit that works to promote responsible development in Jamaica, New York, and southeast Queens.

As a leader of an economic development organization in a formerly redline community, the CRA is foundational to my work. I have studied the Notice of Proposed Rulemaking (NPRM) and had the honor of helping to lead a tour of Jamaica for Comptroller Otting and the OCC. I am here today to discuss significant concerns I have about the ideas presented in the NPRM and that I believe would significantly weaken the CRA and hurt the community that I serve.

That community, Jamaica, Queens, shares a history with many urban communities of color across the United States. Redlined in the 1930s, Jamaica struggled to attract private investment. In the 1960s and 1970s, Jamaica's economic base further eroded as white flight drained the downtown of residents and businesses. The culminating disinvestment left Jamaica in a vicious economic cycle.

Targeted Federal programs like the CRA helped start a reversal of this cycle. Recently, and owing in part to their interest in securing CRA credit, banks financed transformative development projects in Jamaica, including ones that bring more affordable housing and good jobs to southeast Queens. As a community development financial institution (CDFI), GJDC has been able to lend to small businesses with the help of banks' contributions often given to meet CRA obligations.

However, Jamaica still bears the legacy of redlining, suburban flight, and disinvestment. As evidenced in our tour with Comptroller Otting, many areas of Jamaica remain banking deserts. Potentially catalytic projects struggle to secure financing and low-income residents have trouble accessing loans. If changes are made to the CRA that dilute its impact, Jamaica will struggle against such economic headwinds, and the recent progress growing Jamaica's economy will be put at risk.

With regard to the NPRM, I am particularly concerned by several proposals. From my work in economic development, it has become clear that to be effective in spurring equitable economic development, regulations must have clear and well-defined geographic targets. Instead of focusing on a clear geography, the proposed regulation greatly expands where banks can get CRA credit, allowing for investment in areas outside of local assessment areas, making it less likely that financial assistance will flow to communities and projects that need it most.

As one example, under the rules of the NPRM, any investment in a low-income Opportunity Zone would be an eligible activity without any consideration of economic development benefits or community needs. Retail banking is of paramount importance to neighborhoods like Jamaica. As Comptroller Otting mentioned after his tour of Jamaica, there are areas in Jamaica that are served by few or no bank branches.

Compounding this, the nation's persistent digital divide creates a barrier to accessing financial e-services for those in low-income census tracts. Without branches, many residents depend on high-cost alternatives, like corner store ATMs and check-cashing services. As such, I am very concerned by the proposed regulatory changes that eliminate the current large bank service test and examination of basic banking accounts for LMI customers.

By moving forward on proposed regulatory changes without the Federal Reserve, the OCC and the FDIC would create a two-tier regulatory system that adds complexity and confusion to an already complicated sector. While larger money center banks may be able to navigate this added burden of complexity without too much difficulty, smaller institutions may be hit hard, especially minority depository institutions (MDIs).

The CRA is complex. Changes to the regulation will have far-reaching impacts. The short comment period does not allow enough time for adequate comment. The comment period should be extended to a total of 120 days. The changes to the CRA regulations currently proposed by the OCC and the FDIC will hurt economic progress in LMI areas and undermine the anti-redlining intent of CRA. As such, I oppose the changes described in the NPRM, and I look forward to answering any questions related to my testimony.

Thank you.

[The prepared statement of Ms. Knight can be found on page 179 of the appendix.]

Chairman MEEKS. Thank you for your testimony.

And, Ms. Bautista, you are now recognized for 5 minutes.

STATEMENT OF FAITH BAUTISTA, PRESIDENT AND CEO, NATIONAL DIVERSITY COALITION (NDC)

Ms. BAUTISTA. Thank you so much.

Before I read my testimony, I just want to tell you, don't believe everything that Ms. Paulina is saying because we are seeing—we had a group counseling agency, and we have helped so many homeowners in California save their home, and OneWest saved a lot of the people who were facing foreclosure. Thank you.

We must do better. NDC and the National Asian American Coalition (NAAC), which I also lead, represent underserved and minority people and small businesses who are left behind by our current system. I work directly in our communities to provide lending, counseling, and training solutions to our most vulnerable.

For NDC, reducing the number of underbanked is our North Star. We believe CRA has failed for one primary reason: CRA qualifying lending and investments are not measured. Whether this is by design or by neglect, it is harmful to the communities I have spent my life serving.

It is remarkable and offensive that the current CRA regulations do not track CRA activity on an industrywide level. Frankly, it might be the only data that regulators do not think worth collecting and evaluating systematically.

I have had the honor to meet with the Federal Reserve Chairs and Governors over my decades of advocacy. At each meeting, I ask them the same simple question of whether CRA lending and investments have been increasing or decreasing over the prior 5 years. The answer each time is that they simply do not know. Conveniently, the current approach to CRA provides no way of measuring the number of loans or the volume of dollars being invested in underserved minority neighborhoods. That needs to change.

This information is necessary to any serious data-driven analysis seeking to understand the real impact of CRA. With no data and no measurement comes no accountability.

The current approach turns a blind eye to low-income and minority communities. For example, instead of using metrics to gain merger approvals, banks simply make unregulated promises to increase CRA investments in a future that never comes. Today's hearing is to determine who the winners and the losers would be from CRA reform, but the current regulations do not collect the data necessary to measure who is currently winning or losing.

Working every day in communities of color, I can tell you today that the CRA losers are America's low-income communities and minorities. They are the people served by NDC, NAAC, and our members. The stories of abuse and neglect faced by America's immigrants, minorities, and others we serve would break your heart.

NDC believes that underserved communities will only win when there is a real transparency that measures each bank's CRA activity objectively, discloses it timely and publicly, and allows comparison against peers and regulatory targets. Data and accountability must replace excuses and stories.

Today, the question should not be if the CRA proposal is perfect. It is not. Instead, we must ask if it improves upon the current approach to CRA and provides a new paradigm able to break the cycle of poverty and neglect faced by America's most vulnerable communities. The definitive answer is yes.

The OCC and FDIC proposal would improve the current system in three primary ways. First, it will clarify what qualifies for CRA credit. No more guessing. That helps community planners and advocates makes the most of our resources.

Second, it updates where a bank receives credit for CRA. It recognizes the advent of the internet, ending loopholes for internet banks and wholesale banks. This will enable banks who help underserved communities where they have depositors, but no banks, receive CRA credit.

Third, it will provide timely and transparent reporting that measures CRA-related activities using standard metrics. We will all finally be able to confirm that banks are increasing their CRA activity in underserved and minority neighborhoods.

NDC believes the proposal set out by the OCC and the FDIC will increase CRA activity by over $100 billion. Should that not occur, the OCC and the FDIC must commit that they will raise the requirements for "satisfactory" and "outstanding" CRA ratings to ensure that CRA investments increase as promised.

The proposal also closes loopholes that currently allow bankers to trade loans back and forth between banks to claim multiple CRA credits for the same loan. It will also end the CRA credit for gentrification and displacement, when banks finance wealthy people purchasing homes in poor neighborhoods.

It is true that the proposal can benefit from further modifications during the public comment period. For instance, loans guaranteed by the Federal Government should not receive CRA credit. Double dipping on Federal subsidies does not increase the amount of capital reaching underbanked communities.

We pray that the Federal Reserve awakens to the urgent need for change. Today's status quo continues to fail over 30 million disproportionately minority American households. Fear of unintended consequences is not a good reason to stick with a failed system that for 4 decades has resulted in generational poverty and disparate impact in our communities of color.

We are confident that this proposal will at long last begin the process of reducing the unacceptable number of underbanked in America. Thank you so much.

[The prepared statement of Ms. Bautista can be found on page 45 of the appendix.]

Chairman MEEKS. Thank you.

I thank all of the panelists for their testimony today.

And before I recognize myself, I ask for unanimous consent to enter four documents into the record. The first is a statement for the record from Mr. Richard Hunt, the president and CEO of the Consumer Bankers Association, and the statement speaks to the importance of getting CRA modernization right and ensuring that concerns raised are adequately addressed. It is noteworthy that in this document, the CBA raises concerns with the OCC's requests for data, which came after the publication of the rulemaking.

The second statement for the record is from Mr. Noel Poyo, executive director of the National Association for Latino Community Asset Builders. In this statement, Mr. Poyo outlines key concerns with the OCC and FDIC's rulemaking, including ignoring comments from the ANPR and diluting the focus on LMI communities, likely reducing investments in rural and other hard-to-serve communities and other issues.

The third statement for the record is from Mr. Aaron Glantz, senior reporter at Reveal from The Center for Investigative Reporting. And as a reminder, Mr. Glantz testified at our hearing on CRA modernization in April 2019 on his groundbreaking report on modern-day redlining. And this statement for the record provides a detailed, troubling account of Mr. Otting's time at OneWest Bank.

And the fourth statement for the record is from Mr. David Dworkin, president and CEO of the National Housing Conference. In this statement, he reminds us of the history of discrimination and redlining that led to the passage of CRA and the broad agreement on key colors for CRA reforms that outline specific areas where the OCC's proposal will make it fall short of the commitment to holding true to CRA's original intent.

Without objection, it is so ordered.

And I now recognize myself for 5 minutes for questions.

My first question will go to Ms. Levi. As I stated in my opening remarks, I have had private conversations with banks and banking groups, and they are quick to state that they didn't ask for the OCC's framework, and expressed a list of concerns if this approach were to be implemented, posing operating complexity, reputational risks, and significant uncertainty. And in the letter I just entered into the record from the Consumer Bankers Association (CBA), they state that more analysis must be undertaken by stakeholders to better understand the impact of the new metrics that will be used to measure CRA activity for individual institutions in the communities that they serve. And the CBA appreciates the OCC's recent effort to consider the impact of a more quantitative approach through additional data collection, but feels the true cost of reforms must be understood before dramatic changes are made. Can you speak on this?

Ms. LEVI. I can, and we have heard a lot of the same concerns. I was at a housing tax credit conference last week, and for a lot of the folks who participate in that market, they are concerned about more financing gaps, not less, because the incentives under this proposal are off.

It also points to the process concerns I outlined. We don't have enough time. It is complex. It is interconnected. And the agency has not made it easy because they have not shared a lot of their data analyses and modeling.

Chairman MEEKS. Now, is there—or how does the OCC's proposed rulemaking impact the link between a bank's CRA activity and direct lending, especially mortgage lending to low-income communities of color?

Ms. LEVI. The bottom line is that the retail lending distribution test in this proposal is weaker, and is going to make addressing problems this committee is focused on, for example, the racial wealth gap, a lot harder to get banks to participate in. Also, you can fail in half of your local assessment areas and still pass at the bank level.

There are a number of problems with it, and some arbitrary thresholds in it. And there is no review of mortgage lending in LMI neighborhoods at all.

Chairman MEEKS. Thank you.

And, Ms. Knight, I know in your testimony you talked about doing a tour of Jamaica, Queens, with Mr. Otting. And during that tour, he saw the extent of banking deserts and the important needs for loans and financial services, and the great disparities in access to credit and housing in the community. Can you speak—and I know there were several other people from the community who were there—to the feedback that Mr. Otting received from the community, specifically as it relates to the OCC's CRA proposal?

Ms. KNIGHT. Thank you. We were able to show Comptroller Otting how few bank branches there were in southeast Queens, and as a result, small businesses in the community don't have the opportunity to develop relationships with traditional financial institutions. And that is something that many people on the tour, advocates, community leaders, spoke to the Comptroller about. We also were able to show him where many of the alternative financial activity happens in corner stores and check-cashing establishments.

Chairman MEEKS. Thank you.

Mr. Rodriguez, do you consider the CRA to be a civil rights bill?

Mr. RODRIGUEZ. Absolutely. Yes.

Chairman MEEKS. Elaborate, please.

Mr. RODRIGUEZ. Yes. If you think about the origin of CRA and part of the testimony but also what we know of how organizers in Chicago, where they identified the problem of disparities where you had banks that were investing even abroad and not investing very much, if at all, in their own local communities, that is what sparked it as a major movement and ultimately shined a light on inequalities that needed to be remedied through changes through Congress. Absolutely, it is a civil rights law.

Chairman MEEKS. Thank you.

My time has just about expired, so I now will recognize the ranking member, Mr. Luetkemeyer, for 5 minutes for questions.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Ms. Bautista, you were pretty adamant in the discussion of the lack of data that the Comptroller now collects under the CRA law. That is concerning to me from the standpoint of, how can they make good decisions on whether it is working or not?

Ms. BAUTISTA. Congressman, I think the CRA reform—we know that it needs to be reformed. It has been 25 years. The OCC has been working with this for the last 10 years and extensively in the last 2 years. We believe they have data, and the data that the OCC and the FDIC has is the same data with the Federal Reserve.

Mr. LUETKEMEYER. You are about the only one who, as you went through the process here, pointed out the problems, had some solutions, and also indicated the good points about what the law does or what points it actually fixes or things that you support. And it was interesting to me because I think that is where we can point out the problems. If we have no solution to the problems, we are not getting anywhere. And I think you and Mr. Rodriguez made the point that this has to be updated.

The law doesn't have anything in there with regards to internet activity, mobile phone activity, online lending activity, which is a modern day, everyday practice now.

Ms. BAUTISTA. Correct.

Mr. LUETKEMEYER. If I was one of you, I think I would be concerned about some online lending that doesn't qualify for CRA. Some of these folks can make online loans and don't have to comply. That is what I would be arguing about if I were in your seat. I didn't hear anything like that today, which is surprising to me.

But I think, Ms. Bautista, you indicated that one of the good points that this new rule, the proposed rule is talking about here is clarifying what actually qualifies for CRA. And to me, having been in the business for a long time and I had to work with this rule, this is always a problem that I had with it, because there are a lot of good things that an institution can do to invest back in its community and in any of these particular communities of lower- to moderate-income folks, that we are not getting credit for even though they do it, and they do it because they want to do it. They do it because they want the community to grow. They want to be successful, but yet they are not getting credit for it. And then when the examiners come in, they pound them over the head, because you are not doing anything, and it is kind of like putting a square peg in a round hole sometimes. It is hard to get that done.

Do you have any other additions to the list that was presented that you thought would be helpful?

Ms. BAUTISTA. Yes, and this is what I would love about the CRA reform is because when I was reading it, there is like 200 clarifying CRA. I just want to give you some example, that we are doing something in San Diego, and there are three banks that are participating. One bank did not participate because they were not sure if it is CRA-related, even though it is the right thing to do. Now, I can tell the banks, and I can justify that this is CRA-related because it is now identified in the 200s. As a community organizer and very much CRA-involved, it is so refreshing that there are finally guidelines.

And for the internet banking, it has changed, right, from 25 years ago? Then, nobody deposited through their mobile. Now, I don't even go to the bank. Even the immigrants that I serve, they hardly go to the banks anymore because everything can be done through their iPhone. So things have changed, and we have to adjust to the needs, especially for low- and moderate-income people and people of color.

Mr. LUETKEMEYER. One of the things that concerns me is in the past, it was always about location, but yet whenever you take deposits from an area, to me, there needs to be some money going back in investment into those areas. You shouldn't just be taking deposits out. You should be investing back into those areas. And, to me, this new rule does that, does it not?

Ms. BAUTISTA. Yes.

Mr. LUETKEMEYER. To me, this is a really big deal because—

Ms. BAUTISTA. It is.

Mr. LUETKEMEYER. —it goes into your online lending folks. Wherever you get that money from, you would be putting some of that money back. And as far as investments, not taking everything from over here and investing it over there, which is what is being done right now to a certain extent.

So I appreciate your comments today, and I will yield back the balance of my time. Thank you.

Chairman MEEKS. The gentleman yields back.

I now recognize the gentleman from Georgia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Bautista, during your testimony, you said, "Don't pay any attention to what Ms. Gonzalez was saying." And I wanted to get some clarity on that because that really got my attention, because that was a very profound statement, and I want you to explain that statement. Why shouldn't we pay attention to what she was saying?

Ms. BAUTISTA. Thank you.

Mr. SCOTT. What was so profound about it?

Ms. BAUTISTA. Thank you for asking me that. You know, my daughter always tells me if you don't have anything good to say, don't say anything. And the reason I can say that is because I was there when people were losing homes. I lost my home in 2009, and nobody was helping me because there was no process. So I was very adamant in helping people who were losing homes. And during the financial crisis, a lot of the borrowers who came to the National Asian American Coalition or any HUD-approved counseling agency, we had to have a good relationship with the banks.

At the end of the day, the lender still makes the decision, but Comptroller Otting, Mr. Otting then, makes sure that his people—I still remember Tony Edwards bringing people to all the outreach we have done from San Diego, Central Valley, Bay area, and—

Mr. SCOTT. My time is slipping away. But the reason I raise that is because we are faced with some very biting concerns about this rule. And you also said that the Fed had the same data—data is very important here—as the OCC and the FDIC. But why is the Fed staying away from what you are pushing?

Ms. BAUTISTA. Good question, because, to me, the Federal Reserve—I love them, I love all three regulators. They are data-driven, they are research-driven. But, sir, at the end of the day, the people I am serving don't care about data; they need help now.

Mr. SCOTT. Okay. Let me turn to you, Ms. Levi, and to Ms. Gonzalez-Brito. First you, Ms. Gonzalez-Brito. I want to ask you that because our primary concern here is that we have problems and evidence, it seems, that what Mr. Otting is offering not only does not enhance the purpose of the Community Reinvestment Act to do away with discrimination, but that it might increase racial discrimination. And so, we have to get to the clarity of this.

So do you agree with the—do you and Ms. Levi agree with what Governor Lael Brainard said? She said that any proposed changes to the CRA regulation must be grounded in analysis and data to avoid unintended consequences. And do you believe this data is here? Go ahead?

Ms. GONZALEZ-BRITO. Absolutely. And I would say that data does not lie. To Ms. Bautista's point, there were 36,000 foreclosures in California alone under OneWest, Inc., and a third of those were when Mr. Otting was CEO. And so, data is absolutely important. The Federal Reserve, with Governor Brainard, has made their data public. They looked at 3,700 banks, 6,000 performance evaluations, and made that data available to the public as they released their metrics and looked at, how would banks perform under those metrics that they are proposing? The OCC has not released that type of data, and it is clear now, by having an RFI process after releasing their proposal and then having that data not due until after the comment period, it means that the public is not going to be able—

Mr. SCOTT. I know. I want to get Ms. Levi in here. Go ahead, Ms. Levi.

Ms. LEVI. Federal Reserve Governor Brainard really nailed this. And why don't we have that kind of data about this proposal? Implementing a big dominant, single metric framework that incentivizes banks to run up the numerator with a lot of activities that aren't focused on LMI communities and people who need the benefit of CRA credit is not the way to serve the communities that Ms. Bautista purports to represent.

Mr. SCOTT. Thank you.

Chairman MEEKS. The gentleman's time—

Mr. SCOTT. Mr. Chairman, maybe we can get the Federal Reserve in before we move forward? This is serious.

Thank you.

Chairman MEEKS. The gentleman from Oklahoma, Mr. Lucas, is now recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman.

While the banking industry has changed substantially in the past decade with the Community Reinvestment Act, it has not been meaningfully revised since 1995. And I think we all know that we live in a different world now than we were in 20, 25 years ago. I am sure we all can agree that CRA can be updated to better serve low- and moderate-income areas.

The OCC and FDIC's proposal, I think, is a welcome change to the out-of-date regulations. So, first, let me turn to Ms. Bautista. You outlined in your testimony how the CRA has failed to accomplish its mission. Can you expand on how the OCC and FDIC's proposal recognizes that the CRA should not follow a one-size-fits-all approach?

Ms. BAUTISTA. Oh, yes. This is why, during the foreclosure crisis, it took so long to help people, because the banks always have one-size-fits-all regulations. Even for the Asian community, the subethnic group, it is not all the same.

What I like about this is that there are benefits to citizens and community members, there is local emphasis. We are now going to make sure that if you have a branch there over 5 percent deposit, that they will contribute on CRA. There are also benefits for the development of practitioners, advocates, small farms, and small businesses. And like the Indian Country that has never been served before, I am really excited about that, because we have so many constituents, over 1 million, from whom you hear every day what they need. The Indian Country, the payday lending there is so much, and now with this increase of CRA dollars, I think the payday lending, hopefully, we can just bury them.

Mr. LUCAS. Ms. Bautista, you have just explained and have explained several times in your testimony that the new proposal would increase CRA activity. How can the regulators and Congress sustain this increase in the long term with this proposal?

Ms. BAUTISTA. We need to calibrate. Banks have a hard time getting outstanding CRAs. Most of them, they are okay with satisfactory. We need to ensure that—this is why I also like this, is because quarterly, they are now going to be reporting. Right now, they report like every 3 years or—yes, their examination is 3 years. I am not so technical, but now I can see that every 3 months or quarterly, they can do the reporting. So, we know that they are going to increase their CRA investments.

Mr. LUCAS. We have heard mentioned in the hearing about the comment period.

Ms. LEVI. And can I—

Mr. LUCAS. Just one second.

Ms. Bautista, could you expand on the aspects you see of the OCC and the FDIC's proposal that could be improved in the comment period, perhaps even through a separate proposal maybe from the Fed? What could be made better in this comment period? What should people be talking about?

Ms. BAUTISTA. This is why we need to do a lot of outreach. This is about low- to moderate-income, right? This is about people of color, people with English as a second language. I think since they have been doing this for so long and extending it until March 9th, we have to get people involved. The people of color, what do you need? What should the banks be doing that they are not doing? What should the regulators' examination be? And for the Congress—and I am so glad you are doing this hearing, because this is like the voice of the voiceless as now we are telling you what is needed. So, we have a comment period. Let's get to work. If you don't make a comment, then forever hold your peace. Don't ever complain. Say everything that you need to say, pluses or minuses. Nothing is cast in stone until it becomes a law. And to me, even if it is a law and if it is bad, you should still change it.

Mr. LUCAS. Thank you. I yield back, Mr. Chairman.

Chairman MEEKS. The gentleman yields back his time.

I now recognize the gentleman from Illinois, Mr. Foster, for 5 minutes.

Mr. FOSTER. Thank you, Mr. Chairman.

I think we really all agree that our goal is modernization and alignment with actual need on these, but we have to do that without formulas that will be gamed by the players in this so that you don't actually get the results you want.

One of the things that concerns me is that many of the CRA-qualifying activities are now going to be dollar-based. It seems to me this is going to encourage banks to make a small number of mega deals in things in areas that technically qualify. Whereas, if they got some credit for the number of activities as well as simply the dollar value, they would help a lot more smaller businesses, help a lot more individuals by providing them banking services. And I was wondering, Ms. Levi, Mr. Rodriguez, or anyone else, if you could comment on that?

Ms. LEVI. That is absolutely right. And banks will get a lot more partial credit for activities that are not targeted to LMI people and areas. So, the standard has shifted as well.

Mr. FOSTER. I know. I was sort of surprised to learn that apparently, maybe even today, loans for stadiums and sports arenas' jumbotrons qualify for CRA credit. And this seems like the kind of mega deal, large thing that is not going to help a large number of people. And so some change in the formula that gives you credit for helping large numbers of businesses, not a large dollar volume.

Ms. LEVI. Yes. The formula and the primary purpose test has been jettisoned here, so it is both, but it absolutely quantity over quality, large over small, all the wrong incentives for CRA purposes.

Mr. FOSTER. Mr. Rodriguez?

Mr. RODRIGUEZ. Yes. I would just add there is no test around the quality of the investments anymore. So it is watering down the investments and decreasing the potency. So, maybe we could have more CRA investments, but more of them will be worthless with respect to community reinvestment in the ways that the law intended and that we hoped to get to. These are the critical concerns with the proposal and the plan so far.

Mr. FOSTER. So now we are left with just a geographical definition, rather than the purpose of the loan?

Ms. LEVI. Yes. We are left with a lot more activities that are not guided by the primary purpose of LMI and a lot more partial credit. So that does allow banks to run up the numbers. And the exam is designed under this proposal to make banks look as if they are doing more. But as Mr. Rodriguez said, it will have less impact on the communities and people the statute was enacted to serve.

Mr. FOSTER. This clarity argument that Ms. Bautista has been making, do you see merit in having more clarity instead of having some human regulator saying, well, I think that qualifies or partially qualifies? Is it actually going to be more productive to have a very long list that is very specific versus a more general language that is just in the intent of what you are trying—

Ms. BAUTISTA. For the banks, you have to be specific, otherwise they will find excuses. And we need—

Mr. FOSTER. So the banks make their own call under the current system as to what qualifies?

Ms. GONZALEZ-BRITO. I think we want clarity and we do, like they did having more data, but we are not going to trade clarity and data for impact. And I think that is what this proposal does, it makes a trade for the core purpose of CRA, which is serving LMI communities to make it easier for banks to be able to get that outstanding rating. And so, it trades communities for Wall Street, basically.

Ms. LEVI. And Federal Reserve Governor Lael Brainard laid out some of their approach last week in its multiple metrics. So it is possible to achieve clarity for banks and communities without this dominant single metric that really incentivizes dollar volume.

And if I can correct one assertion by the Congressman very quickly, this is a one-size-fits-all proposal, regardless of bank model, regardless of community needs. This is the definition of a one-size-fits-all proposal, and we are not the only ones that—

Mr. FOSTER. Along those lines, just in the few moments I have here, I was sort of surprised that small businesses up to $2 million in revenue will qualify, but for some reason, if the business is a farm, it is $10 million. What is the reason for that? Why treat one business differently than another?

Ms. LEVI. Your guess it as good as ours, but I will tell you, on the farms, only 1 percent of farms had sales over $5 million or more. About 76 percent of farms had sales of $50,000 or less. So small farms are not the focus with that change there.

Mr. FOSTER. Thank you. And I yield back.

Chairman MEEKS. I now recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Thank you, Chairman Meeks and Ranking Member Luetkemeyer, for this hearing.

The Community Reinvestment Act is heralded as one of the foundational civil rights acts of the last century. We all have an interest in a financial system that serves the needs of all, a system without bias. I strongly identify with that goal and believe that our goals of equality in the financial services as well as other objectives are best pursued by ensuring that our free market systems are efficient.

Where financial institutions focus on their shareholders' bottom line, banks and other institutions can be expected to see the profit motive as inconsistent with an arbitrary exclusion of customers based on race or any other irrational criteria.

Ms. Bautista, I would like to believe that fair-minded financial institutions would want to show off their activities that demonstrate their contributions to serving the needs of their depositors and assessment areas. Can you share your experience related to the attitudes of those who are evaluated under the CRA?

Ms. BAUTISTA. I was told not to say any specific bank, so bank A, bank B, bank C. You know, bank A, they make commitments, right? We are involved with so many settlements with all the banks. There is a lot of settlements. But after 5 years, do we really see, did that move the needle? Did they increase homeownership in the African American, Latino, and Asian communities?

The new CRA reform is so refreshing because there is accountability, there is transparency, and there is also now a pressure for banks to do the right thing and to increase their CRA. The CRA should not remain "satisfactory." To me, they should all be "outstanding." But a lot of them cannot be outstanding because they are missing just half a point or one point. And I ask them, why is that that you are not "outstanding?" And it is hard for them to say why, because there are really no guidelines.

Now, with this reform, they will now know, okay, my CEO, we are going to be "outstanding" and we are going to do a lot of planning. We are going to do investing. And what they are saying about the stadiums, I agree with that. We should have really thought it out. And now this project can be really be examined. Is this something that—it is easy to give loans to big hospitals, to stadiums, because they can do those loans all day long, because they have the right financial. But for us, like the CDFI, there are so many good CDFIs in there that are not getting investment because we are not savvy enough, because we are nonprofit. Even with Ms. Hope here in New York—and I sit on the advisory board—there are 1,100 CDFIs and they can do so much.

Now, CDFI is another way to do more micro lending, to do more small businesses, to do more home loans to those who don't fit the box with the lenders.

Mr. POSEY. Okay. Does any substantial part of the community see CRA ratings as an opportunity to showcase how well they serve the needs of low- to moderate-income people?

Ms. BAUTISTA. Yes. CRA is a godsend. CRA is like God warning them do the right thing, so we have to make it right.

Mr. POSEY. Okay. Do many just see it merely as a regulatory burden?

Ms. BAUTISTA. Yes.

Mr. POSEY. Would you say 50/50, or what do you think?

Ms. BAUTISTA. It is too expensive for the small banks to comply with their CRA regulations. That is why I think all of the regulations are not good. And the unintended consequence of that is they will not do funding anymore to nonprofits. That is the job that we should all be doing, because they spent more on the regulations. That is why the big banks should not be treated the same way as the smaller banks. And community banks understand who they are serving. They know their borrowers.

Mr. POSEY. How do you think we can design a process that overcomes that?

Ms. BAUTISTA. You have to leave it to the OCC, the Federal Reserve, and the FDIC. They are the regulators. And I think with input from us, this is why this is great, the pluses and the minuses, and more information, we have until March 9th, and we are going to do a lot of town halls and we are going to be asking the REALTORS. We are going to be asking the loan officers. We are going to be asking the borrowers, the borrowers who are being denied, and they should not be denied from owning a small business or owning a home.

Do you know that there is $100 billion of mortgage loans that are denied because they don't fit the box? I am a good borrower, but because of the foreclosure, my credit score did not go up for 5 years and I have been borrowing. I put 20 percent down, I don't owe anybody, but my credit score is so artificial, it will not go up—it goes up and down; it depends on the time of the day.

Mr. POSEY. Thank you.

Chairman MEEKS. The gentleman's time has expired.

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

Mr. LAWSON. Thank you, Mr. Chairman. And witnesses, welcome to the committee.

Today, we see that homeownership among African Americans and other minorities continues to fall behind. How do you see that the Comptroller of the Currency's, OCC's proposed changes in the Community Reinvestment Act (CRA) affects the homeownership of minority groups who suffer from these financial crisis? And I will just start with you, Ms. Levi.

Ms. LEVI. Let me contradict something that Ms. Bautista said here about CRA and the homeownership gaps and things like that. First of all, let's keep it in perspective, CRA covers about a third of the mortgage market. So, we do have to keep it in perspective. Second, 98 percent of banks are passing CRA exams today. It is really not a big problem for them.

I will say this: The retail lending distribution test is pass-fail. There are some low bars but arbitrary thresholds around local demographics or peer comparators included in it. And overall, the CRA retail test used to be half of the exam. It is now, again, pass-fail, and you can fail in about half of your local assessment areas, your local communities, and still pass at the bank levels. And I think a lot of underserved communities, rural communities should be concerned about that in particular. As I said, I think it makes addressing the racial wealth gap that much harder.

Mr. LAWSON. Go ahead.

Ms. GONZALEZ-BRITO. I also wanted to correct Ms. Bautista. When we do analysis of CRA data in California, the community banks and the smaller banks do better than the big banks in their CRA investments in lending in California.

Mr. LAWSON. Anyone else want to comment?

Mr. RODRIGUEZ. Can I add something?

Mr. LAWSON. Yes, go ahead.

Mr. RODRIGUEZ. Okay. I was going to add it is an excellent point. And just one fine point is that the homeownership rate of the Latino community nationwide is 4 percentage points lower today than it was a decade ago. If we put 4 million Latinos into homes today, we would just be catching up with where we were over a decade ago, and the reason is access to credit and affordability that is crucial to our communities to get back to where we were let alone. And CRA can be an important part of the solution if it is done right.

Ms. BAUTISTA. If I can just make a comment on the African-American homeownership, I am so glad you mentioned that, because it is at an all-time low. We work a lot with Black pastors and we do a lot of workshops in the African-American community. We need to do a proper education, because for the African Americans, they don't even know sometimes if they can own a home. It is a different culture, so the financial literacy should be different in different cultures. And the African Americans need a lot of financial literacy, need a lot of down payment assistance, need a lot of extra help.

Ms. GONZALEZ-BRITO. If I could just say, I think the problem is—

Ms. BAUTISTA. I am not finished yet.

Ms. GONZALEZ-BRITO. —racism and systemic racism and not what Ms. Bautista is talking about right now.

Mr. LAWSON. I am trying to get some clarity. Ms. Bautista, can you finish?

Ms. BAUTISTA. Yes. Thank you so much. CRA is about the people. It is about the low- to moderate-income people. Let's focus on that. Let's do the right thing for all of us.

And, let's not interrupt. At least, be decent.

Thank you.

Mr. LAWSON. Ms. Levi?

Ms. LEVI. I just wanted to say on the financial literacy piece, there is also a shift under this proposal. This or CRA credit for financial literacy for everyone. Again, not targeted on low- and moderate-income home buyers and small businesses and others for whom the statute was designed. It just opens it up for everybody. And I think low- to moderate-income minority borrowers should be the focus of even that piece which Ms. Bautista mentioned.

Mr. LAWSON. Ms. Gonzalez, I have about 20 seconds, did you want to say something?

Ms. GONZALEZ-BRITO. I just wanted to say that one of the things that this proposal does is that it makes it easier for banks to reach those "satisfactory" and "outstanding" ratings. It gives double credit for community development lending. And if I told my son that he could get double credit for doing half his homework, I will tell you right now he would do half his homework, and that is what we can expect from this proposal.

Mr. LAWSON. Okay, thank you. Mr. Chairman, I yield back.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman.

I just have to take exception to that last comment. The community bankers that I know in central Kentucky, that is not their attitude. They want to help their communities. They don't want to do it halfheartedly. Every day, they go to work and they try to help the low- and moderate-income people of their communities, especially in rural areas. That is a mischaracterization of community bankers, in Kentucky at least, in my experience.

Ms. GONZALEZ-BRITO. Congressman, it is community banking that we are—

Mr. BARR. It is my time.

Chairman MEEKS. The time belongs to the gentleman.

Mr. BARR. My time.

I just wanted to make the comment that that is not the way the community bankers of my district behave. And I just wanted to say that.

Ms. GONZALEZ-BRITO. And our data—

Mr. BARR. It is my time. And I want to also correct another thing that was incorrectly stated. Ms. Levi made the statement that this is the Fed's position. I do recognize that Lael Brainard has a position on community—specifically for the community. But as I understand it, Ms. Brainard was speaking in her own capacity, not on behalf of the Fed. And the OCC has been working on this for about a decade, by the way. This is not fly by night.

Let me ask one question to Ms. Knight. You were critical of the proposal to allow CRA credit for investment beyond a defined geographic assessment area. But you also stated that lack of physical branches—this is a very reasonable point that you made—obviously decreases access to banking services. This appears to be a bit of a contradiction. I will give you an opportunity to try to reconcile those statements. My question is, wouldn't allowing for investment beyond a defined geographic area into areas where there is no bank headquarters, where there are no branches, physical branches, but where the customers actually reside, wouldn't that actually have the effect of enlarging and enhancing the goals of CRA and helping the unbanked or underbanked have better access?

Ms. KNIGHT. Yes, I think both things can be true at the same time, because if you have banks that are not a physical location but have customers and they have to make a choice as to where to locate their branches, if they are able to make the choice, they may not make it in low- to moderate-income areas because those areas are not the most profitable to the banks.

Mr. BARR. My point is the OCC proposal contemplates going beyond an arbitrary geographic area to actually where the customers are. And I think that actually is an enhancement.

Let me ask a question about rural communities to Ms. Levi, and I will let you answer this question. A recent Federal Reserve study shows that—because you talked a lot about farms and you talked a lot about rural communities, underserved communities, which is very much my district. A recent Fed study showed that 51 percent of the 3,114 counties in the U.S. saw net declines in the number of bank branches between 2012 and 2017. These declining bank branches disproportionately hit rural communities. A total of 794 rural counties lost a combined 1,553 bank branches over a 5-year period. That is a 14 percent decline.

The negative financial impacts on rural counties of branch closures are perpetuated by the continuing difficulties due to burdensome regulations and other roadblocks of de novo community bank formation. While these trends leave residents of rural counties without access to much-needed financial services, they also have a negative downstream impact on communities because of the absence of incentives under the CRA for banks to invest.

The CRA obviously needs to reach more rural communities, commonly referred to as CRA deserts. Do you believe that the CRA framework that we have today properly accounts for these rural communities?

Ms. LEVI. No, it doesn't. And the NCRC is—first of all, let me say this: Community banks are absolutely vital to their communities. We work with a lot of them. Okay? We are not here to impugn community banks. But let me—

Mr. BARR. I'm sorry. I was just speaking of Ms. Gonzalez' statement, that is all I was doing.

Ms. LEVI. This is why NCRC spends so much time organizing around bank mergers and acquisitions, because they lead to a lot of bank branch losses and the loss of small business lending. All of that is very well-documented in the research. CRA is focused on—

Mr. BARR. I understand. And we have some common ground here, and I acknowledge that, I and appreciate that statement. My only point is that the OCC proposal appears to do better in terms of accessing rural communities. And I think we ought to look at the good here as well and keep the good in this OCC proposal to the extent that it gets banks access into some of these rural communities that are currently underserved. I only have—

Ms. GONZALEZ-BRITO. I can answer that question around—

Mr. BARR. I don't have a lot of time left. Unfortunately, my time has expired.

Ms. GONZALEZ-BRITO. I can answer the question around rural communities.

Chairman MEEKS. The gentleman's time has expired.

Mr. BARR. Okay. I'm sorry we don't have more time. Maybe we can talk offline. But I appreciate your time today and your testimony, and I yield back.

Chairman MEEKS. The gentlewoman from Massachusetts, Ms. Pressley, is now recognized for 5 minutes.

Ms. PRESSLEY. Thank you, Chairman Meeks, for your continued leadership on this issue.

It is odd but consistent that this Administration's modernization efforts betray the fundamental mission of what they hope to modernize. The Community Reinvestment Act is no exception.

Over the weekend, The New York Times published an editorial highlighting the many problematic elements of the FDIC and OCC's December proposal. Under this proposal, loans for improvements to stadiums that, "happen to sit in poor neighborhoods" could earn banks CRA credit. Compare that to the values and data-driven approach outlined by Governor Brainard. The Federal Reserve has notably withheld its support.

Now, although this was a consistent through-line in all of your testimonies, I do believe it bears underscoring. So for the record, and this is to everyone on the panel, by a show of hands, how many of today's witnesses support the FDIC–OCC proposed rule?

How many support the Federal Reserve's approach prioritizing keeping branches open, small-dollar loans, and impactful community investment? Again, by a show of hands.

Ms. LEVI. It is a better start.

Ms. PRESSLEY. This past weekend, I was fortunate enough to host the very first historic Congressional Black Caucus fly-in in my district, the Massachusetts Seventh. Now, during the economic justice panel, including community leaders, entrepreneurs, and industry representatives, we discussed the many challenges our communities face when it comes to access to capital. One of the more compelling stories was that of a company founded and owned by a Black woman. The company is called TRILLFIT. Her name is Heather White. And she was unable to access capital; instead, she liquidated her entire 401(k) in order to open a business.

Women, Black women particularly, struggle to secure financing for everything from a business to a home. Earlier this year, when the big bank CEOs testified in front of this committee, I questioned the witnesses about this disparity in lending, which one report smartly labeled as, "pink lining." The report found that women were 30 to 46 percent more likely to receive subprime mortgage loans during the financial crisis than men. Black women were 256 percent more likely to receive subprime loans than white men.

How does this proposal ensure that Black and Brown women will not continue to be targeted, if not be more likely to be targeted with these predatory financial products?

Ms. LEVI. First of all, quality, a lot of the qualitative factors that are currently a part of the exam are out of this proposal. This is a dollar volume-driven approach that contravenes quality.

And furthermore, I would say to the gentleman about rural areas, you can't allow banks to fail in over half of their local communities and still pass an exam at the bank level.

Ms. GONZALEZ-BRITO. I would also say that the OCC's discrimination guidelines in terms of the way that they evaluate discrimination as part of their CRA exams are weaker than the Federal Reserve and the FDIC. They had an opportunity to strengthen that as part of this proposal and downgrade for harm that is caused by discrimination, and they did not do that as part of this proposal.

Ms. PRESSLEY. Thank you.

Now, Mr. Rodriguez, how is the CRA building upon that influence of development and delivery of financial products for communities of color more broadly?

Mr. RODRIGUEZ. That is an excellent question. I would just add to the previous answer, it is a great point and it is a factor in how the markets are changing and the needs of the community are changing. Someone earlier, a Congressman, mentioned meritocracy. The very reason why we have CRAs is because credit wasn't divvied out based on merit; it was based on race and ethnicity, and the country has changed now. And we want this to adapt and modernize to the changing country.

The Latino community in rural communities has doubled in years and is a fast-growing population. When we are talking about rural communities, are we thinking about Latinos in rural communities? Are we thinking about women? I think those are important points to raise and add to this conversation.

Ms. PRESSLEY. And, Mr. Rodriguez, with the remaining balance of my time, what happens when CRA-covered banks exit neighborhoods or close branches?

Mr. RODRIGUEZ. Another excellent question. Look, I grew up in Red Hook, Brooklyn. When I grew up, I had no banks in my community. There was one on the outskirts of my neighborhood because the Battery Tunnel was there, so when people needed to get some money for tolls, there was a bank there for them. There were not people who looked like me and you in those communities who had access to banking. And we paid a price for that over time, and it is a legacy that we are paying for even now as we look at disparities in wealth and disparities in access to credit and equality.

Thank you.

Chairman MEEKS. The gentlelady's time has expired.

I now recognize the gentleman from Colorado, Mr. Tipton, for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. I appreciate you holding this hearing.

A lot of continuity of thought in terms of CRA needs to be addressed. I happen to come from rural America, and when we are talking about community banks, my community banks in my district actually care about the people they live with, because they live there. They are trying to be able to actually see job improvement, to be able to help support that local community. And so when it comes to our rural community banks, I think for the most part, they are doing a good job reinvesting back into those communities.

That being said, we need to be able to re-update the CRA. The last time this was looked at was under President Clinton. And think about that. We have had a variety of changes. No one has actually brought up the idea of, we have lending now going on in communities from somebody that doesn't have any physical presence. They can be out of Brooklyn and make a loan into southwest Colorado. No CRA involvement whatsoever investing back into that community. So is it going to be appropriate for us to take the time to be able to actually address it? I think it is.

I do think it is worthy of note that the OCC and the FDIC actually were dealing with the Fed data in terms of coming up with this. And we ought to all be mindful that this is a proposal, a rulemaking proposal. So, the feedback is obviously important for us to be able to address.

Ms. Bautista, you have stated a number of times that you regularly worked in terms of some of the ideas that are coming up, and you had cited that we have 200 clarifying proposals that will qualify as CRA. It is my understanding, and can you maybe speak to this as well—one of the frustrations I had heard from community bankers is they are doing what they view as CRA equivalents but never getting credit for it. Do they have an opportunity under the proposal from the OCC and the FDIC to be able to submit that for consideration as a CRA activity?

Ms. BAUTISTA. Yes, absolutely. This is why I said there is going to be over $100 billion of increase on CRA because there is now clarity. And as a community organizer, I have been dong this since 2002, I have been fighting—not fighting, trying to work with the banks to ensure investment in the low- to moderate-income, to the CDFI, to the CDEs, to the faith-based organizations.

For example, faith-based organizations—during the foreclosure crisis, the people go to their pastors. Even though pastors don't know much about banking foreclosure, they went out of their way. First, AME Church in Orange County, we worked with that pastor, Mark Whitlock. And faith-based, the Hispanic evangelical church, the same thing. We are doing a lot of workshops now. So now, that is not CRA-related because it is faith-based.

Arts and culture. One of our members is doing 100 percent service to the low-income Latinos. And every time she goes to the banks, they always say, oh, this is not CRA-related. But if you don't educate the people at a young age, it is not just owning a home, it is not just owning a business, it is also job creation.

Like I said, I have seen borrowers denied over and over again, home buyers denied, even though I know they can afford to buy a home, with different cultures. Now with our family, the Filipino family, there are so many of us living in one house. And all of the loans put together can now be qualified.

There is another example. A client of ours is trying to refinance, because the interest is so high, but because his wife had cancer, he had to take care of his wife. So he was out of a job for 2 years, and he cannot get a loan approval because of loss of that employment. So I told the lender, I said, it is not right, he only did it for the right thing, and he never—he always had a job, and the mother is putting in now to help.

So now there is a lot more clarity that knowing your borrower and the CRA officer now—and CRA officers, most of them are good, because they understand the borrower. And the community banks, I so agree with you; in California, they are good.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you all so much for being here. I think the Community Reinvestment Act—for so many folks in the 13th Congressional District that I represent in the City of Detroit, one of the most beautiful, Blackest cities in the country, where I think we were the forefront and kind of the birthplace of this incredible civil rights movement that I think continues on through this generation.

I do want to back up, and I think, Ms. Levi, maybe you can help me. I really want to back up and talk about the foundation, the reason that CRA even existed or was created.

Ms. LEVI. It was created to really correct for a lot of disinvestment that resulted from government policies, racial discrimination and all of that. Evidence of those redlining policies is still on the ground today. And discrimination is ongoing. We have plenty of evidence for that. But it was also designed to correct for market failures.

Ms. TLAIB. That is right. Ms. Levi, talk about that, because it is recorded in history that these banks redlined.

Ms. LEVI. They redlined. And after redlining perhaps was prohibited, these markets still suffer from a lot of market failures, egative and informational externalities that make them difficult to serve, how to value the property. There are a lot of credit—profitable institutions there, but if they are thinly traded and they don't have the information, then it makes banks misperceive the risk that they will face by lending and investing there.

Ms. TLAIB. I think you are much, much kinder. I just know at home and on the ground it is very intentional, because you see now the CRA changes being done by the same people who probably didn't want CRA created in the first place.

Ms. LEVI. Absolutely.

Ms. TLAIB. We can call it market failure, which is I think is a fancy way to say, no, this is intentionally trying to go toward communities and populations that, in some ways, are much wealthier and look different than the communities that I represent.

Ms. LEVI. Flat out discrimination is very much with us.

Ms. TLAIB. Oh, it is very core. And sometimes, I feel like we should just go ahead and look at all the lawsuits that have settled, where actual whistleblowers within these banks, many of whom in California, for instance, were told, if somebody comes in with an accent, then make sure you give an interest rate that is higher. This is actually documented. That is happening right now in this century.

So one of the things I think is also critically important is, say I am a bank now—because one of the things that is happening in Detroit, specifically, is we have had Comerica Bank and Huntington Bank in Detroit close several branches already throughout 2016 and only—like in 2016 by Comerica Bank. One of the things I want to know is, if I am a bank now and I need to need to meet CRA, what are some of the just basic minimums under this new rule do I have to meet?

Ms. LEVI. First of all, I would say this: In Detroit, and in a lot of rural communities, for example, there is a lot of demand for small mortgages, small dollars, small business loans, small stuff. And this proposal would incent the big stuff. And so, those qualitative factors around small things aren't strengthened here; they are weakened. Again, the retail lending test is going from half to far less. So, the incentives in the proposal are off.

Ms. TLAIB. Okay. One of the things I wanted to ask Ms. Gonzalez-Brito is, what impact, I think not only in homeownership but other kind of economic opportunity impacts for communities of color, and one of the things I do want to get to is, is it true that the number of homeowners among communities of color is actually less than before the CRA at this point, that the numbers—again, I—we used to have the largest statistic for homeownership, I think it was up to 70 percent in Detroit. It is where we built up the middle class. It was incredible. And now, it has just dropped significantly.

Can you talk about that, the systematic change? Because I think it is all interconnected with everything else that we try to fund. From transportation, from other kinds of school programs, all these things are so interconnected with homeownership.

Ms. GONZALEZ-BRITO. I think that has a lot to do with what you were talking about in term of systemic racism. We saw in the subprime mortgage crisis that banks were targeting African Americans and immigrants for these loans that were targeted to us because of systemic racism. I think CRA plays an important role in homeownership for low-income people. And, unfortunately, the way that this proposal is written, it will lessen the amount of homeownership in our communities instead of helping.

Ms. TLAIB. Thank you, Mr. Chairman.

Chairman MEEKS. The gentlelady's time has expired.

I now recognize the gentleman from Texas, Mr. Williams, for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

I am a small business owner from Texas. I have been in business for 50 years. I can't help but think as we have this conversation, I remember, in 1976, I was actually on a board. I was actually on a community bank board, and we were having all the dialogue of, how are we going to make this work, and here we are still having the dialogue, and I think that is probably healthy.

I asked a community bank in my district—a pillar of the community, who does everything they can to make the community better—what is the biggest issue with the current CRA regime, and they said the lack of transparency within the system. For example, their bank will engage in a transaction of a local group thinking it will meet the investment test, only to be told it does not qualify. Additionally, regulators will not give banks preclearance for new activities, which prevents them from innovating and experimenting with new activities that are better suited to meeting the standards of low- and moderate-income people. Let their mind wander. Let them have a chance to invent things.

So, Ms. Bautista, can you discuss how this new proposal, and we have touched on this a little bit, will add additional activities that banks can experiment with in order to help communities in innovative ways?

Ms. BAUTISTA. Like I said, CRA officers want to do the right thing because that is what they are hired for. Sometimes, the CEO or the executive does not have the passion in helping the community. So, that is where I see the difference from the top to bottom. But if the CEOs recognize, and now that they have to be examined, they are now going to be—make sure that they are accountable for this, there is going to be more pressure for them to do the right thing.

And I agree with a lot of things for the African Americans, for the women, that is more lack of access to capital. So with this CRA reform, with so much clarity, when in the last 25 years, and I cannot imagine there was no clarity. And I really have to thank Comptroller Auten and Yolanda McWilliams, the people who are doing this, because they are finally sticking their necks out. So, we have to give credit when it is due.

Mr. WILLIAMS. There are a lot of good ideas out there. We need to let them grow.

Ms. LEVI. Can I add something?

Mr. WILLIAMS. No, I have limited time here.

I have heard from the bankers in my district that CRA deserts and rural communities present unique challenges for their branches. Ms. Bautista, on page 3 of your testimony, you talk about the disparity in banking options between Compton and Santa Monica in California. And even though Compton, California, and Lampasas, Texas—that is in my district—are polar opposites, I am curious if the problems that both localities face regarding CRA are similar?

Do you believe that this new CRA proposal is flexible enough to serve the unique challenges in both rural and urban areas?

Ms. BAUTISTA. Absolutely. This is why I also have to thank the tours that the Comptroller has done, because he went to Compton, and a lot of the NDC members were there, a lot of the pastors, and the CDFI. And he recognized that there has to be a lot of help in Compton. It is even hard to buy a home in Compton. And it is the same population between Compton and Santa Monica, and yet there are more branches in Santa Monica.

So with the CRA reform, I am so happy that our members in Compton, and I talk to them a lot, that there is now going to be at least hope for them to own a home, a small business, and then have a job.

Mr. WILLIAMS. Come to Lampasas, Texas, one day. You are invited, okay?

Ms. BAUTISTA. Okay.

Mr. WILLIAMS. The business of banking has changed drastically since the last time the CRA was updated, and it seems like these regulations are long overdue for modernization. In reviewing this proposal, it seems like it would provide more support to America's small business, of which I am one, and small farms, which are the primary source of jobs in America and create economic opportunity in underserved areas.

So my question to you, Ms. Knight is, can you tell me specifically what you think is wrong with allowing more support for these types of activities?

Ms. KNIGHT. We will talk specifically about some of the activity that would be counted for credit for CRA in this proposal. Any activity in a low- to moderate-income Opportunity Zone would count, so that would be luxury housing, self-storage facilities, and stadiums, as was mentioned earlier. Those activities don't necessarily provide the kinds of support and services that low-income communities are looking for.

Mr. WILLIAMS. Okay. With the advent of online and mobile banking, I tend to agree the current assessment area criteria is outdated. As the business of banking becomes more mobile, we should update our regulation to better reflect the reality.

Ms. Bautista, in light—

Chairman MEEKS. The gentleman's time has expired.

Mr. WILLIAMS. My time is up. I yield back.

Chairman MEEKS. The gentlewoman from Virginia, Ms. Wexton, is recognized for 5 minutes.

Ms. WEXTON. Thank you, Mr. Chairman. And thank you to the witnesses for coming to testify before us today.

As has been noted, the OCC's proposed rule focuses more on the dollar amount and the quantity of transactions and loans than on the quality of those loans. And in an op-ed that ran over the weekend, The New York Times editorial board used the example of a bank financing a new sound system at M&T Stadium in Baltimore, and then claiming CRA credit for investing in the community. And they could do that under this new proposal.

Is this type of lending consistent with the original purpose of the CRA, which was to ensure that people in LMI communities have equal and affordable access to banking systems? So how does this kind of lending, this particular instance of lending, how would that benefit people in LMI communities, particularly those in the area around the stadium in Baltimore? Ms. Bautista?

Ms. BAUTISTA. Thank you for asking that. People are reacting to the fact that now there is a proposed list that we can—

Ms. WEXTON. I'm sorry. I asked a very specific question. How would that particular project benefit or how would it help the people in the area of Baltimore around that stadium access more credit and fair and equal access to credit?

Ms. BAUTISTA. We need to make sure that the projects don't take advantage of the most vulnerable. So, it has to be really thought out.

Ms. WEXTON. So would the financing of a new sound system at a stadium help people in the community—

Ms. BAUTISTA. So it always—

Ms. WEXTON. —get more access to credit?

Ms. BAUTISTA. It always depends, right? I am always about job creation. I want to make sure that when—because if there is a job, there will be homeownership. And if you create more businesses—

Ms. WEXTON. So you can't draw a straight line from that. It would be through—if the people in that community got a job putting that new sound system in the stadium, then they might be able to afford to borrow money. Is that what you are saying?

Ms. BAUTISTA. You really have to think it through. Like I said, it is not one-size-fits-all. If—

Ms. WEXTON. Thank you very much.

Ms. Levi, can you explain to me how such a project would benefit the people in the community?

Ms. LEVI. If you want a short answer and a straight line, it wouldn't. It is not the type of lending or investing that CRA was designed to do. You don't need CRA to get that done. Okay? So it just wasn't what CRA was designed to do.

Ms. WEXTON. Last week, we heard some testimony that the OCC and the FDIC and the Fed are not all on the same page about this proposed rule. And last week, Governor Lael Brainard from the Federal Reserve unveiled an alternative approach that would be kind of more focused on a results-oriented sort of an assessment. And the Fed oversees about 15 percent of CRA activities.

If these three regulators do not end up on the same page, what are some problems that lenders could face with this uncertainty?

Ms. LEVI. Forum shopping in their charters, but also, just on the data, the analyses and the modeling. It is a preferable start. But in its 40-year history, the regulators have implemented this law really in coordination, and this proposal right here has fractured the consensus. But I think forum shopping is one in terms of charters and things like that could be a downside, among other things.

Ms. WEXTON. Can you opine as to the advisability of the OCC and the FDIC moving forward on this new proposal without the Fed being on board?

Ms. LEVI. I would say both on the advocacy side for communities, and I have heard lots of bankers say the same thing. They really want the regulators to be on the same page. But, and this is key, not behind this proposal. A better approach is where consensus should be built.

Ms. WEXTON. Very good. Thank you very much. And I will yield back the remainder of my time.

Chairman MEEKS. The gentlelady yields back the balance of her time.

The gentleman from Georgia, Mr. Loudermilk, is now recognized for 5 minutes.

Mr. LOUDERMILK. Thank you, Mr. Chairman. And I thank you all for being here.

I just want to make sure we do clarify something, before I get into my questions, that Ms. Brainard was speaking on her own behalf, not on behalf of the Fed. So, let's make sure that is clear.

It is important that we have this hearing because, as has been stated several times, it has been a long, long time since the CRA has been updated. Much has changed in that time period, from technology, to our culture, to the diversity. And it is extremely important that, as we continue on, we make sure that CRA is being invested in areas that really matter.

I represent rural communities as well as metropolitan areas. And as has been spoken to earlier, the small banks are the ones who really are in the position to have and the desire to have the greatest impact and invest in these communities. This is a very complex issue. And what I am afraid of is, since I have been here in the City, there is a lot of resistance to change, especially before we even give it an opportunity to move forward, and this is something that is extremely complex. And I think if you hold it in the light of yesterday versus into today, and I think that is what we are doing, is we are comparing an old regulatory scheme in the light of today and it causes problems, so we are looking at ways to update it.

As I talk to the banks back home, those that are in our communities, one of the biggest flaws that is expressed to me is, under the current CRA regime, it takes regulators years sometimes to deliver CRA exam results to a bank. That deprives low- and moderate-income communities of a lot of CRA activity.

So, Ms. Bautista, will the proposed rule make CRA exam results more timely by making the CRA more objective?

Ms. BAUTISTA. Yes. The answer is yes. And going back to minority banks, if the minority banks are really helping the borrowers on the ground, we should also encourage the big banks to invest in minority banks so they can do more work. So with the clarity now, the minority banks—even the commercial banks can do a lot more. They can plan exactly what they will be planning in the next year or 2 years.

And then my encouragement is keep opening this discussion. Find out from different people what they really need. And we should really ask the low- to moderate-income people, the people of color, English as a second language, do they even know about CRA? Most of them do not know about CRA. They don't even know what the Community Reinvestment Act. So, I have to go out there and explain it to them. When I went to Southeast Asian business organizations, I asked them, can you raise your hand if you know about CRA? They don't know. So, I was able to explain it to them.

So the more community organizers doing this, the more we can deliver results. And the more we work together and we are encouraging the Federal Reserve—and I know this is not just Lael Brainard. There are a lot of Governors there who also have to weigh in, not just one person. And a lot of the people who are working for the Governors, the Eric Belskys of the world, the gravitas, they all care so much about this. So let's give them a chance to iron out what is good. But somehow, you have to do it. Like Nike's slogan, just do it.

Mr. LOUDERMILK. And what I get back from a lot of these banks is, under the current CRA, it is almost like filling a box to get a credit versus the transparency and the clarity of knowing where you can invest. And I think that is extremely important.

Another aspect of this that needs to be modernized is, we live in an area of technology, working with different banks, smaller banks especially. There are more and more people, including those in low-income areas, who are relying more on technology for banking, especially the underbanked and unbanked who are using these devices. Is there anything in this rulemaking that will allow banks to expand their CRA activities into areas where they can use the fintech platforms to collect deposits?

Ms. BAUTISTA. Yes. This is another thing that I like, if it is a bank that does not have a branch presence, but they have 5 percent deposit, they have now to do some CRA. Right now, they are excused. They are exempted from CRA. Not anymore. If you take deposits from my world, my local community, you better invest in my community.

Mr. LOUDERMILK. Thank you. I am out of time.

Chairman MEEKS. The gentleman's time has expired.

I now recognize the gentlewoman from New York, Ms. Velazquez, for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Rodriguez, it's wonderful to see you again.

Mr. RODRIGUEZ. Likewise. Thank you.

Ms. VELAZQUEZ. As you know, the CRA was passed by Congress in 1977 in response to redlining and to ensure banks meet the credit and capital needs of all the communities they serve. Can you describe the impact the CRA has had on Latino communities?

Mr. RODRIGUEZ. Yes. Thank you for the question. There is a lot of really good information and data that is coming out that shows significant increases in CRA investments in Latino, African American, and other communities that have been historically discriminated against that we have for ourselves.

Ms. VELAZQUEZ. And do you believe this community will still benefit from the CRA's principles and its core mission?

Mr. RODRIGUEZ. Absolutely. The one thing that hasn't changed in all these years is that we still have significant disparities in financial and economic indicators by race and ethnicity for communities that need to be addressed, and CRA can be an important part or continue to be an important part of that solution.

Ms. VELAZQUEZ. Ms. Levi, I believe that you will agree with the assessment.

Ms. LEVI. Absolutely, and so would the Federal Reserve of Philadelphia, Richmond, and many other public and private researchers that have documented it.

Ms. VELAZQUEZ. Thank you.

Mr. Rodriguez, in 2018, the Association for Neighborhood & Housing Development found that in low-income census tracts in New York City, the number of bank branches was down 7 percent since 2017. I am concerned about how these trends will impact my constituents' access to affordable credit and financial services. How important are bank branches to LMI communities, especially Latinos?

Mr. RODRIGUEZ. We continue to believe that it is enormously important. Our research shows 7 in 10 Latinos still use bank branches. It is an important source of wraparound credit. And I would just add for those Members of Congress who have rural communities, rural America has lost half of its bank branches in the last 2 decades. If they want rural communities to look like Red Hook, Brooklyn, 30 years ago, they will allow this rule to continue without the Fed's involvement.

Ms. GONZALEZ-BRITO. Congresswoman, can I add something to that?

Ms. VELAZQUEZ. Yes.

Ms. GONZALEZ-BRITO. This proposal actually eliminates the service test and would make it so that banks receive almost no credit for branches in LMI communities. So, it would really do a lot of damage for what Mr. Rodriguez is talking about, the need for branches in communities that are LMI, Latino communities as well, and African-American communities and other communities of color.

Ms. VELAZQUEZ. Thank you.

And as banks place greater emphasis on their online platforms and apps or choose to become branchless altogether, how should we think about the importance of branch banking in terms of CRA? Ms. Levi?

Ms. LEVI. It continues to be critical, and the elements of this proposal that attempt to reach that, the new deposit-based assessment areas, again, it is not clear in the proposal how many credit deserts they are going to cover. It simply is not there.

And Ms. Bautista is missing one key. You actually have to collect more than 50 percent of your deposits outside of your branch network before any new assessment areas have to meet the 5 percent market threshold that she mentioned. So, that is a very high hurdle. And again, how many credit deserts, how many credit hot spots are we going to see new assessment areas in?

Ms. VELAZQUEZ. Thank you.

In her remarks regarding CRA reform at the Urban Institute last week, Governor Brainard stated it is much more important to get the reform right than to do it quickly. So by a show of hands, how many of you agree with this statement?

And by a show of hands, how many of you are concerned that the OCC and the FDIC may be trying to rush the rule towards finalization and are not providing sufficient time for public comment?

So, Ms. Bautista, you think that we don't need more time for people to provide input?

Ms. BAUTISTA. Congresswoman, like I said, it is 25-years-old. They have 10 years of that data. The last 2 years, they were diligently working on this. And you can relate to this because being women, being minority, our people need help now. They need jobs. They need to have capital for their small businesses. They need affordable housing. They need all of that. If I'm going to wait, I am not giving justice to the people I serve. They are smart enough, right. This is why input from all of us here is fantastic.

Ms. VELAZQUEZ. Thank you.

Ms. BAUTISTA. Put everything together.

Ms. VELAZQUEZ. Thank you.

Mr. Rodriguez—

Chairman MEEKS. The gentlewoman's woman time has expired.

Ms. VELAZQUEZ. Thank you. I yield back.

Chairman MEEKS. I now recognize the gentleman from Virginia, Mr. Riggleman, for 5 minutes.

Mr. RIGGLEMAN. Thank you, Mr. Chairman.

I want to start by saying I support the mission of the CRA to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, and I applaud the OCC and FDIC's effort to bring the CRA into the 21st Century. And I also believe we need to make the CRA work better for everyone and encourage more lending, investment, and services in the areas that need it most.

And for Ms. Bautista, one more time just to clarify, why would this actual proposal help with any type of transparence and timely reporting?

Ms. BAUTISTA. Looking at all the 200 pages or so, I found 10 benefits to citizens and community members, which we wrote down: 10 benefits to community development practitioners, advocates, small farms, and small businesses. We have spoken to community leaders, to the pastors, to the borrowers, to the homeowners. We all know the problems. We are not going to hide that we don't know the problems. We all agree, whatever side of the aisle you are on, that we are all the same. CRA is nonpartisan. CRA is about helping people. And if we truly need to help people, we have to do it now.

Mr. RIGGLEMAN. The reason I am asking that question is, you talked about small farms and small businesses, and for the whole panel, 65 percent of the population of my district resides in rural areas. It is over 10,000 square miles. And for the East Coast, that is a pretty big district. That is bigger than New Jersey. So, I go all the way from the suburbs of D.C. here all the way to the North Carolina border.

As far as I am concerned, any modernization to the CRA has to address the unique challenges that I have, especially in underserved rural communities, especially with accessing credit.

So one more, Ms. Bautista. How do you think the CRA proposal to increase the size of loans that qualify as small farm loans in LMI areas will impact lending in rural areas?

Ms. BAUTISTA. We have one member, Martha Montoya, all of her life is serving the farms, and, oh, she is so excited now. In this proposal, when she saw the words, "small farms, family farms," she was so excited. So I told her, come to the workshops, come to the town halls so they can be heard, and she said, "Faith, as much as they want to, they are so busy and they cannot go to San Francisco, they cannot go to L.A., they cannot go to D.C.." So my message to her is, tell them help is coming.

Mr. RIGGLEMAN. Thank you.

Ms. LEVI. Can I add something?

Mr. RIGGLEMAN. Yes, ma'am. Please.

Ms. LEVI. Okay.

Mr. RIGGLEMAN. Actually, you were next on the questions, so this is perfect. Thank you.

Ms. LEVI. I think you are raising some very important concerns, and there has been a lot of talk in the committee room about all these new areas where you can get CRA credit. But I want you to understand that it is the CRA obligation, not just where you can get the credit, that drives a lot of bank behavior, that banks will actually be examined in an area to look at the kind of lending to small businesses and things like that that they are doing.

So the obligation drives a lot of bank behavior, not—so a proposal that lets them sort of hopscotch around the nation and cherry pick the most profitable lending and investment opportunities, again, it is not going to incent what we need to incent in terms of lending and investing in the most difficult areas.

Mr. RIGGLEMAN. So in that sense, because if I—just to let—and everybody on the panel probably knows this. If I am going down to—if I say CRA to any one of the small farmers or businesses in my district, even those who are underserved, they don't even know what I am talking about, right? And I almost believe there needs to be some kind of marketing program, but that is probably another hearing, as we go through with what CRA can actually do, as we go forward.

Ms. Levi, you were there. That is great, because I had another question for you. But I do think everyone on the panel would agree that a regulatory structure that is clear, consistent, and works for all impacted parties, including the lenders, is a good thing. And if you want to incentivize financial institutions of all sizes to comply with laws and regulations, I think it is incumbent on the government to ensure equal and tailored treatment. I would say this, and I wrote something else down, but isn't fair treatment the rationale for the Community Reinvestment Act? And for people like me who, brand new to the Financial Services Committee after a year, who ran multiple small companies, that is something that I want to make sure that we push towards.

So, here is the thing. And, Ms. Levi, you can expand on this. Thank you for chiming in. What do you think the best way is to hold banks with vastly different sizes and business models to the same community development standards? When you are talking about incenting these banks, how do you hold them to the same standards based on their different sizes and also the business models?

Ms. LEVI. Again, I think this proposal does have a one-size-fits-all. It isn't tailored to banks with different business models, the ebbs and flows of the economic cycle and things like that. It is just really one standard for everybody.

Chairman MEEKS. The gentleman's time has expired.

Mr. RIGGLEMAN. Thank you.

Chairman MEEKS. I now recognize the gentleman from Illinois, Mr. Garcia, for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman. And thanks to all of the panelists who have shared their expertise and wisdom with us today.

I must confess, I am moved by four-fifths of the panel with many of the concerns that you have clearly articulated and warned us about if this proposed CRA rule is approved.

In 2018, in a post outlining principles for CRA reform, NCRC wrote, "Currently, the only penalty for failed CRA ratings is the possibility of denial of merger or branch applications. This is one of the few sticks things that motivates banks to pass their CRA exams."

That is the leverage, right? Still, we have seen many examples of mergers getting waved through between banks with poor records of lending in low-income communities.

Ms. Gonzalez-Brito, you have some experience advocating that a bank with a problematic CRA record not be allowed to merge. In your testimony, you describe Mr. Otting's bank, OneWest, as, "among the worst banks at reinvesting in low- to moderate-income communities." You outlined OneWest's discriminatory lending record, the high number of complaints filed against it with the CFPB, and its abysmal record of supporting affordable rental housing development and lending to small businesses.

In your view, why was a bank with such a poor CRA record allowed to merge with CIT? And why did the OCC require such a weak CRA plan?

Ms. GONZALEZ-BRITO. That is a great question, Congressman, and one that we haven't had an answer to. I think the OCC did negotiate a CRA plan with CIT-OneWest, and in that plan, OneWest included mortgages to upper-income borrowers and luxury condos. And now, we are seeing some of those kinds of activities in the proposal that you are seeing the OCC put forth now.

I think the OCC, unfortunately, has a record of waving mergers through, and what we should be seeing is more stringent CRA plans being required by banking regulators. And unfortunately, we are seeing relaxation of the types of requirements that banks are required to do.

Mr. GARCIA OF ILLINOIS. Thank you for pointing that out. I would like to note that my bill, the Bank Merger Review Modernization Act, requires merging banks to have outstanding CRA performance records and a strong community benefits plan.

Let's turn now to the OCC's proposal. As Mr. Rodriguez has highlighted, Chicago played an important role in the history and the creation of the CRA. I have to give a shout-out to the late Gale Cincotta, who was a heroine in Chicago, a champion for the people all over the country, and someone who inspired me in the field of community development. I am a former housing counselor with Neighborhood Housing Services and rose to become a director of one of the branches.

A law that was written in response to redlining in communities like mine should have its exams informed by the richest possible data, but the current CRA doesn't work this way. Advocates have repeatedly pointed out that the CRA does not explicitly examine whether lending is occurring in communities of color. Advocates have also recommended that provisions of the Dodd-Frank Act be fully implemented so that CRA exams can more accurately scrutinize small business lending. As one advocate put it, "Small business lending should really be just that, loans to small businesses rather than loans under $1 million."

Ms. Levi, by changing the definition of small business to those with revenues of up to $2 million, doesn't the OCC proposal move things in the complete opposite direction?

Ms. LEVI. Yes, it does. The CFPB estimated that 95 percent of small businesses had revenues of $1 million or less, so I think that stat speaks for itself. And most small businesses need small dollar credit.

Mr. GARCIA OF ILLINOIS. That is where the business is and the action, and that is where we should be targeting.

Ms. LEVI. Right. And it is not targeted.

Mr. GARCIA OF ILLINOIS. Finally—and thank you.

I would like to ask each of the witnesses to briefly, if they can, provide some examples of smaller, more complex projects that might actually be more beneficial to the community than a flashy, high-dollar project like the stadium renovation.

Chairman MEEKS. Pick one.

Mr. RODRIGUEZ. Quickly, the housing counseling program that you had an opportunity to work with was created many, many years ago out of a CRA-credited investment between banks and industry and GSCs and community organizations. It is now highly successful. Thousands and thousands of families go through the home buying process today and get into homes with the support of local counselors.

Chairman MEEKS. The gentleman's time has expired.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman.

Chairman MEEKS. All time has expired.

I now recognize the ranking member, Mr. Luetkemeyer, for 1 minute for the purpose of a closing statement.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. And I thank all of the panelists for being here today. It was a lively discussion. You have added a lot of good information and thoughts to the discussion here.

What we are talking about today is the Community Reinvestment Act, key word "community." A lot of the attention today was focused on housing, which is fine, but I think what we were trying to do here with the readjustment of the Community Reinvestment Act is to look at a more holistic approach, a wider approach and say, wait a minute. What makes up a community? Not just homes, but also businesses, also services, places for jobs. So if the bank is not incentivized to do that, to invest in those food pantries and churches and community centers and small businesses, we don't have a community.

So, this is the problem that we have. And I will tell you, I am probably the only one in this room today who has actually filled out one of these CRA exam reports, because I have done that in one of my former lives. So I can tell you the difficulty in filling it out. The difficulty in getting excellent credit from the CRA folks, that is very, very difficult to do. It is not just a rubber stamp. Trust me, it is not.

So, I want to do one thing first. Thank you for your comments. I want to ask you, though, to please comment during the comment period with your suggestions, but come up with a solution. Don't just comment, "I don't like this, I don't like that." Give us solutions on how you can make it better, okay?

One solution I am going to give you right now with regards to homes versus all of these other things is, why don't you weigh it? Homes account for this much, and all of these other things that you invest in account for this much. If it doesn't weigh 1 to 1 or 2 to 1, whatever, weigh it. That is an example of a way I think we can solve a problem.

The other thing I want to point out, and I am going to take the gavel away from the chairman for just a second here, is one of the problems that we have with CRA, as a former bank examiner and a former banker myself, was the abuse by the regulators of CRA over the last several years. This was a huge problem. I know a number of banks in my district that were not allowed to expand. They were forced to do things because—and they kept the CRA exam open for as long as 3 years in one situation because the regulators forced them to try and do something they didn't want to do. They wouldn't allow them to go out and buy another bank or consolidate or anything like that, and they kept the exam open for 3 years.

It is that kind of abuse that was there from the former regulators that we are also fighting with this new regulation today. And don't forget that when you look at this new proposal. There is a lot in here that we need to put in place so you can keep that abuse from happening again.

Mr. Chairman, with that, you are a fantastic chairman. I will give you back your gavel. I thank you for allowing me the time.

Chairman MEEKS. I would like to thank our witnesses for their testimony today. And as we close, it is important to remember that we are here to debate the implications of critical rulemaking on the lives of millions of low- and moderate-income American families.

Regrettably, the United States has a long, ugly history of federally sanctioned and enabled cultural and corporate discrimination. The legacy of this discrimination echoes today. We collectively have an obligation as legislators, regulators, corporate executives, and community advocates to act in an intellectually honest manner and tackle these issues which have real impact on real people in disenfranchised communities.

The people who will be impacted by the changes of these rules and regulations are the least fortunate among us and live in all of our districts. This isn't picking sides or saying that you are a Democrat or a Republican. This is about ensuring that communities that continue to bear the burden of discrimination and exclusion are not abandoned by our banking system and left in a perpetual cycle of disinvestment and exclusion. This is about getting it right.

No expediency. It took 25 years to get to where we now have to remodernize it. If we don't get it right, we are going to hurt these people, not help them. We need to take our time and make sure we get it as right as we possibly can, because if we don't, we can destroy a community and people who need the most help. Let us take the time to get the comments from everyone so we can get it right.

And I think that we can tell by the participation of the Members at this hearing on both sides of the aisle that this is really important. It is why this is the second time we have had a hearing on CRA. It is why we are going to have Mr. Otting in here. It is why we will have the Fed back in here. This is too important for us to just wipe and move along without making sure we get it right.

The Chair notes that some Members may have additional questions for this panel, 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 these witnesses and to place their 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 now adjourned.

[Whereupon, at 5:03 p.m., the hearing was adjourned.]

A P P E N D I X

January 14, 2020

NATIONAL
DIVERSITY
COALITION

Written Testimony of Ms. Faith Bautista

Members of the Committee, Good afternoon.

My name is Faith Bautista. I am the President and CEO of the National Diversity Coalition.

The Community Reinvestment Act is critical to America's future. We must make sure it works for low-income and minority communities. Today's CRA regulation has failed our citizens who need CRA most. Minority communities remain impoverished, community organizations remain underfunded, and over 25% of Americans remain underbanked. Today's situation is something no one should want to defend.

We must do better.

NDC and the National Asian American Coalition, which I also lead, represent millions of constituents across the country and help tens of thousands of underserved and minority people left behind by our current system. Recently, we were proud to have won a legal fight to secure over $331 million on behalf of California's victims of mortgage foreclosure fraud. I work directly in our communities to provide microlending, HUD-Approved counseling, CDFI lending, mortgage modifications, credit repair, small business training, and critical infrastructure and technology to our most vulnerable. Each year, I am proud to help thousands achieve their American dreams.

For NDC, reducing the number of underbanked is our North Star. We believe CRA has failed for one primary reason: CRA-qualifying lending and investments are not measured. Whether this is by design or by neglect, it is harmful to the communities I have spent my life serving.

As the Federal Reserve regularly reminds the financial markets they seek to remain "data-driven" in their regulatory policy and oversight. But, what does that data tell us about CRA?

It is remarkable and offensive that the current CRA regulations do not track CRA activity at all for any given quarter, year or decade – let alone on a mandatory quarterly basis from all depositories as they do for all other aspects of bank activity. Frankly, it may ~~be~~ the only data that regulators do not think worth collecting and evaluating systematically.

Every three months, each bank, thrift and credit union in the country currently is required to file a Call Report intended to measure banking activity and financial data across hundreds of data-points in 29 discrete categories. Banks also file Home Mortgage Disclosure Act ("HMDA") reports on several hundred additional loan fields relating to every home mortgage they make. This data is aggregated and analyzed by the FDIC, Consumer Financial Protection Bureau, FRB and others to show trends in the banking system and to measure the soundness of our financial system across literally hundreds of data-points.

I have had the honor to meet with Federal Reserve Chairs and Governors over my decades of advocacy. At each meeting, I ask them the simple question of whether CRA lending and investments have been increasing or decreasing over the prior five years. The answer, each time, has been that they simply do not know. Conveniently, the current approach to CRA provides no way of measuring the number of loans or the volume of dollars being invested in underserved and minority neighborhoods. That needs to change.

This information is necessary to any serious "data-driven" analysis seeking to understand the real impact of bank CRA activity.

Federal Reserve Governor Lael Brainard recently made a speech were she the fact that "consistent data on CRA-eligible activity [is] not readily available" to the Federal Reserve. Instead, of being able to rely on systematically collected, system-wide data relating to bank CRA activity to evaluate CRA regulations, the Federal Reserve recently required a substantial, one-off, one-time research project just to try to understand how to reform might impact America. This project required the Federal Reserve research staff to "set about creating a database based on over 6,000 written public CRA evaluations from a sample of some 3,700 banks of varying asset sizes, business models, geographic areas, and bank regulators." Such a resource intensive project is simply impossible for community advocates such as NDC thereby removing transparency and accountability from the financial system.

It is notable that even the Federal Reserve with its unconstrained budget and access to non-public data sources was only able to compile a sample dataset that remains woefully incomplete -- neglecting to include more than half of the country's banks and other depositories and failing to capture the entire time period of CRA activity for all banks sampled.

With no data, transparency and measurement, comes no accountability or responsibility for the high number of underbanked and underserved. Clearly, CRA and analyzing its impact has not been a high priority for the past several decades, and only now are our bank regulators even seeking to collect basic data to understand the plague that has been impacting communities of color and the issues of the underbanked over the past several decades. As Peter Drucker famously observed, "what gets measured, gets managed." The current approach turns a blind eye to low-income and minority communities.

For instance, instead of using metrics to evaluate the impact of merger approvals on underbanked communities, banks simply make unregulated promises to increase

CRA investments in a future that often never comes. For instance, City National Bank was recently acquired by the Royal Bank of Canada. As part of its merger process it made specific promises to the National Diversity Coalition and other community groups. Following receipt of regulatory approval, the bank has violated its promises to the community with little consequence. City National is not alone and without timely reporting it is difficult to hold banks to account.

Today's hearing is to determine who the winners and losers would be from CRA reform, but the current regulations do not collect the data necessary to measure who is currently winning or losing.

Working every day in communities of color, I can tell you. Today, the CRA losers are America's low-income communities and minorities. They are the people served by NDC, NAAC and our members. The stories of abuse and neglect faced by America's immigrants, minorities, and others we serve would break your heart. The impact and abuse is everywhere, not just in far off parts of our country, and it continues to have a disparate impact on minority communities. For instance, in Compton, California there are only 5 bank branches available to serve the needs of a population of 100,000 residents. Meanwhile, just a few miles away in Santa Monica, CA there are 36 bank branches serving the city's similar sized population. According to the FDIC, one third of African Americans and Latinos do not have access to any Mainstream Credit products including a credit card, a personal loan, an auto loan, a student loan, or a home loan. This compares to only 14% of whites and 4% of those making over $75,000.

It is no wonder the Wall Street Journal recently reported that African American home ownership rates fell during this past decade while all other racial and ethnic groups saw rising rates of homeowners. Virtually no one here today would be able to afford a home without access to a bank or mainstream credit products.

While Federal Reserve Governor Brainard recently recommended a slower pace and increased analysis prior to adopting any new CRA reform expressing concern about unintended consequences.

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. If we only have one opportunity for a few decades, I want to make sure CRA reform is based on the best analysis and ideas and the broadest input available. It is critical to analyze carefully the likely effects of any proposed changes on credit access and community development in LMI communities, as well as any additional reporting and procedural burdens for banks.

NDC believes reform is urgently needed, and that communities of color should not be subjected to another day, let alone another decade of discriminatory practices, resulting in lives without adequate access to banking products and services. The failures of today's CRA regulations are not something to protect, they are something to remedy as quickly as possible. Unfortunately, the fact that data necessary to understand the pain afflicting America's most vulnerable communities does not exist is not a cause to slow reform, but a rationale to expedite systematic changes that include timely, transparency data-collection and reporting.

The Federal Reserve has not joined the joint OCC, FDIC proposal stating that "We are proud of our work in familiarizing banks with the CRA's provisions, introducing banks to potential partners in their communities, and convening conferences to disseminate research and best practices." NDC believes that the purpose of CRA is to reduce the number of unbanked and underbanked and expand access to capital for credit worthy Americans. We need strong CRA enforcement and increased CRA eligible loans and investments, not additional outreach events. It is far past time to ensure banks cease discrimination, end red-lining, and reduce the number of unbanked and underbanked. Respectfully, we cannot delay reform while over25% of all our fellow American's remain left behind by our banks.

NDC would welcome the Federal Reserve submitting their own CRA reform proposal for public comment or finding a path to join a combined proposal with the OCC and FDIC. As our states can be laboratories for testing democratic ideas, so to can our regulatory mosaic. If the Federal Reserve elects to propose its own rulemaking based on its own best ideas for how to implement the CRA based on the unique needs of the banks it regulates, we would welcome their thoughtful proposal – we might even support it with equal passion as we do the current proposal. NDC does not believe there to be a single "correct" solution to the problems afflicting the underbanked. However, to sit on the sidelines and criticize progress in favor of a failed regime may be politically savvy but is not good for America's underbanked.

Underserved communities will win only when there is real transparency brought to bank CRA activities that measure each bank's CRA activity objectively, discloses CRA activity timely and publicly, and allows comparison against peers and regulatory targets. Data and accountability must replace excuses and stories.

Today, the question should not be if the joint FDIC, OCC proposal is perfect. It is not. Instead we must ask if it improves upon the current approach to CRA and provides a new paradigm able to break the cycle of poverty and neglect faced America's minority and low-income communities.

The definitive answer is Yes.

The OCC and FDIC proposal would improve the current system in several ways.

First, it will clarify what qualifies for CRA credit. No more guessing. That helps community planners and advocates like me focus our efforts and make the most of available resources.

Second, it updates where a bank can receive credit for CRA work. It recognizes the advent of the internet and enables banks to receive credit in the communities where the bank collects its deposits, not solely where it has physical branches. No more loopholes for internet and wholesale banks.

Third, it will enable community groups, bankers, and politicians to measure CRA-related activities using standard metrics that count the number, distribution, amount, and size of loans made to low-income communities. Finally, we will be able to measure the dollars actually flowing into our neighborhoods to our constituents. Make no mistake, our communities need more capital and dollars.

Fourth, the proposal will make reporting more useful, timely, and transparent. This allows all of us here today to hold banks and bankers accountable when they ignore community needs or attempt to game the system.

Additionally, the new reform proposal recognizes that regulations should not be "one size fits all" for every bank. Minority Depository Institutions and community banks should not be subject to the same requirements and reporting standards as the largest national banks. The proposed reform provides a sensible approach by ensuring banks engage with their specific local community and includes tailored performance standards for each financial institution.

NDC believes the proposal set out by the OCC and FDIC will increase CRA activity by over $100 billion. This is important as banks will inevitably test the limits to find ways to opportunistically expand the CRA box, however a 20% increase in total CRA activity will appropriate protect against such risks. Should that not occur in the first three years, regulators should commit to raising the bar for obtaining Satisfactory and Outstanding CRA ratings to ensure that CRA investments increase as promised and continue to grow over time.

Meanwhile, the proposal closes loopholes that currently allow bankers to trade loans back and forth between banks to claim multiple CRA credits without adding one new dollar of new lending to the community. It will also shut the door on CRA credit currently awarded for loans that result in gentrification and displacement when banks finance wealthy people who purchase homes in poor neighborhoods.

It is true that the joint OCC, FDIC proposal can benefit from thoughtful recommendations during the comment period. For instance, loans guaranteed by the Federal government should be exempt from CRA credit. Double dipping on federal subsidies does not increase the amount of capital reaching underbanked communities. Additionally, we believe that brokered CRA loans and investments acquired by a bank instead of originated through a bank's own connections with the community should be subject to a 20% haircut in CRA credit to reflect the increased expense and transaction costs of loan purchases and broker fees.

We are grateful that the OCC, FDIC proposal moves CRA forward in the right direction and look forward to submitting our comments to make it even stronger.

At the same time, NDC wishes to alert this Committee that the FHFA is currently engaged in regulatory rulemaking relating to CDFI membership and members in the

FHLB system that is incredibly damaging to low income and minority communities. Unfortunately, the FHFA is not complying with the Administrative Procedures Act and is not engaging in a public rulemaking process to implement their material changes to policies relating to CDFIs. This could set back progress in minority and low-income mortgage lending in terms of both price and access. NDC calls on this Committee to hold hearing related to the FHFA's regressive, inappropriate actions – the negatively impact of which could set back homeownership for communities of color by a generation.

We pray that the Federal Reserve awakens to the urgent need for change to our current CRA regulations – whether by joining the current proposal or making their own proposal to reform CRA. Today's status quo continues to fail over 30 million American households who are disproportionately minorities. Fear of unintended consequences is not a good reason to stick with a failed system that for four decades has resulted in generational poverty and disparate impact on our communities of color.

We are confident that banks regulated under this new, more transparent system will better address the needs of the underbanked and this proposal will, at long last, begin the process of lowering the unacceptably high number of underbanked in America.

Thank you.

The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal

Written Testimony of

Paulina Gonzalez-Brito
Executive Director
California Reinvestment Coalition

Before the United States House of Representatives Financial Service Committee, Subcommittee on Consumer Protection and Financial Institutions

January 14, 2020

Chairman Meeks, Ranking Member Luetkemeyer and Members of the Subcommittee, thank you for holding this important hearing today and for inviting the California Reinvestment Coalition (CRC) to testify.

Paulina Gonzalez-Brito and CRC

My name is Paulina Gonzalez-Brito. I am the Executive Director of the CRC. The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner.

We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement, and have the tools necessary to build household and community wealth.

Over the last 30 years, CRC has grown into the largest statewide reinvestment coalition in the country, with a membership of 300 organizations that serve low-income communities and communities of color.

Introduction

The current proposal by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) to change Community Reinvestment Act (CRA) rules threatens to substantially set back communities in our state and across the nation. If enacted as proposed, the rule would do serious harm to our communities and the organizations - like CRC and our members – who serve them. We will not sit back and allow this to happen without calling it out for what is – a deregulatory scheme designed to help the largest and most powerful corporations at the expense of low-income families and families of color seeking to build wealth and thrive.

3 Key Points

There are 3 main points I would like to make to the Subcommittee:

1. The CRA works and is critical to lifting working families out of poverty.

2. While the CRA can be improved to better target access to credit to low and moderate income families and families of color that need it the most, the proposal by the OCC and FDIC will do the opposite, weakening CRA rules, undermining the purpose of the statute,

and harming low-income communities and communities of color in California and throughout the nation.

3. Given our history with the OCC and the current Comptroller of the Currency, we are not surprised that the agency has led this effort to ease burdens on the largest financial institutions while sacrificing low-income communities and communities of color and undermining the public participation process that is the heart of the CRA.

The CRA is important and it works!

The Community Reinvestment Act (CRA) is a federal law that was passed in 1977 as a way to address discrimination in lending based on race, known as redlining. The CRA ensures that banks meet the credit needs of all communities where they take deposits, including low and moderate-income (LMI) neighborhoods. As a result of the CRA, banks have increased their lending to small businesses and made home ownership more accessible, regardless of race. It has also resulted in banks providing financial services in more communities, such as opening branches and offering affordable bank accounts without high fees that strip earning from low-income households.

The CRA has resulted in the development of affordable housing, small business growth, inclusive economic development, and neighborhood stabilization. Advocates throughout the United States, including CRC, have negotiated CRA agreements with banks that have included trillions of dollars in reinvestment for LMI communities and communities of color.[1]

The CRA regulations encourage banks to make meaningful and much-needed investments and to lend in LMI communities and communities of color, consistent with safe and sound operations. The CRA ensures that banks reinvest in the communities they take deposits from, including those that were historically excluded from these types of opportunities due to redlining. The CRA is a crucial tool that encourages banks to participate in their communities in a more responsible manner. A Federal Reserve study found CRA agreements increased bank lending to LMI borrowers and borrowers of color by up to 20 percent.[2] CRA loans and investments are profitable and consistent with safe and sound operations.

The CRA has also been one of the most effective federal efforts to bring investment to communities without substantial taxpayer dollars or government resources. The design of the

[1] From California Reinvestment Coalition, "Harnessing the Power of Banks," March 2018, available at: http://calreinvest.org/wp-content/uploads/2018/07/Harnessing20the20Power20of20Banks20report20FINAL20version.pdf, citing: Community Reinvestment Act (CRA). (2017, October 23). Retrieved from https://ncrc.org/communityreinvestment-act-cra-2/

[2] Raphael Bostic and Breck Robinson, "Do CRA Agreements Influence Lending Patterns?" 2002, Retrieved from https://lusk.usc.edu/research/working-papers/do-cra-agreements-influence-lending-patterns

CRA process encourages banks, regulators, and community leaders to have meaningful dialogue about a community's needs and banks' roles in the communities they serve.

According to the National Community Reinvestment Coalition, more than $6 trillion worth of CRA investments have been committed to LMI communities and communities of color nationwide since the act was passed.[3] Our survey of banks throughout California shows that the CRA is working in California as well; banks are investing in communities throughout the state in a number of impactful ways. Banks that responded to our surveys had lent over $27 billion in 2016 in LMI communities and communities of color throughout California, and had over $31 billion in total CRA activity in 2016.[4]

CRC negotiates formal written CRA agreements with banks which benefits both communities and financial institutions. Over the past three years, CRC has worked with communities and financial institutions to secure more than $50 billion in new CRA commitments.[5] These commitments are addressing critical community needs that help to create a more just, equitable, and robust economy, uplifting low-income people and people of color. In light of California's severe housing crisis, for example, CRA investments are helping to build and preserve thousands of units of affordable housing. In population dense urban centers, these affordable homes and apartments allow low-income residents to remain in communities where many of their families have lived for generations. Similarly, affordable bank loans for small business owners provide much-needed capital to main street businesses that are the lifeblood of local economic health. These small business loans are often coupled with technical assistance that provides entrepreneurs with the financial knowledge to grow their business and create local jobs.

The CRA encourages dialogue between banks, regulators, and community leaders. The CRA has three regulatory points of engagement during which the public and regulators must assess the performance of a bank in its deposit-taking areas: during a merger or consolidation process, when a bank applies open a bank branch, and during regular CRA examinations which occur every few years depending on the size and the past performance of the bank. The significance of the public participation process in CRA implementation cannot be overstated – how can banks meet community credit needs if the community does not help define those needs?

The current CRA proposal is deeply flawed

Although CRC and our members have long supported strengthening the CRA to better meet local

[3] National Community Reinvestment Coalition, "CRA 101 Manual," available at: https://ncrc.org/wp-content/uploads/2017/11/CRA-101_b.pdf

[4] From "Harnessing the Power of Banks," California Reinvestment Coalition, March 2018, available at: http://calreinvest.org/wp-content/uploads/2018/07/Harnessing20the20Power20of20Banks20report20FINAL20version.pdf,

[5] CRC's recent community commitments with banks can be found at http://www.calreinvest.org/publications/bank-agreements.

community credit needs, address racial wealth disparities, and increase oversight of financial institutions, the proposal by the OCC and the FDIC does precisely the opposite. While CRC is still reviewing the current proposal, we are greatly concerned that it weakens the CRA and departs from its statutory mandate in the following respects, among others:

- *The regulatory agencies should act together.* The federal banking regulators have traditionally proceeded through joint rule makings, including for CRA regulations, seeking consistency and uniformity across institutions. The OCC proposal has not grappled with the important and difficult questions of how breaking from these precedents is in the public interest in this case. A final rule from only the OCC and the FDIC will need to contend with the fact that the Federal Reserve chose not to participate, provide the basis for that decision, and explain how the proposal nevertheless makes sense for regulated entities and affected communities. The current proposal makes no attempt to do so.

  Here, the OCC and the FDIC may be creating an opportunity for regulatory arbitrage by going forward without the Federal Reserve. Banks may attempt to switch their regulator in order to lessen their CRA obligations. Such perverse incentives helped fuel the financial crisis, with the largest federally chartered thrifts failing, begetting the foreclosure crisis and ultimately, the end of the Office of Thrift Supervision (OTS). Before the crisis, the OTS sought to attract institutions to the OTS thrift charter by touting the strong preemption protection and other benefits a thrift charter might provide. The failure of OTS regulated institutions such as Washington Mutual, Downey Savings and Loan, World Savings, and, forebodingly, Indymac Bank, expedited the nation's financial crisis.

- *The CRA must retain its statutory focus on LMI and local needs, and not give banks credit for almost anything almost anywhere.* The proposal significantly expands the bank activities that count for CRA credit. Disturbingly, the proposal moves away from the CRA's statutory and historic focus on low and moderate income communities and the obligation to meet local credit needs in a number of ways. It provides CRA credit for loans for "affordable housing" that may actually be rented by middle or upper income tenants benefitting from low rents, loans for housing to tenants earning up to 120% of area median income in high cost areas, financial literacy classes even for upper income consumers, "small business" lending to businesses with up to \$2 million in revenue and in loan amounts of up to \$2 million (even though the vast majority of businesses have significantly less revenue, and most small businesses seek loans below \$100,000[6]),

[6] Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, "Small Business Credit Survey: 2019 Report on Employer Firms," which found that 57% of the 6,614 employer firm small business respondents to the survey sought financing of \$100,000 or less. Presumably, small business owners with no employees, who were not surveyed for this report,

investments in Community Development Financial Institutions (CDFIs) and on so-called "Indian Country" even if not for the benefit of low-income people, and even for large scale infrastructure projects that will primarily benefit the broader, non LMI public.

- *What happened to branches in LMI communities and access to bank accounts for LMI consumers?* Branches in LMI communities have been a key feature of the CRA, and bank presence in LMI neighborhoods has been shown to make a huge difference for local small businesses. According to one Federal Reserve study which analyzed small business lending using Community Reinvestment Act (CRA) disclosures, "among banks that are CRA reporters the share of loans made by lenders without a local branch presence remains quite low. This finding suggests that local branch presence is still important for small business lending."[7] Another recent study found that branch closings "led to a sharp and persistent decline in credit supply to local small businesses. Indeed, after a branch closing, annual tract-level small business loan originations fell by an average of $453,000, from $4.7 million. Loan originations remained depressed for up to six years, leading to a cumulative loss of $2.7 million in loans that those branches might have made if not for their closings."[8]

  The importance of bank branches to a community extends beyond important small business lending. A December 2019 paper by the Federal Reserve found that "banking clients in communities subject to branch closures generally report increased costs and reduced convenience in accessing financial services, and that these challenges appear to be exacerbated for certain groups, such as those with lower incomes or less reliable transportation, older individuals, and small business owners.[9] Another paper examined CRA's impact on branching. Overall, the number of branches has declined significantly from 88,022 in 2009 to 79,872 in 2018. The decline has been steeper in LMI tracts at 11% than non-LMI tracts at 9% during this time period. Importantly, the authors found that CRA has reduced the number of branch closures by 11% in LMI tracts. Importantly, CRA's impact is the strongest preventing closure in LMI tracts with just one branch, preventing banking deserts.[10]

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might need small dollar small business loans to a greater extent, and they would be even more poorly served by a proposal that incentivizes banks to originate larger loans to larger businesses.

[7] Anenberg, Elliot, Andrew C. Chang, Serafin Grundl, Kevin B. Moore, and Richard Windle (2018). "The Branch Puzzle: Why Are there Still Bank Branches?" FEDS Notes. Washington: Board of Governors of the Federal Reserve System, August 20, 2018, https://doi.org/10.17016/2380-7172.2206.

[8] Jacob Idlas, "In Small Business Lending, Technology Hasn't Replaced Face-to-Face Contact," Chicago Policy Review, March 2, 2019, citing Nguyen, Hoia-Luu, "Are Credit Markets Still Local? Evidence from Bank Branch Closings," American Economic Journal: Applied Economics 11(1). (2019): 1-32.

[9] Federal Reserve, "Perspectives from Main Street: Bank Branch Access in Rural Communities," December 3, 2019, available at: https://www.federalreserve.gov/publications/november-2019-bank-branch-access-in-rural-communities.htm

[10] Josh Silver, "New Penn Institute CRA Research Compendium Suggests Incremental Change Is Best Path For CRA Reform," National Community Reinvestment Coalition blog, November 19, 2019, available at: https://ncrc.org/new-penn-institute-cra-research-compendium-suggests-incremental-change-is-best-path-for-cra-

So, too, affordable and accessible bank account products (similar to CRC's Smart Money model account) can help low-income consumers remain in the financial mainstream and build assets by keeping them away from predatory check cashers and payday lenders. But in the current proposal, very little CRA credit is given to banks for siting branches in LMI neighborhoods, and there is apparently no consideration for whether banks are meeting the bank account needs of LMI residents such as through low or no fee accounts, acceptance of alternative forms of identification, or provision of language access services for Limited English Proficient consumers. The CRA requires banks to serve the convenience and needs of the communities where they are chartered to do business, including both the need for credit and deposit services." By drastically reducing or eliminating CRA credit for branches and account services, the proposal substantially departs from this core CRA requirement.[11]

- *The complex evaluation methods proposed by the OCC and the FDIC will lead to less overall investment.* Additionally, this proposal will create incentives for banks to favor big deals over small, simple deals over complex, cookie cutter approaches over innovative and impactful initiatives, and importantly, it will hurt rural communities. The new one ratio metric will have banks chasing the largest deals since that will count for more credit towards their target goals. Further, it will allow banks to fail in their obligations to serve up to half of their assessment areas and yet still receive an overall Satisfactory or Outstanding rating. So, under the new proposal, banks can "pass" by failing.

  Additionally, the various thresholds in the proposal appear arbitrary and not based on data made available to the public. If the OCC was relying on certain data, it should have made that data and methodology available in the proposal. If there in fact are no such supporting data, then that raises perhaps an even more troubling question: what is the foundation upon which the OCC proposes to make such sweeping and damaging changes to the CRA? Federal Reserve Board Governor Lael Brainard, in her recent remarks before the Urban Institute, noted that it was more important to get CRA rule changes done right than done quickly, that any rule should be based on rigorous data analysis that is made available to the public, and that the rule adhere to CRA's core principles.[12]

  The point about the OCC not having or sharing the data that provide the foundational support for the proposal is further highlighted by the OCC itself, which just recently

reform/ (reviewing, Lei Ding and Carolina K. Reid, "The Community Reinvestment Act (CRA) and Bank Branching Patterns," Federal Reserve Bank of Philadelphia, Working Papers Research Department, WP 19-36, September 2019).

[11] Community Reinvestment Act, 12 U.S.C. §2901(a).

[12] Governor Lael Brainard, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purposes," speech delivered at the Urban Institute, January 8, 2020, available at: https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm

issued a Request for Information of financial institutions. The OCC seeks public input from banks with this request for information to assist in determining how the proposed rule might be revised to ensure that the final rule better achieves the statute's purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. Banks are asked by the OCC to respond to the RFI by March 10, 2020, the same time frame for the NPR comment period. The information gleaned from the RFI, which the OCC intends to use to potentially refine the propose rule,[13] will not be made available to the public for review and analysis before public comments are due under the NPR. This is not a fair, transparent and thoughtful process.

- *(CRA) Credit on top of (tax) credit for stadiums and displacement over affordable housing?* As just one example of how the proposal prioritizes displacement over meaningful community development, nonprofit affordable housing developers may see a DECREASE in much needed Low Income Housing Tax Credit (LIHTC) tax credit investment,[14] while the regulators will give banks CRA credit for investing in qualified Opportunity Zone funds in low income areas, including investments in athletic stadiums, self-storage facilities, and luxury housing that will likely result in displacement of the very low-income residents and small businesses meant to benefit from the CRA.

- *There should be greater scrutiny of bad bank practices, not less.* The proposal does nothing to address banks' displacement mortgages which finance rental housing that will foreseeably lead to displacement and eviction of low and moderate income people and people of color by, for example, underwriting loans to higher rents than what tenants are currently paying, or financing problematic landlords that displace or harass their tenants.

  The proposal, as it must, allows for a possible downgrade of a CRA rating if there is evidence of discrimination or illegal credit practices. But the OCC has previously taken two harmful stances that have given banks greater latitude to engage in wrongdoing: 1) the OCC has suggested that generally, double downgrades in CRA ratings for discriminatory or illegal credit practices will not be delivered[15]; and 2) the OCC has narrowed the circumstances under which evidence of discrimination will result in downgrades.[16] These policies combined suggest that actual and accepted evidence of

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[13] See OCC Bulletin 2020-4, "Community Reinvestment Act: Request for Public Input," January 9, 2020, available at: https://www.occ.gov/news-issuances/federal-register/2019/nr-ia-2019-147-federal-register.pdf.
[14] Donna Kimura, "CRA Proposal Draws Concerns from Affordable Housing Leaders," Affordable Housing Finance, December 13, 2019.
[15] OCC Bulletin 2018-23, August 15, 2018 and Policies and Procedures Manual, PPM 5000-43, "Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings," August 15, 2018, wherein the OCC clarifies that the general policy of the OCC is to downgrade a rating by only one rating level unless such illegal practices are found to be "particularly egregious."
[16] OCC Bulletin 2018-23, August 15, 2018, and Policies and Procedures Manual, PPM 5000-43, "Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings," August 15,

discrimination can still result in a Satisfactory or Outstanding rating, and that under one reading of the OCC's deeply flawed policies, even potentially criminal conduct such as the Wells Fargo Bank account opening scandal may not necessarily result in a "failing" CRA rating if the Bank otherwise is an Outstanding CRA performer.

Further, the proposal seeks to give credit for lending and investing activities of bank affiliates, but it is not clear that potential wrongdoing by such affiliates will be scrutinized or result in CRA downgrades. The financial crisis was a result, in part, of bank affiliates making subprime and nontraditional loans that were not sufficiently regulated by the banking agencies, much to our collective detriment. The proposal could well incentivize banks to engage in such reckless and harmful activities in the future.

- *The proposal reduces, and potentially eliminates, avenues for community input.* Importantly, the proposal would likely lead to far less meaningful community input as CRA implementation would move to formula-based approaches and rely on bank performance data that is less transparent and available to the public than is the case today. All of this comes at the expense of community input, community partnerships, and any activity that cannot be quantified. There is no apparent and meaningful way to incorporate community comments on local credit needs or on bank performance; community input comes second to target dollar goals.

We are not surprised by this proposal, given OCC leadership's hostility to the CRA

CRC and our members know firsthand how the Comptroller treats low income communities and communities of color from his tenure as CEO of OneWest Bank, one of the most problematic financial institutions CRC has encountered.

A problematic merger: In the 2014/2015 merger of CIT and OneWest Bank, we found much private gain for bank officers, much public subsidy in the form of lucrative foreclosure loss share agreements and forgiven TARP payments, but no public benefit.

A problematic CRA bank: While Comptroller Otting was CEO of OneWest Bank, OneWest was among the worst banks at reinvesting in LMI communities. CRC analysis of OneWest Bank reinvestment activities placed the Bank towards the bottom of all California banks analyzed, below their peers in meeting community credit needs and reinvesting in neighborhoods. As one example, according to the Bank's own CRA strategic plan, which the bank sought to keep

2018, wherein the OCC clarifies that it will consider lowering a CRA rating only if the evidence of discriminatory or illegal credit practices directly relates to the institution's CRA lending activities, and that full consideration is given to remedial measures taken by the bank. So, CRA ratings may not be lowered if discrimination occurs outside of the lending context, or even if there is evidence of discriminatory lending but the institution has taken what are deemed to be sufficient remedial measures.

confidential, affordable housing is identified as a critical need. But the Bank did seemingly very little to address this need. It devoted little of its already small pool of contributions for affordable housing, its home mortgage lending record was very weak and, we believe, discriminatory, it did not then offer a multi-family loan product, and it may have only participated in a limited way in the LIHTC program to support affordable rental housing development. With such strong nonprofit capacity in its assessment area, the bank's performance was shameful, and represented a wasted opportunity to address critical housing needs in the area. OneWest's poor CRA performance was not confined to mortgage lending as it made very few small business loans to small businesses,[17] had roughly half the branch presence in LMI communities as it peers,[18] and saw over 1,300 complaints filed against it with the Consumer Financial Protection Bureau.[19]

A redlining bank. Under Comptroller Otting's leadership, the bank's mortgage lending was not only weak, we believed it was discriminatory and illegal. As such, CRC filed its first HUD redlining complaint against OneWest Bank in November 2016. The complaint alleged that OneWest Bank's lending to borrowers in communities of color was low in absolute terms, low compared to its peer banks, and lower than one would expect, given the size of the Asian, African American and Latino populations in Southern California. As part of the complaint, an analysis of the bank's assessment areas found that OneWest had only 1 branch in an Asian-American majority census tract, and no branches in African American majority census tracts. Over a 2 year period, the bank only originated 2 mortgage loans to African Americans in the greater Los Angeles area. CRC was pleased to recently settle this complaint with CIT, the successor Bank to OneWest.[20]

A Foreclosure Machine. It would be bad enough if OneWest merely did a poor job meeting community credit needs. But in fact, the Bank that Comptroller Otting ran inflicted substantial harm on communities and families through its mass foreclosures that inflicted great harm on families and communities. We estimate that OneWest foreclosed on over 35,000 foreclosures in California alone since February 2009, about a third of which occurred under Comptroller Otting's management at OneWest. The Bank foreclosed on 2,000 reverse mortgage borrowing

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[17] James Rufus Koren, "Steve Mnuchin's OneWest favored private equity firms, did little for small businesses lending," LA Times, January 19, 2017.
[18] CRC 2015 analysis of bank branch data found 15% of OneWest branches were in LMI communities, compared to 30% for the rest of the industry.
[19] For information on CFPB complaints filed against OneWest Bank during Joseph Otting's tenure as CEO, see CRC Fact Sheet available here: http://calreinvest.org/wp-content/uploads/2018/07/CRC20Fact20Sheet20CFPB20Complaints20Against20OneWest.pdf . Note that CFPB's Consumer Complaint Database was being introduced to the public in phases and may not have been live from the beginning of Mr. Otting's tenure at OneWest Bank, meaning that complaints would likely have been greater if the database was live and known to consumers earlier.
[20] Conciliation Agreement between California Reinvestment Coalition, and CIT Group, Inc., and CIT Bank, N.A., dba OneWest Bank, FHEO CASE NUMBER: 09-17-7199-8, available at: http://calreinvest.org/wp-content/uploads/2019/07/CRC-v-CIT-CONCILIATION-AGREEMENT-07.26.19.pdf

seniors, their widows and heirs in our state. Shockingly, CRC and Urban Strategies Council analysis found that fully 68% of OneWest foreclosures in California were in neighborhoods of color.[21] A CRC FOIA request to the Department of Housing and Urban Development revealed that OneWest's reverse mortgage company was responsible for nearly 40% of all foreclosures nationwide as part of the federal Home Equity Conversion Mortgage Program.[22] A whistleblower lawsuit later required the Bank to pay $89 million to settle charges of violations of the federal reverse mortgage program.[23] During Comptroller Otting's tenure as CEO, the main way in which OneWest engaged with LMI communities was through foreclosure.

A "terrible" mortgage servicer. OWB was a "terrible" mortgage servicer. In our surveys of housing counselors over the years, OWB was frequently cited as among the worst. In 2010, OWB was the deemed the worst at offering loan modifications. In 2011, OWB got the most votes for being a "terrible" servicer. In 2012, OWB got the 2nd most votes for worst servicer. In addition, there were over 1,000 CFPB consumer complaints against OWB during this time, including 150 complaints about its reverse mortgage servicing, about 12% of all reverse mortgage complaints filed at that time. At OneWest Bank, Comptroller Otting ran a foreclosure machine, and made millions doing so.

"Widespread misconduct." Not only did nonprofit housing counselors in California find OneWest foreclosure practices highly problematic, but the California Attorney General's office found that the bank's foreclosure practices during Comptroller Otting's tenure showed evidence of "widespread misconduct." Deputy Attorneys General in the Consumer Law Unit determined that OneWest rushed delinquent homeowners out of their homes by violating notice and waiting period statutes, illegally backdated key documents, and engaged in unlawful foreclosure auction activity, according to a leaked 2013 memo from the AG's office that was published in January of 2017.[24]

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[21] Based on CRC and Urban Strategies Council analysis of purchased foreclosure data, analyzing zip codes in which foreclosures were reported, and overlaying that data with demographic data for the zip codes. CRC statement on this analysis is available at: http://calreinvest.org/press-release/coalition-calls-for-federal-investigation-into-impacts-on-communities-of-color-of-onewest-bank-foreclosures/

[22] A fact sheet on this FOIA request, with links to the FOIA request itself, and the response from HUD, can be found here: http://calreinvest.org/wp-content/uploads/2018/08/CRC20Fact20Sheet20about20Financial20Freedom20Foreclosures20Since20April202009.pdf

[23] CRC statement on $89 million whistleblower settlement, along with a link to the release from whistleblower Sandy Jolley, available at: http://calreinvest.org/press-release/89-million-dollar-whistleblower-settlement-at-company-formerly-led-by-steve-mnuchin-and-joseph-otting/

[24] David Dayen, "TREASURY NOMINEE STEVE MNUCHIN'S BANK ACCUSED OF "WIDESPREAD MISCONDUCT" IN LEAKED MEMO," The Intercept, January 3, 2017. CRC statements and analysis on the leaked AG memo, available at: http://calreinvest.org/press-release/memo-shows-evidence-of-illegal-foreclosure-practices-at-onewest-bank-while-steven-mnuchin-was-ceo/

OCC Requires a Weak CRA Plan. Ultimately, the CIT/OneWest merger was approved in 2015, with the OCC negotiating a weak CRA Plan with OneWest Bank and Comptroller Otting. The Plan foreshadowed the OCC's current efforts, as it appeared to allow the bank to claim credit for activities that benefited upper income borrowers such as through mortgage loans or luxury condominiums.[25] CRC was one of 90 organizations that opposed the OneWest CRA Plan submitted to, and eventually approved by, the OCC.[26]

We are not surprised by this proposal given OCC leadership's hostility to community groups and the public input process

Very little about the merger between Comptroller Otting's OneWest Bank and CIT was normal. CRC extensively documented our numerous concerns about the merger in a series of comment letters to banking regulators, Freedom of Information Act (FOIA) requests, research and data analysis and testimonials. The tactics OneWest Bank and Comptroller Otting utilized call into question whether the Comptroller has appropriate respect for the public input process.

Seeking Wall Street's Help to Lobby the Fed. One of the more bizarre aspects of the merger was Comptroller Otting's solicitation of support for the merger from his Wall Street contacts, contractors, and employees.[27] CRC obtained one of these solicitations, which asked recipients to go to OneWest Bank's website to submit a form letter to bank regulators. The form letter on the bank's website attested to the fact that the bank was being well managed (presumably by Comptroller Otting) and that OneWest Bank was doing a good job serving southern California communities (it wasn't), and that regulators did not need to hold public hearings on the merger. The letter provided no supporting data to justify or even explain the claims and conclusions made. How much weight should regulators give to a bank support letter submitted by a contractor who relies on business from the Bank CEO who requested the letter, or a letter from the CEO's Wall Street acquaintance who asserts, presumably based upon nothing but the request of the CEO, that the bank is doing a good job serving the community in Los Angeles, and there is no need for a public hearing on the merger? According to a report by the US Treasury Department, run by Steve Mnuchin, Comptroller Otting's former boss at OneWest Bank, equal

[25] See Paulina Gonzalez and John Taylor, "CRA Goals are the Casualty of CIT-OneWest Merger" American Banker, BankThink, June 21, 2016, available at: https://www.americanbanker.com/opinion/cra-goals-are-the-casualty-of-cit-onewest-merger and CRC release, available at: http://calreinvest.org/press-release/california-reinvestment-coalition-denounces-occs-approval-of-cit-groups-new-cra-plan/

[26] CRC release on the letter opposing the Bank's CRA Plan, available at: http://calreinvest.org/press-release/90-community-organizations-urge-regulators-to-reject-onewest-banks-community-reinvestment-plan-and-stop-conditional-approval/

[27] Matthew Monks and Elizabeth Drexheimer, "OneWest Seeks Wall Street's Help Lobbying Yellen on CIT," Bloomberg, January 8, 2015.

weight should be given to supporters and opponents of mergers.[28] We are concerned that such recommendations only encourage astroturfing by corporations which dilutes and distorts the public input process, by adding voices that are not necessarily interested or knowledgeable about the issues at hand, but are being employed primarily in the service of well-resourced and self-interested stakeholders.

Corrupting the public comment process via "fabricated comment letters." CRC soon become concerned that what at first seemed to be a harmless PR miscue by the bank's CEO in soliciting help from Wall Street cronies was actually something much more serious. CRC, genuinely surprised that people would actually be in support of this problematic merger, began to look at the letters of support submitted in favor of the Bank, at the Bank's direction, and often via the Bank's website. We observed a number of anomalies, including several emails with similar address formatting, an unusually large number of yahoo.com addresses given Yahoo's smaller market share, and a few hundred emails that appeared to have been submitted at the same time early in the morning on Valentine's Day. Subsequent investigation found approximately one-third of emails sent to addresses of "supporters" of the merger bounced back, including from some with questionable addresses such as gooeypooey69@yahoo.com.[29] Our fears were confirmed when CRC received a call from one such "supporter" of the merger who was upset that his identify had been stolen and that his email address had been used to support a bank merger he had never heard about before. CRC, along with Inner City Press/Fair Finance Watch, then submitted a detailed FOIA request to the OCC seeking documentation relating to potentially false letters of support being filed as part of the merger process. The OCC produced in response, amongst other things, a file labelled by the OCC "OneWest CIT Bank Merger Fabricated Comment Letters," that includes documents reflecting four email exchanges with the OCC from "supporters" of the merger who did not affirmatively support or even know about the merger. How many "supporters" of the merger were not supporters of the merger, or where not even actual human beings for that matter? We don't know. But that didn't stop the Federal Reserve and the OCC from citing the "support" letters in the orders approving the merger of CIT and OneWest. CRC has called for an investigation into who was responsible for the fabricated emails, for changes to ensure that false bank support for a merger cannot again be allowed to corrupt the public comment process, and for the regulators to revise their orders to reflect that the support for the OneWest merger was suspicious at best.[30] Under Comptroller Otting, we are not aware that any of these remedies have been pursued or even considered.

Having a Hard Time – Hostility to the CRA and community groups. The Comptroller's motive in pushing ahead to reform CRA rules, despite overwhelming opposition from community groups

[28] In a report issued under Secretary of the Treasury Mnuchin, Treasury notes that "regulators should give careful and equal weight to the views of individuals who support and oppose the activity," from, "A Financial System That Creates Economic Opportunities: Banks and Credit Unions," U.S. Department of the Treasury, June 2017.
[29] See David Dayen, "The Fake Public Comments Supporting a Bank Merger Are Coming from Inside The House," The Intercept, September 29, 2018.
[30] FOIA request submitted by CRC and ICP, as well as OCC responses, are available at: http://calreinvest.org/wp-content/uploads/2018/10/CRC-FOIA-Request.pdf

and some concern from industry, appears clear to us. We have seen how, in our view, his bank failed to comply with the CRA and Fair Housing Act requirements. We also have his comments on the subject. According to the Wall Street Journal, Comptroller Otting explained at a 2018 banking conference, describing his experience with community groups holding OneWest accountable during the merger with CIT, "I went through a very difficult period with some community groups that…tried to change the direction of our merger. And so I have very strong viewpoints. He has said that community groups should not be able to use the public comment process to "pole vault in and hold [bankers] hostage" during mergers.[31] Later, he was quoted in the American Banker as saying, "During an exam cycle, if a bank wants "to open a branch, close a branch or make an acquisition, certain community groups know how to . . . hold you hostage during that process and *they use your lack of compliance in between the reviews in order to be able to do that*."[32] Perhaps most alarmingly, Comptroller Otting was quoted as saying "…We won't tolerate groups that do not provide services to these communities to disrupt the process and affect our decisions."[33] This last comment is astonishing and suggests that this Comptroller cannot be trusted to impartially consider public comments from community groups, just as he is soliciting public comment on plans to weaken the nation's primary anti-redlining law.

Chilling speech. The OCC later took the unusual step of sending us two separate letters admonishing CRC for comments relating to the OCC's efforts to weaken the CRA. Both letters were sent by Deputy Comptroller Wides on OCC letterhead. CRC and Democracy Forward have submitted a FOIA request to the OCC to determine if other groups received such letters, the nature of any internal OCC communication about CRC, and whether there are any indicia of fabricated emails corrupting the current CRA reform process.[34] Not content to issue the two letters, Deputy Comptroller Wides and the OCC also submitted an op-ed to the American Banker chastising community groups for not contributing positively to the discussion about CRA reform.[35] Apparently, all comments and speech are welcome by the OCC, unless it is critical of the OCC actions and intentions. I felt compelled to respond to this op-ed with one of my own, asking what the OCC is afraid of.[36]

Using his bully pulpit to attack us. At a hearing of the Senate Banking Committee, U.S. Senator Catherine Cortez Masto (D-Nev.) questioned Comptroller of the Currency Comptroller Otting

[31] See David Dayen, "The Fake Public Comments Supporting a Bank Merger Are Coming from Inside The House," The Intercept, September 29, 2018.
[32] Rachel Witkowski, "5 items on the OCC chief's reg relief to-do list," American Banker, April 9, 2019.
[33] "Q&A with Comptroller Joseph Otting," available at:
https://www.cbaofga.com/uploads/1/2/3/8/123887871/qa_comptroller_otting.pdf
[34] Press release from CRC and Democracy Forward, with links to the FOIA request, is available here:
http://calreinvest.org/press-release/coalition-of-community-orgs-seeks-records-on-trump-administrations-attempt-to-silence-opposition-to-gutting-anti-redlining-rules/
[35] Barry Wides, BankThink: "Setting the Record Straight on CRA Reform," American Banker, March 25, 2019, available at: https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform.
[36] Paulina Gonzalez-Brito, BankThink: "Why is OCC Scared of Public Input," American Banker, April 8, 2019, available at: https://www.americanbanker.com/opinion/why-is-occ-scared-of-public-input

about his office's unprecedented decision to publicly chastise critics of its proposed changes to the Community Reinvestment Act (CRA). When asked about efforts to "silence" and "scold" CRC, Comptroller Otting said that "that particular organization was dispelling false information" and that groups "can't go out and say false things." When asked about his comments that community groups came in at the bottom of the ninth inning to hold banks hostage, Comptroller Otting indicated that those comments were accurate, and that there was "overwhelming support in our community for the merger and groups came from outside the community that had no input, no data, were not familiar with our organization and tried to stop the merger."

In fact, the OneWest/CIT merger was perhaps the most protested merger in U.S. history to that point, with over 100 groups and 21,000 individuals opposing the merger. We believe a clear majority of groups commenting on the merger from Southern California opposed the merger. Further, CRC takes issue with Comptroller Otting's assertion that no data or input was presented, as CRC and allies submitted numerous comment letters; conducted analysis of publicly available Home Mortgage Disclosure Act (HMDA) mortgage, CRA small business, and branch and deposit data; issued at least three FOIA requests to three federal agencies for relevant data; conducted and analyzed several nonprofit housing counseling surveys; purchased, analyzed and mapped foreclosure data after the Bank refused to disclose any such data to the public; and provided numerous testimonials of nonprofit organizations and consumers with direct experience with the bank. It is quite possible that there has never been a merger where more data, information and testimony relating to community and consumer impact was presented than regarding his bank. If the Comptroller finds that the record of that merger reflected no data worthy of consideration, how can he be viewed as a fair and unbiased deliberator when it comes to community input in the merger or rule-making process?

Lastly, in the exchange with Senator Cortez Masto, Mr. Otting dismisses CRC, a statewide organization with a plurality of organizational members in Southern California, as a "northern CA based organization," because his bank was a southern California based institution.[37] By contrast, the one group that organized support for the bank appears to be based in Daly City, about 10 minutes south of CRC's main office in San Francisco. Comptroller Otting also did not appear to be dismissive of comments in support of the merger that he solicited from his Wall Street contacts located outside of the state. It is also unclear what he thinks about letters of support for the bank that were fraudulently submitted. What is the OCC's position on which comments will be read and considered, and from whom?

Any role for the community? Taken as a whole, the Comptroller's words and deeds suggest that community groups and members of the public with a differing viewpoint from the Comptroller will not be given fair consideration by this OCC. We see this in the Comptroller continually

[37] All references to the exchange between Comptroller Otting and Senator Cortez Masto reflect good faith efforts, the absence of a transcript, to capture the conversation as observed in the video posted on Senator Cortez Masto's website, available at: https://www.cortezmasto.senate.gov/news/videos/watch/cortez-masto-grills-otting-about-administrations-efforts-to-silence-critics

touting how many groups he has met with and how many comments received in response to the Advanced Notice of Proposed Rulemaking, yet issuing a Proposed Rule that does not reflect those comments. As for the proposed changes to the CRA, the OCC apparently is very interested in hearing from the public, but insists on an unreasonably short 60-day public comment period during which community groups and other stakeholders are expected to analyze and comment on this long, complex proposal which would have huge impacts on communities, and despite a request from several members of Congress to extend the comment period to 120 days.[38] Community input and public participation are at the heart of the CRA. We fear these core principles of the CRA are in jeopardy under this OCC which seeks to stifle dissent and minimize involvement by community groups in the very reinvestment assessments and decisions that impact them greatly.

Conclusion

Mr. Chairman and members of the Subcommittee, thank you again for the opportunity to testify today. The California Reinvestment Coalition looks forward to working with you to ensure that communities do not lose out while important protections, like the Community Reinvestment Act regulations, are weakened as part of a deregulatory scheme designed to benefit the largest and most powerful conversations.

[38] Neil Haggerty, "Maxine Waters to crash FDIC meeting on CRA revamp," American Banker, December 12, 2019 (referencing a letter from Chair Waters and all of the Democrats on the Housing Financial Services and Senate Banking Committees to the FDIC and the OCC, asking them to allow for a 120-day comment period on the CRA proposal).

CRC

CALIFORNIA REINVESTMENT COALITION

June 16, 2015

Janet Yellen
Chair
Federal Reserve Board of Governors

Thomas Curry
Comptroller
Office of the Comptroller of the Currency

Martin Gruenberg
Chair
Federal Deposit Insurance Corporation

Mel Watt
Director
Federal Housing Finance Agency

Richard Cordray
Director
Consumer Financial Protection Bureau

Julian Castro
Secretary
Dept. of Housing and Urban Development

Loretta Lynch
Attorney General
United States Department of Justice

Re: *CRC calls for fair lending/fair housing investigation of OneWest Bank: 8th Comment Letter opposing proposed merger of OneWest and CIT Group*

Dear Chairs Yellen and Gruenberg, Directors Watt and Cordray, Comptroller Curry, Secretary Castro, and Attorney General Lynch,

The California Reinvestment Coalition writes this eighth comment letter in opposition to the proposed merger of the holding companies and banks represented by OneWest (OWB) and CIT Group.

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CRC is specifically calling on federal regulators to conduct a fair housing and fair lending investigation of OneWest bank and its activities relating to:

1) Foreclosures that are located disproportionately in neighborhoods of color;
2) Weak home lending to Asian American and Pacific Islander (AAPI) and African American borrowers;
3) Low branch presence in Low and Moderate-Income (LMI) neighborhoods and neighborhoods of color;
4) Allegations of disparate REO property maintenance and marketing in neighborhoods of color, as compared to white neighborhoods;
5) Servicing and foreclosure practices impacting seniors and women, in particular, Non Borrower Spouses of deceased reverse mortgage borrowers; and
6) Arbitrary use of discretion in servicing reverse mortgages.

The California Reinvestment Coalition (CRC), based in San Francisco, is a non-profit membership organization of community based non-profit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color through access to equitable and low cost financial services. CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities.

In this letter, we present new foreclosure data, mapping and analysis that suggests that OneWest's 36,382 foreclosures are disproportionately located in neighborhoods of color. We combine this new foreclosure data and analysis with prior comments and analysis showing additional disparities in OneWest's home lending, branch presence, REO property marketing and maintenance, and reverse mortgage servicing and foreclosures on seniors and widows. All of these facts, when combined, paint a disturbing picture of how OneWest is impacting low and moderate income communities and communities of color, and warrants further fair lending and fair housing investigation and potentially, enforcement.

1) Foreclosure are located disproportionately in neighborhoods of color

For months, CRC has sought information about OneWest's foreclosure practices in California. Despite collecting over a billion dollars from the FDIC for costs related to foreclosures, the bank refused to publicly share this information, so CRC worked with Urban Strategies Council to purchase and analyze California foreclosure data for OneWest, Indymac and Financial Freedom from April 2009, when OneWest investors took over Indymac, until April 2015.

CRC

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Please note that CRC still seeks data regarding the total number of foreclosures OneWest has processed across the country, as well as the number of pending foreclosures in OneWest's and Financial Freedom's foreclosure pipelines. The data presented here are limited further in that they do not account for short sales, deeds in lieu, and other foreclosure alternatives that result in homeowners losing their homes against their wishes, but which are not tracked as a "completed foreclosure" in the data.

1a. OneWest has foreclosed on a large number of households in California.

Since April 2009 through April 2015, OneWest has foreclosed on 36,382 California households. This calls into question how OneWest Bank is meeting its obligation to meet the community's credit needs under the Community Reinvestment Act.

Figure 1: OneWest, IndyMac, Financial Freedom foreclosures in California from April 2009 to April 2015

OneWest	IndyMac	OneWest and IndyMac	Financial Freedom	Total
16,113	17,810	33,923	2,459	36,382

Figure 2: Top 10 counties for IndyMac and OneWest foreclosures (excluding Financial Freedom) from April 2009 to April 2015

County	Indymac	OneWest	Total	Percent
LOS ANGELES	4,216	3,703	7,919	23%
RIVERSIDE	2,191	2,106	4,297	13%
SAN BERNARDINO	1,795	1,890	3,685	11%
SAN DIEGO	1,185	1,138	2,323	7%
ORANGE	1,004	843	1,847	5%
SACRAMENTO	1,138	436	1,574	5%
KERN	475	572	1,047	3%
ALAMEDA	437	504	941	3%
CONTRA COSTA	725	207	932	3%
Total	**13,166**	**11,399**	**24,565**	**72%**

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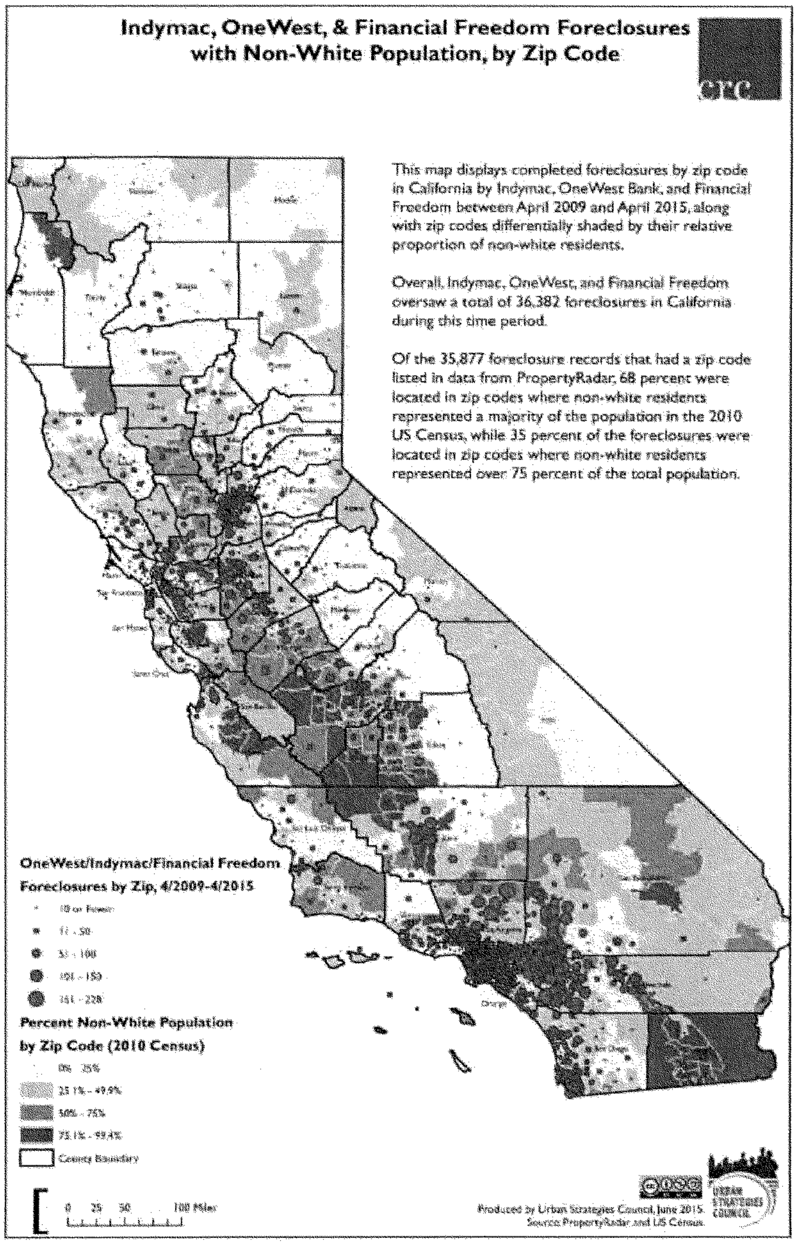
Figure 3: Top 10 counties for Financial Freedom foreclosures from April 2009 to April 2015

County	Financial Freedom Foreclosures	Percent
LOS ANGELES	498	20%
SAN BERNARDINO	287	12%
RIVERSIDE	267	11%
SACRAMENTO	200	8%
SAN DIEGO	187	8%
KERN	123	5%
ORANGE	102	4%
FRESNO	83	3%
SAN JOAQUIN	68	3%
Total	**1,815**	**74%**

Figure 4: The map on the next page shows where OneWest foreclosures in California have been located.

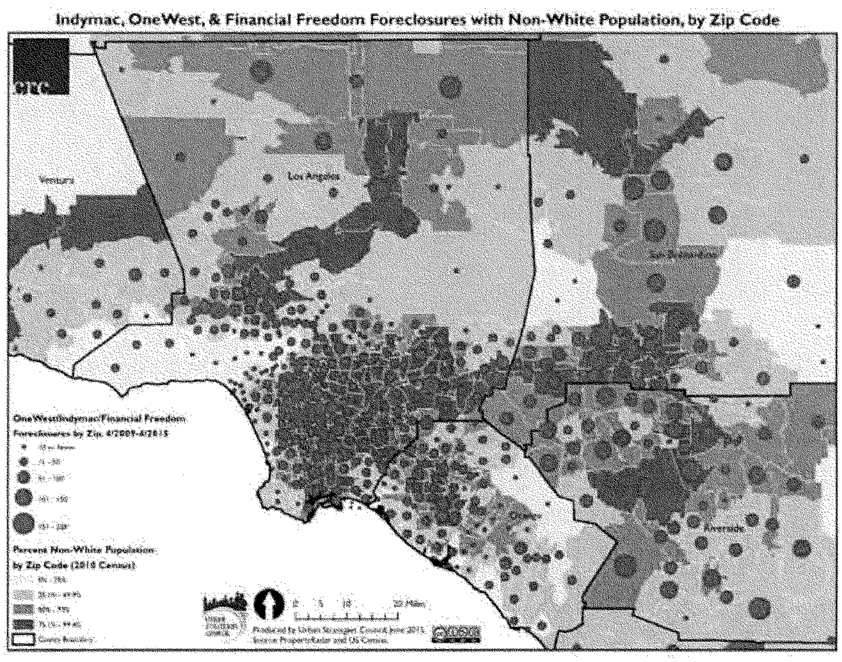
CALIFORNIA REINVESTMENT COALITION



1b. OneWest foreclosures appear to be concentrated in communities of color.

Of particular concern is that most of these California foreclosures are in communities of color. Of the 36,382 California foreclosures identified, 35,877 could be assigned to a zip code. Nearly 70% of these foreclosures, 24,471, occurred in zip codes where 50% or more of the residents are people of color. Further, 35% of these foreclosures, or 12,619, occurred in zip codes where 75% of the population is of color. Below is a map of OneWest foreclosures in Los Angeles, Orange, San Bernardino and Riverside Counties. The darker areas represent zip codes with a greater percentage of residents of color. The larger the blue dots, the more OneWest foreclosures processed in that zip code. Appendix I includes additional maps of OneWest foreclosures in California, by county.

Figure 5: Indymac, OneWest, Financial Freedom foreclosures, April 2009 to April 2015



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1c. OneWest's numerous and concentrated foreclosures come in the context of problematic servicing practices and performance regarding forward mortgage loans.

The disparate impact on communities of color from OneWest foreclosures is further concerning in light of the extent of the evidence of OneWest's faulty servicing practices. Numerous complaints field with the CFPB and the Bank itself, CRC housing counselor surveys, bountiful litigation, the Bank's flouting of our state's Homeowner Bill of Rights, HAMP Treasury reports, Independent Foreclosure Review findings, foreclosing on borrowers not in default, postponing embarrassing foreclosures, complaints from other industry professionals, rankings by JD Power and Associates, and testimony at the public hearing on the merger in Los Angeles in February (Public Hearing) all paint a picture of a problematic servicer where unnecessary foreclosures were likely, and where incentives to pad loss share and FHA claims may have led to abusive servicing practices. Below is a summary of various indicators of OneWest's problematic servicing practices.

Evidence of Problematic Servicing: Numerous CFPB complaints. Consumers have filed over 1,263 complaints against OneWest Bank with the Consumer Financial Protection Bureau, with over 1,000 of the complaints related to mortgages, loan servicing and loan modifications.

Evidence of Problematic Servicing: Numerous complaints made directly to OneWest, even though OneWest arbitrarily reported out complaints only from the time period after it sold most of its servicing rights. The Federal Reserve Bank of New York (FRB) has asked the Applicant Bank to respond to several of its Additional Information (AI) requests, including the number of complaints that OneWest received related to various allegations of improper servicing and foreclosure. Besides not responding to this question directly, OneWest decided to provide information on complaints only for the period *after* which it sold MOST of its servicing rights.[1] This is nonresponsive to the FRB's request, and is further evidence of the Bank's penchant for misleading and obfuscation.

Further, despite the bank trying to shirk responsibility by pointing to its sale of a "substantial part of its mortgage servicing rights," OneWest still managed to rack up 812 complaints, including over 200 relating to its reverse mortgage servicing practices. But again, this does not

[1] Sullivan and Cromwell, LLP, "RESPONSES TO THE REQUEST FOR ADDITIONAL INFORMATION DATED MARCH 17, 2015 FROM THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN CONNECTION WITH THE APPLICATION TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM RELATING TO THE PROPOSED ACQUISITION OF IMB HOLDCO LLC BY CIT GROUP INC. AND CARBON MERGER SUB LLC," April 14, 2015, p. 11.

even cover the period when OneWest most impacted its communities, especially Low and Moderate Income (LMI) communities and communities of color. The FRB must request again, and OneWest must provide, complaint data beginning from the time OneWest investors purchased IndyMac Bank.

It is also worth noting that the number of homeowners who could have filed complaints is likely much higher, especially considering the case of Michelle Ayers in Florida. When she sought assistance with the problems she faced with Financial Freedom, she first contacted HUD, who then referred her to NOVAD or NOVAC, who allegedly told her they could not assist because "the reverse mortgage is not through a HUD program." She was then referred to the Office of Financial Regulations, who in turn referred her to the Office of the Comptroller of the Currency, who in turn referred her to the CFPB where she ultimately filed two complaints. For more, please see: "Sisters lose home after OneWest forecloses on Reverse Mortgage."[2]

How many other consumers would have the time, energy and resolve to press on to file their complaints after being shuttled through 5 different regulatory agencies, especially if they are also mourning the recent death of a loved one?

Evidence of Problematic Servicing: California Housing Counselor Surveys rate OneWest poorly: During the time when OneWest was a large and active servicer of forward mortgages, housing counselors in California, who served thousands of consumers in distress each month during the heart of the foreclosure crisis, repeatedly rated OneWest among the worst servicers.[3]

- In a July 2010 survey, thirty housing counselors cited OWB as the worst offender for not offering affordable loan modifications, more than all fifteen of the other servicers surveyed.
- Later that year, only two servicers received more votes than OWB from housing counselors for being the most difficult servicer to work with when trying to help homeowners avoid foreclosure.
- In June of 2011, 50% of responding counselors rated OWB as "terrible," a higher percentage than for all other eleven servicers considered. Counselor comments regarding OWB included:
    - "Indymac. Terrible customer service. Get the run around."

[2] Lisa Greenberg, "NFM sisters chained to home to protest reverse mortgage," Fox4 News, January 8, 2015, available at: http://www.scrippsmedia.com/fox4now/news/NFM-sisters-chained-to-home-to-protest-reverse-mortgage-287977331.html
[3] CRC Housing Counselor surveys can be found at: http://www.calreinvest.org/publications/california-reinvestment-coalition-research

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- "IndyMac. The average processing time is 12 months. They continually request updated documents and state that they never received docs. It's so frustrating. Even when you escalate the file the same results occur, having to update docs continually for months on end."
- "Chase and OneWest (Indymac) are in a tie. Both entities string along homeowners with hopes of obtaining a modification and ultimately denying the hardship request due to 'excessive forbearance.' It almost appears to be done intentionally rather than being a capacity issue."
- "We are having a difficult time with Chase's and IndyMac's customer service representatives. We get an entirely different request each time we call even when the documents are in their system and they can see them. They are not able to explain what else is needed."
- "IndyMac/OneWest hardly ever gives loan mods."
- "Indymac Bank/OneWest, they constantly lose documents."
- "Indymac. Customer service reps are incompetent, oppositional, and frequently fail to take notes. I have established gross income figures three times in one case only to have the rep on the phone fail to find record in their notes of my previous phone call. Difficult specific RMA forms, and just plain nasty customer service rep attitudes."
- "Indymac is one of the worst. Not willing to work with the homeowner at all."

- In a February 2012 survey, 95% of responding counselors said OWB was "terrible" or "bad", the second worst rating of all servicers considered.

- That same survey year, OWB was voted second "worst servicer." Some comments from counselors about OWB in response to a question about the worst servicer included:
    - "Indymac: Their ability to receive documents (unless it is online) is atrocious. They seemingly are always missing docs that are already there. Their online portal is limited in data transfer capacity. Some of their loans are insured, giving them no motive to modify."
    - "Indymac has the worst performance in terms of foreclosure prevention. Very difficult to obtain any assistance. We had a client that was a victim of dual tracking and had their home foreclosed on."
    - "OneWest Bank/Indymac. They continue to request updated documents forever."

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Evidence of Problematic Servicing: Litigation: Significantly, earlier this year a federal court unsealed a False Claims Act complaint against OWB alleging that OWB routinely violated the HAMP program and FHA loss mitigation rules. In United States ex rel Fisher vs. OneWest Bank FSB, the complaint also alleged that OWB "almost always" added new debt to the borrower's loan balance.

Other litigation. OWB and its servicing operations have been the subject of additional litigation, including:

- In Sayonara Reyes et al vs. IndyMac Mortgage Services, a division of OneWest Bank, a class action complaint was filed against OWB with claims of breach of contract, breach of the implied covenant of good faith and fair dealing, promissory estoppel and violation of the Massachusetts state law alleging a failure to honor trial period payment plans.

- In Maloney v IndyMac Mortgage Services, OneWest Bank, a class action complaint was filed alleging that OWB required certain borrowers to purchase flood insurance in excess of what their mortgage contract and federal law requires.

- In Fletcher vs. IndyMac/OneWest Bank, a putative class action complaint was filed alleging OMB mishandled plaintiff's HAMP application and that OWB's practices fell into a pattern of misconduct.

- In 2013, a San Luis Obispo couple received a million dollar plus settlement from OWB for foreclosing on them while they believed they were negotiating for a loan modification.

- The California HBOR Collaborative compendium of cases includes Rogers v OneWest Bank FSB, Rigali v OneWest Bank, Jamil-Pahan v OneWest Bank, and DiRienzo v OneWest Bank FSB, relating to issues of dual tracking and fair credit reporting.

The FRB requested of OWB litigation information relating to concerns raised at the Public Hearing on the merger. It is unclear why the FRB allowed OneWest to focus narrowly only on issues raised by those able to testify at the hearing, as opposed to all of those submitting written testimony, to say nothing of any questions the FRB and the OCC would have about OWB servicing and foreclosure practices based on their own due diligence.

As one example, the Response fails to note Gorsuch v. Financial Freedom, et. al., the case of a woman in Toledo, OH, facing eviction by Financial Freedom because of the fees associated with forced-placed insurance. Though force-placed insurance is permitted, it is often vastly more expensive than standard insurance coverage. Ms. Gorsuch alleges that Financial Freedom misrepresented that the cost of force-placed insurance was necessary in order to protect the value of, and the lender's interest in, the secured property. Further, she alleges that Financial Freedom did not disclose the nature of the kickbacks—that Financial Freedom would receive payment based on a percentage of the cost of the premium. Because of the fees associated with her force-placed policy, Financial Freedom is threatening Ms. Gorsuch with foreclosure. Ms. Gorsuch recently filed an amended complaint and the court rejected OneWest's Motion to Dismiss.[4]

Relatedly, the *Washington Post* reported on a recent, $140 million class action settlement over allegations that Ocwen, a large mortgage servicer, and Assurant, a large insurance company, engaged in an unlawful kickback scheme in imposing forced placed insurance on unsuspecting borrowers. The article refers to a couple of cases that were complicated by a loan transfer to Ocwen.[5] Given that OneWest sold a substantial portion of its servicing rights to Ocwen (and that Ocwen has been suffering significant legal and regulatory setbacks, including with the California Department of Business Oversight), and that, as we believe, OneWest may have a business relationship with Assurant, the FRB, the OCC and the CFPB should investigate further whether OneWest has met all of its legal and contractual obligations with respect to forced placed insurance and mortgage servicing transfers. The FRB should further require OneWest to report on ALL of its mortgage, servicing, and foreclosure related litigation.

Nevertheless, the Response to the narrow litigation question posed by the FRB reveals that in fact a number of cases have been filed alleging violations of law relating to issues raised at the one day Public Hearing. Strangely, there is no "TOTAL" in the chart provided by the Bank it its response to the FRB, but it appears that there are nearly 200 claims that have been made against OneWest relating only to the foreclosure and servicing issues that were raised during the one day Public Hearing.[6] That is substantial.

Evidence of Problematic Servicing: OneWest flouts California's Homeowner Bill of Rights. OneWest has put forth the dubious and harmful argument that OneWest foreclosures are not subject to our state's hard fought, landmark Homeowner Bill of Rights (HBOR) if the loan it's

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[4] Amended Complaint, Gorsuch v. Financial Freedom et. al, 3:14-cv-00152-JZ, filed 02/24/2015.
[5] Ken Harney, "Allegedly abusive mortgage insurance deals lead to class action settlement," Washington Post, May 6, 2015 at http://www.washingtonpost.com/realestate/allegedly-abusive-mortgage-insurance-deals-lead-to-class-actionsettlement/ 2015/05/05/8c0eb764-f284-11e4-bcc4-e8141e5eb0c9_story.html
[6] Sullivan and Cromwell, LLP, "RESPONSES TO THE REQUEST FOR ADDITIONAL INFORMATION DATED MARCH 17, 2015 FROM THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN CONNECTION WITH THE APPLICATION TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM RELATING TO THE PROPOSED ACQUISITION OF IMB HOLDCO LLC BY CIT GROUP INC. AND CARBON MERGER SUB LLC," April 14, 2015, pp. 15,, 16.

foreclosing on was originated by a federally charted thrift. In another response to an FRB AI request, the Bank provides a convoluted discussion of its practices relating to HBOR. OneWest claims that it complies with HBOR, but also that it is not subject to HBOR. These claims run counter to the experience of California homeowners, and the legal opinions of California advocates, the California Attorney General's office, and a growing number of courts. This argument is highly problematic in that it is OneWest's conduct not as a lender but as a loan servicer that is in question, and that such conduct is clearly subject to regulation by the state of California and HBOR. OneWest should immediately cease arguing preemption in the context of HBOR, and the OCC and state Department of Business Oversight should issue guidance to this effect. Further, the FDIC should investigate and determine that no loss share payments have been made on foreclosures resulting from dual track and Single Point of Contact (SPOC) violations committed by OneWest where the Bank argued that HBOR did not apply. In other words, the FDIC should not be paying or reimbursing OneWest for certain foreclosure costs where OneWest improperly argued that it did not have to follow state law protections against dual track and the obligation to provide a SPOC.

And in one of the many ironies that characterize this merger, OneWest CEO Joseph Otting is currently the Chair of the California Chamber of Commerce which inexplicably placed AB244 (Eggman), a bill that would clarify that HBOR protections extend to successors in interest (widows and orphans), on the Chamber's "jobs killer" list.[7]

Evidence of Problematic Servicing: Treasury reports raise concerns. Reports on servicer HAMP performance from the Treasury Department confirm OWB was more likely to foreclose on its borrowers than other banks. In the Program Performance Report Through November 2013, out of nine servicers participating, OneWest had the second highest rate of completed foreclosures for homeowners who were not accepted for a HAMP trial, as well as for those whom a HAMP permanent modification was denied. Similarly, in September of 2013, out of eight servicers participating, OneWest had the highest percentage of completed foreclosures for homeowners who were disqualified for a permanent loan modification.[8]

Evidence of Problematic Servicing: IFR Process raises concerns. Additionally, OWB cites the Independent Foreclosure Review process as a vindication of its efforts, though the April 2014 report it cites notes, "the consultant (for OneWest) had confirmed 10,781 (OneWest) borrowers

[7] Tammerlin Drummond, "Mortgage help needed for relatives of deceased," Oakland Tribune, April 26, 2015, available at: http://www.contracostatimes.com/breaking-news/ci_27988835/drummond-mortgage-help-needed-relatives-deceased
[8] Making Home Affordable Program Performance Reports can be found at: http://www.treasury.gov/initiatives/financial-stability/reports/Pages/Making-Home-Affordable-Program-Performance-Report.aspx

(5.6 percent of the in-scope population of 192,199) were due remediation," and that OneWest had a Service Members Civil Relief Act error rate of over 6%.[9] Additionally, the Office of Thrift Supervision found OneWest engaged in numerous abuses, including filing affidavits that were not based on personal knowledge or review of relevant records, filing affidavits that were not properly notarized, initiating foreclosures without ensuring that promissory notes and mortgage documents were properly endorsed or assigned, failing to devote adequate staff and resources to ensure proper administration of foreclosure processes, and failing to adequately oversee third party agents who are processing foreclosures.[10]

Evidence of Problematic Servicing: Foreclosing on borrowers not in default. In responding to Federal Reserve Additional Information requests, CIT and OneWest cite approvingly the very low rate of foreclosures (1/100th of 1%) on 178,886 loans reviewed where the loan was not in default.[11]

In other words, the Response touts OneWest's record of very rarely foreclosing when the loans are in current payment status. But OneWest should NEVER be foreclosing on borrowers who are not in default. Where error rates are notes, regulators should determine whether those harmed by such servicing errors were members of protected classes, and whether OneWest violated fair lending laws in its policies or practices.

Of far greater and practical concern are those potentially numerous instances where borrowers were in default but were wrongly denied a loan modification or other home preservation alternative to foreclosure for which they qualified. Importantly, the IFR process focused on a very narrow set of "in scope" borrowers, those in the foreclosure process in 2009 and 2010. The regulators should ensure that OneWest and Financial Freedom provide review, and where applicable, relief, to all borrowers put into the foreclosure process from 2009 through the present.

Evidence of Problematic Servicing: Postponing embarrassing foreclosures. It was reported in the media that Financial Freedom was set to foreclose on 103 year-old Texas grandmother

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[9] Office of the Comptroller of the Currency, "Foreclosure-Related Consent Orders Status Report: Observations, Payments, and Foreclosure Prevention Assistance," April 2014, pp. 14, 15.
[10] Office of Thrift Supervision, In the Matter of OneWest Bank, FSB. Consent Order No. WN-11-011, April 13, 2011, available at: http://www.occ.gov/static/ots/misc-docs/consent-orders-97665.pdf
[11] Sullivan and Cromwell, LLP, "RESPONSES TO THE REQUEST FOR ADDITIONAL INFORMATION DATED MARCH 17, 2015 FROM THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN CONNECTION WITH THE APPLICATION TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM RELATING TO THE PROPOSED ACQUISITION OF IMB HOLDCO LLC BY CIT GROUP INC. AND CARBON MERGER SUB LLC," April 14, 2015, p 7.

Myrtle Lewis, who was sold a reverse mortgage when she was 92.[12] After media coverage, the Bank backed off. Similarly Janice Cooper, a 73 year-old widow with disabilities was slated for foreclosure from her Southern California home before an article about her appeared in the American Banker,[13] at which point, Financial Freedom postponed the sale. Ms. Cooper was later given a new sale date. And OneWest was scheduled to foreclose on Teena Colebrook of San Luis Obispo (a homeowner who spoke at the Public Hearing about the many problems she faced with OneWest in trying to retain her home) on Christmas Eve before that case was brought to light. Will these three consumers get permanent help, or only temporary relief from OWB and FF until media attention dies down or the regulators approve of this merger?

To the extent these foreclosures were improper, would OWB and FF not only have taken these homes improperly, would they have also improperly billed the FDIC under the loss share, or HUD under the FHA insurance fund, for the "cost" of these improper foreclosures? Would the FDIC's or FHA's due diligence process for monitoring compliance with the loss share agreement or FHA insurance program have flagged these and other problematic cases, or merely processed payments to OWB for the losses to OneWest from these possibly improper foreclosures? How many cases like these have there been over the years where OWB and FF improperly foreclosed on families, and then improperly billed the FDIC under the loss share agreement, or HUD under the FHA HECM program? Do the FDIC and HUD truly have processes in place to effectively screen out improper foreclosures from claims submitted by OneWest?

Evidence of Problematic Servicing: Oral and written testimony submitted as part of the merger process. A number of consumers testified passionately at the February 26, 2015 Public Hearing, and many others have submitted written comments regarding their horrible experiences with OneWest Bank's forward mortgage servicing. It may be that more consumers have been motivated by their bad experiences with OneWest to protest this bank merger by submitting formal comments and public testimony, than any other bank merger in history. Federal regulators must scrutinize the public record to determine if servicing, fair lending, and fair housing laws have been violated.

Evidence of Problematic Servicing: Industry professional notes OneWest mistake. A former loss mitigation executive for a large servicer recently asked CRC for help connecting with a non-bank servicer that had acquired the servicing rights for a neighbor's loan from OneWest.

[12] Jack Douglas, Jr. "103-Year-Old North Texas Woman Fights To Keep Her House,"CBSWDF.com, November 21, 2014, at: http://dfw.cbslocal.com/2014/11/21/103-year-old-north-texas-woman-fights-to-keep-her-house/
[13] Bonnie Sinnock, "HECM Non-Borrowing Spouses Renew Class Certification Attempts," American Banker, November 17, 2014.

This loss mitigation professional concluded that OneWest had erred in failing to offer a loan modification to his neighbor, but because they had already sold the servicing rights, he was forced to work with the new servicer to correct OneWest's mistake.

Evidence of Problematic Servicing: GAO Report identifies concerning trends. In February of last year, a GAO report found statistically significant differences in loan modification outcomes for Limited English Proficient and African American borrowers after analyzing non-public data of four unnamed servicers.[14] CRC has sought the identities of the servicers involved, though neither Treasury nor GAO are prepared to release that data publicly at this time. These issues - the identity of the servicers in the GAO study, as well as the fair lending analysis of loan modification outcomes employed in that study - should be investigated further by the regulators before deciding upon this merger application.

Evidence of Problematic Servicing: OneWest's JD Power ranking has been low. In 2010, OneWest was ranked as the third worst servicer reviewed as part of the J.D. Powers Customer Satisfaction Index Ranking.[15] In 2012, J.D. Power and Associates confirmed that OneWest Bank ranked 20th out of 23 servicers reviewed as part of its Customer Satisfaction Index Ranking.[i16]

For all of these reasons, and others, CRC believes OneWest to be a problematic servicer, and that its concentrated foreclosures in communities of color need to be scrutinized further. Regulators need to investigate if communities of color are disproportionately bearing the consequence OneWest's problematic loan servicing practices.

1d. Concerns regarding FDIC Loss Share and the extent and location of future foreclosures.

CRC has previously raised concerns about the FDIC loss share agreement with OneWest. Whatever the benefits of entering into a loss share agreement with OneWest in order to sell Indymac assets, there is no public benefit to CIT Group being able to obtain the loss share agreement benefits from OneWest. And we have expressed concern that OWB may have improperly submitted claims to the FDIC for loss share payments (and to FHA under the HECM program) to cover foreclosures that did not need to happen.

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[14] U.S. General Accountability Office, "TROUBLED ASSET RELIEF PROGRAM: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs," GAO-14-117: Published: Feb 6, 2014. Publicly Released: Feb 6, 2014.
[15] J.D. Powers and Associates, "J.D. Power and Associates Reports: Mortgage Servicers Fail to Deliver on Best Practices During the Loan Modification Process," August 26, 2010.
[16] J.D. Power and Associates, "J.D. Power and Association Reports: Amid Record-Low Interest Rates and Improved Loan Modification Programs, Customer Satisfaction Increases, July 19, 2012.

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Additionally, we remain concerned that these foreclosure numbers will continue to grow. CRC learned through our FOIA request that OneWest has received over $1 billion through the lucrative loss share agreement with the FDIC. This represents over $1 billion to cover certain costs associated with some of OneWest's 36,000+ California foreclosures, plus an untold number of foreclosures in other states.

What is alarming is that FDIC reports indicate an estimated, *additional $1.4 billion* in loss share payments may yet flow to OneWest (and CIT Group, if this merger is approved) to cover certain, future foreclosure costs. How many future foreclosures does this represent? In what communities will these foreclosures be located? How is this providing a public benefit as must be demonstrated in order for this merger to be approved?

We urge the regulators to investigate and determine if the loss share agreement (where OWB and potentially CITBNA can now seek 95% of the value of certain foreclosure related costs), private insurance, and/or FHA insurance provide any financial incentive for OneWest to move quickly to instigate foreclosure proceedings, to pad foreclosure costs, and/or to complete unnecessary foreclosures.

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2) Weak home lending to Asian American and Pacific Islander (AAPI) and African American borrowers

As noted in prior comment letters, OneWest home lending to African American and Asian American Pacific Islander (AAPI) borrowers is low. Specifically, in response to the Federal Reserve's Additional Information request, OneWest submitted the following numbers concerning its mortgage lending:

- In 2012, out of 43 home purchase and home improvement loans, OneWest made 0 loans to African Americans.
- In 2013, out of 26 home purchase and home improvement loans, OneWest made 0 loans to African Americans.
- In 2012, OneWest had a 10.1% AAPI origination market share, while its peers were at 24.2%, with OneWest at roughly half of the industry average.
- In 2013, OneWest similarly had an 11% AAPI origination market share, while its peers were at 23%, with OneWest at roughly half the industry average.
- *Again, these numbers come from OneWest in its prior filings with the regulators.*[17]

The OneWest reported numbers are consistent with CRC HMDA analysis: According to our analysis, OWB's 2012 HMDA data show it particularly underperformed the industry in regards to serving Asian American borrowers (4.6% of OWB originations in the state and 5.9% of its originations in the Los Angeles MSA were to "Asian" borrowers, while for the industry the figures were 15.9% and 15.8%, respectively).

In 2013, while the industry originated 16% of its conventional home purchase and refinance lending to Asian borrowers in California, OneWest originated only 7% of such loans to Asian borrowers.

[17] Sullivan and Cromwell, LLP, "RESPONSES TO THE REQUEST FOR ADDITIONAL INFORMATION DATED DECEMBER 10, 2014 FROM THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN CONNECTION WITH THE APPLICATION TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM RELATING TO THE PROPOSED ACQUISITION OF IMB HOLDCO LLC BY CIT GROUP INC. AND CARBON MERGER SUB LLC, December 22, 2014, pp. 6, 7.

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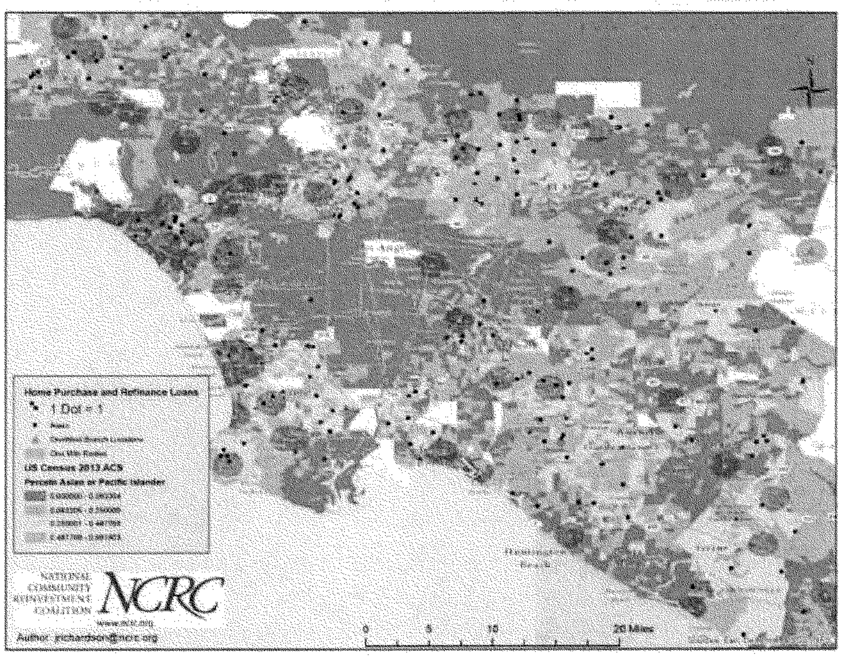
The map below shows home purchase and refinance lending by OneWest to Asian American owner occupants in the greater Los Angeles area. Each loan is depicted by one black dot. There are few home loans to Asian American borrowers. Additionally, OneWest branches are depicted in the first map by green triangles. The majority of OneWest branches avoid neighborhoods that are comprised of 25% to 100% Asian American residents. Such neighborhoods are depicted on the map in differing shades of orange. OneWest is not adequately meeting the needs of the Asian American Pacific Islander community in Los Angeles or California.

Figure 6: Home Purchase and Refinancing Lending by OneWest to Asian Americans in LA



OWB presents no reasonable explanation for this failing, and no credible plan for fixing this problem. The Department of Justice, CFPB, and HUD should investigate further and determine if fair housing or fair lending laws have been violated.

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3) OneWest demonstrates a low branch presence in Low and Moderate-Income (LMI) neighborhoods and neighborhoods of color in California

Low Branch Presence in LMI Neighborhoods. As noted in prior comment letters, OneWest has only 2 out of 73 branches in low-income neighborhoods, and only 15% of its branches in low and moderate-income neighborhoods, compared to an industry average of 30%. In contrast, fully 37.5% of census tracts in the Los Angeles MSA are low to moderate income.

The map on the following page depicts OneWest branch presence in the low and moderate-income communities it is charged with serving under the Community Reinvestment Act. OneWest branches are depicted by green triangles. It is obvious from this map that nearly the entirety of OneWest branches are in the middle and upper income census tracts depicted on the map in white, and avoid the orange shaded areas which represent low and moderate income neighborhoods.

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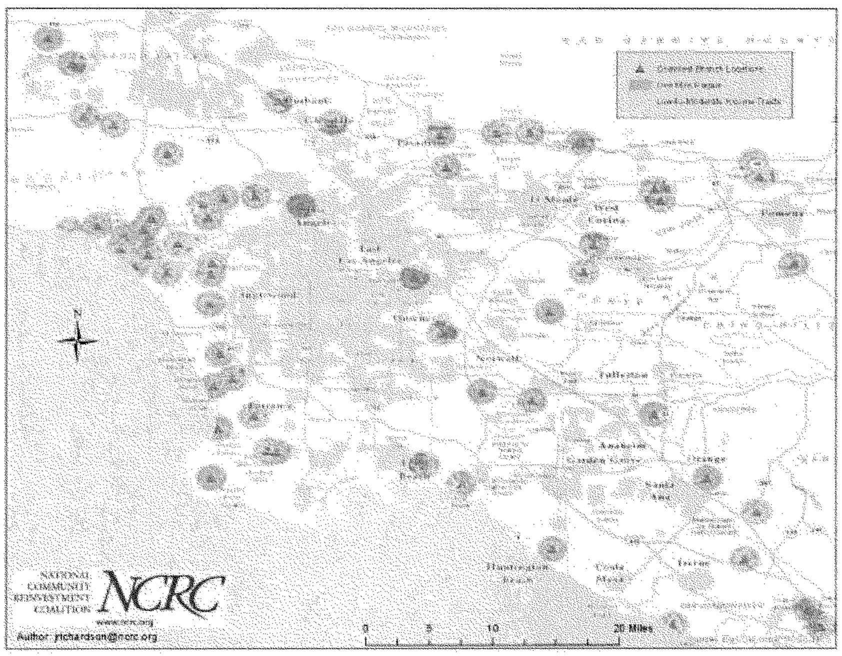
Figure 7: OneWest branch presence in low and moderate income communities



OWB will not commit to open new branches in LMI areas to balance out its branch network and to better serve low and moderate-income communities. CRC is also concerned by Bank comments that suggest it may turn to mobile phones and other technology as a preferred vehicle to serve LMI households. The question here is, who is doing the preferring? OWB may wish to serve its LMI customers via technology, but many LMI, of color, elderly and other customers rely and depend on retail branch presence and the ability to interact face to face with bank staff.

Mobile Banking is No Substitute for Branch Access. A recent report by National CAPACD, National Urban League, and National Council of La Raza, based on surveys of over 5,000 consumers, found that, "Despite the growing prevalence of online or mobile banking services, most people admitted some level of discomfort with using the services. Only 11% of all respondents reported that they were comfortable conducting financial transactions online or using their mobile phone—7% of AAPIs, 13% of African Americans, and 16% of Hispanics." [18] We dispute the notion that mobile banking can be a substitute for an adequate branch presence in low and moderate-income neighborhoods, which OWB does not and will not have. This is only a way for the bank to cut costs, and communities of color once again are disproportionately facing the consequences of OneWest's practices.

Low Branch Presence in Neighborhoods of Color. The map on the following page shows OneWest's failure to be present in neighborhoods of color. OneWest branches are depicted in the third map by green triangles. With very few exceptions, OneWest branches in the Greater Los Angeles area avoid the swaths of neighborhoods that are comprised of 51% to 100% residents of color. Such neighborhoods are depicted on the map in differing shades of orange. OneWest is not adequately meeting the needs of neighborhoods of color in Los Angeles or in California.

[18] BANKING IN COLOR: New Findings on Financial Access for Low- and Moderate-Income Communities. National CAPACD, National Urban League and National Council of La Raza. 2014, p. 17, at http://iamempowered.com/sites/default/files/bankingincolor_web.pdf

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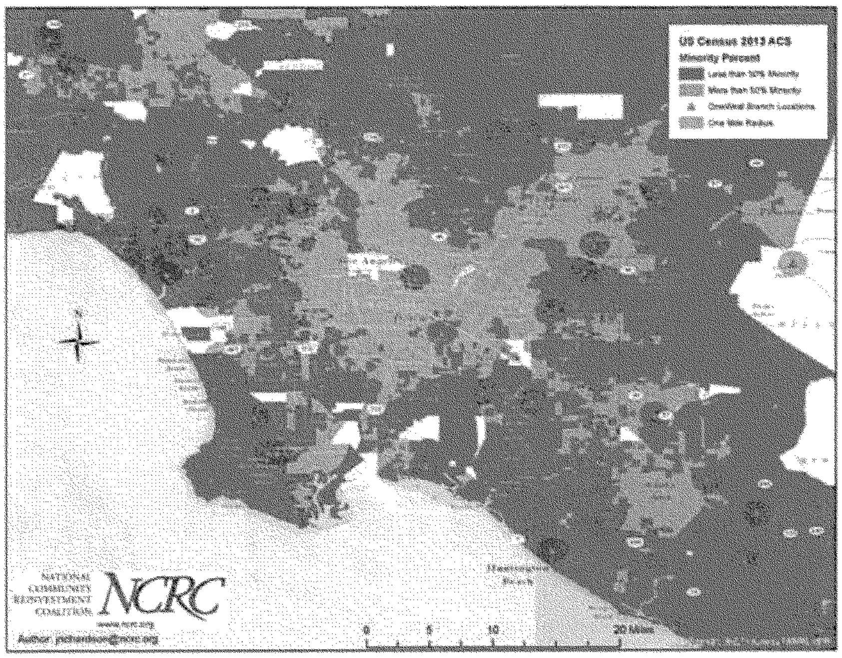
Figure 8: OneWest branch presence in neighborhoods of color in LA



OneWest consolidated branches in neighborhoods of color. Yet OneWest reports to regulators in response to an AI request that of the 12 branches that have been "consolidated" since OneWest took over, 5 of the 12 (or 41.6% of the total consolidations) were in majority minority tracts. For local communities, the impact of a branch consolidation is one less branch in the community, just as with a branch "closure." At the Public Hearing in Los Angeles, Cynthia Amador and others spoke to the negative impacts of OneWest branch closings/consolidations on communities of color.

4) Allegations have been made of disparate REO property maintenance and marketing in neighborhoods of color as compared to white neighborhoods

At the Public Hearing in Los Angeles, a representative from the Housing Rights Center in Los Angeles gave testimony on behalf of Fair Housing of Marin that OneWest does not equally maintain and market REO properties in certain minority neighborhoods as compared to white neighborhoods in northern California.

In a follow letter filed with the OCC and the FRB, Fair Housing of Marin notes that its preliminary analysis of 7 OneWest REO properties showed that "while Onewest REO properties in White neighborhoods were generally well maintained and well marketed with neatly manicured lawns, securely locked doors and windows, and attractive professional, "for sale" signs posted out front, OneWest REO properties in communities of color were more likely to have trash strewn about the premises, overgrown grass, shrubbery, and weeds, and boarded or broken doors and windows among many other curb appeal and structural issues. OneWest's REO in communities of color appear abandoned, blighted and unappealing to potential homeowners, even though they are located in stable neighborhoods with surrounding homes that are well-maintained... The complaints filed by FHOM/NFHA against Fannie Mae, Bank of America, and others – for similar failures to properly maintain/market REO homes in communities of color – underlines the seriousness of the fair housing issues."[19]

The Applicant's Response to the Federal Reserve's AI request on this point does not contradict the testimony given. In fact, at least 18 complaints and 7 legal claims raising similar issues are separately noted in the Bank's Response to the Federal Reserve's Additional Information request.

[19] Caroline Peattie, Letter of Fair Housing of Marin to FRB NY: CIT Group Inc. Proposed Acquisition of IMB Holdco LLC, Response to Request for Additional Information, June 5, 2015.

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5) OneWest's Financial Freedom servicing and foreclosure practices severely impact seniors and women, in particular, Non Borrower Spouses

5a. Financial Freedom (FF) has foreclosed on a large number of households in California.

Figure 9: Top 10 California counties for Financial Freedom foreclosures, April 2009 to April 2015

County	Financial Freedom Foreclosures	Total
LOS ANGELES	498	20%
SAN BERNARDINO	287	12%
RIVERSIDE	267	11%
SACRAMENTO	200	8%
SAN DIEGO	187	8%
KERN	123	5%
ORANGE	102	4%
FRESNO	83	3%
SAN JOAQUIN	68	3%
Total	1815	74%

Figure 10: Top 10 California cities for Financial Freedom foreclosures, April 2009 to April 2015

City	Financial Freedom Foreclosures	Percent
LOS ANGELES	181	7%
SACRAMENTO	115	5%
BAKERSFIELD	73	3%
SAN DIEGO	72	3%
FRESNO	63	3%
COMPTON	43	2%
STOCKTON	42	2%
OAKLAND	40	2%
APPLE VALLEY	39	2%
Total	**668**	**27%**

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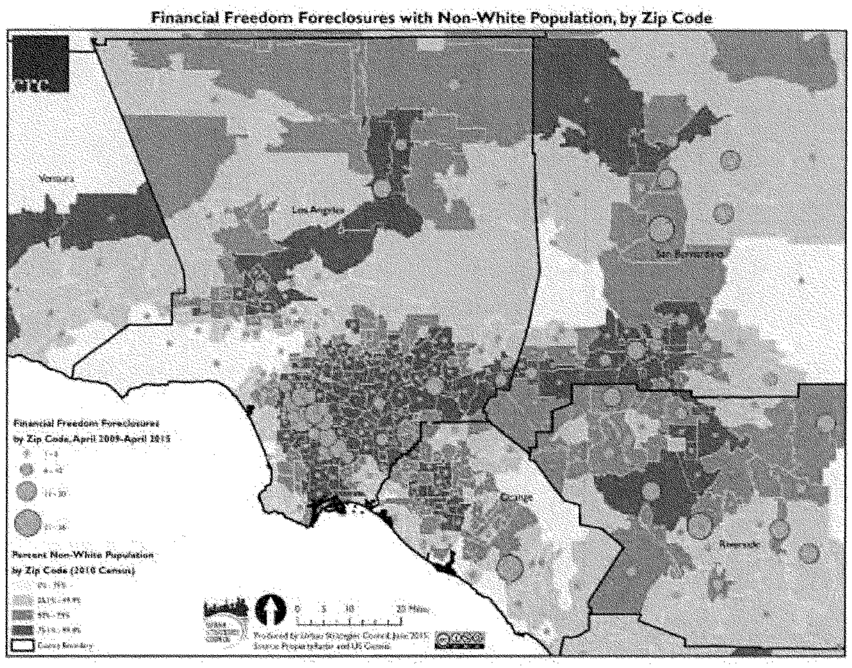
Figure 11: Financial Freedom foreclosures in LA, April 2009 to April 2015



Financial Freedom, the reverse mortgage servicing arm of OneWest, is responsible for 2,459 foreclosures of seniors in California since OWB took over. These reverse mortgage foreclosures are, by definition, having a concentrated impact on seniors and their families. And they continue.

5b. There has been little transparency around Financial Freedom foreclosures, servicing, performance and oversight.

In light of growing concern about OWB's Financial Freedom (FF) affiliate and its HECM reverse mortgage servicing, on November 19, 2014 CRC filed a Freedom Of Information Act (FOIA) request with HUD seeking documents relating to complaints that may have been filed against Financial Freedom, any HUD policies designed to address court decisions challenging the legality of its policies for dealing with non-borrower spouses and heirs, the number of existing homeowners for whom the non-borrower spouse issue may be relevant, and the number of HECM foreclosures of borrowers, non-borrower spouses and heirs processed by OWB and FF in California and the nation. CRC has sought expedited review of this request so as not to unduly delay the processing of the bank merger application. The FRB and the OCC should not make any decisions on this merger without this information being made part of the public record, subject to public scrutiny, and part of their deliberations.

5c. The Non Borrower Spouse issue is a fair lending problem that OneWest and Financial Freedom appear to have been perpetuating.

We are particularly concerned about how FF deals with non-borrower spouses (NBS) when the borrower spouse has died. We have spoken to a number of advocates, attorneys, and non-borrower spouses from across the country who have had problems with FF. We believe that FF is acting contrary to the Congressional statute authorizing HECMs which provides protections to homeowners, including spouses, and also that FF is acting contrary to the decision in the Bennett case invalidating HUD policies that may have seemingly required servicers to bring reverse mortgage loans due and payable upon the death of the borrower, even while a non-borrower spouse was living in the home.

This is all the more unjust as there is near consensus that for the typical couples facing this situation, they were routinely encouraged to take the younger spouse off of the reverse mortgage, were not told that doing so would endanger the surviving spouse's ability to remain in the home and were often lied to, and that the surviving spouse invariably is shocked to learn that upon the passing of their loved one that they are being pushed out of the home.

We say, "near consensus" as the CEO of OneWest Bank, Joseph Otting, is the only person we have heard articulate that surviving spouses knowingly bargained for the situation they find themselves in.

In fact, through a cursory review of public notices filed, we see that OneWest and Financial Freedom foreclosures are continuing with alarming speed. We have seen notices for at least sixty-six (66) foreclosure sales from across the U.S. since March 20, 2015. Despite statements by OneWest executives at the February 26, 2015 hearing about their sympathy for a foreclosure moratorium on Non Borrower Spouses, several of these recent notices appear to be regarding proposed foreclosures on non-borrower spouses (NBS), heirs and estates. We urge the regulators to ensure that all foreclosures on successors in interest have been in full compliance with existing federal law, CFPB and HUD rules, and state law. Further, we urge that Financial

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Freedom refrain from any further foreclosures on surviving spouses of HECM borrowers while HUD's policy on this score is being finalized.

CRC views the reverse mortgage Non Borrower Spouse (NBS) issue as a fair housing and fair lending concern in that nearly all of the surviving spouses who already lost their homes and those facing foreclosure at the hands of Financial Freedom are both seniors and women. Moreover, as noted in our recent mapping analysis, it appears that Financial Freedom foreclosures are disproportionately concentrated in communities of color. As noted in prior CRC comment letters, the legal context for NBS has been in a state of flux. Yet, OneWest and Financial Freedom have appeared intent on aggressively foreclosing on Non Borrower Spouses.

This is an issue of Congressional concern. Congresswoman Maxine Waters recently sent a letter to HUD Secretary Castro seeking clarification on the Non Borrower Spouse issue and urging a resolution that would allow widows and widowers to stay in their homes, as they had always understood they would be able to do.[20] Previously, Congressional Democrats had sent a letter to HUD urging greater protection for Non Borrower Spouses.[21]

The CFPB and the OCC should ensure that Financial Freedom has policies and procedures in place to work with successors in interest and provide them a meaningful opportunity to remain in their homes after the passing of a loved one. This is especially compelling in light of recent policy changes at CFPB, Fannie, Freddie and Treasury designed to provide greater protection to these vulnerable borrowers in the forward mortgage context.

A number of comments by Non Borrower Spouses and advocates have been submitted as part of the record in this merger, and several reverse mortgage borrowers and families testified at the Public Hearing as to Financial Freedom abuses.

Karen Hunziker testified at the February 26, 2015 hearing in Los Angeles about her experience with Financial Freedom after her husband passed away.

She asserted that, "My husband passed away in May 2014 and 10 days later OWB sent me a repayment letter and a PRE-FORECLOSURE letter saying they would initiate foreclosure in 30 days. One day, I called 5 times to verify I received the 90-day extension OWB promised in writing. I spoke to 5 different people all with a different story. In part, I was told:
• OWB didn't receive the documents faxed multiple times,
• The documents needed to be reviewed by their legal department,

[20] U.S. House Committee on Financial Services, "Waters Calls for Increased Transparency in HUD's Reverse Mortgage Conversion Program," Press Release, May 27, 2015.
[21] Bonnie Sinnock, "House Democrats Call for Expanded Reverse Mortgage Protections," National Mortgage News, December 23, 2015.

- I had to call back in 5 days,
- I used up all my extensions,
- I didn't get the documents in on time,
- The last person told me my property was scheduled for auction in 30 days.

At all times OWB refused to put any phone conversation in writing. My story illustrates the consistent pattern and practice of OneWest Bank to aggressively foreclose and evict non-borrowing spouses from their homes."[22]

CRC understands that at least one additional Non Borrower Spouse facing foreclosure by Financial Freedom is submitting comments and raising concerns about Financial Freedom's move to foreclose on widows whose main defaulting activity is seeing their husbands pass away. It is not clear that HUD is as intent on foreclosing on Non Borrower Spouses as Financial Freedom appears to be.

While Financial Freedom appears intent to foreclosure on NBS, we understand that Wells Fargo, and perhaps J.B. Nutter, have taken the position that they will not process foreclosures on non-borrower surviving spouses until, at least, HUD clarifies some of the open questions relating to this emerging policy. OneWest should do no less —especially considering its claim at the public hearing that it actually supports a moratorium—and the regulators should require OneWest and Financial Freedom to refrain from foreclosing on non-borrower surviving spouses until this issue is resolved.

On May 1, HUD rescinded its Mortgagee Letter 2015-03 which recently framed HUD's guidance regarding the process servicers should follow for Non Borrower Spouses. HUD's policy has been subject to litigation and opposition from consumer groups for its failure to protect Non Borrower Spouses as the statute, broker sales pitches, and human decency would dictate. It is clear that HUD policy on this issue is unclear has been in flux.

On Friday, June 12, HUD surprisingly issued Mortgagee Letter 2015-15[23] which may significantly address this problem going forward. We are still reviewing the letter, but it appears to provide a meaningful path to home preservation for Non Borrower Spouses. But the letter also appears to give servicers the option to offer NBS the Mortgagee Option Election. Given Financial Freedom's prior arbitrary use of its discretion, discussed more fully

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[22] Karen Hunziker, "TESTIMONY OF KAREN HUNZIKER PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM, FEDERAL RESERVE BANK, LOS ANGELES BRANCH, February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/05/consumer-testifies-financial-freedom-onewest-bank-reverse-mortgage-problems-federal-reserve-hud-cfpb-occ/

[23] Mortgagee Letter 2015-15, U.S. Department of Housing and Urban Development, June 12, 2015.

below, regulators need to ensure that MOE options are not unfairly, arbitrarily or discriminatorily denied to certain Non Borrower Spouses.

We reiterate our call that OneWest commit to honor a moratorium on foreclosing on Non Borrower Spouses. We expect that other servicers will continue to take stronger pro-consumer approaches to this issue in the short term. OneWest should cease all such foreclosures.

5d. Financial Freedom makes it difficult for heirs to retain the family home.

A recent state legislative bill on reverse mortgages designed to increase consumer education and protection garnered the support of 21 individuals, 19 of whom are believed to be Financial Freedom borrowers, or relatives of Financial Freedom borrowers. A representative excerpt from these letters reads, "As the daughter and heir of a Reverse Mortgage Borrower I can state with a certainty if the protections provided by this AB 1700 had been in place at the time of reverse mortgage origination my father would have understood his responsibility to ensure a reverse mortgage was suitable for his circumstances, if a reverse mortgage would meet his financial goals, provide financial security through his retirement and meet his goals for his estate and property upon his passing. Importantly, the AB1700 worksheet provides guidance to understand the consequences and risks and gives Borrowers and their family the necessary time to obtain professional financial and legal advice necessary before agreeing to a complex financial contract. After my two-year struggle with the financial institution to retain the family home after my father's passing, I feel it is crucial to require all family members to be involved in this process."

On January 8, 2015, *Fox 4* in Florida reported on the case of Mary Damacher, who chained her sister Michelle Ayers to a pipe in the home that was first purchased by their grandparents, then passed down to her mother, until Financial Freedom foreclosed on them. The sisters attempted to purchase the home, but were reportedly rebuffed in their efforts by Financial Freedom. "I've been preapproved for a mortgage and had all the paperwork taken care of to repurchase the home, and basically Financial Freedom and One West Bank has refused me the right to purchase my home," Mary said.[24]

Mr. Michael Allen from Phoenix had testimony read into the record at the Public Hearing on February 26, 2015. He was frustrated in his attempts to purchase his mother's home. As he testified, "OneWest Bank (OWB) did not provide a Single Point of Contact nor provide any

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[24] Lisa Greenberg, "NFM sisters chained to home to protest reverse mortgage," Fox4, January 8, 2015, at http://www.jrn.com/fox4now/news/NFM-sisters-chained-to-home-to-protest-reverse-mortgage-287977331.html

guidance or instruction to help me satisfy the loan. I initiated all calls to OWB and spoke to a different person with a different story and different reason to deny my requests. OWB claimed they didn't get my documents time after time. THEY DID. OWB sent me a short sale packet twice after I wrote saying I wanted to pay the lesser amount of the loan balance. The appraised value was about $35,000 more than the loan balance. On 11/3 I received notification that OWB had recorded a Notice of Trustee sale on September 29, approximately 3 months after my mother's death and 2 months after receipt of the repayment letter. I called OWB – they refused to postpone auction. The auction was cancelled with HUD intervention. OWB added foreclosure related legal fees and drive by appraisal fees to the payoff. My story is illustrative of OneWest Bank's violation of my right to repay the loan, the acceleration of foreclosure, and the related legal and appraisal fees of $2,508.50 and an unidentified servicing advance of $1,839.00 we did not receive."[25]

Elizabeth Lavulo testified similarly about her attempts to purchase her grandmother's Utah home. She testified that OneWest did not provide a Single Point of Contact, lost documents, wrongly claimed she not have legal authority to speak to them or act on behalf of her grandmother's estate, accelerated foreclosure 4 months after her Grandmother's death, refused to honor her letter of intent to repay the loan and refused to grant her the HUD authorized time to obtain a new loan. OneWest three times wrongly attempted to auction the property within a 6 week period. These auctions were only stopped with hours to spare through HUD intervention. OWB refused to accept her certified funds and demanded additional legal fees because OWB chose to list the property for auction a 4th time. OWB's statement to escrow noted that "If the additional fees for listing the property for auction are not paid immediately OWB will return the certified funds and auction the property. According to Ms. Lavulo, "In order to close the loan I was forced to pay $2,015.60 in foreclosure related costs and legal fees for the decision of OWB to accelerate foreclosure and auction 4 times."[26]

Julie Cheney testified at the Public Hearing about her efforts to retain her parents' home. Ms. Cheney testified that her parents "were sold a Financial Freedom reverse mortgage they didn't need, while my dad was in the last month of his life, with terminal cancer, on narcotic pain medication, and my mother had Alzheimer's disease and could not complete a sentence. A month after dad's death we found the Financial Freedom loan docs and learned my parents

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[25] Michael Allen, "TESTIMONY OF MICHAEL ALLEN: PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM, FEDERAL RESERVE BANK, LOS ANGELES BRANCH," February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/05/financial-freedom-one-west-bank-no-single-point-of-contact-arizona-federal-reserve-cfpb-complaints/

[26] Elizabeth Lavulo, "Testimony of Elizabeth Lavulo, PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM FEDERAL RESERVE BANK, LOS ANGELES BRANCH, February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/05/delays-by-financial-freedom-reverse-mortgage-complaints/

received a lump sum of $80,000 that sat untouched in their bank account. The nightmare began when we tried to give the money back to OneWest Bank 3 times over the course of a year after dad's death. OWB refused each time." She went on to testify that OneWest wrongfully foreclosed on the property three times, recorded false documents with the county recorder, failed to provide a Single Point Of Contact, inflated an appraisal in order to prevent her from exercising the 95% option, and charged unauthorized legal, service and foreclosure related fees to the loan payoff.[27]

Noreen O'More struggled to honor her father's wish to keep his home of 50 years in the family. She testified that her father was a WW2, Korea & Viet Nam Veteran with 38 years military service. He got a reverse mortgage in 2002. He passed away in August of 2011. "We contacted OWB immediately after his death to repay the loan. We were never provided a Single Point of Contact. We could never talk to the same person twice, our questions were not answered and paperwork was always lost or missing. We submitted all the documentation requested by OWB and secured financing 3 months after my father's death. We called, emailed and faxed every week or two for status. OWB kept delaying with one excuse after another for more than 18 months. OWB delayed the repayment process for over 2 years forcing us to pay an additional $89,000 due to increased property value. We closed the loan one day before the auction set by OWB."[28]

Lisa Rinard could not secure OneWest/Financial Freedom's cooperation despite evidence that fraud was being perpetrated on her mother in law. In 2005, a caretaker began submitting draw requests to OWB without the knowledge of Ms. Rinard's mother in law. "OWB approved the forged draw requests without any verification that an 80 year old woman was suddenly withdrawing large amounts of money. The caretaker gave sworn testimony during a court hearing admitting to forging Mrs. Rinard's signature and taking money without her permission. Mrs. Rinard's bank investigated and concluded fraud had occurred by the caretaker. We notified OWB three times of the forged withdrawals in the amount of $198,504.85. When we requested a refund, OWB denied they had acknowledged fraud and refused to speak to us without a POA. OWB refused to speak to us without a conservatorship which cost us $6,000. OWB continued to deny fraud and foreclosed. Because of OWB's refusal to refund any of the fraudulent funds, Mrs. Rinard was forced to live the last years of her life on Medi-Cal in a nursing home funded by

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[27] Julie Cheney, "Testimony of Julie Cheney, PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM FEDERAL RESERVE BANK, LOS ANGELES BRANCH, February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/05/inside-financial-freedom-one-west-bank-reverse-mortgage-nightmare-one-familiys-story-federal-reserve-office-of-the-comptroller-of-the-currency/

[28] Noreen O'More, "TESTIMONY OF NOREEN O'MORE: PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM, FEDERAL RESERVE BANK, LOS ANGELES BRANCH, February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/05/financial-freedom-onewest-bank-reverse-mortgage-delays-hurt-california-family-federal-reserve/

taxpayer dollars. OWB either submitted a claim to HUD for FHA insurance benefits or to the FDIC for the loss share agreement.[29]

Nearly every consumer who testified at the public hearing cited a lack of a single contact at Financial Freedom, multiple mixed messages from Financial Freedom staff, and numerous bank-created obstacles in attempting to keep their homes.

We understand that FF may also have denied heirs the ability to pursue deeds in lieu, in addition to denying heirs the ability to purchase the property. The following is a timeline of one such heir, provided by one HECM counselor who indicated seeing approximately five similar cases where Financial Freedom would not allow a deceased borrower's heirs to purchase the home or even secure a deed in lieu:

Heir's experience in trying to work with Financial Freedom to purchase family home

- 11/4/2013 :__ passed away
- 11/20/2013 : __ appointed as Representative
- 12/26/2013 : First letter received from Financial Freedom dated 12/12/13
- 12/26/2013: _ family met with _ and faxed the Proposed HECM Repayment Schedule to Financial Freedom, and mailed hard copy. Estate proposed to obtain financing for the family living in the home, or put the home up for sale in January 2014.
- 2/2/2014: The estate listed the home with a realtor for sale. (See the MLS service records for the State of Utah)
- 2/28/2014: Financial Freedom's attorney filed the Notice of Default and Substitution of Trustee. No contact was made by Financial Freedom or the attorney to the estate for an updated status prior to the NOD being filed.
- 3/12/2014: Estate heirs met with _ to complete an application for refinance in the event a sale was not forthcoming.
- 3/25/2014: Heirs received a copy of the Notice of Default. _ sent a certified letter to the foreclosing attorney that the NOD filing was premature as the estate had been doing all that was required. We requested they cancel the NOD filing, and copies of this correspondence were provided to Financial Freedom and HUD.
- 4/22/2014: Heirs received a letter from Financial Freedom stating that they had received our letter of 3/25, but they did not have authorization to release information to our office. The representative for the estate, _ came into our office and signed an

[29] Lisa Rinard, TESTIMONY OF LISA RINARD: PUBLIC MEETING FEBRUARY 26, 2015, 8 AM to 4 PM, FEDERAL RESERVE BANK, LOS ANGELES BRANCH, February 26, 2015, available at https://calreinvest.wordpress.com/2015/03/05/one-west-bank-reverse-mortgage-fraud-hurts-california-senior/

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authorization which was provided to Financial Freedom via fax on 4/25/2014, along with executed listing agreement with _, dated 4/24/2014 and the recorded Deed to the property. These items were requested by Financial Freedom to be included with the authorization form. They were faxed to 866-574-0094, attention Corey.

- 6/12/2014: No offers were received on the home, so the heirs residing in the home collected all required information for a refinance and went into _ and completed an application. Since no offers on the home had been received, they wanted to be able to meet the original time frame allotted to pay off __ existing HECM loan. They were preapproved at that time.
- 6/18/2014: Heirs came home to a Notice of Trustee's Sale on the door of the home, reflecting a posted sale date of July 11, 2014.
- 6/23/2014: _ contacted Financial Freedom as to why the Notice of Trustee's Sale had been posted when they had been made aware of what the estate's intentions were, and their efforts since his death. We were advised that the submission on 03/25 was missing 2 additional items, therefore, they had not processed a request to postpone. When asked who in the estate was contacted about the needed items, we were advised that no one was because that is not the responsibility of Financial Freedom and is the responsibility of the Estate. We asked then what two items were needed and were told to provide the Letter of Intent from the Estate and the Listing Agreement. Both were faxed to the Maturity Department at Financial Freedom, 866-447-2022 that same day.
- 7/1/2014 : _ contacted Financial Freedom to determine that they had received all the required information to postpone the sale and allow the estate's heirs to complete their refinance, as all was approved and we would be closing, but not until after the 7/11 sale date. We were told the sale had NOT been postponed, and they required authorization to speak with us. Advised that they had it and refaxed it. Called back in and was told Financial Freedom had no intentions of postponing the sale. Called and talked with Fannie Mae, the investor.
- 7/10/2014: Phoned Financial Freedom to make sure the sale set for 7/11 had been postponed; was told it was not. Also phoned Fannie Mae and was told that the Heirs needed to file Bankruptcy on the estate of the deceased.
- 7/10/2014: One of the heirs on title to the home filed for bankruptcy protection after the attorney told them they could not file on an estate to stop the sale set for 7/11. The prior loan refinance approval became null and void with the bankruptcy filing. The estate opted to lower the sales price to move the home as quickly as possible.
- 7/15/2014: Received a letter via __ sent by FEDEX to her advising that Financial Freedom had "decided" to postpone the sale to 8/25/2014. No mention was made of the bankruptcy stay in effect.

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- 8/3/2014: Estate received and accepted an offer to purchase at a price that would pay off the Financial Freedom loan in full. The offer was submitted to Financial Freedom with advice that since the payoff would be in full, no short sale approval or review was necessary. The purchase contract reflected a closing date of 9/9/2014, so we asked at that time if this closing date would be acceptable. We were advised that since a bankruptcy stay was in effect, this should be acceptable.
- 8/22/2014: contacted Financial Freedom after receiving a payoff stating that there was a foreclosure sale set for 8/25. We were again advised that a bankruptcy stay was on the home and the sale for 8/25 would not be held.
- 8/25/2014: At the urging of the heirs in the home, we again called Financial Freedom to make certain that the foreclosure sale had been canceled, and again, were told that the property was under bankruptcy protection and the sale would not be held that day.
- 8/26/2014 I found out from Financial Freedom that the property had been sold to a 3rd party when I called to find out what date the sale had been postponed to.

5e. Financial Freedom's numerous foreclosures come in the context of problematic servicing practices and performance regarding reverse mortgage loans.

OneWest's Financial Freedom reverse mortgage servicer affiliate continues to be the subject of reports suggesting potential abuses and community harm.

Problematic Servicing: Testimony of Sandy Jolley. Sandy Jolley, a reverse mortgage and abuse consultant working with a large number of reverse mortgage borrowers and their families, has submitted a number of comment letters outlining various servicing abuses by Financial Freedom. In her most recent comment letter, she addresses "the most egregiously harmful practices, specifically: Consumer Comment Letters & Testimony, Consumer Complaints, Single Point of Contact, Legal Authority, Repayment of loans, and Consent Orders. All Statements in this comment letter are supported by physical evidence."

In discussing wrongful foreclosures, acceleration of foreclosures, and padding foreclosure costs, Ms. Jolley testifies, ***"One of the unvarying aggressive business practices of OWB is to (fast track)*** *foreclosure and set auctions outside HUD guidance.* Consumers who are in compliance with regulations and attempting to exercise their rights report initiation of foreclosure as soon as 30 to 90 days after the death of the borrower. Some consumer's receive a pre-foreclosure letter at the same time as the repayment letter. OneWest *always initiates foreclosure* ***months prior to the expiration of time allowed by HUD regulations."***

"The most common question I get from consumers is, "Why won't Financial Freedom let me pay off the loan? They would get their money."

"The answer is simple-*it is more profitable for* ***OneWest to foreclose and add on thousands and thousands of dollars in foreclosure related legal fees and other costs to inflate their FHA claim and/or the consumer payoff.***"[30]

Problematic Servicing: Testimony of Bet Tzedek Legal Services. At the Public Hearing in Los Angeles on February 26, 2015, Rachel Mehlsak of Bet Tzedek Legal Services testified, "My colleagues and I have seen firsthand the distress caused by OneWest Bank in its rush to pursue foreclosure, particularly against elderly clients with reverse mortgages serviced by its Financial Freedom division. One elderly Bet Tzedek client was threatened with foreclosure by Financial Freedom for not making repairs to her home. But the client's original lender, IndyMac, had refused to release the funds that were set aside for the repairs, effectively preventing the client from making the repairs and then punishing her for not doing it. Moreover, Financial Freedom had let the client's affordable hazard insurance lapse, and then force-placed her with a OneWest-affiliated company at an exorbitantly higher rate.

"Another client I worked with had lived in her home for over 40 years. She is elderly, disabled, and supports her daughter and four minor grandchildren on just her monthly Social Security income. After her husband died, she had trouble maintaining her property tax payments, and OneWest, the parent company of her reverse mortgage lender, Financial Freedom, threatened to foreclose. Eventually, OneWest initiated foreclosure against the client's home one month sooner than HUD guidelines required. OneWest did so even though HUD had just announced a 60-day extension of its foreclosure timeframes for surviving spouses like my client and even though I had asked Financial Freedom multiple times to postpone the foreclosure proceedings. I was able to help the client obtain a one-month extension of the foreclosure – an outcome she wouldn't have received without representation – but ultimately OneWest went through with the foreclosure sale. **Three generations of my client's family were kicked out of their home for less than $1300 owed to Financial Freedom** (emphasis added)."[31]

Problematic Servicing: Ratings Agency Reports. In March of 2014, Moody's reported that "Financial Freedom continued to underperform in certain performance metrics related to its call center and assignment pipeline. The reverse mortgage servicer's abandonment rates and average speeds of answer were poor....Financial Freedom serviced 120,488 reverse mortgages for $22.7 billion as of January 31." In September 2014, Fitch's Negative Outlook of FF "predominantly reflects uncertainties relating to the pending sale of the servicing platform and

[30] Sandy Jolley, "Continuing opposition to CIT Group application to acquire IMB and OneWest Bank and to merge One West Bank and C1TBank: CIT/One West Bank Response to Federal Reserve Bank "Request for Additional Information," May 12, 2015.
[31] Rachel Mehlsak, "Testimony regarding **CIT Group/OneWest** before **JOINT PUBLIC MEETING Held by the Federal Reserve and the Office of the Comptroller of the Currency," February 26, 2015, available at: https://calreinvest.wordpress.com/2015/03/02/bet-tzedek-testimony-at-onewest-cit-group-merger-federal-reserve-hearing-office-of-the-comptroller-of-the-currency/**

Fitch's concerns that the servicing operation could deteriorate while the pending sale remains unresolved."

In other words, when Financial Freedom borrowers, non-borrower spouses, and heirs call Financial Freedom, they will likely be subject to long wait times to speak with a human, and due to Financial Freedom's lack of capacity, the number of people who eventually hang up without speaking to a live person is higher than their industry peers.

6) OneWest has been arbitrary in the use of its discretion in servicing reverse mortgages and negatively impacts seniors

CRC is concerned about OneWest's use and abuse of discretion in the context of reverse mortgage servicing, and otherwise. In at least two recent instances, HUD gave servicers discretion, first in offering NBS an alternative to foreclosure under Mortgagee Letter 2015-3, and then the discretion to postpone NBS foreclosure sales for 60 days after its rescission of the mortgagee letter. CRC is aware of at least one homeowner that Financial Freedom appears to have chosen not to assist, while perhaps exercising its discretion to help others. This borrower happened to testify against OneWest at the public hearing. We further understand that Financial Freedom did not grant the recent 60 day extension to all homeowners.

This is consistent with the testimony of Rachel Mehlsak of Bet Tzedek, discussed more fully above, that Financial Freedom would not offer her client a 60 day extension of the foreclosure timeline that HUD had authorized servicers to give previously. We would hope OneWest, Financial Freedom and all servicers would refrain from ALL foreclosures on Non Borrower Spouses until a consumer friendly policy can be crafted. But on what legitimate basis can a servicer of HECM loans agree to postpone foreclosures for some consumers, but refuse to do so for other, similarly situated consumers? **The regulators should investigate whether OneWest improperly retaliated against one or more of its homeowners, and whether OneWest is exercising servicing discretion in an arbitrary fashion and in a manner that may violate fair housing and/or fair lending laws.**

The new Mortgagee Letter appears to allow mortgagees to provide Non Borrower Spouses a path to remain in their homes for the rest of their lives, and provides mortgagees 120 days to take action. Financial Freedom and OneWest should be required to commit that for ALL (not only those it chooses to help, or those who did not testify against the bank merger, etc.) qualified Non Borrower Spouses, OWB and FF will work to keep NBS in their homes via the Mortgagee Option Election, and that in no event will they move to foreclose on ANY Non Borrower Spouse within the next 120 days. In essence, they must commit to a moratorium on

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foreclosures of NBS for at least 120 days, and commit to offer the MOE to all qualified borrowers so that every qualified NBS can remain in their homes through the rest of their days, as they and their deceased spouses intended and expected.

Enabling other abuse of seniors. In addition to the above cited cases, particularly that of Ms. Rinard, whose mother-in-law, Millie Minard was foreclosed despite her family presenting documented evidence of fraud to Financial Freedom, CRC also noted in a prior comment letter another example of OneWest failings having a severe impact on a senior. Specifically, Paul Greenwood, Deputy District Attorney and Head of Elder Abuse Prosecutions for the San Diego District Attorney's office, shared and lamented a "preventable crime" involving an 84-year-old OneWest Bank customer who was fleeced of $300,000 in a mere 5 days as OneWest allowed him to repeatedly wire transfer thousands of dollars at a time from his account to a foreign bank. In the words of Deputy D.A. Greenwood, "Why would a branch of a bank allow an 84 year old gentleman [who has been a customer for over 20 years] to wire transfer to foreign banks an amount of $50,000, then $42,500, then $40,000, then $65,000, and finally $98,000 on separate days and in separate transactions? And that same customer has NEVER before wire transferred like that in his entire banking experience." As Deputy D.A. Greenwood noted, "California implemented a law in 2007 establishing that every bank teller in the state was a mandatory reporter of suspected financial elder abuse. But is it effective; is it enough?"

Conclusion

In summary, we believe that public testimony, public and private data, and other evidence support the need for federal regulators to conduct an investigation into potential fair housing and fair lending violations by OneWest Bank and its affiliates.

In the meantime, we renew our opposition to this proposed merger, as currently structured, and urge the Federal Reserve and the OCC to reject these merger applications as the banks in question have clearly not met community credit needs, and this merger will provide no public benefit.

This merger application is characterized by too much opposition, too many fair lending and fair housing concerns, too much harm, too many foreclosures, too much secrecy, too much public subsidy, too much systemic risk, and too little reinvestment. The regulators cannot approve of this merger without conducting a fair housing and fair lending investigation, and without imposing substantial conditions in order to ensure that more homeowners do not unnecessarily

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lose their homes, that certain consumers are not disproportionately impacted, and that communities and the public will benefit.

If the Federal Reserve and the OCC will not exercise their authority to reject a merger as problematic as this one, will they ever?

Thank you for your consideration of these views. Please feel free to contact us at (415) 864-3980 if you wish to discuss this matter further.

Very Truly Yours,

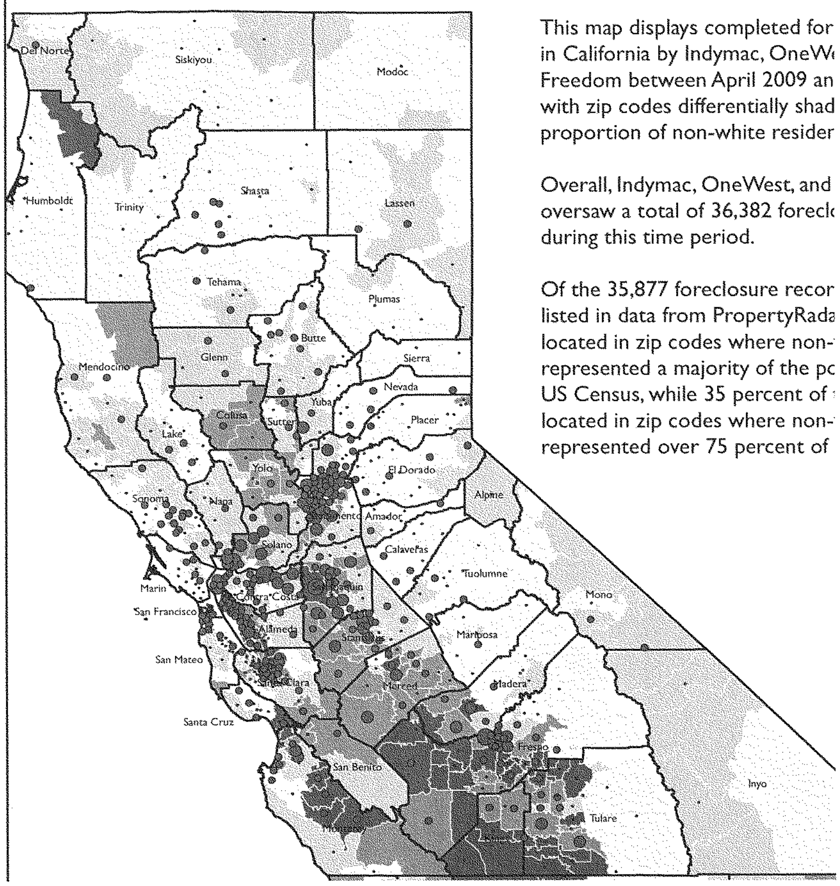
Kevin Stein
Associate Director

Paulina Gonzalez
Executive Director

cc: Jan Owen, Commissioner, California Department of Business Oversight
Ivan J. Hurwitz, Vice President, FRB NY, comments.applications@ny.frb.org
David Finnegan, Office of the Comptroller of the Currency, WE.Licensing@occ.treas.gov

APPENDIX I:
OWB/IMB/FF CALIFORNIA FORECLOSURE DATA: APRIL 2009-APRIL 2015

Indymac, OneWest, & Financial Freedom Fore
with Non-White Population, by Zip Cod



This map displays completed for
in California by Indymac, OneW
Freedom between April 2009 an
with zip codes differentially shad
proportion of non-white resider

Overall, Indymac, OneWest, and
oversaw a total of 36,382 forecl
during this time period.

Of the 35,877 foreclosure recor
listed in data from PropertyRada
located in zip codes where non-
represented a majority of the pc
US Census, while 35 percent of
located in zip codes where non-
represented over 75 percent of

Chart 1: Total Number of California foreclosures by OneWest Bank + Financial Freedom from April 2009 to April 2015

OneWest	Indymac	OneWest and Indymac	Financial Freedom	All
16,113	17,810	33,923	2,459	36,382

Chart 2: Top 10 Counties for OneWest Foreclosures in California (excluding Financial Freedom foreclosures) from April 2009- April 2015

County	Indymac	OneWest	Total	Percent of total CA OneWest foreclosures (excluding Financial Freedom)
LOS ANGELES	4,216	3,703	7,919	23%
RIVERSIDE	2,191	2,106	4,297	13%
SAN BERNARDINO	1,795	1,890	3,685	11%
SAN DIEGO	1,185	1,138	2,323	7%
ORANGE	1,004	843	1,847	5%
SACRAMENTO	1,138	436	1,574	5%
KERN	475	572	1,047	3%
ALAMEDA	437	504	941	3%
CONTRA COSTA	725	207	932	3%
Total	13,166	11,399	24,565	72%

Source: Analysis of PropertyRadar data by Urban Strategies Council.

Chart 3: Top 10 Cities for OneWest Foreclosures (excluding Financial Freedom) in California from April 2009-April 2015

City	Indymac	OneWest	Total	Percent of total
LOS ANGELES	797	755	1,552	5%
SACRAMENTO	614	247	861	3%
SAN DIEGO	379	386	765	2%
BAKERSFIELD	332	377	709	2%
RIVERSIDE	316	306	622	2%
FRESNO	278	305	583	2%
SAN JOSE	300	228	528	2%
FONTANA	241	225	466	1%
PALMDALE	276	187	463	1%
Total	3533	3016	6,549	19%

Source: Analysis of PropertyRadar data by Urban Strategies Council.

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Chart 4: Top Ten Counties for Financial Freedom Foreclosures in California from April 2009 to April 2015

County	Financial Freedom Foreclosures	Percent of total Financial Freedom Foreclosures
LOS ANGELES	498	20%
SAN BERNARDINO	287	12%
RIVERSIDE	267	11%
SACRAMENTO	200	8%
SAN DIEGO	187	8%
KERN	123	5%
ORANGE	102	4%
FRESNO	83	3%
SAN JOAQUIN	68	3%
Total	1815	74%

Source: Analysis of PropertyRadar data by Urban Strategies Council.

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Chart 5: Top Ten Cities for Financial Freedom Foreclosures in California from April 2009 to April 2015

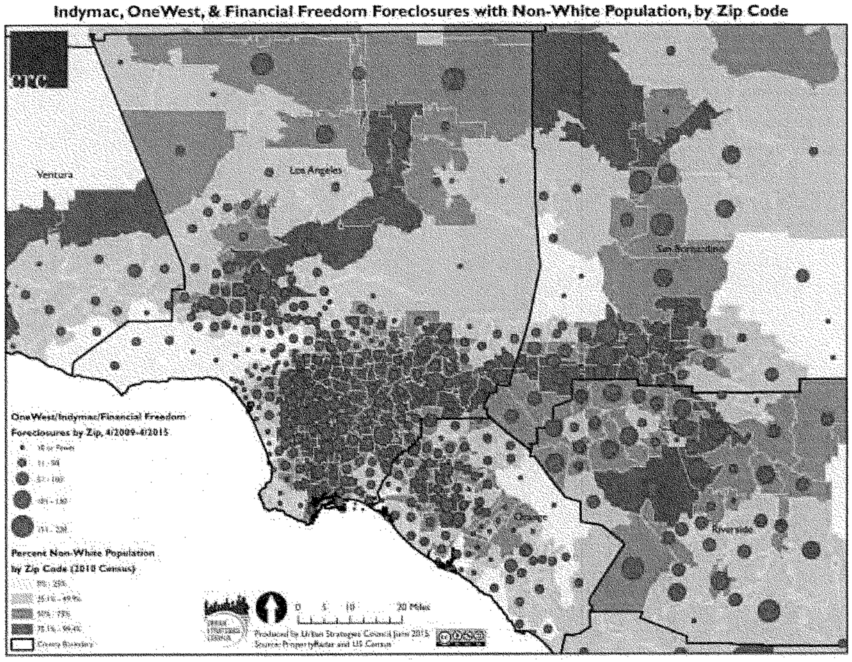
City	Financial Freedom Foreclosures	Percent of total Financial Freedom Foreclosures
LOS ANGELES	181	7%
SACRAMENTO	115	5%
BAKERSFIELD	73	3%
SAN DIEGO	72	3%
FRESNO	63	3%
COMPTON	43	2%
STOCKTON	42	2%
OAKLAND	40	2%
APPLE VALLEY	39	2%
Total	668	27%

Source: Analysis of PropertyRadar data by Urban Strategies Council.

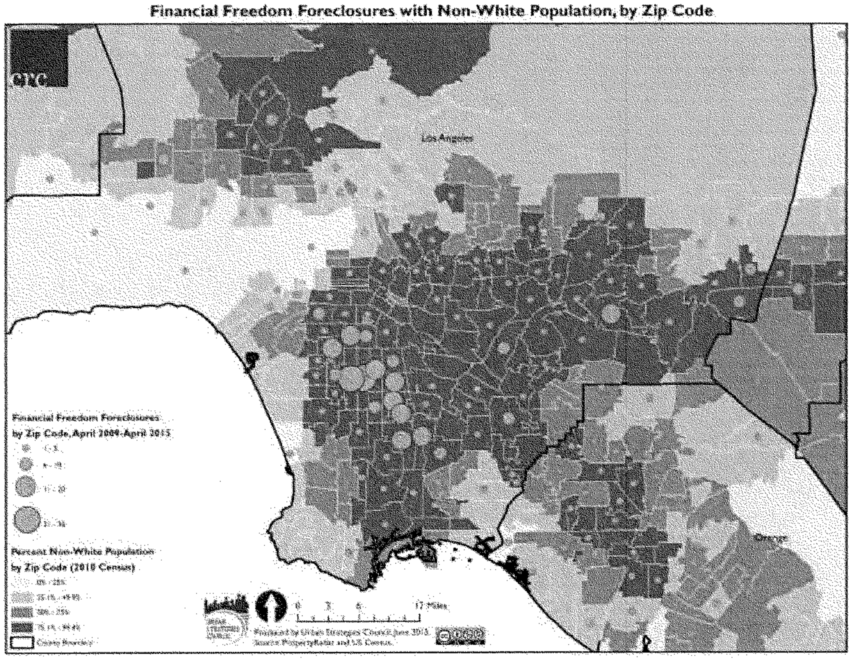
URBAN STRATEGIES COUNCIL

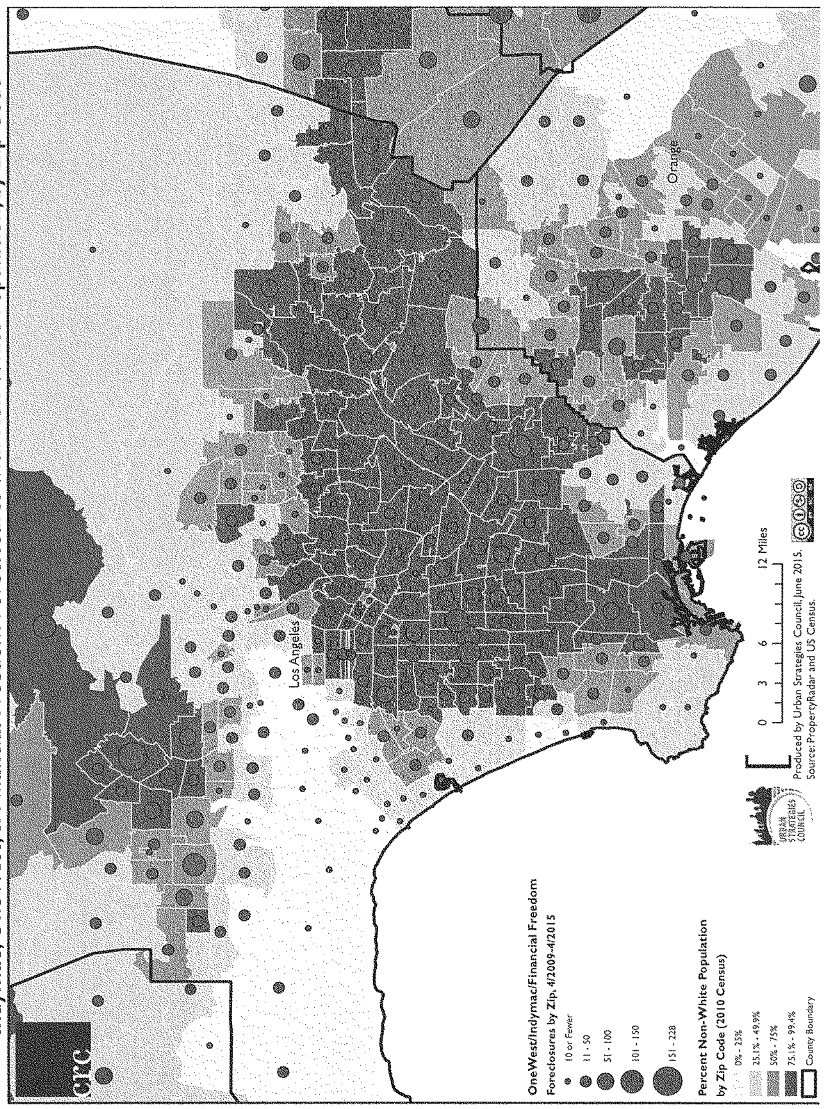
crc

Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code

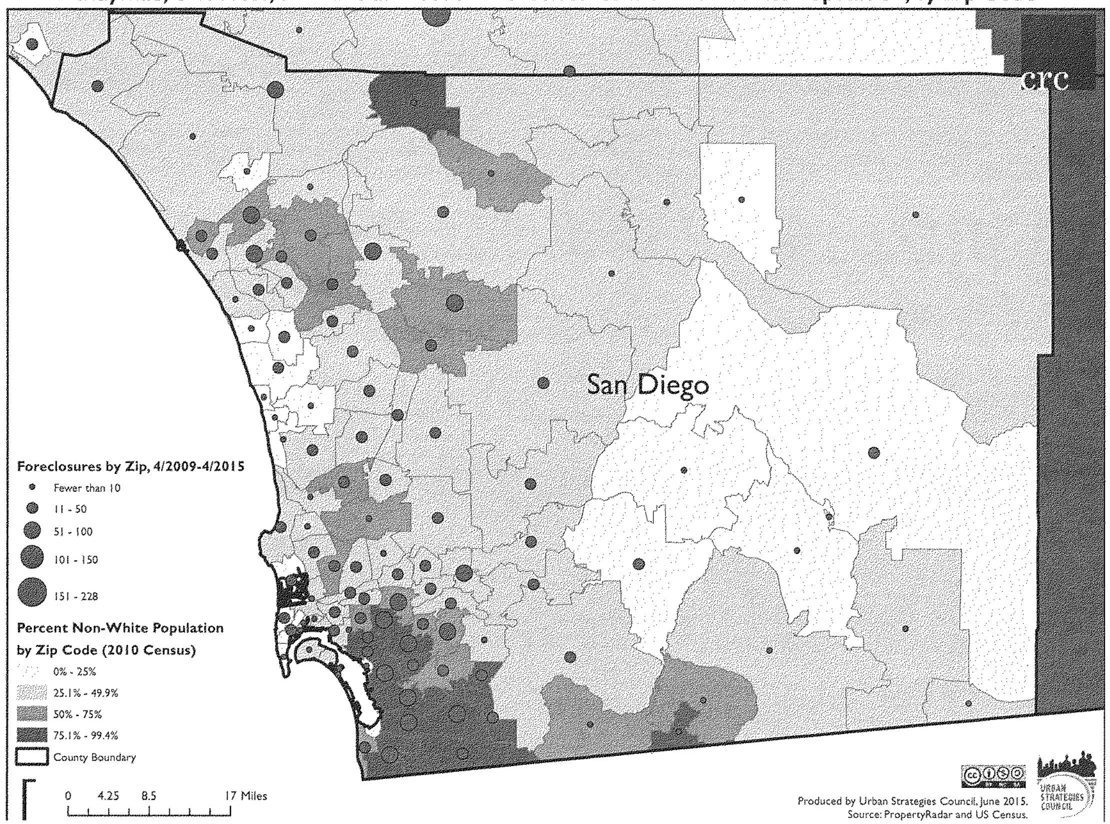


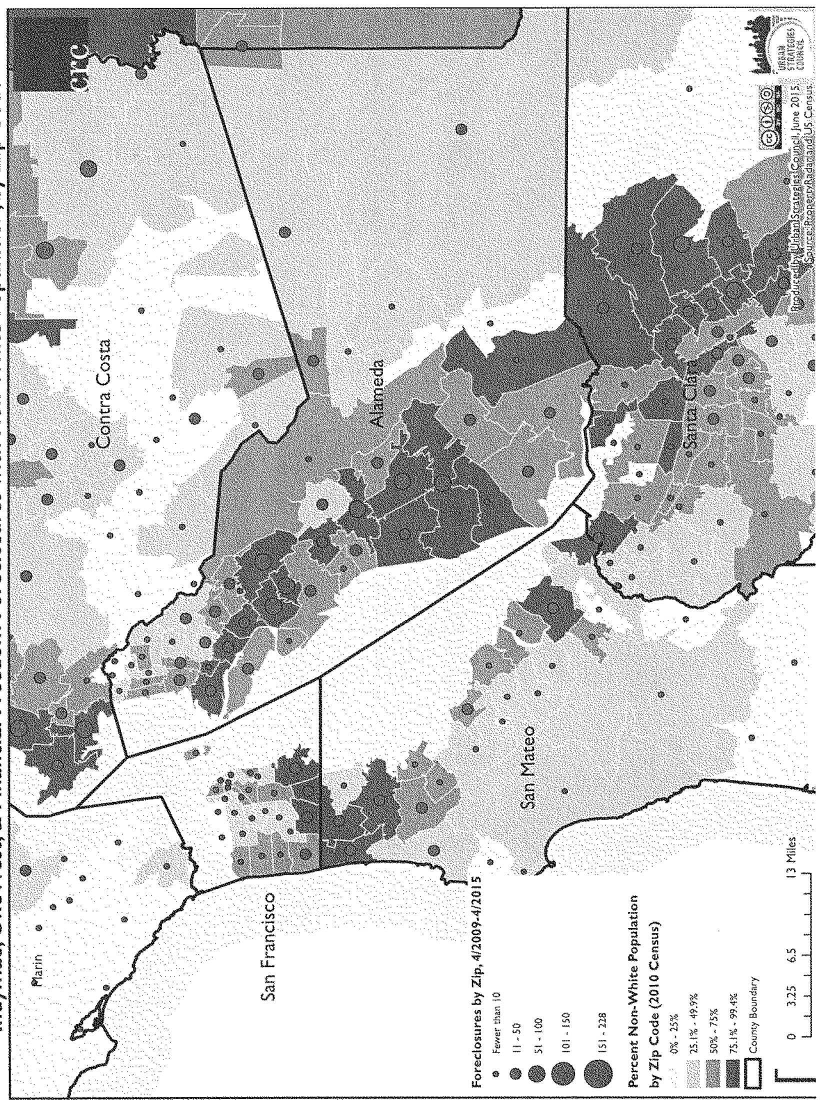
Financial Freedom Foreclosures with Non-White Population, by Zip Code



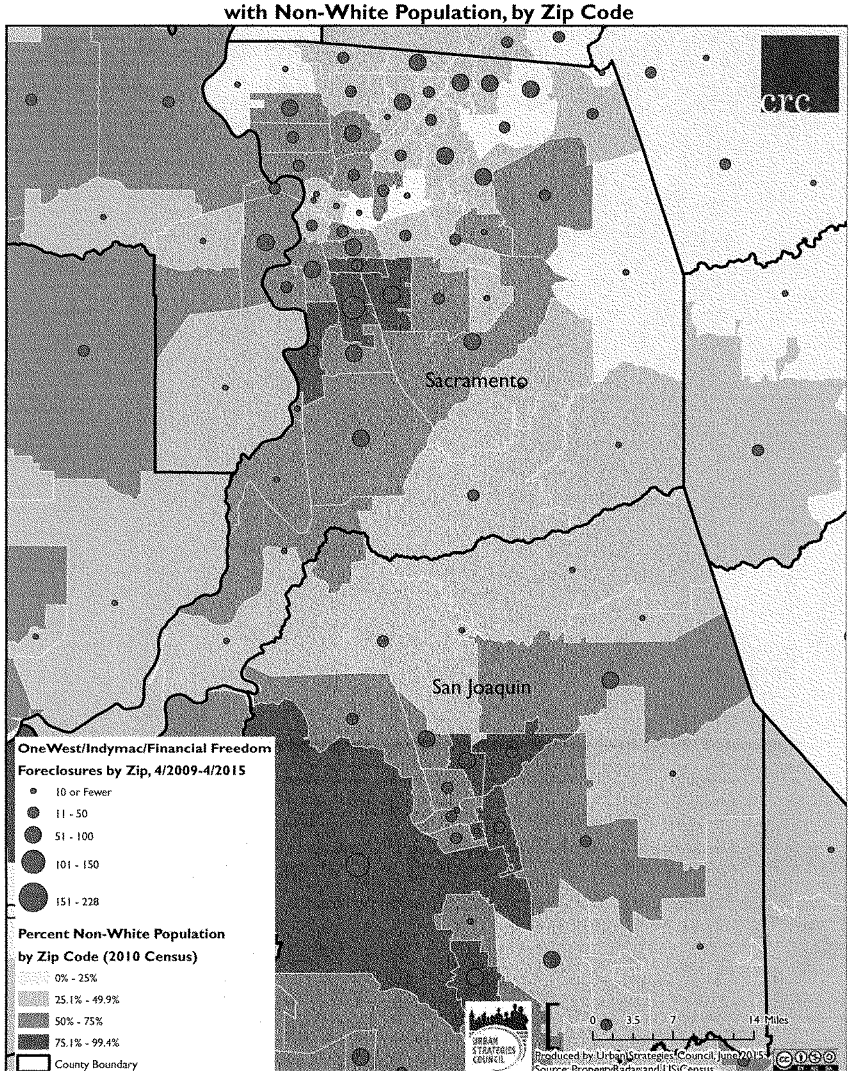

Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code
crc
Los Angeles
Orange
OneWest/Indymac/Financial Freedom
Foreclosures by Zip, 4/2009-4/2015
10 or Fewer
11 - 50
51 - 100
101 - 150
151 - 228
Percent Non-White Population
by Zip Code (2010 Census)
0% - 25%
25.1% - 49.9%
50% - 75%
75.1% - 99.4%
County Boundary
0 3 6 12 Miles
Produced by Urban Strategies Council, June 2015.
Source: PropertyRadar and US Census.
URBAN STRATEGIES COUNCIL

Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code

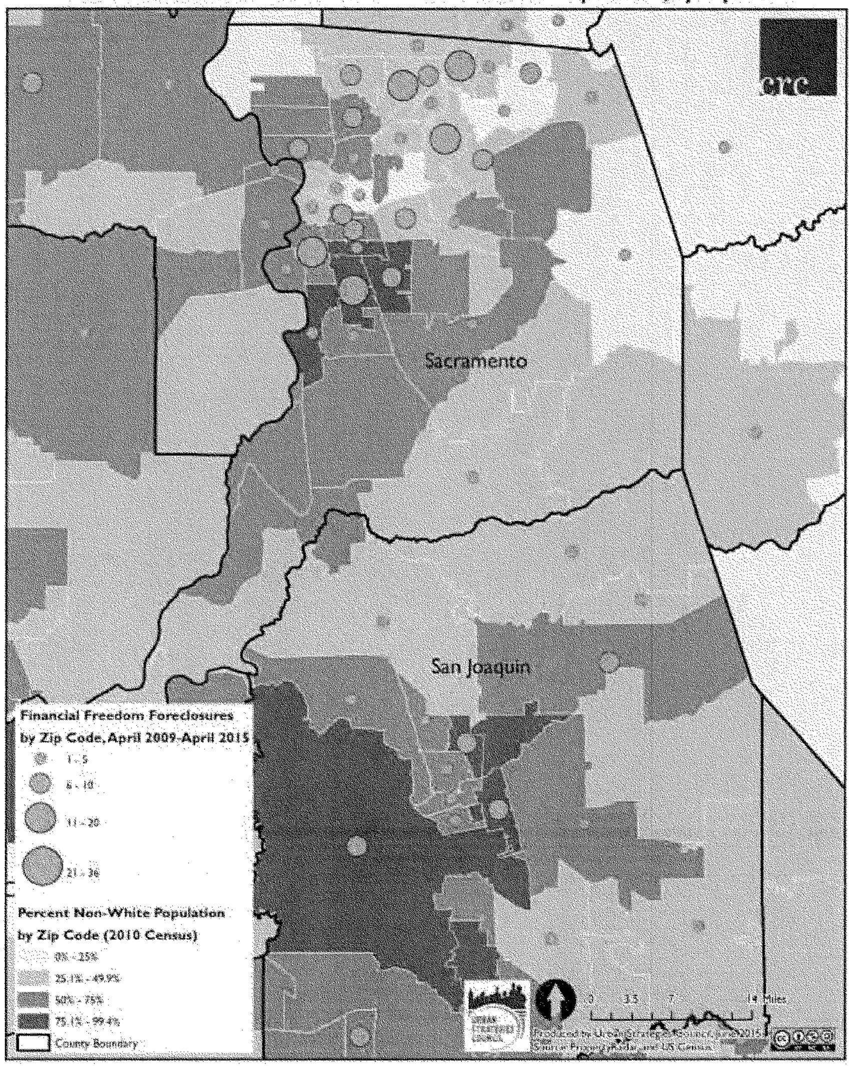



Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code
CRC
Marin
San Francisco
Contra Costa
Alameda
San Mateo
Santa Clara
Foreclosures by Zip, 4/2009-4/2015
Fewer than 10
11 - 50
51 - 100
101 - 150
151 - 228
Percent Non-White Population by Zip Code (2010 Census)
0% - 25%
25.1% - 49.9%
50% - 75%
75.1% - 99.4%
County Boundary
0
3.25
6.5
13 Miles
Produced by Urban Strategies Council, June 2015.
Source: PropertyRadar and US Census.
URBAN STRATEGIES COUNCIL

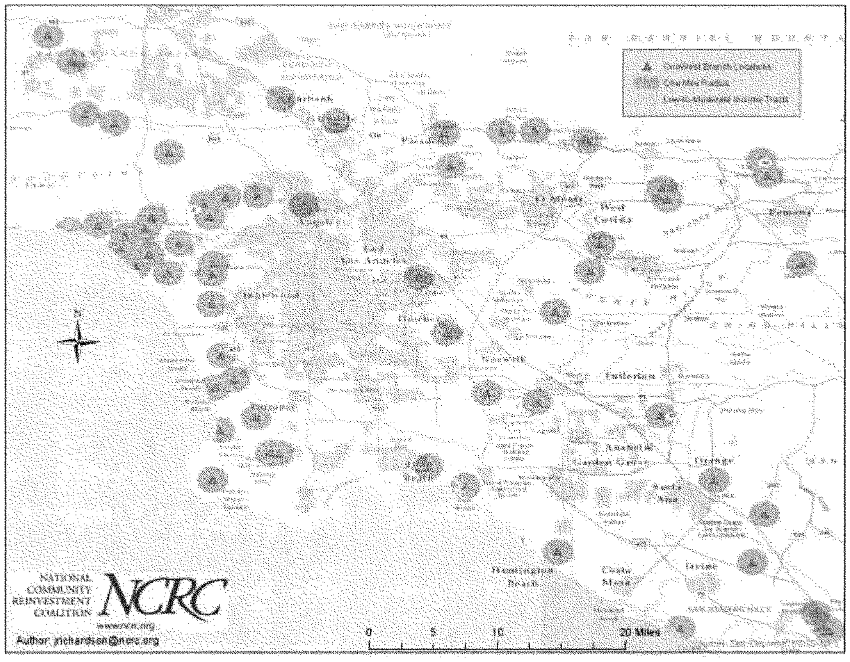
Indymac, OneWest, & Financial Freedom Foreclosures with Non-White Population, by Zip Code

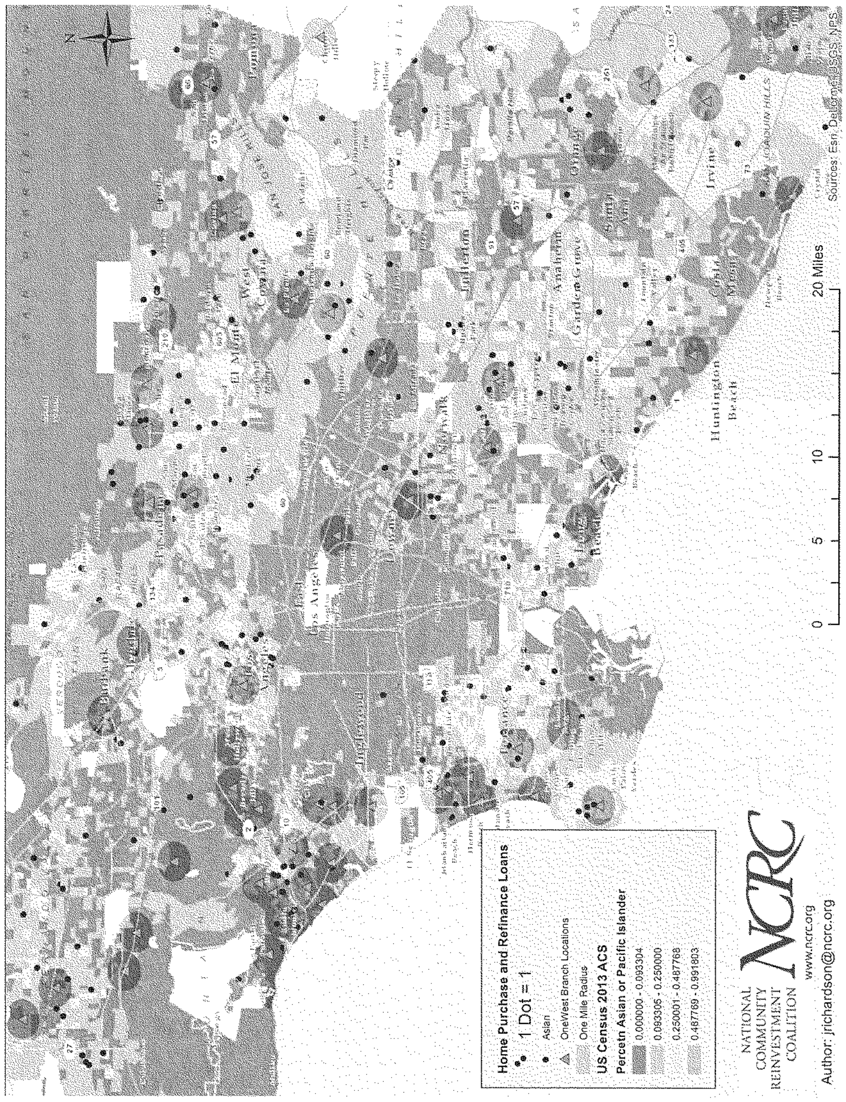


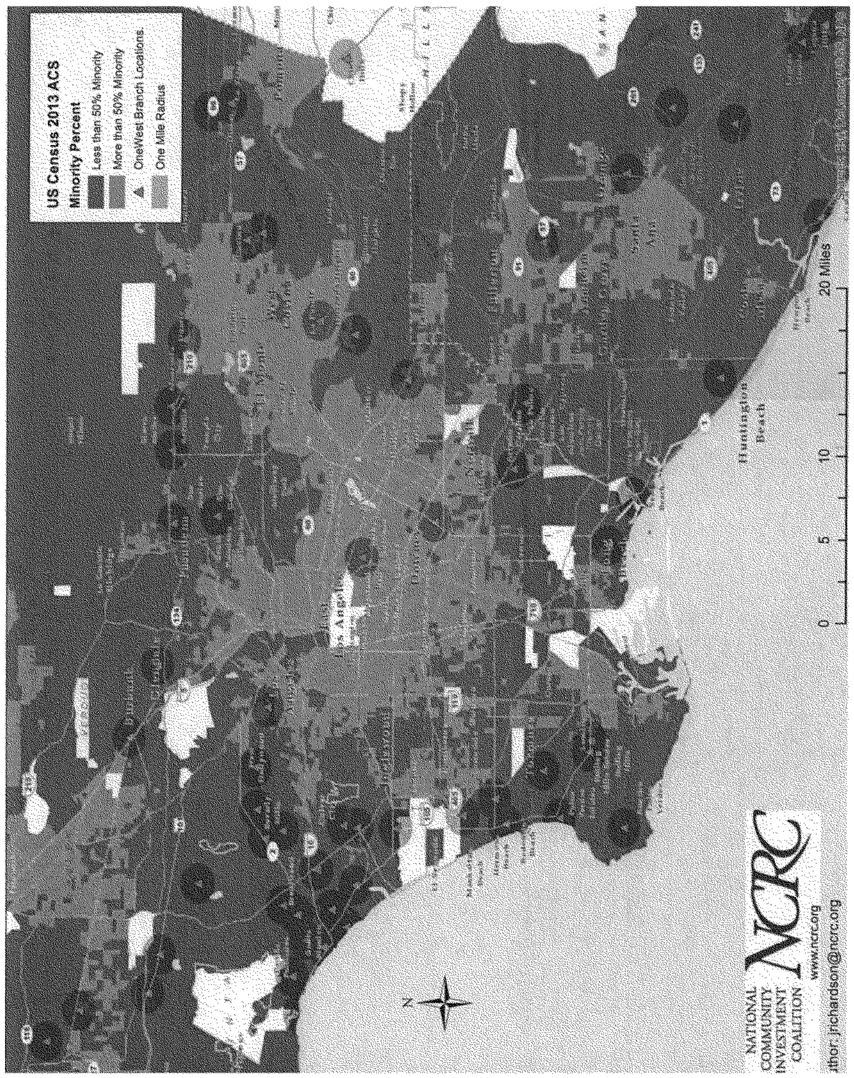
Financial Freedom Foreclosures with Non-White Population, by Zip Code



APPENDIX II:
OWB CALIFORNIA BRANCH MAPS BY RACE AND INCOME OF CENSUS TRACTS PREPARED BY NCRC


NATIONAL
COMMUNITY
REINVESTMENT
COALITION
NCRC
www.ncrc.org
Author: jrichardson@ncrc.org
0
5
10
20 Miles
Inglewood
Downey
Norwalk
Fullerton
Anaheim
Garden Grove
Orange
Santa Ana
Huntington Beach
Costa Mesa
Irvine
West Covina
Pomona


Home Purchase and Refinance Loans
1 Dot = 1
Asian
OneWest Branch Locations
One Mile Radius
US Census 2013 ACS
Percetn Asian or Pacific Islander
0.000000 - 0.093304
0.093305 - 0.250000
0.250001 - 0.487768
0.487769 - 0.991803
NATIONAL COMMUNITY REINVESTMENT COALITION
NCRC
www.ncrc.org
Author: jrichardson@ncrc.org
0
5
10
20 Miles
Sources: Esri, DeLorme, USGS, NPS
Burbank
Glendale
Pasadena
Los Angeles
El Monte
West Covina
Pomona
Inglewood
Downey
Norwalk
Fullerton
Anaheim
Garden Grove
Orange
Santa Ana
Irvine
Costa Mesa
Huntington Beach
Long Beach
Torrance


US Census 2013 ACS
Minority Percent
Less than 50% Minority
More than 50% Minority
OneWest Branch Locations.
One Mile Radius
0
5
10
20 Miles
Los Angeles
Huntington Beach
Santa Ana
NATIONAL COMMUNITY INVESTMENT COALITION
NCRC
www.ncrc.org
thor: jrichardson@ncrc.org

Housing Discrimination Complaint

Case Number:

1. **Complainants:**

   California Reinvestment Coalition (CRC)
   474 Valencia St, Ste 230
   San Francisco, CA 94103

2. **Complainant Representatives:**

   Kevin Stein
   California Reinvestment Coalition
   474 Valencia St, Ste 230
   San Francisco, CA 94103

3. **Other Aggrieved Parties:**

4. **The following is alleged to have occurred or is about to occur:**

   - Discriminatory refusal to sell
   - Discriminatory financing (includes real estate transactions)
   - Discriminatory terms, conditions, privileges, or services and facilities
   - Redlining

5. **The alleged violation occurred because of:**

   - National Origin
   - Color
   - Race

6. **Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

CA

7. **Respondents:**

CIT Bank, National Association, dba OneWest Bank
888 East Walnut Street
Pasadena, CA 91101

CIT Group, Inc
1 CIT Drive
Livingston, NJ 07039

8. **The following is a brief and concise statement of the facts regarding the alleged violation:**

Complainant California Reinvestment Coalition is a nonprofit corporation. Complainant alleges that Respondent CIT Group, by and through its CIT Bank, N.A. subsidiary, the successor to OneWest Bank, and its subsidiaries and affiliates (hereinafter and collectively, "Respondent") violated and continues to violate the Fair Housing Act by providing residential real estate related transactions in a manner that discriminates because of race, color and national origin.

Specifically, Complainant alleges that since at least 2011, Respondent discriminated in the marketing and origination of housing-related products, as evidenced by the low number of mortgages it made to African-American, Asian-American, and Latino borrowers in comparison to the demographics of the counties in Respondent's CRA assessment area and to the average industry market share. Complainants also allege Respondent discriminated on the basis of race, national origin and/or color, in locating and maintaining most of its bank branches in areas that serve majority-white communities and do not serve areas of high minority concentration. Complainant alleges that Respondent's practices amount to redlining and deny equal access to housing-related services, including mortgages, to borrowers because of their race, color and national origin in violation of the Fair Housing Act.

Specifically, complainant alleges that in the 6 counties that comprise Respondent's CRA assessment area:

- In African American majority neighborhoods: 0 Respondent branches; .7% of industry branches
- In Asian American majority neighborhoods; 1.4% of Respondents branches; 6.6% industry branches
- In Latino majority neighborhoods: 14.9% Respondent's branches; 19.6% of industry branches

In addition, Complainant alleges that market share and other analyses of Home Mortgage Disclosure Act (HMDA) data and data provided to federal banking regulators show that, since at least 2011, Respondent made few loans to Asian American, African American, and Latino borrowers and communities in absolute terms, in relation to the demographics of the counties in Respondent's CRA assessment area, and/or in relation to the industry as a whole. For example, for home loans originated in Respondent's six county CRA assessment area, Respondent had the **following market shares in 2014:**

- Respondent market share for all home loans - .03%
- Respondent market share for loans originated in majority minority census tracts - .02%
- Respondent market share for loans originated to Asian American borrowers - .02%
- Respondent market share for loans originated to Latino borrows .01%
- Respondent market share for loans originated to African American borrows - 0% (no loans originated to African American borrowers)

•

9. The most recent date on which the alleged discrimination occurred:

, and is continuing.

10. Types of Federal Funding Identified:

11. The acts alleged in this complaint, if proven, may constitute a violation of the following sections:

804a or f, 805, and 804b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

2/14/17

On Behalf of CRC   Date

N O T E : HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

Supplemental Narrative in Support of Fair Housing Complaint

Pursuant to 42 U.S.C. §§ 3604 and 3605, The California Reinvestment Coalition (hereinafter "Complainant CRC") and Fair Housing Advocates of Northern California – formerly Fair Housing of Marin (hereinafter "Complainant FHANC") allege that CIT Group, by and through its CIT Bank, N.A. subsidiary, as successor to OneWest Bank, and its subsidiaries and affiliates (hereinafter and collectively, "Respondent") discriminated on the basis of race, national origin and/or color in violation of the federal Fair Housing Act (42 U.S.C. §3604(a), §3604(b), §3604(c), §3604(d) and 3605(a)). Respondent has violated and continues to violate the Fair Housing Act ("FHA") by locating and operating branches and services in a manner which did not and does not give equal access to all consumers and loan seekers based on race, national origin and/or color. Respondent further violated and continues to violate the FHA by failing to market and originate residential real estate products to Asian American, African-American and Latino borrowers and communities for multiple years. In addition, Respondent is maintaining and marketing (or failing to market) Real Estate Owned ("REO") properties in a state of disrepair in predominantly African-American, Latino, and other non-White communities (hereinafter "communities of color") while maintaining and marketing such properties in predominantly White communities in a materially better condition.

Through the acts and omissions described herein, and those to be discovered during the course of HUD's investigation, Complainants allege that Respondent has a systemic and particularized practice of engaging in differential treatment in locating branches and services, failing to market and originate residential real estate products, and maintaining and/or marketing its REO properties on the basis of race, national origin and/or color. This practice has been ongoing and continues to persist through the present.

FACTUAL BACKGROUND

A. The Parties

Complainant California Reinvestment Coalition (CRC) is a statewide nonprofit coalition of 300 member organizations, incorporated under the laws of California, with its principal place of business in San Francisco. CRC organizational members include numerous fair housing organizations, housing and consumer credit counseling agencies, legal service and legal aid offices, Community Development Financial Institutions, community development corporations, small business technical assistance providers, and other organizations involved in addressing the housing, mortgage, small business and other credit needs of California's residents and communities of color. Complainant CRC's mission is to build an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner. Complainant CRC furthers its mission through regulatory and legislative advocacy, dialogue and negotiations with banks and other corporations, research, and outreach and education of and with its member organizations. Respondent's discriminatory conduct has required Complainant CRC to frustrate its mission and to divert its resources.

Through its advocacy, trainings, technical assistance, research, media work, outreach and education of its members, Complainant CRC works to ensure that corporations are meeting the needs of, and responsible participants in the economies of, communities of color and low income communities. The unlawful conduct of Respondent has injured Complainant CRC by:
1) interfering with these efforts to promote responsible corporate behavior in the state;
2) frustrating Complainant CRC's mission and purposes of building an inclusive and fair economy that meets the needs of communities of color and low income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner; and 3) diverting Complainant CRC's resources away from advocating for better laws, regulations and corporate practices in furtherance of equal access to housing and other resources, and diverting Complainant CRC's resources away from advocating against other harmful practices, policies and actors that discriminate against people and neighborhoods of color in California. Respondent has injured Complainant CRC by requiring Complainant CRC to commit scarce resources, including substantial staff time and the expenditure of limited funds, to research and analyze Respondent's discriminatory practices, educate the public about such practices, and advocate for regulatory and other responses to halt and remedy the discriminatory conduct, amongst other activities.

Complainant Fair Housing Advocates of Northern California (FHANC) is a non-profit fair housing organization and member of both CRC and the National Fair Housing Alliance (NFHA), incorporated under the laws of the State of California and with its principal place of business in San Rafael, California. FHANC works to promote equal opportunity in the renting, purchasing, financing, and advertising of housing; educate people regarding federal and state fair housing laws; promote integrated communities and neighborhood diversity; and eliminate discriminatory housing practices. FHANC engages in a number of activities to further its mission of promoting equal housing opportunities, including but not limited to: fair housing and fair lending counseling, foreclosure prevention and pre-purchase counseling and education, educational programs in schools and the community regarding fair housing and diversity, fair housing training programs for housing providers, and advocacy for affordable housing. Respondent's discriminatory conduct has required FHANC to frustrate its mission and to divert its scarce resources.

Respondent has injured Complainant FHANC by requiring Complainant FHANC to commit scarce resources, including staff time, to conduct numerous investigations of the maintenance and marketing of Respondent's REO properties in Solano and Contra Costa Counties. As a result of this expenditure of time and resources, FHANC was forced to divert resources and time away from other intended projects and programs, and to delay, suspend, or even cancel such programming. In addition, FHANC engaged in significant community outreach and public efforts in order to address and attempt to counteract the effects of Defendants' conduct. FHANC has also expended its own funds to engage in community development, homeownership promotion, and neighborhood stabilization efforts. FHANC's financial investments have been and are continuing to be undermined by the existence of Respondent's deteriorating and poorly maintained REO properties in those communities.

Respondent CIT Bank, N.A. is a national bank chartered and regulated by the Office of the Comptroller of the Currency, and headquartered in Pasadena, California. CIT Bank, N.A. operates approximately 71 retail branches throughout southern California, and engages in mortgage lending, small business lending and the provision of other bank products and services. CIT Bank, N.A. also controls Financial Freedom, an affiliate or subsidiary, which was in the business of originating, and continues to be in the business of servicing reverse mortgage loans, primarily those insured by HUD through the HECM program.

Respondent CIT Group, Inc. is a diversified financial services holding company which is regulated by the Federal Reserve Bank of New York and which is a necessary party to this complaint as it controls and owns CIT Bank, NA. CIT Group is a Systemically Important Financial Institution with over $50 billion in assets.

B. Complainant's Investigation And Analysis Demonstrates Disparities Based Upon Race, National Origin and/or Color in Where Respondent Locates and Maintains Retail Branch Offices And Offers Financial Products in Communities of Color Compared to Predominantly White Communities

Complainant CRC alleges that Respondent is in the business of operating retail bank branch offices in California and is charged with meeting the credit needs of the communities in which these branch offices are located. Complainant CRC alleges that the Respondent discriminated on the basis of race, national origin and/or color in locating and maintaining bank branches in areas that serve majority-white communities, do not serve areas of high minority concentration, and provide unequal access to residential real estate loans to Asian Americans, African Americans, and Latinos, and unequal access to other bank products for people and neighborhoods of color where 50% or more of residents are people of color. Respondent's branch presence in majority minority communities is below that of its peers which resulted and results in making residential real estate, small business, and other loan products less available to persons based on race, national origin and/or color, and which results in making banking services less available to protected groups and neighborhoods. Additionally, of the 12 branches that have been "consolidated" by Respondent, 5 of the 12 (or 41.6% of the total consolidations) were in majority minority tracts. Respondent has sited branches in a way that avoids neighborhoods of color and minority census tracts, and the resulting pattern of branch locations and consolidations supports a claim of redlining.

Respondent has a strikingly low penetration of branches into neighborhoods that are predominantly Asian American, predominantly African American, and predominantly Latino, in absolute terms and compared to its peers. In Respondent's six county CRA assessment areas:

- In African American majority neighborhoods: 0 Respondent branches; .7% of industry branches

- In Asian American majority neighborhoods; 1.4% of Respondents branches; 6.6% industry branches
- In Latino majority neighborhoods: 14.9% Respondent's branches; 19.6% of industry branches[1]

C. Complainant's Investigation and Analysis Demonstrates a Pattern of Disparities Based upon Race, National Origin and/or Color in How Respondent Markets, Offers, and Originates Mortgage Loans and Other Products in Communities of Color Compared to Predominantly White Communities and to Loan Applicants of Color Compared to White Loan Applicants.

Complainant CRC alleges that Respondent is in the business of marketing, originating, and arranging loans for borrowers to purchase,, refinance, or maintain a dwelling secured by residential real estate. Complainant CRC alleges that the Respondent discriminated on the basis of race, national origin and/or color by failing to market its residential real estate loan products to Asian Americans, African Americans, Latinos and/or majority minority communities in the Los Angeles MSA and other Southern California counties in the Bank's CRA assessment area. Complainant CRC alleges that Respondent's lack of market penetration in Asian American, African-American, Latino, and majority minority communities in these markets made and makes residential real estate products less available to persons based on race, national origin, and/or color.

Market share and other analysis of Home Mortgage Disclosure Act (HMDA) data, and data provided to federal banking regulators by the Respondent itself, show that since at least 2011, Respondent made few loans to protected groups and communities in absolute terms, in relation to the demographics of the counties in Respondent's CRA assessment area, and in relation to the industry as a whole. Respondent's home lending shows a significant disparity when compared to other lenders. In addition, Respondent's small business lending activity is concentrated in white neighborhoods, at the expense of residents, small businesses, and neighborhoods of color.

In 2015, in the Los Angeles Combined Statistical Area (CSA),[2] African Americans comprised 6.2% of the population, Asian Americans comprised 12.1% of the population, Latinos comprised 43.3% of the population, and minority census tracts comprised 64.7% of all census tracts. Yet home lending by Respondent in 2015 in the Los Angeles CSA did not equitably make credit available and did not help meet community credit needs. Only 1.7% of Respondent's home loans were originated to African American borrowers (compared to 3.6% for the industry); only 8.4% of Respondent's home loans were originated to Asian American borrowers (compared to 11% for the industry); only 8.4% of Respondent's home loans were originated to Latino borrowers (compared to 20.5% for the industry); and only 29.4% of Respondent's home loans were originated in minority census tracts (compared to 49.4% for the industry). These lending figures are well below the representation of protected classes and protected neighborhoods according to CSA demographics.

[1]Branch and census data used are current through June 2014.

[2] The CSA includes the counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

Los Angeles CSA	Percent of total population in Los Angeles CSA	Percent of OneWest mortgages originated to these borrowers in 2015	Industry average of mortgages originated to these borrowers in 2015
African American	6.2%	1.7%	3.6%
Asian Americans	12.1%	8.4%	11.4%
Latinos	43.3%	8.4%	22.4%
Whites	35.3%	82.4%	67.8%
50 to 100% Minority Census Tracts	64.7%	29.4%	52.9%

For many years, Respondent's lending to protected classes and in protected neighborhoods is strikingly low in absolute terms and in comparison to that of Respondent's peers. For example, for home loans originated in Respondent's 6 county CRA assessment area, Respondent had the following market shares in 2014:

- .03% of all loans originated
- .02% of all loans originated in majority minority census tracts
- .02% of all loans originated to Asian borrowers
- .01% of all loans originated to Latino borrowers
- 0% of all loans originated to African American borrowers (no loans originated)

Complainant CRC states that even according to data provided by Respondent, Respondent's lending to Asian American and African American borrowers, and to majority minority communities, is also below peer lending and the demographics of the communities where Respondent is engaged in business activity.

According to data submitted to bank regulators by Respondent,[3] for lending in Los Angeles County:

- In 2012, out of 43 home purchase and home improvement loans, Respondent made 0 loans to African Americans.
- In 2013, out of 26 home purchase and home improvement loans, Respondent made 0 loans to African Americans.
- In 2012, Respondent had a 10.1% Asian American origination market share, while its peers were at 24.2%. In other words, Respondent's Asian American market share was less than half the industry average.
- In 2013, Respondent similarly had an 11% Asian American origination market share, while its peers were at 23%, with Respondent at less than half the industry average.

Again, these data points were provided by Respondent to the Federal Reserve Bank of New York as part of the CIT Group, Inc. and OneWest Bank merger process.

Respondent's systemic practice of failing to effectively market, offer and originate mortgage loans and other loan products in communities of color violates the Fair Housing Act, 42 U.S.C. §§ 3601, et seq. and HUD's implementing regulations.

D. Respondent's Role in Maintaining and Marketing REO Properties

A property becomes an REO property when a bank or lender has foreclosed upon or repossessed a home from a homeowner or borrower and the ownership of the property has reverted to the bank or lender. After a foreclosure occurs, the foreclosing entity that owns the REO property has the responsibility to maintain the property and engage in disposition strategies, including but not limited to sale to a potential owner-occupant or investor, donation to a non-profit or local government entity, conveyance, or bulk auction. In addition, the owner of a REO property may contract with another entity to service or maintain the REO property. Respondent is the owner of REO properties and is responsible for preserving, maintaining, marketing, and selling REO properties.

Respondent utilizes employees and agents to preserve, maintain, service, market, and sell REO properties throughout the United States. Respondent has a vast network of brokers/agents who list REO properties on behalf of Respondent and help to maintain and market those properties. Respondent also contracts with asset management companies that perform preservation and maintenance work on REO properties on its behalf. Respondent is responsible for the acts of its employees, agents, brokers, contractors and servicers.

[3] RESPONSES TO THE REQUEST FOR ADDITIONAL INFORMATION DATED DECEMBER 10, 2014 FROM THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM IN CONNECTION WITH THE APPLICATION TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM RELATING TO THE PROPOSED ACQUISITION OF IMB HOLDCO LLC BY CIT GROUP INC. AND CARBON MERGER SUB LLC, December 22, 2014, pp. 6, 7, available at: https://www.federalreserve.gov/bankinforeg/2014-12-22_Response_to_2014-12-10_AI_Request.pdf

E. Complainant's Investigation Demonstrates a Pattern of Disparities Based upon Race, National Origin and/or Color in How Respondent Maintains and Markets REO Properties in Communities of Color Compared to Predominantly White Communities

From April 2014 – May 2016, Complainant FHANC investigated sixteen of Respondent's REO properties in Solano and Contra Costa Counties, six in predominantly Latino communities, seven in predominantly non-White communities, and three in predominantly White communities. Complainant employed a methodology for investigating how REO properties are maintained and marketed, measuring whether there are differences between how REO properties are maintained and marketed in communities of color compared to REO properties in predominantly White communities. A predominantly non-White neighborhood is defined as one in which 50% or greater of the population is non-White.

Investigators visited and photographed the properties in question, noting the number and type of deficiencies present on the REO. Deficiencies denote problems with important maintenance issues addressing curb appeal, health and safety items, structural issues for marketing the REO, and maintaining property values in a way that one would expect of a good neighbor. Evaluation measures include curb appeal (trash, leaves, overgrown grass, overgrown shrubs, invasive plants, dead grass); structure (broken windows, broken doors, damaged fences, damaged roof, holes, wood rot); signage (trespassing/warning signs, "Bank owned," "auction," or "Foreclosure" signs, "For Sale" signs missing/discarded); paint/siding (graffiti, excessive peeling/chipped paint, damaged siding); gutters (missing, out of place, broken, hanging, obstructed); water damage (mold, algae, discoloration, excessive rust, erosion); utilities (tampered with or exposed). No homes that were occupied or undergoing construction were evaluated in this complaint.

Results of Complainant FHANC's REO investigations demonstrate a pattern of far fewer maintenance deficiencies or problems in predominantly White communities as opposed to communities of color in line with patterns that have been seen with Fannie Mae, Bank of America, US Bank, and other lending institutions. While Respondent's REO properties in White communities were generally well maintained and well marketed with manicured lawns, securely locked doors and windows, and attractive, professional, "for sale" signs posted out front, Respondent's REO properties in communities of color were more likely to have trash strewn about the premises, overgrown grass, shrubbery, and weeds, and boarded or broken doors and windows among many other curb appeal and structural issues. The only exception was an REO property in a White community that is 52-53% White and borders a community of color. Respondent's REOs in communities of color appear abandoned, blighted, and unappealing to potential homeowners, even though they are located in stable neighborhoods with surrounding homes that are well-maintained.

Overall, REO properties in White communities were far more likely to have a small number of maintenance deficiencies or problems than REO properties in communities of color, while REO properties in communities of color were far more likely to have large numbers of such deficiencies or problems than those in White communities. In addition, in these metropolitan areas, Complainants documented significant racial disparities in many of the objective factors evaluated. Complainant FHANC's investigation of Respondent's REO properties highlights disparities in the maintenance and marketing of REO properties in communities of color vs. predominantly White communities.

Complainant FHANC found the following patterns based upon its investigation of sixteen REO properties owned by Respondent in Solano and Contra Costa Counties:

- 66.7% of the REO properties in White communities had **fewer than 5 maintenance or marketing deficiencies**, while none of the REO properties in communities of color had fewer than 5 deficiencies.

- 100.0% of the REO properties in communities of color had **5 or more maintenance or marketing deficiencies**, while only 33.3% of the REO properties in predominantly White communities had 5 or more deficiencies.

- 53.8% of the REO properties in communities of color had **10 or more maintenance or marketing deficiencies**, while none of the REO properties in predominantly White communities had 10 or more deficiencies.

- 7.7% of the REO properties in communities of color had **15 or more maintenance or marketing deficiencies**, while none of the REO properties in predominantly White communities had 15 or more deficiencies.

REO properties in communities of color were far more likely to have certain types of deficiencies or problems than REO properties in predominantly White communities. Complainant FHANC found significant racial disparities in the majority of the objective factors it measured, including the following:

- 61.5% of the REO properties in communities of color had **substantial amounts of trash** on the premises, while none of the REO properties in predominantly White communities had the same problem.

- 30.8% of the REO properties in communities of color had **accumulated mail,** while none of the REO properties in predominantly White communities had the same problem.

- 61.5% of the REO properties in communities of color had **overgrown grass or dead leaves,** while none of the REO properties in predominantly White communities had the same problem.

- 15.4% of the REO properties in communities of color had at least **10% to 50% of the property covered in dead grass**, while none of the REO properties in predominately White communities had the same problem.

- 23.1% of the REO properties in communities of color had at least **10% to 50% of the property covered in invasive plants**, while none of the REO properties in predominately White communities had the same problem.

- 61.5% of the REO properties in communities of color had **unsecured or broken doors,** while none of the REO properties in predominantly White communities had the same problem.

- 53.8% of the REO properties in communities of color had **broken or boarded windows**, while only 33.3%* of the REO properties in predominantly White communities had the same problem. *The property in question is 52-53% White, bordering a community of color.

- 61.5% of the REO properties in communities of color had a **damaged fence,** while none of the REO properties in predominantly White communities had the same problem.

- 46.2% of the REO properties in communities of color had **holes** in the structure of the home, while none of the REO properties in predominantly White communities had the same problem.

- 15.4% of the REO properties in communities of color had **wood rot,** while none of the REO properties in predominantly White communities had the same problem.

- 61.5% of the REO properties in communities of color had **no professional "for sale" sign marketing the home,** while none of the REO properties in predominantly White communities had the same problem.

- 53.8% of the REO properties in communities of color had **damaged siding,** while none of the REO properties in predominantly White communities had the same problem.

- 15.4% of REO properties in communities of color had **missing or out of place gutters,** while none of the REO properties in predominantly White communities had the same problem.

- 30.8% of REO properties in communities of color had **broken or hanging gutters,** while none of the REO properties in predominantly White communities had the same problem.

- 23.1% of the REO properties in communities of color had **exposed or tampered-with utilities,** while none of the REO properties in predominantly White communities had the same problem.

Respondent's systemic practice of failing to maintain REO properties in communities of color on the same basis as they maintain properties in White communities violates the Fair Housing Act, 42 U.S.C. §§ 3601, et seq. and HUD's implementing regulations.

LEGAL CLAIMS

FIRST CAUSE OF ACTION: 42 U.S.C. § 3604(b)

Section 3604(b) states it is unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale . . . of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color … or national origin [.]" 42 U.S.C. § 3604(b). HUD's implementing regulations state "[i]t shall be unlawful, because of race . . ., to impose different terms, conditions or privileges relating to the sale . . . of a dwelling or to deny or limit services or facilities in connection with the sale . . . of a dwelling." 24 C.F.R. § 100.65(a), and in particular that "prohibited actions under this section include, but are not limited to: . . . Failing or delaying maintenance or repairs of sale or rental dwellings because of race[.]" Id. § 100.65(b)(2) (emphasis added). By consistently failing to undertake basic maintenance or repairs of REO properties in communities of color while consistently maintaining and/or repairing REO properties in predominantly White communities in a superior fashion, Respondent engages in the "prohibited action" of "failing or delaying maintenance or repairs of sale . . . dwellings because of race," id. § 100.65(b)(2), and thereby discriminates "in the terms, conditions, or privileges of sale . . . dwelling, or in the provision of services or facilities in connection therewith, because of race, color … and national origin[.]" 42 U.S.C. § 3604(b). Additionally, Respondent's acts, policies, and practices, in its retail branch location and its home loan marketing and origination penetration, have provided and continue to provide different terms, conditions, and/or privileges of sale of housing, as well as different services and facilities in connection therewith, on the basis of race, national origin and/or color in violation of 42 U.S.C. §3604(b).

SECOND CAUSE OF ACTION: 42 U.S.C. § 3604(c)

Section 3604(c) broadly prohibits discrimination in the advertising of dwellings for sale or rent. See 42 U.S.C. § 3604(c). HUD's regulations state it is unlawful to "make, print, or publish" a discriminatory notice, statement or advertisement about a dwelling for sale, including through signs, banners, posters or any other documents. 24 C.F.R. § 100.75(a)-(b). In particular, "[d]iscriminatory notices, statements and advertisements include, but are not limited to" "[s]electing media or locations for advertising the sale . . . of dwellings which deny particular segments of the housing market information about housing opportunities because of race," id. § 100.75(c)(3), and "[r]efusing to publish advertising for the sale . . . of dwellings or requiring different charges or terms for such advertising because of race, color … or national origin[.]" Id. § 100.75(c)(4). Respondent's practice of failing to advertise its REO properties with a "for sale" sign in communities of color at substantially the same rate as in predominantly White communities and its related practice of posting signs in communities of color that convey a message that homes are dangerous, undesirable, or distressed violates § 3604(c) and 24 C.F.R. § 100.75(c) and (d) by selecting advertising locations that deny communities of color vital information about opportunities to purchase REO properties, and by refusing to publish advertising or using different terms to advertise REO properties in communities of color, because of race, color and/or national origin.

THIRD CAUSE OF ACTION: 42 U.S.C. § 3604(d)

Section 3604(d) makes it unlawful "to represent to any person because of race . . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." 42 U.S.C. § 3604(d). HUD's implementing regulations state that "[i]t shall be unlawful, because of race . . . to provide inaccurate . . . information about the availability of dwellings for sale or rental," including by "[l]imiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental, because of race," or by "[p]roviding . . . inaccurate information regarding the availability of a dwelling for sale . . . to any person . . . because of race, color ... or national origin[.]" 24 C.F.R. § 100.80(a), (b)(4)-(5). Through a combination of sub-standard maintenance, failing to market homes as "for sale," and the affirmative marketing of these homes as dangerous, undesirable, or distressed, Respondent violates § 3604(d) by conveying an inaccurate message to existing homeowners and prospective purchasers in communities of color that its REO properties in communities of color are "not available for inspection, [or] sale, . . . when such dwelling[s] [are] in fact so available," because of the race, color or national origin of the homeowners or purchasers in these communities of color. 42 U.S.C. § 3604(d). In addition, the same practices drastically limit information or provide inaccurate information about the availability of REO properties because of race in violation of 24 C.F.R. § 100.80(b)(4), and (5).

FOURTH CAUSE OF ACTION: 42 U.S.C. § 3604(a)

Section 3604(a) states that it is unlawful to "refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color ...or national origin[.]" 42 U.S.C. § 3604(a). Respondent's differential treatment in maintenance and marketing of REO properties violates § 3604(a), as it "refuse[s] . . . to negotiate" or "us[es] different . . . sale . . . standards or procedures . . . or other requirements . . . because of race." 24 C.F.R. § 100.60(b)(2), (4). Furthermore, these practices "restrict . . . the choices of a person by word or conduct in connection with seeking, negotiating for, buying . . . a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns," by conveying a message to prospective purchasers that REO properties in communities of color are not available or desirable. 24 C.F.R. § 100.70(a). Specifically, these practices "exaggerat[e] [the] drawbacks" of REO properties, "fail to inform" purchasers of "desirable features of a dwelling or of a community, neighborhood, or development," and "discourag[e]" persons "from inspecting [or] purchasing" REO properties "because of the race . . . of persons in a community, neighborhood, or development." 24 C.F.R. § 100.70(c)(1)-(2). Finally, in the most severe instances of poor maintenance, Respondent's practices can cause REO properties in communities of color to fall into such disrepair that they cannot be restored and must be demolished, making them completely "unavailable" to purchasers. See 24 C.F.R. § 100.70(b). Additionally, Respondent's acts, policies, and practices, in its retail branch location and its loan marketing and origination penetration, have made and continue to make housing unavailable on the basis of race, color or national origin, in violation of 42 U.S.C. §3604(a).

FIFTH CAUSE OF ACTION: 42 U.S.C. § 3605

Section 3605 states that "It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.
(b) Definition.--As used in this section, the term "residential real estate-related transaction" means any of the following: (1) The making or purchasing of loans or providing other financial assistance-- (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (B) secured by residential real estate. Here, Respondent's acts, policies and practices in its retail branch location and its loan marketing and origination penetration have provided and continue to provide different terms, conditions and/or privileges on the basis of race and/or color in connection with the making of residential real estate related transactions, in violation of 42 U.S.C. §3605. Respondent avoided the credit needs of majority minority neighborhoods and residents, thereby engaging in acts or practices directed at prospective applicants that discouraged people in minority neighborhoods from applying for credit.

As a result of such discriminatory conduct, individuals, homeowners, small businesses, local jurisdictions, and local institutions in the communities served by Complainant CRC and its member organizations and Complainant FHANC, have been subjected to: 1) decreased opportunities to access home purchase, home and refinance, and other loan products; 2) decreased access to banking services available at retail banking offices and branches; and 3) decreased opportunities for orderly maintenance and transfer of properties and ensuing increased risk of destabilized and blighted communities.

Concurrently with, and in part resulting from, Respondent's disinvestment, foreclosures and faulty REO property maintenance practices in neighborhoods of color, the Los Angeles MSA, Los Angeles CSA, Respondent's CRA assessment area, Solano and Contra Costa County communities, and communities throughout the state have been negatively impacted. Communities have witnessed the large scale purchase by investors of distressed REO properties and distressed loans, the dramatic increase in the cost of homeownership and rental housing, and the gentrification of communities of color and displacement of large numbers of protected classes of people. These dynamics have been exacerbated by Respondent's failure to make home mortgage and other loan products, housing, branch access, adequate REO property maintenance and marketing, and related services and products available to Asian American, African American, Latino, and other of color residents and communities.

Complainants believe this discriminatory conduct is ongoing and will not abate without intervention. Further, complainants assert that these allegations demonstrate a pattern and practice of discriminatory conduct by Respondent. Additional context, including widespread foreclosures[4] in neighborhoods of color by Respondent[5] paints an even clearer picture of an

[4] Complainant CRC's analysis of HUD's response to CRC's Freedom of Information Act (FOIA) request found that Respondent's subsidiaries and affiliates were responsible for at least 38% of all foreclosures on seniors, non-

institution that serves white communities with branches and loans, and interacts with neighborhoods of color and vulnerable communities through foreclosures.

In response, Complainants have expended considerable resources to bring Respondent's discriminatory practices to light, and in so doing, have put Respondent on notice as to its discriminatory practices, conduct and impact, on California residents and communities in violation of the Fair Housing Act, 42 U.S.C. section 3604 and 3605.

borrower spouses and their family members as part of the FHA Home Equity Conversion Mortgage (HECM) program from April 2009. Additional CRC analysis finds that of all of Respondent's foreclosures in California on reverse mortgage borrowers, non-borrower spouses and their family members, 47% were in neighborhoods where most of the residents were people of color.

[5] Complainant CRC's analysis of Respondent's 36,382 foreclosures in California from April 2009 to April 2015 found that 68% of such foreclosures were in majority minority zip codes, and that 35% of Respondent's California foreclosures were in zip codes where 75% of the residents were people of color.

BLOOMBERG

OneWest Seeks Wall Street's Help Lobbying Yellen on CIT

Matthew Monks and Elizabeth Dexheimer
January 8, 2015, 2:06 PM PST

A California group that advocates for low-income borrowers is calling on regulators to hold hearings on the biggest U.S. bank sale of 2014. The target of that deal, OneWest Bank, is pushing back in an unusual way.

OneWest Chief Executive Officer Joseph Otting sent an e-mail to his contacts on Wall Street this week asking for help to discourage bank overseers from holding public hearings on its $3.4 billion takeover by CIT Group Inc.

Otting's e-mail includes a link to a petition addressed to Federal Reserve Chair Janet Yellen and others stating that "there is no need for a public hearing." The contents of the e-mail were described by executives at investment banks who received the message and spoke on the condition that they not be named so as not antagonize a potential client.

"I have never heard anything like this," said Bert Ely, an independent banking consultant. "It strikes me as unusual and kind of overkill, unless possibly there is a problem that hasn't surfaced publicly yet that they are trying to mitigate or minimize."

OneWest is the former IndyMac Bancorp, which failed in 2008 and was acquired by a group of investors including George Soros and John Paulson the next year.

"It's general business practice to solicit comments from key constituencies, including customers, community organizations and trade associations, to highlight the support a proposed merger/transaction has within the community," David Isaacs, a spokesman for OneWest, said in an e-mailed statement. Representatives of CIT and the Fed declined to comment.

Sale Criticism

IndyMac's 2009 sale by the Federal Deposit Insurance Corp. was the target of protests by foreclosed homeowners outside the residence of Steven Mnuchin, its chairman. Mnuchin, a former Goldman Sachs Group Inc. partner, brought together Soros, Paulson and others including Michael Dell to acquire IndyMac for about $1.5 billion.

Those backers agreed last July to sell Pasadena, California-based OneWest to CIT, the New York business lender run by John Thain, and that's revived the protests.

A copy of Otting's e-mail was forwarded to Bloomberg News by Kevin Stein, associate director of the California Reinvestment Coalition, or CRC, which advocates for low-income borrowers and is a primary opponent of the deal.

His group, which organized a protest at OneWest's headquarters in December, has argued in letters to state and federal regulators that the deal will create another "too-big-to fail" bank. The transaction would enrich OneWest management with little benefit to the community, CRC said.

Yellen Letter

Below a message titled "Show your support for OneWest Bank," visitors to the OneWest website are encouraged to add their name and address to a form letter to Yellen.

"This merger will retain and create new jobs in California," the letter reads. "I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing."

Regulators have made it harder for big banks to merge since taxpayers bailed out the largest U.S. lenders during the financial crisis. M&T Bank Corp.'s $3.7 billion deal for Hudson City Bancorp. Inc. has been stalled since 2012. The Fed delayed Capital One Financial Corp.'s $9 billion acquisition of ING Groep NV's online bank for public hearings.

The CIT deal is slated to close in the first half of 2015, pending approval from the Fed and Office of the Comptroller of the Currency.

CIT would have $67 billion in assets and 73 branches after buying OneWest, according to an investor presentation in July. At that size, CIT would become the 36th largest bank holding company by assets, according to regulatory data.

Finnegan, David

From:	[redacted]@gmail.com on behalf of [redacted] <[redacted]>
Sent:	Friday, January 16, 2015 12:57 PM
To:	Finnegan, David
Subject:	Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)
Categories:	Red Category

Mr. David Finnegan
OCC

This is to bring to your attention that **I received an email from the office of OCC regarding a subject I am completely unaware of**. I DID NOT send the email below that you responded to. This is a fraudulent use of my email account. I will be working with my email hosting provider to ensure that this does not happen again.

I will appreciate your reply acknowledging this very important notice. Thank you very much!

Sincerely,
[redacted]

---------- Forwarded message ----------
From: **WE Licensing** <WE.Licensing@occ.treas.gov>
Date: Fri, Jan 16, 2015 at 11:34 AM
Subject: RE: Support for the OneWest and CIT Merger
To: "[redacted]" <[redacted]>

Dear Commenter,

The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, Utah with and into OneWest Bank, National Association, Pasadena, CA.

At this time, the OCC has not made a decision as to whether it will hold public hearings Should the OCC decide to hold public hearings, we will notify you promptly.

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http://occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf

We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or

David.finnegan@occ.treas.gov.

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From: (b)(6) [mailto: (b)(6)]
Sent: Friday, January 16, 2015 11:42 AM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)
E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

Kind regards,
(b)(6)

Finnegan, David

From:	(b)(6)
Sent:	Friday, January 16, 2015 7 56 PM
To:	Finnegan, David
Subject:	OneWest/CIT
Follow Up Flag:	Follow up
Flag Status:	Flagged
Categories:	Red Category

I am NOT the writer of the communication below – name, address & zip are wrong:

Dear Commenter,

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Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From (b)(6) *[mailto:* (b)(6) *]*
Sent: Friday, January 16, 2015 12 13 PM
To: comments.applications@ny.frb.org; WE Licensing
Subject. Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

Kind regards,
(b)(6)

Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:02 AM
To: (b)(6)
Subject: RE: OneWest/CIT

Thank you for letting us know.

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6)
Sent: Friday, January 16, 2015 7:56 PM
To: Finnegan, David
Subject: OneWest/CIT

I am NOT the writer of the communication below – name, address & zip are wrong:

Dear Commenter,

The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, Utah with and into OneWest Bank, National Association, Pasadena, CA.

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We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or David.finnegan@occ.treas.gov.

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From: (b)(6)
Sent: Friday, January 16, 2015 12:13 PM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing

Kind regards,

(b)(6)

Finnegan, David

From:	(b)(6) @yahoo.com>
Sent:	Wednesday, February 18, 2015 9.46 AM
To:	WE Licensing
Subject:	Re: Support for the OneWest and CIT Merger

I did not write this letter!

Sent from (b)(6)

> On Feb 18, 2015, at 8:18 AM, WE Licensing <WE.Licensing@occ.treas.gov> wrote·
>
> Dear Commenter,
>
> The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, UT with and into OneWest Bank, National Association, Pasadena, CA.
>
> The OCC has decided it will hold a public meeting regarding the merger. Please refer to the following link for more information. http://www.occ.gov/news-issuances/news-releases/2015/nr-ia-2015-17.html
>
> For more information regarding the OCC's practice on receipt and review of public comments received in connection with pending applications, please see Comptroller's Licensing Manual (Public Notice and Comments) at http·//occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf
>
> Please be advised that comments are published without redaction of personally identifiable information including any business or personal information such as name and address, e-mail addresses, or telephone numbers A representative of OneWest Bank, National Association has been provided a copy of your comment.
>
> We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or David.finnegan@occ.treas.gov.
>
> -----Original Message-----
> From. (b)(6) @yahoo.com [mailto (b)(6) @yahoo.com]
> Sent: Saturday, February 14, 2015 4:36 AM
> To· comments.applications@ny.frb.org, WE Licensing
> Subject: Support for the OneWest and CIT Merger
>
> (b)(6)
>
> (b)(6)
> E-Mail. (b)(6) @yahoo.com
>
> Subject: Support for the OneWest and CIT Merger
>
> Dear Chair Yellen, President Dudley and Comptroller Curry,
>
> I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to

serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

>

> Kind regards,

> (b)(6)

>

>

>

>

Finnegan, David

From:	[redacted]@yahoo.com>
Sent:	Monday, February 23, 2015 11 24 PM
To:	WE Licensing
Subject:	Re Support for the OneWest and CIT Merger

To whom it may concern<
I never send this email. I am not aware of the merge of the companies
Someone got a hold on my email address Sorry
Thanks.
[redacted]

On Wednesday, February 18, 2015 8 18 AM, WE Licensing <WE Licensing@occ.treas.gov> wrote

Dear Commenter,

The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, UT with and into OneWest Bank, National Association, Pasadena, CA.

The OCC has decided it will hold a public meeting regarding the merger. Please refer to the following link for more information http://www.occ.gov/news-issuances/news-releases/2015/nr-ia-2015-17.html

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Please be advised that comments are published without redaction of personally identifiable information including any business or personal information such as name and address, e-mail addresses, or telephone numbers. A representative of OneWest Bank, National Association has been provided a copy of your comment

We appreciate your comments and will consider them during our review of the application If you have questions, please contact David Finnegan at (720) 475-7650 or David.finnegan@occ.treas.gov.

-----Original Message-----
From [redacted]@yahoo.com [mailto [redacted]@yahoo.com]
Sent Saturday, February 14, 2015 4 35 AM
To. comments.applications@ny.frb.org, WE Licensing
Subject Support for the OneWest and CIT Merger

[redacted]

[redacted]
E-Mail [redacted]@yahoo.com

Finnegan, David

From:	Finnegan, David
Sent:	Tuesday, January 20, 2015 8:04 AM
To:	(b)(6)
Subject:	RE: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)

Thank you for letting us know about this situation.

David

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6) @gmail.com [mailto (b)(6) @gmail.com] **On Behalf Of** (b)(6)
Sent: Friday, January 16, 2015 12:57 PM
To: Finnegan, David
Subject: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)

Mr. David Finnegan
OCC

This is to bring to your attention that **I received an email from the office of OCC regarding a subject I am completely unaware of**. I DID NOT send the email below that you responded to. This is a fraudulent use of my email account. I will be working with my email hosting provider to ensure that this does not happen again.

I will appreciate your reply acknowledging this very important notice. Thank you very much!

Sincerely,
(b)(6)

---------- Forwarded message ----------
From: **WE Licensing** <WE.Licensing@occ.treas.gov>
Date: Fri, Jan 16, 2015 at 11:34 AM
Subject: RE: Support for the OneWest and CIT Merger

To: '(b)(6)' (b)(6)

Dear Commenter,

The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, Utah with and into OneWest Bank, National Association, Pasadena, CA.

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David.finnegan@occ.treas.gov.

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From: (b)(6) [mailto (b)(6)]
Sent: Friday, January 16, 2015 11:42 AM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

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Kind regards,
(b)(6)

Finnegan, David

From:	Finnegan, David
Sent:	Tuesday, January 20, 2015 8 13 AM
To:	Salley, Stephen M (Salleys@sullcrom.com)
Subject:	FW: OneWest/CIT

FYI and review. We would appreciate any information you can provide regarding this submission.

Thank you,
David

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6) [mailto: (b)(6)]
Sent: Friday, January 16, 2015 7:56 PM
To: Finnegan, David
Subject: OneWest/CIT

I am NOT the writer of the communication below – name, address & zip are wrong:

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At this time, the OCC has not made a decision as to whether it will hold public hearings. Should the OCC decide to hold public hearings, we will notify you promptly

For more information regarding the OCC's practice on receipt and review of public comments received in connection with pending applications, please see Comptroller's Licensing Manual (Public Notice and Comments) at http://occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf

We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or David.finnegan@occ.treas.gov

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From: (b)(6) [*mailto:* (b)(6)]
Sent: Friday, January 16, 2015 12:13 PM
To: comments.applications@ny.frb.org, WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing

Kind regards,
(b)(6)

Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:13 AM
To: Salley, Stephen M (Salleys@sullcrom com)
Subject: FW Fraudulent use of my email account (RE Support for the OneWest and CIT Merge)

FYI and review. We would appreciate any information you can provide regarding this submission

Thank you,
David

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6) @gmail.com [mailto: (b)(6) @gmail.com] **On Behalf Of** (b)(6)
Sent: Friday, January 16, 2015 12:57 PM
To: Finnegan, David
Subject: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)

Mr. David Finnegan
OCC

This is to bring to your attention that **I received an email from the office of OCC regarding a subject I am completely unaware of**. I DID NOT send the email below that you responded to. This is a fraudulent use of my email account. I will be working with my email hosting provider to ensure that this does not happen again.

I will appreciate your reply acknowledging this very important notice. Thank you very much!

Sincerely,
(b)(6)

---------- Forwarded message ----------
From. **WE Licensing** <WE.Licensing@occ.treas.gov>
Date: Fri, Jan 16, 2015 at 11:34 AM

Subject: RE: Support for the OneWest and CIT Merger
To: '[redacted] (b)(6)' <[redacted] (b)(6)>

Dear Commenter,

The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, Utah with and into OneWest Bank, National Association, Pasadena, CA

At this time, the OCC has not made a decision as to whether it will hold public hearings. Should the OCC decide to hold public hearings, we will notify you promptly.

For more information regarding the OCC's practice on receipt and review of public comments received in connection with pending applications, please see Comptroller's Licensing Manual (Public Notice and Comments) at

http://occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf

We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or

David.finnegan@occ.treas.gov.

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----
From: [redacted] (b)(6) [mailto [redacted] (b)(6)]
Sent: Friday, January 16, 2015 11:42 AM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

[redacted] (b)(6)
E-Mail: [redacted] (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

Kind regards,
[redacted] (b)(6)

Office of the Comptroller of the Currency

Washington, DC 20219

January 9, 2019

Ms. Paulina Gonzalez-Brito
Executive Director
California Reinvestment Coalition
474 Valencia Street, Suite 230
San Francisco, CA 94103

Dear Ms. Gonzalez-Brito:

On behalf of the Office of the Comptroller of the Currency (OCC), I am writing to correct the untrue assertions and mischaracterizations in the California Reinvestment Coalition's (CRC) recent releases about the OCC's Community Reinvestment Act (CRA) Advance Notice of Proposed Rulemaking (ANPR).

In issuing its CRA ANPR, seeking stakeholder input, and reviewing the many public comments received, the OCC is encouraging constructive public dialogue on how best to align CRA implementation with the significant changes in the way consumers and businesses bank today.

The OCC's goal is to *strengthen* the CRA to facilitate *even greater* community and economic development lending by banks to low- and moderate-income areas, small businesses, and other communities in need of financial services.

CRC's assertion that the OCC seeks to weaken the CRA and to silence community voices is false and negatively prejudging. Quite to the contrary, the OCC's process is encouraging community discourse by engaging stakeholders and transparently soliciting public comment on how best to strengthen CRA regulations. The public comment process provides the opportunity to hear from a broad cross section of community, consumer, and civil rights organizations.

Comptroller Joseph M. Otting, myself, and other senior OCC executives have during the past year—and well before formulating and issuing the CRA ANPR on August 28, 2018—met personally with and sought input from many community groups. We met with the leaders and members of national and regional community development and consumer protection organizations as well as national civil rights organizations. For example, the Comptroller met with the National Community Reinvestment Coalition's (NCRC) leadership to discuss CRA modernization, and as a follow up to that meeting, Senior Deputy Comptroller for Compliance and Community Affairs Grovetta Gardineer and I met with the NCRC's Banker/Community Collaborative Council.

The OCC's broad stakeholder engagement has resulted in receiving valuable feedback on the 31 questions posed in our CRA ANPR. In response, the OCC is pleased to have received more than 1,500 comment letters, including several hundred from community organizations. This response shows that the OCC has, in fact, ***successfully encouraged community voices***, not silenced them, and I am offended that the CRC would suggest otherwise.

The next step will also include the opportunity for broad stakeholder inclusion and public comment, consistent with long-standing practice of the interagency rulemaking process.

In summary, the OCC's has successfully solicited and received public comments from a broad range of stakeholders on how best to strengthen CRA and will continue to seek to be inclusive in our rulemaking process. Our efforts illustrate the OCC's continuing commitment to ensuring this goal and the original intent of the CRA amid the rapid and continuing evolution of the financial services landscape across the United States.

Strengthening the CRA is an important public goal. I ask that you refrain from mischaracterizing the OCC's CRA ANPR in any future CRC releases and other public communications.

Sincerely,

Barry Wides

Barry Wides
Deputy Comptroller for Community Affairs

Office of the Comptroller of the Currency
Washington, DC 20219

October 2, 2019

Ms. Paulina Gonzalez-Brito
Executive Director
California Reinvestment Coalition
474 Valencia Street, Suite 230
San Francisco, CA 94103

Subject: Correction to your September 16, 2019, email regarding modernizing Community Reinvestment Act (CRA) regulations

Dear Ms. Gonzalez-Brito:

I am writing to ask that California Reinvestment Coalition (CRC) correct the assertion in its September 16, 2019, email communication that the OCC is seeking to "mak[e] life easier for banks to get credit for CRA activity while doing less to boost our communities." The statement is misleading and unsupported by any facts that we are aware of. If you have information that supports your position, please forward that information to the agency for review.

The OCC, and the Comptroller specifically, has repeatedly stated in various statements, appearances, and media that the goal of CRA modernization is to strengthen CRA rules to facilitate more community and economic development activity by banks to meet the needs of their communities, including low- and moderate-income areas. The CRA Advance Notice of Proposed Rulemaking, published in August of 2018, also stated that clear intent and sought input from all stakeholders on how best to improve CRA regulations. The OCC remains committed to preserving and strengthening the CRA regulatory framework to ensure it works better for all stakeholders.

The OCC also remains committed to gathering constructive feedback from all interested stakeholders about CRA modernization. OCC senior executives were pleased to have had the opportunity to meet with you and 17 other representatives of CRC and its member organizations to discuss CRA modernization on March 13, 2019 and April 12, 2018. We look forward to your feedback, and comments from all stakeholders, on the Notice of Proposed Rulemaking that the Comptroller hopes to issue on an interagency basis this fall.

Sincerely,

Barry Wides

Barry Wides
Deputy Comptroller for Community Affairs

cc: Jonathan Gould

AMERICAN BANKER

BankThink Setting the record straight on CRA reform

By Barry Wides
Published March 25 2019, 9:00am EDT

Applying an outdated regulatory framework for the Community Reinvestment Act — written for the way customers banked in the 1970s, '80s and '90s — creates unnecessary restrictions and burdens on what banks can do to benefit communities in need of help.

Communities, banks and the customers they serve deserve better. Clarity is needed about which bank activities, in which communities, should receive CRA consideration from regulators.

To this end, the OCC issued an advance notice of proposed rulemaking in August. The ANPR did not make any regulatory proposals. Instead, it presented 31 questions on a variety of issues and options that could reform the CRA framework, including one that asked stakeholders to tell us what issues we may have missed. The OCC solicited input from all stakeholders — on all sides of the debate — regarding any and all ideas and opinions about how regulators might strengthen and enhance the CRA framework.

Most important, the purpose of the OCC's ANPR was to spark a robust and important public discussion about how, with all stakeholders working together, we could encourage more CRA activities in communities that need them most. As Comptroller of the Currency Joseph M. Otting said in issuing the ANPR, "It is time for a national discussion on how we can make the CRA work better." This important discussion is long overdue. The OCC took a necessary step and challenged the status quo simply by soliciting any and all opinions from stakeholders for and against reforming the CRA framework.

"It is time for a national discussion on how we can make the CRA work better," said Comptroller of the Currency Joseph Otting, right. Other regulators, including Fed Vice Chairman for Supervision Randal Quarles, have indicated that we need to modernize and strengthen the CRA regulatory framework. Bloomberg News

I am generally pleased with the discussion underway and the progress so far. The OCC received approximately 1,500 comment letters with varied opinions and insights that otherwise would not have been available to regulators. In the comments about the ANPR, there was broad agreement that evaluating assessment areas only where banks have their main offices, branches and deposit-taking ATMs is difficult to reconcile with banking in the 21st century.

Many commenters also cited the need for regulators to address the conundrum in many rural distressed areas (including Native American territories), which do not get enough CRA investment today because too few banks operate there. The distressed communities that CRA activities currently fail to reach, so-called CRA deserts, could and would benefit from bank regulators identifying and implementing ways to make our CRA regulations less cumbersome and complex.

Most commenters also agreed that regulators need to provide a transparent way of knowing what counts for CRA consideration and what does not. Bankers and their community development partners should know in advance whether investments or services worth millions of dollars would qualify for CRA consideration.

Unfortunately, certain stakeholders have not contributed positively to the public discussion. Instead, some opted to distort facts by inaccurately portraying the purpose and content of the ANPR. They incorrectly claimed that the ANPR made regulatory proposals, when it did not. They asserted the ANPR would lead to the loss of billions of dollars in bank CRA activities, when this is not true. Quite to the contrary of such false claims, the ANPR sought suggestions for how the CRA framework might be reformed to *increase* lending, investment and banking services in low- and moderate-income communities and to make CRA evaluation more objective and transparent.

Fortunately, while these misleading claims hindered the constructive public dialogue about CRA reforms, it has not derailed this important discussion. Good progress has been made. Since November, the OCC has reviewed and analyzed the varying views expressed in the comment letters from community groups, academics, bankers, industry groups, regulators and the public. There is clear agreement on this: the CRA has proven over four decades to be a powerful tool for community revitalization and has encouraged trillions of dollars in lending, investment and other banking activities in low- and moderate-income communities across our nation. Commenters also generally agreed that the time has come for all stakeholders to work together to update and strengthen the CRA regulatory framework.

The time is ripe to enhance the regulations implementing the CRA. When enacted in 1977, it was a simply worded law intended to stop “redlining” by requiring banks to meet the credit needs of communities where they are chartered to do business and receive deposits. From the start, the CRA had an important objective of expanding access to financial services in areas that were not being well served. Bank performance in achieving these goals was made public for all to see and to create incentives for optimal performance.

Today, the CRA's goals remain critically important. However, in the 42 years since its enactment, the regulations and policies that implement the law have not kept pace with changes in how consumers and businesses bank and how banks deliver their services. These regulations require examiners to evaluate banks according to their assessment areas, as defined by where banks have their headquarters, branches and deposit-taking ATMs. While this approach requires regulators to evaluate the delivery of financial services through bank branches, the regulations do not allow us to assess bank activities outside of those areas, including,for example, online and other non-branch-based services provided by today's banks. Continuing to use such outdated CRA rules has resulted in the inconsistent application of policies and outcomes that vary from bank to bank and region to region.

The task now before us is to develop a proposed rule that will clarify what counts for CRA, where it counts, how much it counts and how to count it. That rule must address the weaknesses in the CRA framework and provide greater certainty for everyone — regulators, banks, community development practitioners and community groups — to ensure the CRA continues to benefit and transform distressed communities today and for future generations.

The OCC is eager to work with the other federal banking regulators to jointly develop and issue a proposed rule this summer. While the Federal Reserve and the Federal Deposit Insurance Corp. did not join the OCC in August in issuing the ANPR, the document reflected their input and the valuable insights provided by their staffs. In addition, FDIC Chairman Jelena McWilliams, Federal Reserve Board Chairman Jerome Powell, Fed Vice Chairman for Supervision Randal Quarles and Fed Gov. Lael Brainard have all indicated that we need to modernize and strengthen the CRA regulatory framework and expressed their interest in working together to achieve this important goal.

When a reform proposal is ready, it will be released for public review as a notice of proposed rulemaking — and once again — stakeholders on all sides will be invited to comment before any reforms are finalized. It will continue to be a transparent process, and one that takes the time to consider constructive and honest public comment and discussion.

During my 35-year career, I have seen firsthand the good CRA can do by encouraging banks to transform foreclosed condominiums into badly needed affordable rentals, finance purchases for low- and moderate-income, first-time homebuyers, and promote public welfare investments to bring community development, economic vitality and jobs to distressed communities. I know much more can be done by making our CRA implementation framework more objective, transparent, consistent and easy to understand. By modernizing CRA regulations, we will *strengthen* and *enhance* the CRA and ensure that it fulfills its original, statutory purpose of encouraging banks to serve their communities.

Barry Wides

Barry Wides is the deputy comptroller for community affairs at the Office of the Comptroller of the Currency.

AMERICAN BANKER

BankThink Why is OCC scared of public input?

By Paulina Gonzalez-Brito

Published April 08 2019, 10:27am EDT

A recent op-ed in American Banker includes a remarkable complaint, alleging that "certain stakeholders have not contributed positively to the public discussion." The author, Deputy Comptroller Barry Wides, doesn't name names, but I believe that this public scolding is directed at my organization, the California Reinvestment Coalition.

CRC has raised serious questions about the advance notice of proposed rulemaking issued by the Office of the Comptroller of the Currency last August. We continue to discuss our concerns with our members, allied organizations and elected officials who believe that financial regulation should seek to combat inequality and protect civil rights. And we believe that this op-ed reflects a political agenda driven by administration appointees. More troubling than mere sensitivity to criticism, this agenda scorns input from groups that hold banks accountable to their communities.

We believe it's part of an ongoing campaign that reflects the worst tendencies of the rest of the Trump administration: silencing the public in order to break norms with impunity.

Why raise our hands to be named as the targets of anonymous criticism? Because the OCC has directly reprimanded CRC for speaking out. In a bizarre move, the OCC sent an official letter to our organization less than three months ago that defends the ANPR's outreach and calls our public input "false and negatively prejudging." (This was not prejudging — we read the whole thing and then judged.) It asks "that you refrain from mischaracterizing the OCC's CRA ANPR" in public communications.

It's one thing for kindergarten teachers to ask for nice comments only. It's quite another for a public agency in a democratic government. Using official communications to criticize solicited public input is a chilling move.

This fear of the public is not unique to the ANPR process. Reports suggest that the OCC has unilaterally decided to smooth the way for mergers by no longer considering critical public comments during the merger process itself, instead relegating them to a separate CRA examination track. A similar plan to wall off the public has been reported for mergers that involve other regulatory agencies; yet another would make FOIA responses harder to get.

Why, then, would the OCC want to chill this particular input? If we're wrong about their intentions, what would they have to hide? If the ANPR doesn't foreshadow a threat to the important role the CRA plays in protecting working-class communities of color and mom-and-pop businesses who have been unfairly denied access to financial products, then the agency has nothing to worry about.

Sadly, there's more evidence that we're right. And it comes straight from the top.

Comptroller Joseph Otting's career in the private sector was the perfect audition to be appointed to eviscerate the CRA. When Otting was CEO of OneWest Bank, a CRC analysis found it to be one of the poorest CRA-performing banks in California, making inadequate reinvestments in low- and moderate-income communities and people, failing to meet local credit needs for affordable homeownership and rental housing, failing to make loans to small businesses and catering to wealthy clients.

Given that track record, we worry that the "outdated regulatory framework" described in these pages refers to policies that direct investment to working people, or that might inhibit companies like OneWest from foreclosing on tens of thousands of Californians, including seniors, widows and their families.

We also worry that the comptroller's public comments reveal this agenda. As The Wall Street Journal reported, he has publicized plans to "make it harder for community groups to 'pole vault in and hold [bankers] hostage,' " which is to say, prevent communities that have been the victims of redlining from holding banks accountable.

More recently, a CRC FOIA request confirmed that the OneWest-CIT merger was supported by fabricated letters generated from a template provided by OneWest and issued at the direction of Mr. Otting to his friends and family. Rather than investigate this violation of the law, the OCC has approached public comment in a similar spirit, encouraging compliments and lashing out at critics.

Many of these concerns were raised by Rep. Katie Porter, D-Calif., in an April 1 letter to the comptroller inquiring whether the CRA risks conflicts of interest and regulatory capture in its approach to CRA. We hope the agency will respond to a member of Congress more openly than it has received our own comments.

Avoiding sunshine and accountability may be the only way the OCC can defend a process that, in a radical break with the norms of rulemaking, has cast aside the traditional balanced process that includes the Federal Reserve and the FDIC and proceeded unilaterally.

What could be more in line with the way this administration has treated ordinary Americans? The picture is clear: They don't want to hear criticism from the public, and they don't want them to see what they're doing.

It's almost like they're building a wall.

Paulina Gonzalez-Brito
Paulina Gonzalez-Brito is executive director of the California Reinvestment Coalition.

DEMOCRACY FORWARD FOUNDATION crc

December 11, 2019

VIA Electronic Delivery

Chief FOIA Officer
Communications Division
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Office of the Comptroller of the Currency (OCC) and the Department of the Treasury regulations at 12 C.F.R. Part 4 and 31 C.F.R. Part 1, respectively, Democracy Forward Foundation and California Reinvestment Coalition make the following request for records.

Records Requested

In an effort to understand and explain to the public how OCC is responding to community groups' concerns with its effort to revise the Community Reinvestment Act regulations,[1] Democracy Forward Foundation and California Reinvestment Coalition request that the OCC produce the following within twenty (20) business days:

1. All emails related to the revision of the Community Reinvestment Act regulations whose sender and/or recipient fields include one or more email addresses with a top-level domain ".com," ".org," or ".edu." This does not include comments filed in the public rulemaking docket number OCC-2018-0008, "Reforming the Community Reinvestment Act Regulatory Framework."[2]
2. All records containing or reflecting communications, conversations, complaints, interpretations, decisions or actions taken relating to whether public comments related to the Advanced Notice of Proposed Rulemaking (ANPR) "Reforming the Community Reinvestment Act Regulatory Framework" were fabricated, manufactured, or otherwise not authored by the putative signatory.
3. All records containing or reflecting communications to or from Comptroller Joseph Otting or Deputy Comptroller for Community Affairs Barry Wides concerning or relating

[1] Advanced Notice of Proposed Rulemaking, Reforming Community Reinvestment Act Regulatory Framework, OCC (Sept. 5, 2018), https://www.regulations.gov/document?D=OCC-2018-0008-0001.

[2] Docket Folder, Reforming Community Reinvestment Act Regulatory Framework, OCC (last accessed Dec. 2, 2019), https://www.regulations.gov/docket?D=OCC-2018-0008.

to California Reinvestment Coalition (CRC) or the American Banker articles "BankThink Why is OCC scared of public input?"[3] or "Setting the record straight on CRA reform."[4]

4. All records containing or reflecting communications from Deputy Comptroller for Community Affairs Barry Wides to persons or entities outside the government seeking corrections of or responding to statements, whether inside or outside the ANPR/rulemaking process, by such persons or entities about the OCC effort to revise the Community Reinvestment Act regulations.

The timeline for this search is September 5, 2018 to the date the search is completed.

Scope of Search

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

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[3] Paulina Gonzalez-Brito, BankThink: Why is OCC scared of public input?, Am. Banker (April 08, 2019), https://www.americanbanker.com/opinion/why-is-occ-scared-of-public-input.

[4] Barry Wides, BankThink: Setting the record straight on CRA reform, Am. Banker (March 25, 2019), https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 12 C.F.R. § 4.17, and 31 C.F.R. § 1.7, Democracy Forward Foundation (DFF) and California Reinvestment Coalition (CRC) request a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A); *see also* 12 C.F.R. § 4.17(4), 31 C.F.R. § 1.7(k)(1).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

The OCC has begun the process of taking public comment on revised regulations under the Community Reinvestment Act (CRA). The CRA is a crucial fair lending law designed to combat redlining and encourage financial institutions to meet the credit needs of their communities. In September 2018, the OCC published an Advanced Notice of Proposed Rulemaking to take comment on a new CRA regulatory framework.[5] The ANPRM received over 1,500 public comments in response. The OCC's behavior toward commenters, particularly from community groups, has raised significant flags. In January and March 2019 respectively, the OCC Deputy Comptroller for Community Affairs Barry Wides sent a letter to CRC expressing offense at its advocacy around the CRA and published an article that took the unusual step of criticizing commenters that in his view "have not contributed positively to the public discussion" and "opted to distort facts by inaccurately portraying the purpose and content of the ANPR."[6] And the following October, Wides again sent a letter to the California Reinvestment Coalition asking CRC to alter its stance on the ANPRM.[7] This request seeks more information about OCC's views of community groups like California Reinvestment Coalition, how it decided to take these unusual steps, and whether there are other irregularities in the ANPRM comment process.[8] The

[5] Advanced Notice of Proposed Rulemaking, Reforming Community Reinvestment Act Regulatory Framework, OCC (Sept. 5, 2018), https://www.regulations.gov/document?D=OCC-2018-0008-0001.

[6] Letter from Barry Wides, Deputy Comptroller, OCC, to Paulina Gonzalex-Brito, Executive Director, CRC (January 9, 2019), http://calreinvest.org/wp-content/uploads/2019/03/Wides-Letter-to-CRC.pdf; Barry Wides, BankThink: Setting the record straight on CRA reform, Am. Banker (March 25, 2019), https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform.

[7] @CalReinvest, Twitter (Oct. 2, 2019), https://twitter.com/CalReinvest/status/1179491967308185600?s=20.

[8] *Cf.* David Dayen, *The Fake Public Comments Supporting a Bank Merger are Coming from Inside the House*, The Intercept (Sept. 29, 2018), https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/ (documenting "fake" public comments in a previous OCC notice-and-comment process).

requested records will therefore have a connection that is "direct and clear" to operations or activities of the Federal Government, and because these records will shed new light on this important topic, they also will be "meaningfully informative" about government operations or activities. 31 C.F.R. § 1.7(k)(2).

Democracy Forward Foundation and California Reinvestment Coalition are able to, and regularly do, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a "demonstrated . . . ability to disseminate the requested information," *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to "a reasonably broad audience of persons interested in the subject" of its work. *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require "pointless specificity"; all that is necessary is for a requester to adequately demonstrate its "ability to publicize disclosed information." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, *see id.*, or whether the requester has a history of "contacts with any major news[] companies" that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public's understanding of the operations of government.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF's communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.[9]

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[9] *See, e.g.*, Alexander Nazaryan, *Why did right-wing troll Charles C. Johnson meet with Commerce Secretary Wilbur Ross?*, Yahoo News (May 14, 2019), https://news.yahoo.com/why-did-rightwing-troll-charles-c-johnson-want-to-meet-with-commerce-secretary-wilbur-ross-090000636.html; Derek Kravitz and Jack Gillum, *"Happy to Do It": Emails Show Current FAA Chief Coordinated With Ex-Lobbyist Colleagues on Policy*, ProPublica (Mar. 27, 2019), https://www.propublica.org/article/dan-elwell-current-faa-chief-coordinated-with-ex-lobbyist-colleagues-on-policy; Hamid Aleaziz, *Emails Show US Border Officials Didn't Receive "Zero Tolerance" Guidance Until After the Policy Was Enacted*, Buzzfeed News (Feb. 28, 2019), https://www.buzzfeednews.com/article/hamedaleaziz/zero-tolerance-policy-guidance-dhs-family-separation; Jonathan Cohn and Jeffrey Young, *Emails Show Trump Administration Was Told Obamacare Ad Cuts Could Hurt Enrollment*, Huffpost (Dec. 17, 2018), https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut_us_5c115061e4b084b082ff8dba; Madison Pauly, *When the Biggest Prison Company Complained About a California Sanctuary Law, ICE Listened*, Mother Jones (Dec. 7, 2018), https://www.motherjones.com/politics/2018/12/geo-memo-private-prison-california-immigration/; Eliza Rellman,

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list, discussing ongoing legal developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.[10] In

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'Just answer the question and kill this story': In internal emails, Heather Nauert criticized Rex Tillerson's refusal to deny reports that he called Trump a 'moron,' Business Insider (Nov. 2, 2018), https://www.businessinsider.com/heather-nauert-rex-tillerson-trump-moron-2018-11; Rebecca Klein, *Lawsuit Accuses Betsy DeVos And Her Deputies Of Being Motivated By Sexism*, HuffPost (Oct. 31, 2018), https://m.huffpost.com/us/entry/us_5bd9ff6ee4b01abc6a1ad4a9; Nick Penzenstadler, *A year after Vegas shooting, ATF emails reveal blame, alarm over bump stocks*, USA Today (Oct. 1, 2018), https://www.usatoday.com/story/news/2018/10/01/year-after-vegas-shooting-atf-emails-reveal-blame-alarm-over-bump-stocks/1432137002/; Jessica Kwong, *Ivanka Trump was more than complicit in Obama equal pay rollback-she had a hand in it, watchdog alleges*, Newsweek (Aug. 29, 2018), https://www.newsweek.com/ivanka-trump-equal-pay-complicit-obama-1093833; Vera Bergengruen, *New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump*, Buzzfeed News (July 25, 2018), https://www.buzzfeednews.com/article/verabergengruen/these-emails-show-what-happens-when-the-white-house-keeps; Erin Dooley, *Exclusive: Former for-profit college executive shaped Education Department policy that could benefit former employers: Documents*, ABC News (May 15, 2017), https://abcnews.go.com/US/exclusive-profit-college-executive-shaped-education-department-policy/story?id=55108981; Heidi Przybyla, *Notes, emails reveal Trump appointees' war to end HHS teen pregnancy program*, NBC News (Mar. 20, 2018), https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686; Dominic Holden, *Documents Show The Trump Administration Approved Bump Stocks Before It Opposed Them*, Buzzfeed News (Mar. 22, 2018), https://www.buzzfeednews.com/article/dominicholden/trump-administration-bump-stocks; Bernard Condon, *Trump Advisor Denies He Cheered End of Tunnel Funding Deal*, Associated Press (Feb. 13, 2018), *available at* https://www.usnews.com/news/business/articles/2018-02-13/trump-adviser-denies-he-cheered-end-of-tunnel-funding-deal; Celeste Katz, *Interior Department tapped wildfire preparedness funds for Ryan Zinke helicopter tour*, Newsweek (Dec. 29, 2017), https://www.newsweek.com/ryan-zinke-interior-department-helicopters-wildfires-757857.

[10] *See, e.g.*, *BREAKING: At Congressional Hearing, Sec. DeVos Confronted With Records Revealing Trump Administration's Unlawful Decision to Permit Federal Funds to Arm Teachers* (Apr. 10, 2019), https://democracyforward.org/press/breaking-at-congressional-hearing-sec-devos-confronted-with-records-revealing-trump-administrations-unlawful-decision-to-permit-federal-funds-to-arm-teachers/; *BREAKING: New Evidence Reinforces Claim Trump's Title IX Policy Was Based on Sexist Stereotypes, Rendering it Unconstitutional* (Nov. 1, 2018), https://democracyforward.org/press/breaking-new-evidence-reinforces-claim-trumps-title-ix-policy-was-based-on-sexist-stereotypes-rendering-it-unconstitutional/; *On 1-Year Anniversary of Equal Pay Roll Back, New Documents Reveal Ivanka Trump's Role in Trump Administration Decision to Roll Back Protections for Women and Working Families* (Aug. 29, 2018), https://democracyforward.org/press/on-1-year-anniversary-of-equal-pay-roll-back-new-documents-reveal-ivanka-trumps-role-in-trump-administration-decision-to-roll-back-protections-for-women-and-working-families/; *Democracy Forward Demands Ethics Investigation into White House Official's Role in Developing Special Drug Pricing Project With Novartis* (July 11, 2018), https://democracyforward.org/press/democracy-forward-demands-ethics-investigation-into-white-house-officials-role-in-developing-special-drug-pricing-project-with-novartis/; *BREAKING: New Records Reveal DeVos Senior Advisor And Former For-Profit College Executive Directed Rollback of Protections Against Predatory Student Loans* (May 15, 2018), https://democracyforward.org/press/breaking-new-records-reveal-devos-senior-advisor-former-profit-college-executive-directed-rollback-protections-predatory-student-loans/; *BREAKING: New Records Suggest Trump-Appointed Political Officials Drove HHS Decision To End Program Grants That Have Helped Reduce Teen Pregnancy Rates To All-Time Low* (Mar. 20, 2018), https://democracyforward.org/press/breaking-new-records-suggest-trump-appointed-political-officials-drove-hhs-decision-end-program-grants-helped-reduce-teen-pregnancy-rates-time-low/.

addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.[11]

DFF's website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF's website logged over 187,000 pageviews in 2018 alone.

DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.[12]

Similarly, CRC frequently submits FOIA requests to enhance the public's understanding of the actions of financial regulatory agencies.[13] It publicizes the government's responses to its requests in its newsletter and on its website. CRC also use this information to further enhance public discourse through comments and communications to various administrative agencies, and through its media work to educate the public, regulatory agencies and policymakers about the plight of vulnerable residents and communities and the need for regulators and legislators to more closely scrutinize financial institution practices.[14]

Democracy Forward Foundation and California Reinvestment Coalition are purely noncommercial requesters.

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[11] *See, e.g.*, the following tweets and tweet threads from @DemocracyFwd: https://twitter.com/DemocracyFwd/status/910123899035226112 (Sep. 19, 2017); https://twitter.com/DemocracyFwd/status/976991060680462336 (Mar. 22, 2018); https://twitter.com/DemocracyFwd/status/996480908877271042 (May 15, 2018); https://twitter.com/DemocracyFwd/status/998986714105483264 (May 22, 2018); https://twitter.com/DemocracyFwd/status/1022870550769754112 (July 27, 2018); https://twitter.com/DemocracyFwd/status/1035144352345903105 (Aug. 30, 2018); https://twitter.com/DemocracyFwd/status/1053294640382779392 (Oct. 19, 2018); https://twitter.com/DemocracyFwd/status/1071105652867690496 (Dec. 7, 2018).

[12] *See, e.g.*, Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n. 4; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n. 4.

[13] *See, e.g., Federal Reverse Mortgage Program Results In Widows Losing Their Homes After Death Of Spouse* (March 12, 2018), http://calreinvest.org/press-release/federal-reverse-mortgage-program-results-in-widows-losing-their-homes-after-death-of-spouse-2/; *Fact Sheet: CIT Group's Financial Freedom is Responsible for nearly 40% of HECM Reverse Mortgage Foreclosures*, http://calreinvest.org/wp-content/uploads/2018/08/CRC20Fact20Sheet20about20Financial20Freedom20Foreclosures20Since20April202009.pdf; *Fact Sheet: OneWest Bank Expected to Receive Over $2.4 billion from the FDIC*, http://calreinvest.org/wp-content/uploads/2018/08/CRC-FDIC-Loss-Share-Fact-Sheet.pdf.

[14] *See, e.g.*, David Dayen, *The Fake Public Comments Supporting a Bank Merger are Coming from Inside the House*, The Intercept (Sept. 29, 2018), https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/; David Wharton, *HUD Addresses Concerns About Reverse Mortgage Foreclosures*, DS News (March 14, 2018), https://dsnews.com/daily-dose/03-14-2018/hud-addresses-concerns-reverse-mortgage-foreclosures; Matthew Goldstein and Alexandra Stevenson, *Trump's Treasury Pick Moves in Secretive Hedge Fund Circles*, NYT (Dec. 19, 2016), https://www.nytimes.com/2016/12/19/business/dealbook/steven-mnuchin-trump-treasury-hedge-funds.html.

Neither Democracy Forward Foundation nor California Reinvestment Coalition are filing this request to further a commercial interest, and any information disclosed by DFF or CRC as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.[15]

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[15] *See, e.g., A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326 (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), https://democracyforward.org/updates/airlines-and-the-trump-administration/; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/ (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), https://democracyforward.org/updates/trump-done-guns-lot/; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019), https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-20190213-story.html (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017),

California Reinvestment Coalition is an "other requester."

CRC is a nonprofit institution advocating for fair and equal access to banking and other financial services for low-income and communities of color. CRC is a 501(c)(3) non-profit corporation and accordingly falls under the "all other requesters" category. 12 C.F.R. § 4.17(b)(2)(iii).

For all the foregoing reasons, Democracy Forward Foundation and California Reinvestment Coalition qualify for a fee waiver.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Democracy Forward as soon as possible at foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

Nitin Shah

Democracy Forward Foundation

Kevin Stein

California Reinvestment Coalition

https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap (piece authored by two members of DFF's staff).

The Community Reinvestment Act and Economic Development in Jamaica, New York

Written Testimony of

Hope Knight
President and CEO
Greater Jamaica Development Corporation

Before the United States House of Representatives Financial Service Committee,
Subcommittee on Consumer Protection and Financial Institutions

January 14, 2020

Good afternoon. Chairman Meeks, Ranking Member Luetkemeyer and Members of the Subcommittee thank you for the opportunity to testify today. My name is Hope Knight and I am the President and CEO of the Greater Jamaica Development Corporation (GJDC). GJDC is a non-profit that works to plan, promote, coordinate, and advance responsible development to revitalize Jamaica, New York and Southeast Queens.

This hearing is on the Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation's (FDIC) Notice of Proposed Rulemaking (NPRM) on proposed changes to the Community Reinvestment Act (CRA).

As the leader of an economic development organization in a formerly redlined community, the CRA is foundational to my work. I have studied the NPRM in detail, and had the honor of helping to lead a tour of Jamaica for Comptroller Otting and the OCC.

I am here today to discuss the significant concerns I have about ideas presented in the NPRM that I believe would significantly weaken the CRA and lead to less investment, fewer loans and banks, and less meaningful investment in the neighborhood I serve. I am also very concerned that the OCC and FDIC are moving forward without the cooperation of the Federal Reserve Board, which will create regulatory uncertainty. Moreover, the short, 60-day, comment period is insufficient to collect adequate public feedback on this important but complex regulatory change. We request that the comment period be extended to total at least 120 days.

The CRA had helped Jamaica, Queens Recover from Disinvestment

Jamaica, Queens shares a similar history with many other urban communities of color across the United States. Redlined in the 1930s, Jamaica struggled to attract private investment for over half a century. In the 1960s and 1970s, Jamaica's economic base further eroded as white flight to the suburbs drained the downtown core of residents and businesses. The culminating disinvestment left Jamaica in a vicious economic cycle: a structural impediment to attracting private capital prevented Jamaica's residents from getting loans to buy homes and start businesses, which limited opportunities to build wealth and grow jobs and, as a result, created an additional economic barrier to attracting private capital.

Targeted federal programs, like the CRA, have helped to start a reversal of this cycle in Jamaica. Recently, and owing in part to their interest in securing CRA credit, banks financed transformative development in Jamaica, including projects that will bring more affordable housing and good jobs to residents of Southeast Queens. As a Community Development Financial Institution, GJDC has been able to lend to small businesses with help from banks' contributions, often given to meet CRA obligations. This work on responsible development and small business assistance has helped grow Jamaica's economy and attract the kind of private capital it once lacked.

However, despite this progress, Jamaica still bears the legacy of redlining, suburban flight, and disinvestment. Many areas of Jamaica remain banking deserts. On our tour with

Comptroller Otting, we passed miles long stretches in densely populated corridors with no bank branches. With few bank branches, Jamaica's residents rely on expensive bank alternatives like check cashers and high-fee ATMs at corner stores. Potentially catalytic projects—like efforts to build hotels and other businesses to support the nearby JFK International Airport—struggle to secure financing. Low-income residents have difficulty accessing loans. Jamaica also remains vulnerable to economic crises. For instance, community members were hit hard by the Great Recession. If changes are made to the CRA that dilute its impact, Jamaica will struggle against such economic headwinds and the recent progress growing Jamaica's economy will be put at risk.

The Proposed CRA Reform Will Hurt Jamaica, Queens and Other Similarly Situated Communities

With regard to the NPRM, I am particularly concerned by several proposals, including those that will broaden assessment areas, redefine what activities count for CRA credit, increase the maximum size of the small business loans, and decrease the focus on bank branches. Additionally, I believe that the uncertainty and lack of clarity caused by two competing sets of CRA regulations will decrease lending activity and put a burden on the kind of financial institutions best suited to serve communities like Jamaica: small Minority Depository Institutions (MDIs).

Assessment areas: From my work in economic development, it has become clear that, to be effective in spurring equitable economic development, regulations must have clear and well-defined geographic targets. Instead of focusing on a clear geography, the proposed regulation greatly expands where banks can get CRA credit, allowing for investment in areas outside of local assessment areas. Without clear geographic direction, it is less likely that financial assistance will flow to communities that need it the most.

Activities that garner CRA credit: Formerly redlined communities need more private investment. That investment must also be targeted at effective projects. The proposed reform will reduce the need to specifically target investment toward community-supporting projects. As one example, under the rules in the NPRM any investment in an Opportunity Zone would be an eligible activity without any consideration of the economic development benefits or community needs.

Size of small business loans: The proposed regulation raises the maximum size of a small business loan from $1 million to $2 million. For purpose of obtaining CRA credit, large deals are likely more attractive to banks. However, in Jamaica, Queens many small businesses that need financing would not be able to accommodate a loan of $2 million. Increasing the size of small business loans may freeze out small businesses from financing they need to grow.

Bank branches: Retail banking is of paramount importance to neighborhoods like Jamaica. However, and as Comptroller Otting mentioned after his tour of Jamaica, there are areas in Jamaica served by few or no bank branches. Without branches, many Jamaica residents depend on high cost of physical alternatives like corner sore ATMs and check cashing services. Although there has been a proliferation of e-banking and other online fintech services, the nation's persistent "digital divide" creates a barrier to accessing such e-services for those in low-income census tracks. Additionally, low- and moderate-income (LMI) individuals benefit from the kind of person-to-person financial services offered at banks. As such, I am very concerned by the proposed regulatory changes that eliminate the current large bank service test and examination of basic banking accounts for LMI customers.

Regulatory clarity: By moving ahead on proposed regulatory changes without the Federal Reserve Board, the OCC and the FDIC would create a two-tier regulatory system that adds complexity and confusion to an already complicated sector. While larger money center banks may be able to navigate this added burden of complexity without too much difficulty, smaller financial institutions may be hit hard. Small MDIs—which, in my experience, are particularly well suited to helping LMI people and districts—tend to put a premium on local customer service while having less internal infrastructure to handle regulatory confusion and uncertainty.

Comment period: The CRA is complex. Changes to the regulation will have far-reaching impacts. The short, 60-day, comment period does not allow enough time reflection and thoughtful comment on the proposed changes. We request that the comment period be extended to total at least 120 days.

Conclusion

The banking industry has changed since the 1970s and it is reasonable that regulations will also need to change to meet new realities. In my experience, I have been fortunate to work with many banks on CRA eligible projects and have often found our partners to be good-faith actors. We would be happy to support changes to CRA regulations that allow for banks to have more creativity in working with communities to meet changing needs—such as giving CRA credit for capitalizing MDIs or offering pre-development financing to non-profits. However, the changes to CRA regulations currently proposed by the OCC and FDIC will hurt economic progress in LMIs areas and undermine the anti-redlining intent of the CRA. As such, I opposed the changes described in the NPRM and ask the OCC and FDIC to reconsider their proposed regulatory overhaul.

Testimony of Gerron S. Levi

Director, Policy and Government Affairs
National Community Reinvestment Coalition

Before the United States House of Representatives
Committee on Financial Services
Subcommittee on Consumer Protection and Financial Institutions

The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal.

January 14, 2020

Good afternoon Chairman Meeks, Ranking Member Luetkemeyer and the Members of the House Subcommittee on Consumer Protection and Financial Institutions. Thank you for the opportunity to testify and for convening this important hearing on the Community Reinvestment Act (CRA) to discuss the winners and the losers in the proposed rulemaking formally published last week by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) changing the regulatory framework for the law. I am the Director of Policy and Government Affairs of the National Community Reinvestment Coalition (NCRC). NCRC and its more than 600 grassroots member organizations create opportunities for people to build wealth. NCRC members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, as well as local and social service providers from across the nation. We work with community leaders, policymakers and financial institutions to champion fairness and fight discrimination in banking, housing and business.

Comptroller Joseph Otting has really led this CRA regulatory reform process from the very beginning and the agency has lived up to its promise to put forth a "transformational approach" to the CRA regulations for the nation's largest banks. The proposed changes are substantial, dilutive and would weaken the effectiveness of the law. I can say, without equivocation, the winners would be the nation's largest banks and the losers would be low- and moderate-income (LMI) and underserved borrowers and communities, and importantly, the CRA ecosystem that has been built since to support economic opportunity in LMI communities in both urban and rural areas.

While we are certainly at odds with the Comptroller over this notice of proposed rulemaking (NPRM), NCRC has a long history of working with both OCC and FDIC and we recognize that a great deal of time and effort has gone into this reform framework. Nonetheless, we could not agree more with the very apt assessment of FDIC Board Member Martin J. Gruenberg that: *"this is a deeply misconceived proposal."*

I. Introduction

In this testimony, I will summarize concerns on both this rulemaking process as well as the substance of this proposal, but we will provide more in the coming days. Given its complexity, we have focused on what we believe to be the largest and most significant issues. NCRC and our member organizations of CRA practitioners around the country are still adding to our analyses of this proposal – *its new benchmarks, thresholds, definitions, standards, data collection, reporting and disclosure requirements* – as well as how all the pieces would all fit together in a new regulatory schema. And, importantly, how they will impact bank performance standards and CRA ratings.

Today, about 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.[1] Despite the paucity of underlying data and impact analyses in the proposed rule, CRA grade inflation is unmistakable in the central features of this proposal – a single metric as the dominant determinant of the CRA rating, an expanded list of eligible and qualifying CRA activities diluting the law's effectiveness, and all triggering presumptive CRA ratings that allow banks to garner passing scores at the bank-level even as they have failing CRA scores in nearly half of their local communities/local assessment areas. Importantly, under the framework, banks would appear that they are doing more in the coming years in the dollar volume of CRA activities, but those activities would be less impactful, less targeted to LMI individuals and underserved communities, and with less effective strategies to respond to local credit needs.

CNN Business' *Before the Bell* newsletter reported this weekend, that the largest U.S. banks made more than $120 billion in 2018, an all-time high. And, last year may have been

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[1] For example, according to NCRC's review of FFIEC data, in 2019, 7 percent of banks received a CRA rating of Outstanding; 91% received a rating of Satisfactory; 2 percent received a rating of Needs to Improve; 0 received a rating of Substantial Noncompliance. In 2018, 10% received a CRA rating of Outstanding; 89 percent received a rating of Satisfactory; 1 percent received a rating of Needs to Improve; 0 received a rating of Substantial Noncompliance. See also NCRC's Grade Inflation Infographic: *How Well are Regulators Evaluating Banks Under the Community Reinvestment Act?*

even better. CRA standards for lending, investing and serving LMI and underserved communities should be strengthened and not weakened, plain and simple.

II. CRA: The Law's Origins & Purposes

A. A response to actual redlining and on-going discrimination

The CRA was one of several landmark pieces of legislation enacted in the wake of the civil rights movement intended to address inequities in the credit markets. By passing the CRA, Congress aimed to reverse disinvestment associated with years of government policies and lending discrimination that deprived lower-income areas and communities of color of credit by redlining —using red-inked lines to separate neighborhoods deemed too risky.[2] The 1977 Congressional hearings leading to the enactment of the CRA documented conditions of redlining and unequal access to lending in the 1970s, but the phenomenon of redlining extended decades prior to the 1930s. The federal Home Owner's Loan Corporation (HOLC) drew maps of city neighborhoods and differentiated them according to risk as perceived by industry professionals working for the federal government. The highest risk and "hazardous" neighborhoods were overwhelmingly minority and lower income. With federal government approval, these neighborhoods were then systematically redlined by lending institutions for decades. In a recent report, NCRC found that the neighborhoods classified as "hazardous" have remained predominantly minority and lower income.[3]

According to one study of redlining in 51 American cities, 86% of African Americans lived in a neighborhood marked for credit redlining in 1940, despite making up just 8%of the study's

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[2] See Richard Rothstein, *The Color of Law: The Forgotten History of How Our Government Segregated America* (New York: W.W. Norton & Company, 2017). See "Mapping Inequality: Redlining in New Deal America" (2016), for a compilation of the maps and notes created by the federal Home Owners' Loan Corporation in the 1930s that designated areas considered too risky for mortgage lending and were used to determine eligibility for Federal Housing Administration guarantees.

[3] Bruce Mitchell, PhD. and Juan Franco, March 2018, HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality, NCRC, March 2018, https://ncrc.org/holc/

population.[4] By contrast, only 35% of whites lived in redlined areas in 1940 despite making up over 90% of the sample population. Today, once-redlined neighborhoods continue to lag behind non-redlined areas on key economic indicators, such as homeownership rates and house values. Causal studies of the effects of HOLC redlining are few, but the literature is growing, finding: redlining maps increased racial segregation, while depressing homeownership, house values, and rents;[5] redlining maps had significant and persistent negative effects on new construction and population density.[6] Both of these studies do find, however, that the negative effects of redlining—particularly with respect to lower homeownership rates and higher levels of racial segregation—have become more muted since 1980. This is consistent with the effectiveness of the CRA as anti-redlining legislation and raises the broader question as to why and how the CRA has been effective.

B. A response to market failures

In economic terms, the CRA can also be seen as a response to what are known as "market failures", including negative and informational externalities associated with a lack of lending and investment in LMI,[7] underserved communities and communities of color. For example, if lenders fear that other lenders will not lend to areas that are perceived to be risky whether they are or not, other lenders will withhold lending due to this fear, resulting in "self-fulfilling prophecy redlining." The inability to borrow to buy and improve homes consigns neighborhoods to continuing disinvestment. The absence of home sales makes neighborhoods

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[4] Krimmel, Jacob and Wachter, Susan, The Future of the Community Reinvestment Act, PENN IUR Brief, (September 2019); Krimmel, Jacob. "Persistence of Prejudice: Estimating the Long Term Effects of Redlining." Working Paper, University of Pennsylvania, 2018.

[5] Aaronson, D., Hartley, D. A., & Mazumder, B. The Effects of the 1930s HOLC "Redlining" Maps. Chicago Fed Working Paper (2017).

[6] Krimmel, at footnote 4.

[7] Robert E. Litan, Nicolas P. Retsinas, Eric S. Belsky, Susan White Haag, The Community Reinvestment Act After Financial Modernization: A Baseline Report, U.S. Treasury Dept., April 2000 (see p. 46, Economic Rationales); also, Ling, David C. and Susan M. Wachter. "Information Externalities in Home Mortgage Underwriting," 44 Journal of Urban Economics (1998): 317-332 (provides evidence of information externalities in neighborhood decline). Guttentag, Jack M. and Susan M. Wachter. "Redlining and Public Policy." Salomon Brothers Center for the Study of Financial Institutions Monograph Series in Finance and Economics, eds. Edwin Elton and Martin J. Gruber (New York University Graduate School of Business, 1980), 1-50.

riskier because appraisers rely on sales to provide information on the value of homes in order to determine appropriate loan amounts. Information externalities and asymmetries can result in delays, caution about perceived risk, and banks charging higher interest rates. Lender expectations of this sort can cause a potentially viable market to suffocate from lack of credit. In the process, borrowers who may otherwise be credit-worthy will be denied credit because of the absence of entry by competitive lenders.

The CRA can be understood as a vehicle for facilitating coordination and for assuring banks that they will not be the lone participants in thinly-traded markets.[8] The Act and its regulations have produced positive information externalities that allow all lenders – both those covered by the CRA and those not covered by the CRA – to better assess and price for risk. By conferring an affirmative and continuing obligation on banks to help meet the credit needs in all of the neighborhoods they serve, the CRA has not only prompted banks to be more active lenders in LMI areas, but also important participants in multisector efforts to revitalize communities across the country.

C. CRA at the heart of a vibrant ecosystem

Due to the CRA's statutory design and the existing regulatory framework, banks have made good strides in LMI markets and communities of color.[9] They have taken numerous steps,

[8] Ibid.
[9]A sample of research about the CRA and its effectiveness. Lei Ding and Leonard Nakamura, *Don't Know What You Got Till It's Gone: The Effects of the Community Reinvestment Act (CRA) on Mortgage Lending in the Philadelphia Market*, Working Paper No. 17-15, June 19, 2017, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2017/wp17-15.pdf; Lei Ding, Raphael Bostic, and Hyojung Lee, Effects of CRA on Small Business Lending, Federal Reserve Bank of Philadelphia, WP 18-27, December 2018, https://www.philadelphiafed.org/-/media/research-and-data/publications/working-papers/2018/wp18-27.pdf; Governor Randall S. Kroszner, *The CRA and Recent Mortgage Crisis*, speech delivered at the Confronting Concentrated Poverty Forum, Board of Governors of the Federal Reserve System, December 2008, https://www.federalreserve.gov/newsevents/speech/kroszner20081203a.htm; Is the CRA Still Relevant to Mortgage Lending? | Paul Calem, Lauren Lambie-Hanson, and Susan Wachter; Quantitative Performance Metrics for CRA: How Much "Reinvestment" is Enough? | Carolina Reid; The Community Reinvestment Act and Bank Branching Patterns | Lei Ding and Carolina Reid; NCRC, *Access to Capital and Credit in Appalachia and the Impact of the Financial Crisis and Recession on Commercial Lending and Finance in the Region*, prepared for the Appalachian Regional Commission, July 2013, https://ncrc.org/wp-content/uploads/2013/11/accesstocapitalandcreditinappalachia.pdf

including establishing loan products geared towards LMI borrowers, entering loan pooling arrangements, undertaking lending consortiums, partnering with local groups, community development corporations and community development financial institutions (CDFIs) to break down the barriers that impede the efficient flow of capital into LMI communities. One accounting and tax advisory firm estimated that the banking sector was the source of 85% of the $10 billion in capital committed to housing tax credit investments in 2012.[10] When bank investors were surveyed about why they were so attracted to housing tax credit investments, they said the principal motivation were their obligations under the CRA investment test. The OCC and FDIC's proposed general performance standards for the nation's largest banks undermine these important benefits of the law — the incentive for banks to develop partnerships with local community organizations and other stakeholders to address community needs - because the banks can satisfy their CRA obligations by simply hitting the metric. And, they could hit the metric with an expanded list of eligible and qualifying activities.

III. **The OCC and FDIC's Proposed Rule** – *On the Process*

A. A patently unfair 60-day comment period

At the outset, we believe there have been critical missteps in the rulemaking process, including the 60-day length of the public comment period. The agencies must extend it. The OCC and FDIC should heed Chairwoman Maxine Brown and Ranking Member Sherrod Brown and the Members of this Committee and Senate Banking calling for and extension of the

[10] *The Community Reinvestment Act and Its Effect on Housing Tax Credit Pricing*, CohnReznick Report.

comment period. The 240-page proposal is dense, complex and has many interlocking pieces – in terms of how all the new benchmarks, thresholds and definitions fit together. Neither the 60-day timeframe nor the information provided in the notice of proposed rulemaking (NPRM) offer a meaningful opportunity to comment.

The NPRM is a fundamental rewrite of the CRA regulatory framework. An entire retail lending, community development and affordable housing infrastructure for low- and moderate-income individuals and communities is built around and reliant upon it working. On last Friday, the OCC released a request for information (RFI) related to deposit and other bank data limitations acknowledged by the agencies in the NPRM. That comment period closes one day after that of the NPR. As described above, the CRA ecosystem is vast. It has benefited LMI and minority home buyers, small farms, credit starved sole-proprietors, small- and minority-owned and women-owned businesses in low- and moderate-income communities and the incubators and cooperatives that provide technical and other assistance to them, housing tax credit investors and syndicators, non-profit and mission affordable single-family and multifamily housing developers, state and local housing finance agencies, community and economic development corporations, CDFIs and Indian country to name a few. The existing CRA regulatory structure which examines the nation's largest banks under a retail lending test, investment test and service test.[11] The stakeholder community is vast, the proposal is multi-layered and connected with other public and private programs and incentives and multisector efforts. A 60-day comment period is simply unfair to the community of stakeholders that are tasked with understanding the various aspects of the proposal and how it would impact their work and their communities. The proposal cannot be understood, digested and analyzed in 60 days, plain and simple.

B. Missing data, analysis referenced in the proposed rule and impact on bank ratings of the various new empirical benchmarks and thresholds

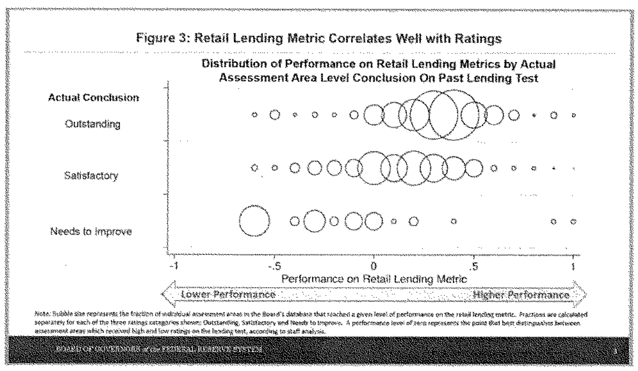
Commenting on the proposal in the 60-day window is further hampered by the lack of data and impact analysis in the proposal. While the agencies have provided an illustrative list of

[11] See A Banker's Quick Reference Guide to CRA (see also attached)

bank activities that qualify and they have provided some cursory descriptions of their methods, they have provided very little of the underlying data or referenced analyses supporting their various empirical benchmarks and thresholds and virtually no impact analysis.

1. The Federal Reserve's data and analysis

The contrast is best illustrated by some of the charts and graphs provided last week by Federal Reserve Governor Lael Brainard at the Urban Institute[12] in describing that agency's approach of creating multiple metrics that would be more familiar to the organizations that are in the CRA space based on public data sources. The agency built a CRA database based on 6,000 written public CRA performance evaluations since 2005 from a sample of 3,700 banks of varying asset sizes, business models, geographic areas and bank regulators. It also spans economic cycles. Based on that database, Governor Brainard was able to illustrate how their proposed retail lending metrics, for example, correlate well with past ratings of bank performance.



The specific thresholds that would establish a presumption of satisfactory performance could be informed, Governor Brainard said, by current evaluation procedures but need not be set at the same level as today. Proposed metrics with the kinds of outcomes the law mandates combined with the data and underlying analyses would allow the public to understand what metrics would replicate past CRA ratings and examiner expectations. The public could then

[12] _Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose_, Governor Lael Brainard, January 8, 2020.

have an informed discussion and provide public comment about how those metrics could be adjusted to reflect the law, goals and priorities going forward. It is a better starting point for an informed discussion about how proposed metrics in terms of transparency, clarity and impact and a basis for meaningful public comment.

2. The OCC's methods

The OCC relied on a sample of over 200 CRA performance evaluations completed since 2011 for banks above the small bank asset threshold of $1.284 billion in 2019. They analyzed Home Mortgage Disclosure Act (HMDA) data, Call Report data and credit bureau data, information about community development investments and made some assumptions to estimate what banks' average CRA evaluation measures would have been from 2011 – 2017. Based on their analyses, they developed "empirical' benchmarks and various threshold levels of bank activities that would correspond with an Outstanding CRA rating (11%), Satisfactory (6%) and Needs to Improve (3%); set a 2% community development minimum at the local assessment area and bank-level; included a .01 credit for bank branches located in LMI and other underserved areas; set new retail lending test demographic or peer comparators at 55% and 65%, respectively, that the bank either meet, exceed or fail; new deposit-based assessment area requirements for banks that collect more than 50% of their deposits outside their branch network, in markets where they collect 5%.

The ability to provide informed comment on the proposal is frustrated by a lack of the agencies' referenced analyses around the empirical benchmarks and other thresholds or a distributional analysis of the impact on bank ratings. They all appear to be arbitrary. For example, based on the agencies' review of historical data, does a 2% community development minimum correlate well with CRA ratings today? Based on historical data, what do the agencies know about the distribution of banks above, below and around a 2% minimum today? What do the agencies know or estimate about how much essential infrastructure, for example, banks are financing today that would qualify towards that minimum that does not today? Do the retail lending metrics correlate well with today's CRA ratings? What do the agencies know or estimate about how many more bank assessment areas would be designated under the new deposit-based thresholds?[13]

Quite frankly, the agencies have failed to "show their work" and without having a better understanding or at least the agencies referenced analyses, the agencies estimates about how these benchmarks and thresholds compare with past ratings as well as distributions across the various scoring ranges, the public cannot provide informed input about the general performance standards, where these various markers should be set to reflect the laws, mandates and Congressional objectives as well as larger public policy and societal goals. The ability to meaningfully comment is truly frustrated.

C. The agencies must complete the data RFI first

On Friday, the OCC also released a RFI on the data that will supplement their historical data and assumptions related to retail domestic deposit activities, CRA qualifying activities and various retail loan data, including those originated and sold in 90 days. How the agency will supplement the existing historical data and assumptions is a critical piece that will inform bank capacity as measured by the base/the denominator of the OCC's single metric – the CRA evaluation measure, the designation of new deposit-based assessment areas and well as other benchmarks, thresholds, information collection, reporting and disclosure requirements underlying these new small bank and general performance CRA standards. It would also inform how the regulators propose to verify a bank's sample data used to determine compliance with the presumptive CRA ratings. It must be completed and a final rule published before the public comment period for the NPRM closes. Without knowing and understanding critical data and verification pieces around bank capacity and existing and new assessment areas, as just two examples, the ability to provide informed and meaningful comment would be frustrated for the hundreds of CRA practitioners we represent.

IV. **The Proposed Rule** – *On the substance*

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[13]For example, the OCC's regulatory impact analyses says in relation to the small banks that "we believe that seven banks currently designated as wholesale or limited purpose banks may have increased data classification requirements."

Attached is a powerpoint which reflects what the OCC and FDIC are proposing and some of our concerns. This is a brief summary of some of our concerns, as well:

CRA Evaluation Measure – *an overly determinative single metric; rationing of CRA credit*
The CRA evaluation measure that would apply to all of the nation's largest banks and small banks that opt into the new general performance standards relies on a numerator inflated by an expanded list of CRA qualifying activities and a denominator of retail domestic deposits that is data limited and finite. Particularly in the case of community development activities, a rationing of CRA credit would occur as large and easy projects across the nation become the enemy of smaller, more complex but impactful local projects.

Presumptive CRA Ratings - *arbitrary benchmarks; missing agency impact analysis; undermines the economic rationales for CRA*

The proposed presumptive CRA ratings for Outstanding, Satisfactory and Needs to Improve appear to be arbitrary. The agencies have provided a cursory overview of data sources and assumptions they used to arrive at these empirical benchmarks, but they have failed to provide what they know about how banks would perform under them. *Are more banks estimated to achieve Outstanding CRA ratings under these benchmarks than today, for example*? The presumptive ratings, within this overall single metric framework, undermine what CRA has done very well: encourage the various kinds of community partnerships and loan pooling arrangements that help overcome the various market failures, negative and informational externalities that can be major roadblocks to attracting bank investment in low-income, distressed and underserved communities.

Expansion of CRA Qualifying Activities – *extends CRA credit to bank activities done in the ordinary course of business; upends exam incentives that keep LMI considerations at the heart of the law.*

The proposal broadens categories of CRA credit, including infrastructure and community facilities and volunteer activities by bank employees, for which banks are now proposed to get partial CRA credit all across the country. Banks would no longer have to have a "primary purpose" of community development targeted on LMI individuals and areas, small businesses or small farms, or underserved distressed rural areas. Even more of the smallest businesses and farms, for example, will be frustrated in their efforts to get bank credit and smaller dollar credit since key dollar loan size and gross annual revenue thresholds would be doubled and more for farms.

Facility-Based and New Deposit-Based Assessment Areas (AAs) - *serious deposit data limitations; arbitrary deposit-based thresholds; no estimates of how many credit deserts would be served.*

Though updates are certainly needed for internet and online banking, the regulators acknowledge the inadequacy of today's deposit data to designate new areas or to develop a CRA evaluation measure based on local deposits. The regulators also assume that the thresholds they are proposing for when banks designate deposit-based AAs will encompass banking deserts, but they don't explain why they assume it. The general CRA performance standards will also mean the nation's largest banks will get a lot more credit for bank activities outside of AAs without any certainty they are qualitatively meeting local credit needs before then racking up a lot of partial credit around the nation for projects that really don't need a CRA credit to get done.

Retail Lending Distribution Test – *arbitrary demographic and peer thresholds; weaker incentive for banks to provide homeownership opportunities, small business and small farm loans to LMI borrowers and areas.*

The agencies do not provide estimated pass rates for how banks would perform under their lending distribution benchmarks when compared to either the local demographics or the bank's peers. *It could set a low "pass" bar in those instances where the LMI population is high, but peer lending is low.* The pass-fail retail lending test also does not consider the quality of the lending (e.g. high-cost consumer loans; how many small dollar mortgages are being made) and drops all place-based review of home mortgages in LMI neighborhoods. The retail lending test is weakened on the exam – it would have far less weight and banks could fail in half of their local AAs and still achieve a bank-level passing CRA grade. National policy efforts and the role of the nation's banks in closing homeownership gaps and related racial and other wealth gaps get harder.

The Service Test – *proposal virtually eliminates it; minimal recognition of bank branches in LMI areas; no consideration of affordable financial services and products.*

The proposal has expanded CRA credit for general volunteer work of bank employees, including for financial literacy regardless of income, but eliminates consideration of bank's efforts to provide affordable products, low-cost transaction and savings accounts and services intended to expand access to the banking system to low- and moderate-income individuals who are currently unbanked. Importantly, the percentage point credit for the number of bank branches in LMI and other underserved areas is not enough of an incentive and there would be no review of banks openings and closings.

V. **Conclusion**

Thank you for the opportunity to testify on the CRA. The OCC's and FDIC's proposal is deeply flawed. We urge the Members of this Committee to join us in opposing this framework and facilitating interagency coordination by all three of the prudential regulators around a common but far better approach that will clarify but strengthen the CRA's regulatory framework for LMI people, underserved communities and communities of color.

Attachments:

1. NCRC powerpoint slides of the OCC/FDIC proposal and topline concerns
2. NCRC examples of absurd CRA qualifying activities in the NPRM
3. A Step-by-Step Summary of the OCC's Proposed Ratings Mechanics (Covington)
4. The Banker's Quick Reference Guide to CRA (today's exam for large banks)

CRA Evaluation Measure - *"Single Metric" framework* - *§25.10*

'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."
- Former FDIC Chair Marty Gruenberg

The OCC/FDIC Proposal

$$\frac{\textit{Qualifying Activities Value}}{\textit{Average quarterly Retail Domestic Deposits}} + .01\left(\frac{\textit{Branches in Specified Areas}}{\textit{Total Branches}}\right)$$

- Applies to the nation's largest banks
- CRA investment test eliminated
- Expanded list of CD activities are CRA qualifying (e.g. infrastructure projects that partially benefit LMI)
- Double credit for most CD investments (exc.MBS and muni bonds); AH CD loans; support for CDFIs

Concerns

Concerns

- Dollar volume is too determinative
- Favors large and easy deals over complex/innovative ones
- Favors quantity of bank activities over quality/impact
- Bank branches and affordable banking services given short shrift
- e.g. fewer financing options for smaller nonprofits to build and preserve deep affordable housing
- e.g. fewer small retail loans - small mortgages, small business and small farm loans

***Presumptive CRA ratings** - § 25.12*

"These presumptive standards undermine one of the most important benefits of CRA - the incentive for banks to develop partnerships with local community organizations and other stakeholders to address community needs - because the banks can satisfy their CRA obligations by simply hitting the metric.."

OCC/FDIC Proposal

- Dollar volume results in new "presumptive rating"
  - 11% and up = *Outstanding*
  - 6% = *Satisfactory*
  - 3% = *Needs to Improve*
  - Less than 3% = *substantial noncompliance*
- CRA Ratings at both the assessment area and bank level
- Other performance standards
  - e.g. 2% CD minimum
  - e.g. retail lending test (pass/fail)

Concerns

- Banks could fail the exam in nearly half of their local communities and still pass
- Discourages what CRA has done best – *encourage community partnerships*
- Rations CRA – *the perfect becomes the enemy of the good*
- "empirical benchmarks" appear arbitrary; impact unknown

CRA Qualifying – *expanded activities/areas*
- *§25.04*

"expands eligible and qualifying CRA activities to include some of what banks already do in the ordinary course of business, thereby diluting the effectiveness of CRA."

OCC/FDIC Proposal

- Agencies to publish non-exhaustive list of examples of qualifying activities
- Community development expanded, including
  - essential infrastructure
  - OZ funds (e.g. stadium repair)
  - financial literacy for all
  - RH that "partially or primarily benefit" middle income in high cost areas

Concerns

- More and not less CRA grade inflation – *weakening*
- More activities; less LMI focus and impact
- *e.g. Will double affordable housing/CD credit mean easier middle-income projects over harder low-income projects?*

CRA Qualifying – definitions - §§ 25.04, 25.03

"CD loans, investments, and services would no longer have to have a primary purpose of CD targeted on LMI individuals and areas, small business or small farms, or underserved or distressed rural areas."

OCC/FDIC proposal

- Gone: "primary purpose" of CD test targeted at LMI+
- New: "partially or primarily" benefit/serve LMI standard
- More "pro-rata" credit for the dollar values that partially benefits LMI
- Expands qualifying middle-income tracts

Concerns

- Undermines CRA's historic focus on LMI
- Banks appear to do more in dollar volume, but less impactful activities
- CRA grade inflation
- Unclear impact

Retail Lending Distribution Test - § 25.11

(*depending on the bank's retail products)*

OCC/FDIC Proposal

- Borrower distribution test
  - for mortgages, small business/small farms, consumer loans
- Geographic distribution test
  - for small small business/small farms, consumer loans
- New higher small biz/small farm limits:
  - $2 mill. dollar loan limit
  - $2 mill. annual revenue limit
- Local AA: meet or exceed
  - 55% of LMI demographic percentage
  - 65% of peer loans percentage

Concerns

- Can fail in half of local AAs & still pass at the bank-level
- Low pass/fail standard -either demographic *or* peer comparator, not both
- Arbitrary thresholds
- No review of mortgage lending in LMI neighborhoods
- No incentive for small loans to home buyers, small business, small farms
- e.g. could pass with mainly high cost consumer lending

Assessment Areas (AAs) - §25.08

"...we do not know how many or where these deposit- based assessment areas might be, or how they would benefit low-and moderate-income communities. It is not clear that communities that are so-called "credit deserts" would necessarily benefit from the five percent threshold ."

OCC/FDIC Proposal

- Facility-based AAs – same as today
- New deposit-based AAs –if 50% of deposits outside branches, then where they receive 5%
- CRA credit in AAs and more *outside AAs credit* at the bank-level
- Strategic Plans rules revised & required for some

Concerns

- Favors easy retail and CD activities around the country over local credit needs
- Deposit data is limited -*how many new AAs? Where? In credit deserts? Rural areas?*
- Arbitrary deposit-based AA thresholds

The OCC's General CRA Performance Standards – *from the proposed rule*

CRA evaluation	Retail lending distribution tests	CD minimums	Presumptive rating category
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 11 percent (selected from a range of 10 to 15 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, *divided by* the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Outstanding.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 6 percent (selected from a range of 5 to 10 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, *divided by* the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Satisfactory.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 3 percent (selected from a range of 2 to 5 percent).			Needs Improvement.
The average of a bank's annual assessment area CRA evaluation measures is less than 3 percent (selected from a range of 0 to 5 percent).			Substantial Non-compliance.

Proposed General Bank Performance Standards - > $500 million is bank assets

NCRC

Absurd Examples of CRA Qualifiying Activities Thanks to the NPRM

Family Farm

An illustrative example of a of CRA qualifying activities under proposed §§ 25.04(c)(7)(i) and 345.04(c)(7)(i) is a loan to a family farm with gross annual revenues of $10 million.[1] According to the U.S. Department of Agriculture, only 1% of farms had sales of $5 million or more. About 76% of farms had sales of $50,000 or less.[2] This change in CRA qualifying activities would divert lending away from the smallest farms.

Stadiums in Opportunity Zones

The NPRMwould allow financing of improvements to athletic stadiums in low-income census tracts located in Opportunity Zones.[3] Recently, the City of Jacksonville borrowed $45 million to pay for upgrades, a new outdoor amphitheater and indoor practice facility, next to the stadium in which the Jacksonville Jaguars play.[4]

One of the two largest banks in terms of deposit market share in Jacksonville had community development lending ($15 million) that was of a lower dollar amount than the loan for the stadium. The community development lending of this bank supported 72 units of affordable housing and economic development.[5] If financing for stadiums is allowed, banks would have an incentive to eliminate important community development lending directly benefiting LMI households and neighborhoods.

Another bank, which is also one of the two largest banks in terms of deposit market share, made $21 million in community development lending that supported over 200 units of affordable housing.[6] Again, would this bank continue to do this if large scale financing and other infrastructure is promoted by a new CRA rule.

Small Business

The agencies proposed to revise the definition of a small business as one with revenues of up to $2 million and annually adjusted for inflation, which would be an increase from the $1 million limit currently.[7] The CFPB estimated that 95% of small businesses had revenues of $1 million or less.[8] The agencies' change in the small business revenue size that qualifies a loan as CRA-eligible would divert CRA-qualified lending away from the smallest businesses.

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[1] NPRM, p. 97, §§ 25.04(c)(7) and 345.04(c)(7)
[2] https://www.nass.usda.gov/Publications/Highlights/2019/2017Census_Farm_Economics.pdf
[3] NPRM, p. 100. §§25.04(c)(11) and 345.04(c)(11)
[4] https://www.jacksonville.com/news/metro/2015-12-08/story/city-council-unanimously-approves-90-million-improvement-everbank-field

[5] https://www.occ.gov/static/cra/craeval/oct19/13044.pdf
[6] https://www.occ.gov/static/cra/craeval/oct19/715115.pdf
[7] NPRM, p. 26, §§ 25.03 and 345.03
[8] Consumer Financial Protection Bureau (CFPB), *Key Dimensions of the Small Business Lending Landscape*, p. 10, May 2017, https://www.consumerfinance.gov/data-research/research-reports/key-dimensions-small-business-lending-landscape/

Middle- and Upper-Income Housing

The NPRM could facilitate mixed income housing as defined by middle- and upper-income housing. Current CRA guidelines provide partial CRA credit to mixed income housing that is low-income and middle/upper income, but the credit is *"based on the percentage of units set-aside for affordable housing for low- or moderate- income individuals."*[1] The NPRM proposes to also provide CRA credit for the portion of units set aside for those that are middle income in high cost areas. As one example, §§ 25.04(c)(1)(i)(D) and 345.04(c)(1)(i)(D) of NPRM defines affordable housing as rental housing "that partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government."[2] Affordable housing for low-income households is far more difficult to finance and, if these provisions are implemented, it could make up a shrinking share of the affordable rental housing promoted by CRA.

Financial Education for All Incomes

The NPRM would allow banks to offer financial education to people of all income levels.[9] Currently, this community development service is targeted to low- and moderate-income people. Thus under the NPRM, banks could offer financial education to the Comptroller of the Currency and the Chairman of the FDIC and receive CRA credit. The provision of financial education must be consistent with the statutory purpose of CRA, that is, combating redlining and increasing access to credit and banking services to low- and moderate-income populations and neighborhoods.

The Dominant Single Metric and Three Large Credit Card Lenders

The CRA evaluation measure would likely be ineffective in stimulating increases in community development financing by large credit card lenders. We did a back-of-the-envelope calculation. NCRC approximated the CRA evaluation measure of three large credit card lenders. We made a conservative estimate of credit card lending to LMI borrowers (no data on this lending is publicly available). Even with a conservative estimate of credit card lending to LMI borrowers, the three large credit card lenders had ratios with just qualified credit card lending in the numerator that already exceeded the benchmark of 11% needed for an Outstanding rating.

In addition, one of the three large lenders had an overall community development minimum that today exceeds 2% of deposits. In other words, this large lender likely would not have to increase its community development financing in order to keep receiving Outstanding ratings. For this lender, stagnant performance would earn it Outstanding. The other two lenders would have to increase their community development financing but once they hit the 2% minimum required ratio, their performance would stagnate. The proposal would be likely to lead to lackluster CRA performance (that does not continually and affirmatively respond to needs) in the long term for these three large lenders.

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[9] NRPM, p. 28, §§ 25.04(c)(9) and 345.04(c)(9)

Appendix A: Step-by-Step Summary of Proposed Ratings Mechanics

Step 1: Designation of Assessment Area(s)

The scope of a bank's assessment area(s) is determined through two tests:

Facility-Based Assessment Area: Every bank must delineate an assessment area encompassing each location where it maintains its main office, a branch, or a non-branch deposit-taking facility, as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans.

Deposit-Based Assessment Area: A bank that receives 50 percent or more of its retail domestic deposits from outside of its facility-based assessment area must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

Step 2: Determination of Assessment Area-Level Presumptive Rating

The bank's presumptive assessment area-level rating is determined by its CRA Evaluation Measure, and a Satisfactory or better rating also requires passing the Retail Lending Distribution Measure and satisfying the CD Minimum.

CRA Evaluation Measure: The bank's assessment area-level CRA Evaluation Measure is the sum of: (1) the dollar value of qualifying activities, divided by the average quarterly value of the bank's assessment area retail domestic deposits; and (2) the percentage of branches in the assessment area that are located in LMI census tracts, multiplied by 0.01. The value of certain CD activities is multiplied by two for the purposes of this measure. This measure must meet or exceed 11 percent for an Outstanding rating, 6 percent for a Satisfactory rating, and 3 percent for a Needs to Improve rating in the assessment area.

Retail Lending Distribution Measure: The bank must (1) pass a borrower distribution test for each major retail lending product line for which a bank has originated 20 or more loans in the assessment area during the evaluation period, and (2) when making small loans to businesses or farms is a major retail lending product line and the bank has originated 20 or more such loans in the assessment area during the evaluation period, pass the geographic distribution test for such loans. These tests measure the number of loans that the bank has made, rather than the dollar value of those loans.

- Under the borrower distribution test, the percentage of the bank's loans in a given category in the assessment area that the bank has made to LMI individuals, small businesses, or small farms (as applicable) must exceed either (a) 55 percent of the percentage of individuals in the assessment area who are LMI, or percentage of businesses or farms in the assessment area that are small businesses or small farms (as applicable), or (b) 65 percent of the percentage of peer banks' loans in the category in the assessment area that peer banks have made to LMI individuals, small businesses, or small farms (as applicable).
- Under the geographic distribution test, the percentage of the bank's small loans to businesses or farms in the assessment area that the bank has made in LMI census tracts must meet or exceed either (a) 55 percent of the percentage of businesses or farms in the assessment area that are in LMI census tracts, or (b) 65 percent of the percentage of peer banks' loans to businesses or farms in the assessment area that peer banks have made in LMI census tracts.

CD Minimum: The value of the bank's CD loans and investments in the assessment area divided by the average quarterly value of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.

Step 3: Determination of Bank-Level Presumptive Rating

The bank's presumptive bank-level rating is determined by its bank-level CRA Evaluation Measure and its assessment area ratings, and a Satisfactory or better bank-level rating also requires satisfying the bank-level CD Minimum.

CRA Evaluation Measure: The CRA Evaluation Measure described in Step 2 is also used to evaluate the bank's total qualifying activities both within *and* outside of its assessment areas to calculate the bank-level CRA Evaluation Measure. The average of the annual bank-level CRA Evaluation Measures during the evaluation period must meet or exceed 11 percent for an Outstanding rating, 6 percent for a Satisfactory rating, and 3 percent for a Needs to Improve rating.

Assessment Area Ratings: The bank must receive a given rating in a "significant portion" of its assessment areas (which the preamble suggests is 50 percent or more) to receive that same rating at the bank level.

CD Minimum: The value of the bank's total CD loans and investments (both within *and* outside its assessment areas) divided by the average quarterly value of the bank's retail domestic deposits must meet or exceed 2 percent.

Step 4: Application of Performance Context Factors

The bank's primary federal regulator may adjust its presumptive assessment area-level and bank-level ratings based on a series of performance context factors. These factors include the bank's explanation of its product offerings, business strategy, financial constraints, economic factors, and assessment area needs.

Evidence that the bank has engaged in discriminatory or other illegal credit practices may also provide grounds for a downward ratings adjustment.

Federal Reserve Bank of Dallas

A Banker's Quick Reference Guide to CRA

As amended effective September 1, 2005

This publication is a guide to the CRA regulation and examination procedures. It is intended for bank CEOs, presidents, and CRA and compliance officers as a tool for accessing CRA information quickly. Refer to Regulation BB and agency examination procedures for more detailed information.

Large Banks – Lending Test

Performance Standards

Number and amount of loans in the AA

Geographic distribution of loans
- proportion of loans in AA
- dispersion of lending in AA
- number and amount of loans by geography classification (low-, moderate-, middle- and upper-income) in AA

Distribution based on borrower characteristics
- number and amount of home mortgage loans to low-, moderate-, middle- and upper-income individuals
- number and amount of small business and small farm loans by loan amount at origination and to small businesses and small farms with gross annual revenues of $1 million or less
- (optional) number and amount of consumer loans to low-, moderate-, middle- and upper-income individuals

CD loans
- number and amount
- complexity and innovativeness

Innovative or flexible lending practices to address the needs of LMI individuals or geographies

(Optional) Affiliate lending, if not claimed by any other institution, and lending by a consortium or third party will be considered.

Examiner Review

Identify loans to be evaluated by reviewing
- most recent HMDA and CRA disclosure statements.
- interim HMDA and CRA data collected.
- sample of consumer loans (if a substantial majority of business).
- other loan information provided by the bank.

Verify accuracy of loan data collected and/or reported.
- Affiliate loans may be claimed by only one affiliate.
- CD loans meet definition.
- The amount of third party, consortia or affiliate lending may not account for more than the percentage share of the bank's participation or investment.
- If reported, consumer loans must include all loans in a particular category (e.g., motor vehicle).

Evaluate lending volume both in number and dollar amount of loans within the AA for each type of loan, giving consideration to the performance context.

Analyze the geographic distribution of lending.
- Review information provided by the bank for insight into the reasonableness of its geographic distribution.
- Perform independent analysis as necessary. The analysis should consider:
  - number, dollar volume and percentage of loans made:
    - inside and outside AA.
    - in each geography and each income category of geography.
  - number of geographies penetrated in each income category.
  - number and dollar volume of housing loans in each geography compared with the number of housing units in each geography.
  - number and dollar volume of small business or farm loans in each geography compared with the number of small businesses or farms in each geography.
  - whether any gaps exist in lending activity for each income category, by identifying groups of contiguous geographies that have no or low loan penetration relative to the other geographies.
- If contiguous geographies have abnormally low penetration, the examiner may compare the bank's performance with that of other area lenders. Note: Banks are not required to lend in every geography.

Analyze distribution of lending by borrower characteristics.
- Review information provided by the bank for insight into the reasonableness of its lending distribution.
- Supplement with independent analysis of lending distribution by borrower characteristics as necessary and applicable, giving consideration to the:
  - number, dollar volume and percentage of home mortgages made to low-, moderate-, middle- and upper-income borrowers and make a percentage comparison of total home mortgage loans with the population in each income category.
  - number and dollar volume of small loans to businesses or farms by loan size of $100,000 or less, more than $100,000 but less than or equal to $250,000, and more than $250,000.
  - number and dollar amount of small loans to businesses or farms that had annual revenues of less than $1 million, and compare with total reported number and amount of small loans to businesses or farms.
  - loans made outside the AA if borrowers within the AA are adequately served and it would enhance the assessment of the bank's performance.

Review CD lending to determine the CD lending opportunities, the bank's responsiveness and the extent of its leadership.

Determine whether lending performance is enhanced by offering innovative or more flexible loan products by considering:
- if LMI borrowers are served in new ways or the loans serve creditworthy borrowers not previously served.
- the success of each product, including number and dollar volume of originations.

Large Banks – Data Collection

General

Collect and maintain data on loans to small businesses or farms captured in Schedule RC-C of the Call Report (loans originated or purchased).
- unique loan number or alphanumeric symbol
- dollar amount of the loan at origination
- location of the loan
- Indicate whether the gross annual revenues of the business or farm are $1 million or less.

Submit annually by March 1 the following data:
- for each geography, loans to small businesses and farms (loans originated or purchased), including
  - aggregate number and dollar amount of loans at origination in loan size categories of $100,000 or less, more than $100,000 but less than or equal to $250,000, and more than $250,000.
  - aggregate number and dollar amount of loans to businesses and farms with gross revenues of $1 million or less.
- aggregate number and dollar amount of CD loans (originated or purchased).
- home mortgage loans as required under Regulation C (HMDA).
- a list for each assessment area showing the geographies within the area.
- affiliate lending if affiliate lending is being considered.
- consortium or third-party lending if consortium or third-party lending is being considered.

Optional

Collect and maintain data for consumer loans (originated and purchased).
- unique loan number or alphanumeric symbol
- dollar amount of the loan at origination
- location of the loan
- gross annual income of the borrower that is considered in making the credit decision

Any other information concerning lending performance the bank chooses to provide

Large Banks – Lending Performance Ratings

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Noncompliance
Lending Activity	Lending levels reflect EXCELLENT responsiveness to AA credit needs.	GOOD	ADEQUATE	POOR	VERY POOR
Assessment Area(s) Concentration	A SUBSTANTIAL MAJOR-ITY of loans are made in the bank's AA.	HIGH PERCENTAGE	ADEQUATE PERCENTAGE	SMALL PERCENTAGE	VERY SMALL PERCENTAGE
Geographic Distribution of Loans	The geographic distribution of loans reflects EXCELLENT penetration throughout the AA.	GOOD	ADEQUATE	POOR	VERY POOR
Borrower's Profile	The distribution of borrowers reflects, given the product lines offered, EXCELLENT penetration among customers of different income levels and businesses of different sizes.	GOOD	ADEQUATE	POOR	VERY POOR
Responsiveness to Credit Needs of Low-Income Individuals and Geographies and Very Small Businesses	Exhibits an EXCELLENT record of serving the credit needs of low-income individuals and areas and very small businesses.	GOOD	ADEQUATE	POOR	VERY POOR
Community Development Lending Activities	A LEADER IN MAKING CD loans.	MAKES A RELATIVELY HIGH LEVEL	MAKES AN ADEQUATE LEVEL	MAKES A LOW LEVEL	MAKES FEW, IF ANY
Product Innovation	Makes EXTENSIVE USE of innovative and/or flexible lending practices in serving AA credit needs.	USE	LIMITED USE	LITTLE USE	NO USE

Large Banks – Investment Test

Performance Standards

Dollar amount of qualified investments

Innovativeness and complexity of qualified investments

Responsiveness of qualified investments to credit and CD needs

Degree to which qualified investments are not routinely provided by private investors

Qualified investments must benefit the AA or a broader statewide or regional area that includes the AA.

(Optional) Qualified investments made by an affiliate bank will be considered if not claimed by any other institution.

Examiner Review

Identify qualified investments.
- Review investment portfolio.
- At bank's option, review affiliate's investment portfolio.
- Include qualified investments made since previous examination and qualified investments made prior to last examination still outstanding.
- Include qualifying grants, donations or in-kind contributions of property made since last examination that have a primary purpose of CD.

Evaluate investment performance.
- benefit to assessment area or broader statewide or regional area that includes AA
- has not been considered under lending or service test
- if reported, that affiliate investments have not been claimed by another institution
- dollar volume of investments made considering performance context
- use of innovative or complex investments, particularly those not routinely provided by other investors
- responsiveness to available opportunities and degree to which they serve LMI areas or individuals

Large Banks – Investment Performance Ratings

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Noncompliance
Investment and Grant Activity	An EXCELLENT level of qualified CD investments and grants, particularly those not routinely provided by private investors, OFTEN in a leadership position.	SIGNIFICANT OCCASIONALLY	ADEQUATE RARELY	POOR	FEW, IF ANY
Community Development Initiatives	Makes EXTENSIVE USE of innovative and/or complex investments to support CD initiatives.	SIGNIFICANT USE	OCCASIONAL USE	RARE USE	NO USE
Responsiveness to Credit and Community Development Needs	Exhibits EXCELLENT responsiveness to credit and CD needs.	GOOD	ADEQUATE	POOR	VERY POOR

Large Banks – Service Test

Performance Standards	Examiner Review
Retail Banking Services	**Retail Banking Services**
Distribution of branches among each geography classification	**Determine** from the bank's public file the distribution of branches among each geography classification in the AA and the banking services provided, including hours and available products.
Record of opening and closing branches, particularly those located in LMI geographies or primarily serving LMI individuals	**Identify** any material differences in hours or services available at each branch.
Availability and effectiveness of alternative systems for delivering retail banking services in LMI geographies and to LMI individuals	**Evaluate** the record of opening and closing branch offices and its effect, particularly on LMI geographies or individuals.
Range of services provided in each geography classification and the degree the services are tailored to meet the needs of those geographies	**Evaluate** the accessibility and use of alternative systems for delivering retail banking services in LMI areas and to LMI individuals.
	Assess the quantity, quality and accessibility of service-delivery systems provided in each geography classification. – Consider the degree to which services are tailored to the convenience and needs of each geography.
Community Development Services	**Community Development Services**
Extent of CD services provided	**Identify** CD services of the bank and, at its option, services through affiliates.
Innovativeness and responsiveness of CD services	**Ensure** CD services meet the definition of CD service.
	Evaluate CD services using performance context information and consider: – innovativeness and whether they serve LMI customers in new ways or serve groups of customers not previously served. – the degree to which they serve LMI areas or LMI individuals and their responsiveness to available service opportunities.

Large Banks – Service Performance Ratings

Characteristic	Outstanding	High Satisfactory	Low Satisfactory	Needs to Improve	Substantial Noncompliance
Accessibility of Delivery Systems	Delivery systems are READILY ACCESSIBLE to the bank's geographies and individuals of different income levels in its AA.	ACCESSIBLE	REASONABLY ACCESSIBLE	UNREASONABLY INACCESSIBLE TO PORTIONS OF	UNREASONABLY INACCESSIBLE TO SIGNIFICANT PORTIONS OF
Changes in Branch Locations	Record of opening and closing of branches has IMPROVED the accessibility of its delivery systems, particularly to LMI geographies and/or LMI individuals.	NOT ADVERSELY AFFECTED	GENERALLY NOT ADVERSELY AFFECTED	ADVERSELY AFFECTED	SIGNIFICANTLY ADVERSELY AFFECTED
Reasonableness of Business Hours and Services in Meeting AA Needs	Services ARE TAILORED TO CONVENIENCE AND NEEDS OF its AA, particularly LMI geographies and/or LMI individuals.	DO NOT VARY IN A WAY THAT INCONVENIENCES	DO NOT VARY IN A WAY THAT INCONVENIENCES	VARY IN A WAY THAT INCONVENIENCES	VARY IN A WAY THAT SIGNIFICANTLY INCONVENIENCES
Community Development Services	A LEADER IN PROVIDING CD services.	PROVIDES A RELATIVELY HIGH LEVEL OF	PROVIDES AN ADEQUATE LEVEL OF	PROVIDES A LIMITED LEVEL OF	PROVIDES FEW, IF ANY

CRA Ratings

Small Banks

Outstanding

- if the bank meets the rating descriptions and standards for Satisfactory for each of the five core criteria and materially exceeds the standards for Satisfactory in some or all of the criteria to the extent that an outstanding rating is warranted
  or
- if the bank's performance with respect to the five core criteria generally exceeds Satisfactory and its performance in making qualified investments and providing branches and other services and delivery systems in the AA supplements its performance under the five core criteria sufficiently to warrant an overall rating of Outstanding

Satisfactory

- if the bank meets each of the standards for a Satisfactory rating
  or
- if exceptionally strong performance with respect to some of the standards compensates for weak performance in others

Needs to Improve or Substantial Noncompliance

- depending on the degree to which a bank's performance has failed to meet the standards for a Satisfactory rating

Intermediate Small Banks

Outstanding

- if the bank is rated Outstanding on both the lending and CD tests or if the bank is rated Outstanding on one test and at least Satisfactory on the other test

Satisfactory

- if the bank receives at least a Satisfactory rating on both the lending and CD tests

Needs to Improve or Substantial Noncompliance

- depending on the degree to which a bank's performance has failed to meet the standards for a Satisfactory rating on a test

Large Banks

Component test ratings that reflect the bank's lending, investments and services are assigned.

Component Test Ratings	Lending	Investment	Service
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

Preliminary composite rating is assigned by summing the component test ratings for lending, investment and service tests and referring to the chart below.

Points	Composite Assigned Rating
20+	Outstanding
11–19	Satisfactory
5–10	Needs to Improve
0–4	Substantial Noncompliance

No bank may receive a composite assigned rating of Satisfactory or higher unless it receives at least Low Satisfactory on the lending test. The assigned rating can be no more than three times the score on the lending test.

Strategic Plan

Bank must identify satisfactory measurable goals and, to be considered for an Outstanding rating, must identify a separate group of outstanding measurable goals that substantially exceed the Satisfactory level.

An Outstanding rating will be assigned if the bank exceeds its plan goals for a Satisfactory rating and substantially achieves its plan goals for an Outstanding rating.

A Satisfactory rating will be assigned if the bank substantially achieves its plan goals for a Satisfactory rating.

A Needs to Improve or Substantial Noncompliance rating will be assigned if the bank fails to substantially meet its plan goals for a Satisfactory rating, unless the bank elects in its plan to be evaluated under the appropriate alternative large or small bank assessment method.

All Banks

Evidence of discriminatory or other illegal credit practices adversely affects the evaluation of a bank's CRA performance.

A final overall CRA rating is assigned.

- Banks with branches in just one state will receive one set of component ratings. Banks with branches in two or more states and banks with branches in two or more states of a multistate MSA will be assigned component ratings for each state or multistate MSA.

Definitions

Assessment Area(s) — One or more of the geographic area(s) that is delineated by the bank and used by the regulatory agency in evaluating the bank's record of helping to meet the credit needs of its community. It must, in general, consist of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities or towns. It must include geographies in which the bank has its main office, branches and deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. A bank may adjust the boundaries of its AA to include only the portion of a political subdivision that it reasonably can be expected to serve. An AA must consist only of whole geographies, may not reflect illegal discrimination, may not arbitrarily exclude LMI geographies and may not extend substantially beyond an MSA boundary or beyond a state boundary, unless the AA is located in a multistate MSA.

Community Development — Encompasses affordable housing (including multifamily rental housing) for LMI individuals; community services targeted to LMI individuals; activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs or have gross annual revenues of $1 million or less; or activities that revitalize or stabilize LMI geographies, designated disaster areas or distressed or underserved non-metropolitan middle-income geographies designated by the Board of Governors, FDIC and OCC.

Community Development Loan — A loan that has as its primary purpose community development; (except for wholesale or limited purpose banks) has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm or consumer loan, unless it is a multifamily dwelling loan; and benefits the bank's AA or a broader statewide or regional area that includes the bank's AA.

Community Development Service — A service that has as its primary purpose community development, is related to the provision of financial services, has not been considered in the evaluation of the bank's retail banking services, benefits the bank's AA or a broader statewide or regional area that includes the bank's AA and has not been claimed by other affiliated institutions.

Discriminatory or Other Illegal Credit Practices — Activities that result in violations of an applicable law, rule or regulation, including, but not limited to, the Equal Credit Opportunity Act; the Fair Housing Act; the Home Ownership and Equity Protection Act; section 5 of the Federal Trade Commission Act; section 8 of the Real Estate Settlement Procedures Act; and the Truth in Lending Act provisions regarding a consumer's right of rescission.

Geography — A census tract delineated by the U.S. Bureau of the Census in the most recent decennial census.

Income Level – Geography
- **Low-Income** — Median family income less than 50 percent of the area median income
- **Moderate-Income** — Median family income at least 50 percent and less than 80 percent of the area median income
- **Middle-Income** — Median family income at least 80 percent and less than 120 percent of the area median income
- **Upper-Income** — Median family income at least 120 percent of the area median income

Income Level – Individual
- **Low-Income** — Less than 50 percent of the area median income
- **Moderate-Income** — At least 50 percent and less than 80 percent of the area median income
- **Middle-Income** — At least 80 percent and less than 120 percent of the area median income
- **Upper-Income** — At least 120 percent of area median income

Limited Purpose Bank — A bank that offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market and has received designation as a limited purpose bank from its supervisory agency.

Performance Context — A bank's performance is judged in the context of information about the bank and its AA, including
- demographic data on median income levels, distribution of household income, nature of housing stock, housing costs and other relevant data
- lending, investment and service opportunities
- the bank's product offerings and business strategy, capacity and constraints, past performance and the performance of similarly situated lenders
- the bank's public file and any written comments about the bank's CRA performance
- any other relevant information

Qualified Investment — A lawful investment, deposit, membership share or grant that has as its primary purpose community development.

Small Bank — A bank that, as of December 31 of either of the prior two calendar years, had total assets of less than $1 billion. **Intermediate Small Bank** means a small bank with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years. Asset size designation will be adjusted annually based on the year-to-year change in the average of the consumer price index for urban wage earners and clerical workers.

Wholesale Bank — A bank that is not in the business of extending home mortgage, small business, small farm or consumer loans to retail customers and has received designation as a wholesale bank from its supervisory agency.

STRONGER COMMUNITIES. STRONGER AMERICA.

WHY LATINOS WILL LOSE UNDER THE OCC AND FDIC'S PROPOSAL TO MODERNIZE THE COMMUNITY REINVESTMENT ACT

Presented at

"The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal"

Submitted to

House Financial Services Subcommittee on Consumer Protection and Financial Institutions

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INTRODUCTION

Good afternoon. My name is Eric Rodriguez and I am the Senior Vice President of Policy and Advocacy for UnidosUS, formerly the National Council of La Raza, which is the largest Hispanic* civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for low- and moderate-income (LMI) Latino families so that they can achieve economic security and build wealth. In this capacity, UnidosUS, with its network of nearly 300 Affiliates—local, community-based organizations across the U.S. and in Puerto Rico—provides education, health care, housing counseling, workforce development, and financial coaching programs to millions of citizens and immigrants.

For more than two decades, UnidosUS has published reports, provided testimony, and engaged in advocacy for strong fair housing and fair lending laws, increased access to financial services for LMI individuals, and expanded homeownership opportunities in the Latino community. UnidosUS has conducted original research on the experiences of LMI communities of color in using financial services and has authored numerous reports, including Latino Financial Access and Inclusion in California (2013); Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities (2014); Small Dollars for Big Change (2017); The Future of Banking (2019); and Latino Homeownership 2007–2017: A Decade of Decline for Latinos (2019).

In addition, the UnidosUS Wealth and Housing Alliance (UWHA) is the nation's largest network of community-based organizations working to empower Latino wealth-building through homeownership. Established in 1993 as "Home to Own" in partnership with First Interstate Bank—a bank seeking to improve its Community Reinvestment Act (CRA) rating—the program was created to provide culturally competent, linguistically appropriate, one-to-one counseling to prospective Latino homeowners and was designed to overcome the widespread lack of knowledge in the Hispanic community about the mortgage financing process. Following a positive evaluation by the Morrison Institute for Public Policy at Arizona State University, and subsequently confirmed by a substantial body of independent research, the program expanded to 10 sites in a number of states. Around the same time, we played a major role in creating and supporting appropriations to fund the Department of Housing and Urban Development's (HUD) Housing Counseling Program. Twenty-seven years later, Home to Own—now UWHA—has grown to a nationally recognized housing counseling intermediary designated by HUD to train and credential other housing counseling networks. It includes 50 independent community-based organizations and supports more than 60,000 families a year in their journey to homeownership and the American Dream.

Furthermore, our subsidiary, the Raza Development Fund (RDF), is the nation's largest Latino Community Development Financial Institution (CDFI). Since 1999, RDF has provided more than

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* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

half a billion dollars in financing to locally based development projects throughout the country. This work has substantively increased UnidosUS's institutional knowledge of how Latinos interact with the mortgage market, their credit and capital needs, and the impact of government regulations on financial services markets.

Due to its requirement for banks to meet the credit needs of their communities and intent to combat redlining, CRA has become one of the most important tools that LMI households and communities of color have to access mainstream banking services, credit, and investments. CRA has helped to revitalize neighborhoods and enable non-traditional borrowers—including many Latinos—to gain access to financial services and benefit directly from investments made by large mainstream banks that may otherwise have left the community underserved. CRA has also been an important tool—albeit indirectly—in mitigating the effects of discrimination and disparate treatment of individuals of color and immigrants within mainstream financial markets.[1] Specifically, CRA has led to $1.7 trillion in lending to economically distressed areas since its enactment and has partially been responsible for the gains in credit in low and moderate income (LMI) communities and communities of color.[2] Another 2017 study found that CRA increased credit activity by 9% from 2004 to 2012 and the number of credit visible individuals in the community by 7%.[3] Still another study found that between 2010 and 2016, the CRA expanded the number of small business loans in LMI neighborhoods by 38%. Finally, our own research has found that the CRA has bolstered home lending for Latinos and facilitated between 15% and 35% of home loans to Latinos in LMI census tracts. This was about two to three times the share of loans facilitated to Whites in LMI census tracts.[4]

This written statement briefly summarizes the history of the Community Reinvestment Act (CRA) and explains how this landmark legislation has been instrumental in expanding access to affordable credit for Latinos and communities of color. The statement also focuses on how the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation's (FDIC) proposed rule to "modernize" the CRA could significantly harm Latinos living in LMI communities by decreasing their access to financial institutions and credit. Finally, this statement recommends alternative courses of action for the OCC and the FDIC to consider in addressing the need for increased financial institutions' investments in Latino LMI communities and expanded access to affordable credit.[5]

BACKGROUND

"You realize pretty fast that if there isn't money flowing into a community, it'll die."
—Gail Cincotta, Chairperson of the National People's Action, a Chicago community organization[6]

Bias in banking and issuance of credit by financial institutions has been persistent in the American financial system since the creation of our nation. After its founding in 1781, the first "modern" bank—the Bank of North America—was criticized in 1784 for favoring city merchants over farmers. This was the first, but certainly not the last, recorded case of bias in lending policies by an American bank.[7] Nearly 150 years later, the Home Owners Loan Corporation

(HOLC)—formed by the federal government as part of the New Deal to refinance mortgage loans—established a universal "risk" appraisal method that color-coded neighborhoods. The appraisal classified communities by age, type of construction, price range, and state of repair of the housing stock. Most importantly, it assigned risk to neighborhoods based on the occupation, income, race, and ethnicity of the residents.[8] Green neighborhoods were new, homogenous, and White; blue neighborhoods had "peaked," but expected to still remain White; yellow neighborhoods were "declining" and were not racially homogenous; and red neighborhoods had "fully declined"—that is, they were neighborhoods where people of color constituted the majority.[9]

The HOLC color-coding appraisal method was adopted by other federal government lenders, the private mortgage market, and the American financial system generally. The Federal Housing Administration's (FHA) chief economist, Homer Hoyt, sought to "improve" the accuracy of the HOLC model by overlaying it with a pseudoscientific racial and ethnic hierarchy. Hoyt ranked Anglo-Saxons and Northern Europeans as the "most desirable," followed by Northern Italians, Czechs, Poles, Lithuanians, and Greeks, while "Russian Jews of the lower class," South Italians, and "Negroes and Mexicans" ranked as the lowest class.[10] Simultaneously, the chief underwriter for FHA—Frederick Babcock—sent letters to field offices warning "against mixing income classes and incompatible racial and social groups" when making home loans.[11] The federal government gave its considerable authority to the practice of redlining, withholding credit to neighborhoods based on their racial and ethnic composition.

Redlining was, and remains, a "self-fulfilling prophecy" that destroys neighborhoods. The loss of access to credit reduced property values in non-White neighborhoods and harmed the small businesses that served those communities.[12] Bankers, real estate agents, and mortgage lenders worked to convince prospective buyers that a community with people of color was not desirable, that loans were not available, and that the buyer or businessowner would be better off in an all-White suburb. Upwardly mobile residents found other neighborhoods to live in. Home improvement loans were unavailable to property owners who wanted to make repairs, which led to neighborhood decay.[13] By the late 1950s, pervasive redlining left many cities trapped in a spiral of "White flight" and ghettoization, a process that was aided and abetted by federal banking regulators.

While many communities throughout the nation pushed back against redlining, Chicago established itself as the center of the movement against redlining and for community reinvestment. In 1969, the West Side Coalition, a community organization in West Town—a Polish neighborhood with a growing Puerto Rican population—began to take direct action against discrimination by local banks. When members of the community found that they had been denied loans despite good credit histories, coalition members visited the bank branch and demanded an immediate processing of the denied loan, a say in where their savings would be used, and a right to review future rejected applications. When the bank refused their demands, the West Side Coalition visited the bank to hand out fliers to current and potential customers explaining that the bank was practicing redlining. Then, coalition members divided into small groups, entered the bank, and clogged teller lines until the group secured a meeting with the bank's president and the chairperson of their board of directors.

In 1971, the Center for Community Change and the National Urban League built on the activism of the West Side Coalition and examined the problems of lending discrimination and neighborhood disinvestment in New York City, St. Louis, Cleveland, and Chicago. Their study found that redlining was present in all the cities they examined.[14] In 1974, the Federal Home Loan Bank Board surveyed 189 of its federally insured associations in Cook County, Illinois by the amount of savings deposits and the number of home loans by ZIP Code. The survey showed that inner-city neighborhoods were redlined; neighborhood bank branches invested as little as one penny's worth of loans into their local community for every dollar deposited by residents.[15]

These two studies led to the Chicago City Council legally prohibiting redlining by financial institutions that did business in the city. To support this prohibition, Chicago mandated that the city's banks disclose, by Census tract, all of their residential, commercial, and consumer loans, as well as savings and checking accounts.[16] In 1975, following continuing pressure from the community groups, the Illinois State Legislature passed two laws, identical to the Chicago City Council's.[17]

Spurred by community activism, Congress and the executive branch began to investigate the community organizations' claims of redlining. In March 1972, for example, the Federal Home Loan Bank Board released a survey of savings and loan associations in which 30% volunteered that they "disqualif[ied] some neighborhoods from lending because they [were] low-income or minority-group areas."[18] Two months later, HUD released a survey in which 1,000 lending institutions, located in 50 cities, admitted that they used the racial and ethnic characteristics of a neighborhood as a factor in evaluating loan applications—just as Homer Hoyt had intended.[19]

The problem of lending discrimination was too pervasive to be resolved by state and local legislation alone. In 1975, Senator William Proxmire (D-WI) introduced S. 1281, the Home Mortgage Disclosure Act (HMDA). He held a series of hearings on community reinvestment, and community groups from all over the country presented information on discriminatory lending patterns and the lack of loans for local needs. Gail Cincotta, the Chairperson of the People's Action Committee from Chicago, testified that:

> In one week, Chicago newspapers reported about a Harris Bank of Chicago office in Beirut, Lebanon; a $25 million loan by Continental Bank in Chicago for building a road in Spain; a $30 million loan by First National Bank to South Korea to buy Boeing 747s. But we can't get a $3,000 loan to rehabilitate our homes. We are not asking for handouts. All we are asking for is a fair return on our savings into communities.

The bill passed the Senate 45–37 and in the House 177–147, and President Gerald Ford signed it into law on December 31, 1975.[20] HMDA became the source for community groups to confirm lending patterns in their neighborhoods, fueling calls for a piece of legislation that would require banks to reinvest in their communities. It was premised on the idea that since banks were chartered, regulated, and insured by the federal government to serve the public's interests, they also had an "affirmative obligation" to serve local credit needs.[21]

Following extensive meetings with community groups, including a two-and-a-half-day meeting held by HUD in Philadelphia with 58 witnesses, in 1977 Senator Proxmire introduced the Community Reinvestment Act (CRA) as a complement to HMDA, to "encourage financial institutions to help meet the credit needs of the communities in which they are chartered." In his floor remarks introducing the bill, the Senator plainly stated that:

> [D]epository institutions—including commercial banks, mutual savings banks[,] and savings and loan associations—play a strategic role in allocating the public's savings. Their collective decisions help to shape the communities we live in, our economic well-being, and have a profound impact on our daily lives . . . The bank regulatory agencies have considerable influence over financial institutions, with the authority to approve or deny applications for deposit facilities . . . Successful applicants pay nothing for the right to operate a new deposit facility[,] even though they convey a substantial economic benefit . . . In return for these benefits financial institutions are required by law and regulatory policy to serve the convenience and needs of their communities, including the credit needs of their communities . . . In practice the regulators have tended to ignore credit needs and [have instead] focused on deposit needs. [Currently] the regulators do not require any analysis of the community's needs for credit and how the applicant proposed to meet that need.[22]

CRA's IMPACT NATIONWIDE AND ON LATINOS

Today, CRA promotes the goal of fair and equal distribution of banking services in all neighborhoods, regardless of the racial, ethnic, or income composition of their residents. Since its passage in 1977, CRA has emerged as a critical tool to promote investment and affordable lending in underserved communities. Fair housing and equal credit laws prohibit discrimination against individuals and families, but CRA is unique in that it places an affirmative obligation on private financial institutions to meet the credit needs of the communities where they do business.

In its four decades of existence, CRA has served as the catalyst for encouraging regulated banks to lend to LMI communities of color. Specifically, CRA has helped to revitalize neighborhoods, increased mortgage and small business lending to LMI communities of color, and enabled nontraditional borrowers—including many Latinos—to access mainstream financial products and receive credit.

Overall, CRA has made significant nationwide improvements in access to credit. The law has led to an estimated $1.7 trillion in lending to economically distressed areas since its enactment and strengthened gains in access to credit and financial services in LMI communities of color.[23] The Philadelphia Federal Reserve (Philly Fed) reported in two different papers that the CRA has increased mortgage lending and the extension of credit to small businesses.[24] In a 2017 paper, the Philly Fed found that the loss of CRA-eligibility status in a neighborhood leads to a decrease of between 10% and 20% in the volume of mortgage purchase originations by CRA-regulated lenders. The paper also found that the CRA has made mortgage credit more accessible for households in LMI communities.[25] Specifically it states that:

> The CRA effects are more pronounced among minority borrowers . . . Without the incentive of CRA, it seems depository institutions are less likely to keep up or expand their supply of mortgage credit in [LMI] neighborhoods; instead they tend to scale back their lending from these neighborhoods by reducing the supply of mortgage credit to minority borrowers . . .

The Federal Reserve Bank of Boston reported in a 2013 paper that CRA expanded access to credit in LMI neighborhoods by 9% and that this expanded access to credit did not result in worse credit outcomes after the financial crisis.[26]

CRA has been an important tool in mitigating the effects of discrimination and disparate treatment of Latinos within mainstream financial markets, especially in terms of mortgage lending. UnidosUS, in its statistical brief analyzing National Survey of Mortgage Origination Data from 2014 to 2018 (Attachment A), found that the CRA has bolstered home lending for Latinos and facilitated between 15% and 35% of home loans to Latinos in LMI census tracts. This was about two to three times the share of loans facilitated to Whites in LMI census tracts.[27] Notably, Latinos represent 18% of the population; as the Latino community grows, especially in rural America where the Hispanic population has doubled since 1990, CRA remains a critical tool for ensuring that the financial system serves our communities in a fair and inclusive manner.[28]

Leveraging private investment toward the public goal of ensuring that minority and LMI communities have equal access to bank services has produced benefits for communities of color, the banks themselves, and all Americans. Without the CRA, Latinos and other LMI communities nationwide would face widespread barriers accessing mainstream financial products. This would inhibit their progress toward financial security and the empowerment that comes from owning homes and businesses.

HOW THE PROPOSED RULEMAKING COULD HURT LATINOS

The OCC and FDIC's proposal reiterates concerns that the current CRA framework has not kept pace with the dramatic changes that have occurred in the banking industry since 2005, when the CRA regulations were last revised. As such, the proposal would establish a new framework for measuring insured banks' CRA performance. It focuses on redefining assessment areas, expanding the type of activities eligible for CRA credit, addressing digital banking challenges, and encouraging lending to LMI borrowers in underserved communities, such as communities located in rural areas and on tribal lands.

As thoroughly addressed in our November 2018 response to the OCC's Advanced Notice of Proposed Rulemaking (ANPRM) (Attachment B), we urged the OCC and its fellow prudential regulators, including the FDIC, to consider a rulemaking process to modernize CRA which would: 1) do no harm; 2) increase the size and impact of investment in Latino LMI communities; and 3) expand access to affordable credit for Latino LMI communities. After meeting with the OCC and the FDIC, along with other civil rights and economic justice organizations to reiterate our concerns, we note that the issues we raised have not been fully addressed by the OCC and FDIC's Notice of Proposed Rulemaking (NPRM) issued in January 2020.

Even though we and other civil rights organizations have a number of issues with the OCC and FDIC's NPRM, this statement will address only three of those concerns: 1) how the proposal will diminish the importance of branch banking; 2) how the current list of credit-receiving activites under the proposal will have little-to-no-impact on the communities in which banks are located; and 3) the absence of a clear mechanism for essential community input in CRA examinations.

Limited Consideration of Bank Branches

The underlying theory of the CRA is that banks have public duties because they are essentially public institutions. In passing the CRA in 1977, Senator William Proxmire, alluded to the dependent nature of the bank-state relationship. He stated that the CRA was based on a "widely shared assumption" that "a [bank's] public charter conveys numerous economic benefits and in return it is legitimate for public policy and regulatory practice to require some public purpose . . ." The Senator claimed that banks are "a franchise to serve local convenience and needs" and therefore "it is fair for the public to ask something in return." Senator Proxmire explained "financial institutions are required by law and regulatory policy to serve the 'convenience and needs' of their communities. The 'needs' of a community clearly include the need for credit services as well as deposit services . . . . The proposed legislation directs the bank regulatory agencies to use their influence to award applications for deposit facilities in a way that will benefit local communities as well as bankers."[29]

In order to enforce the CRA, regulators currently look at a bank's "assessment areas," defined in the regulations regarding where a bank has its branches or some other physical presence, to gauge whether the bank is in fact meeting the credit needs of the community in which it does business. The current CRA regulations explicitly recognize the importance of bank branches and financial services as part of the "service" test of the CRA examination, which primarily examines the geographic distributions of banks' branches, as well as how many banks have opened and closed—particularly those that serve LMI communities.

With the advent of internet banking and the proliferation of smart devices, the current approach for delineating assessment areas should be expanded, but not at the expense of physical bank branches. Yet, the OCC and FDIC proposed revising the service test to devalue bank branches.

Specifically, the NPRM proposes that "the number of the bank's branches located in LMI census tracts . . . during the same annual period used to calculate the qualifying activities value would be divided by the bank's total number of branches in that annual period and multiplied by 0.01." This proposal would greatly diminish the importance of bank branches in meeting the test for CRA compliance, which could lead to significant branch closures in LMI communities. This would lead to a corresponding decrease in lending in these communities' and reduced access to mainstream financial products.

Branch banking is extremely important in providing access to financial services and credit to LMI communities and communities of color. As discussed in our 2019 Future of Banking report coauthored by PolicyLink (Attachment C), physical presence still has an impact on whether residents of LMI communities of color are banked, including in their decision on whether or where to open an account and resolving issues with a bank. Research also shows that there is a direct correlation between the number of bank branches and ATMs located in a neighborhood and the credit opportunities available to the surrounding community.[30]

The Federal Reserve Bank of Philadelphia found in a 2019 paper that CRA has "motivated banks to keep their branches open in LMI communities in the aftermath of the Great Recession." More importantly, it states that "[a]s banks increasingly seek ways to reduce costs, it is likely that more of them will substitute technology such as ATMs or online and mobile banking for in-bank interactions. Understanding 'what matters' about a branch could help identify alternative approaches to ensuring that technological shifts do not leave lower-income communities and borrowers behind."[31]

Creditworthy Activities Should Benefit the Communities in which Banks Are Located

Congress enacted the CRA with the belief that financial institutions have a responsibility to meet the credit needs of the entire community that they serve, including meeting the needs of low- and moderate income (LMI) neighborhoods, as well as inner city, older, and predominantly minority neighborhoods.[32] This is clear from the remarks of Senator William Proxmire, on the Senate floor clarifying the intent of the law. He articulated:

> The committee included title IV to reaffirm that [banks] are indeed chartered to serve the convenience and needs of their community, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans. . . . Mr. President[,] the solution to housing and economic development needs is not simply a Federal program, a Federal charge . . . . What it takes is the kind of resources that the local financial institutions have, and they have plenty. . . . The private sector has the capital, the know-how, and the efficiency to do the job. And the banking industry must be encouraged to reinvest in local needs . . .We need to encourage bankers to get out of the office and walk around the block and find loan opportunities here at home.[33]

The OCC and FDIC's NPRM would allow for community development activities that are outside of the original intent of the CRA. These activities neither assist in meeting the credit needs of the communities in which they are chartered, nor serve the convenience and needs of their communities.

The OCC and FDIC's NPRM proposes a number of new activities that can earn CRA credit. Even though the most egregious of these activities is the well-publicized ability for banks to earn credit for financing upgrades to sports stadiums,[34] we still are bothered by a list of financial literacy programs that receive credit, among other activities. We are bothered by the fact that the OCC and FDIC sought to include financial education or literacy curricula at local community centers, "train the trainer" programs designed to train teachers to provide financial literacy education to their students, and bank employees providing financial education in connection with a school savings program, over financial coaching programs or a combination of the two.

Financial literacy programs, especially in low-income populations—the target communities of the CRA—are not best served by financial education. As summarized by Hastings, Madrian and Skinnyhorn in their 2013 article, there is mixed evidence about the efficacy of financial education,[35] especially for low-income populations.[36] Rather, as displayed in the Urban Institute's 2015 seminal study comparing financial education with financial coaching,[37] a well-structured financial coaching program can increase savings amounts and the number of deposits, paying bills on time, credit scores and familiarity with a credit report, and the likelihood of having a budget; while reducing debts, the likelihood of borrowing money from family and friends, the use of payday loans, and financial stress levels.[38]

While any increased engagement in financial education is welcome, this approach would have too few controls, and there would be inadequate oversight of the activities to ensure the achievement of the CRA goals. Furthermore, bank-designed curricula are often aligned with the bank's business goals, rather than consumer needs, and deploying these throughout the communities that CRA aims to serve would function as a new marketing stream for businesses rather than fulfilling the law's intent, as shown in this testimony, of ensuring equal access to banking services.

Community Input Is Essential

As discussed in our 2018 response to the ANPRM and in our meeting with the OCC and the FDIC in anticipation of the proposed NPRM, we urged the OCC and the FDIC to preserve community feedback to meet the needs of their entire communities, especially LMI communities. Otherwise, we argued that this would essentially strip the "community" out of the Community Reinvestment Act.

Even though the NPRM explicitly states that it would preserve community voices, it does not articulate how this is actually the case. It does not specify how the regulatory agencies would solicit, review, or weigh public comments from community organizations or individuals about the performance of banks or their contribution to helping meet the credit needs of the local communities in which they are chartered.

The history of the enactment of HMDA and CRA underscores the essential role of community groups in diagnosing the causes of and offering effective solutions to community disinvestment. Furthermore, prior to every major policy advance to expand access to credit to minority and disadvantaged people, many in the financial services industry and regulatory community either denied the existence of a problem or predicted that fair housing and fair lending laws, HMDA, and CRA would have dire consequences. In virtually every case, community-based advocates have been proven right, and the so-called experts were wrong. In this connection it's worth noting that the financial crisis of a decade ago was driven largely by unregulated financial institutions that were not covered by CRA, which should give pause to those who advocate for weakening a regulatory regime that has withstood the test of time.

CONCLUSION

"Major updates to the CRA regulations happen once every few decades. So, it is much more important to get reform right than do it quickly. If we only have one opportunity for a few decades, I want to make sure CRA reform is based on the best analysis and ideas and the broadest input available."
—Dr. Lael Brainard, Board of Governors of the Federal Reserve System, January 8, 2020

In the four-decades since CRA was proposed, the law has increased bank lending in LMI communities, increased the share of loan portfolios with CRA-covered loans, and outpaced similar growth in lending to LMI communities among non-CRA-covered institutions. CRA has helped to spur mainstream regulated financial institutions to innovate in ways that have been helpful to minority LMI borrowers. Moreover, it has encouraged regulated banks to establish and strengthen relationships with local community-based organizations (CBOs) which help advance banks' goal of lending safely and affordably to LMI residents. One of the most important outcomes of these activities is the creation of Community Development Corporations (CDCs) and CDFIs that have assisted in ensuring that capital and credit flow into LMI neighborhoods from banks in ways that are prudent and affordable.

Yet, the CRA is not perfect. Currently, 98% of banks pass their CRA exams, while many families and communities of color remain locked out of meaningful financial services including 16.9% of Black households and 14.0% of Latino households, according to the FDIC.[39] As the Latino community grows, especially in rural America where the Hispanic population has doubled since 1990, CRA remains a critical tool for ensuring that the financial system serve 18% of the population in a fair and inclusive manner.[40]

We hope this testimony provides the Committee with information on the ways in which the prudential regulators can improve the CRA through regulations that can be more effective in promoting responsible lending to the diverse populations of the U.S. In moving forward with their NPRM, we urge the OCC and FDIC to withdraw their current NPRM and work with the Federal Reserve to propose a new NPRM. In proposing a new, revised NPRM, we urge all three prudential regulators—together—to further consult with civil rights, economic justice, and community organizations about how best to modernize the regulations under this important law to serve all communities—especially those it was designed to protect. We look forward to further discussions on strengthening the CRA and will be happy to respond to any questions raised by this testimony.

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[1] It is well known that individuals of color have historically had difficulty accessing credit, and when they are able to do so, obtain lower dollar amounts. For example, the overall rate of mortgage denials for individuals of color was between 13.5% and 18.4%, while the denial rate was only 8.8% for Whites. In 2017, the average value of home purchase loans for individuals of color ranged from $224,000 to $230,000, while the average value for Whites was $254,000. Similarly, access to credits for minority-owned businesses is still a challenge, as approval rates for credit for individuals of color is 6% to 19% lower than that of Whites. In 2006, the average loan amount for high-sales minority firms was $149,000, while the non-minority average was more than twice this amount at $310,000. "Large Numbers of Loan Applications Get Denied. But for Blacks, Hispanics and Asians, the Rejection Rate Is Even Higher." Washington Post. May 23, 2018. Accessed October 10, 2018. https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blackshispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3- 49d6d4814c4c_story.html?utm_term=.0d4073abd59a; data obtained from 2017 Home Mortgage Disclosure Act (HMDA) data provided by the Consumer Protection Bureau, https://www.consumerfinance.gov/dataresearch/hmda/explore; "2016 Small Business Credit Survey: Report on Minority-Owned Firms." Fed Small Business. Accessed October 10, 2018. https://www.fedsmallbusiness.org/survey/2017/report-on-minority-ownedfirms; "The State of Minority Business Enterprises: An Overview of the 2007 Survey of Business Owners."

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ATTACHMENT A

UNIDOSUS
STRONGER COMMUNITIES. STRONGER AMERICA.

STATISTICAL BRIEF
JUNE 2019

LATINO HOMEOWNERSHIP 2007-2017:

A Decade of Decline for Latinos*

Key Findings

1. **Since the Great Recession, the White-Latino homeownership gap remains unchanged.** In 2007, about half of Latinos owned a home. During the Great Recession, millions of Latino families lost their homes to foreclosure, significantly decreasing the homeownership rate. Since the end of the Recession, the number of new Latino homeowners has increased, yet growth in new Latino homeowners still lags behind new White homeowners.
2. **Despite gains, disparities in home purchase lending to Latinos have persisted.** In 2017, Latinos made up 13% of U.S. households, yet received less than 10% of mortgages to purchase a home. During the Recession, Latino borrowers struggled to access affordable loans, as lenders set more stringent standards. Since, mortgages to Latinos have increased; yet overall growth in loans made to Latinos has been smaller than the growth in loans to Whites.
3. **Latinos face dual barriers of access to credit and affordability.** In the past decade, fewer Latino applicants have been denied a mortgage. However, emerging trends of increasing denials due to debt, collateral, and cash reserves point to growing challenges in Latinos' ability to afford a home in their communities. Latinos also continue to face disparities in home mortgage costs.
4. **There appear to be cracks in the foundation, as more Latinos fall behind on their mortgage payments.** Despite a drop in the foreclosure rate, there has been a sharp increase in early- and late-stage mortgage delinquency for Latinos. Significantly more Latinos were more than 30 days past due on their mortgage in 2017, as compared to 2014.

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Introduction

Hispanic* Americans represent a growing and influential segment of the U.S. housing market. Since 2010, growth in Latino homeownership has accounted for 60% of total homeownership growth in the United States.[1] Moreover, projections from the Harvard Joint Center for Housing Studies indicate that Latinos will make up about 37% of new American households and half of new homeowners in the coming decade.[2]

Homeownership has long been a cornerstone of the American dream for countless Latinos, and Latinos are more likely than other groups to have the majority of their assets invested in their homes.[3] Furthermore, Latinos place a high value on homeownership. According to a recent poll, more than nine out of 10 (94%) Latino voters said that it was important for lawmakers to create more homeownership opportunities.[4]

Since the Great Recession, Latino homeownership rebounded from a low of 45% in 2014 to 47.2% in 2017. Despite recent gains, continued low Latino homeownership rates and persistent homeownership disparities have the potential to dampen the future prospects of the nation's housing market and economy. For example, in 2016, about 40% of Latino homeowners' wealth was tied to the equity in their homes.[5] And many Latinos have yet to recover from the losses they sustained and continue to have less wealth. Additionally, according to our analysis of Home Mortgage Disclosure Act (HMDA) data, Latinos continue to lag-behind Whites in terms of homeownership. And Latinos are more likely to be denied a mortgage, receive fewer home mortgages, and are more likely to fall behind on their mortgage payments than Whites.

Given that Latino households will contribute to significant growth in the housing market over the next decade, it is critical to address the low homeownership rate of Latinos and increase Latinos' access to affordable homeownership opportunities. Doing so is not only imperative to ensure that the benefits of homeownership are available to all Americans in the decades to come, but also for the future of the nation's economy. Investments in housing and consumption of housing services contributes an average of 15% to the nation's GDP.[6] From home construction to buying a first home, Latinos will be critical to bolstering the housing market and the nation's economy.[7]

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

This statistical brief illustrates the status of Latinos in the mortgage market for the period between 2007 to 2017, and emerging trends for Latinos homeowners.[8] It is intended to serve as a resource to policymakers and stakeholders. This brief uses HMDA home purchase mortgage origination data from the Consumer Financial Protection Bureau (CFPB) and National Survey of Mortgage Originations data from the Federal Housing Finance Agency, unless otherwise indicated.

Table 1: Indicators at a Glance 2007-2017

	2007		2017	
	Latinos	Whites	Latinos	Whites
Population[9]	45,427,437	223,000,483	58,846,134	235,507,457
Households	12,311,308	223,005,483	15,823,610	235,507,457
Homeowners	6,141,649	59,576,858	7,471,778	58,261,487
Homeownership Rate	49.9%	72.2%	47.2%	69.5%
Home Purchase Originations	428,834	2,561,107	395,858	2,772,559
% Non-Conventional	10.6%	11.65%	52.2%	33.3%
% FHA	8%	7.3%	41.3%	1.8%
% Higher-Priced*	25.4%	11.5%	19.6%	8.2%
% Overall Approval Rate	67.3%	82.7%	85.9%	90.3%
% Overall Denial Rates	32.8%	17.3%	14.1%	9.7%
Top Reason for Denial	Credit History	Credit History	Debt-to-Income Ratio	Debt-to-Income Ratio
Top Mortgage Lender	Wells Fargo	Bank of America	Wells Fargo	Wells Fargo

* As identified by the CFPB, a mortgage is higher-priced if the annual percentage rate (APR) is 1.5 percentage points (or more) higher than the Average Prime Offer Rate (APOR).

Key Dates: The Great Recession & Recovery[10]

October 2006: Housing market cools as foreclosures begin to rise.

December 2007: Official start of the Great Recession after weakening economic growth; housing crisis deepens with foreclosures on the rise.

January 2008: Federal Reserve responds to slowing growth by continuing to drop interest rates.

February 2008: Economic Stimulus Act signed into law by President George Bush includes $152 billion in taxpayer credits, business tax cuts, and an attempt to keep housing prices from quickly rising.

March 2008: Large bank lenders and mortgage companies begin to go under.

September 2008: U.S. Treasury takes over the management of Freddie Mac and Fannie Mae, two of the largest companies guaranteeing home mortgages.

October 2008: Stock market crashes with Dow Jones reaching historic lows—millions of Americans see drastic losses on financial investments; Troubled Asset Relief Program (TARP) signed into law by President George Bush includes $439 billion in taxpayer funds to buy mortgages and other assets from struggling financial institutions.

December 2008: Auto industry receives TARP funds; Federal Reserve lowers short-term interest rate to 0%.

January 2009: U.S. government continues bailing out banks.

February 2009: President Obama signs the American Recovery and Reinvestment Act and Economic Stimulus Act (ARRA) into law, which included $831 billion in tax cuts, funds to spur employment, temporary relief programs to those hit hardest, and spending for schools, health care, and infrastructure.

June 2009: Official end of the Great Recession.

October 2009: U.S. unemployment rate hits a record high.

December 2009: Home foreclosures reach a record high.

July 2010: President Obama signs the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) into law to increase consumer protections and government regulatory power over financial institutions; Dodd-Frank leads to the creation of the Consumer Finance Protection Bureau (CPFB), which has returned billions to defrauded consumers.

June 2014: Labor market recovers jobs lost during the Great Recession.

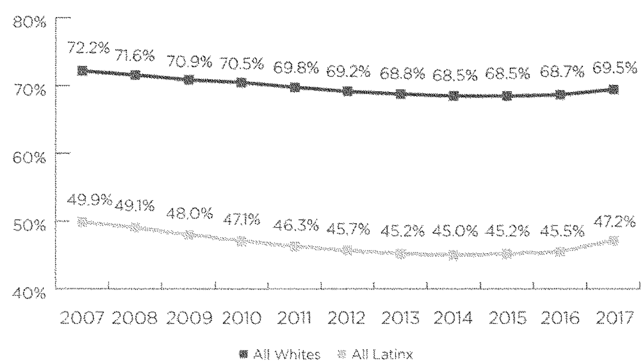
May 2018: Congress eases Dodd-Frank regulations on financial industry.

Gaps and Disparities in Latino Homeownership are Stagnant

Since the Great Recession, the White-Latino homeownership gap remains unchanged. In 2007, about 50% of Latinos owned a home. During the Great Recession, millions of Latino families lost their homes to foreclosure, and few new applicants received a mortgage to buy a home—significantly decreasing the homeownership rate. Then in 2014, the homeownership rate declined to a low of 45%. Since 2014, the Latino homeownership rate has risen to 47.2% in 2017 (see Figure 1).

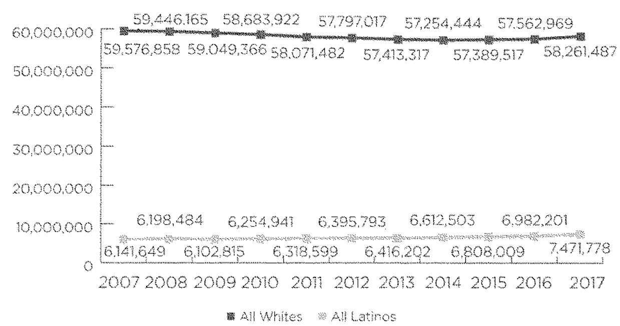
Between 2007-2017, new Hispanic households have grown by 28%, while new White households have grown only 5% (See Table 1). The number of Latino homeowners also continued to grow, yet this growth still lagged behind that of White homeowners (see Figure 2). In terms of percentage points, the Latino homeownership rate lags behind the rate of Whites by about 22 percentage points—the same gap that existed in 2007 (see Figure 1).

Figure 1: Homeownership for Latinos has Slightly Declined in the Last 10 Years



Source: U.S. Census Bureau, American Community Survey 1-Year estimates, 2018.

Figure 2: The Number of Latino and White Homeowners by Year



Source: U.S. Census Bureau, American Community Survey 1-Year estimates, 2018.

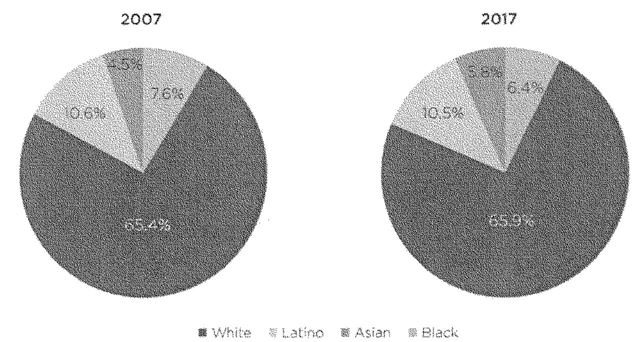
Disparities and Gaps Remain in Home Purchase Originations*

Disparities in home lending have persisted since the Great Recession. In 2017, Latinos composed 13% of households, yet owned only 9% of the homes. The same year, Latinos received less than 11% of mortgages to buy a home and fewer mortgages than they received in 2007 (see Figure 3).[11] During the Great Recession, the number of mortgages for home purchases originated to Latinos dropped by 54.8%, from 354,994 in 2007 to 194,721 in 2011 (see Figure 4). In 2012, mortgages to Latinos began to increase, and by 2016 the number of loans surpassed 2007 levels to 363,111 (see Figure 4). Despite these improvements, overall growth in loans made to Latinos has been smaller than the growth in loans to Whites (see Figure 4). Since 2011, Whites received consistently more loans each year, receiving 200,000 or more loans in four of those years, while the growth in mortgages to Latinos has not surpassed 60,000 each year (see Figures 4 and 5).

* Home purchase originations do not include mortgages for the purchase of manufactured homes.

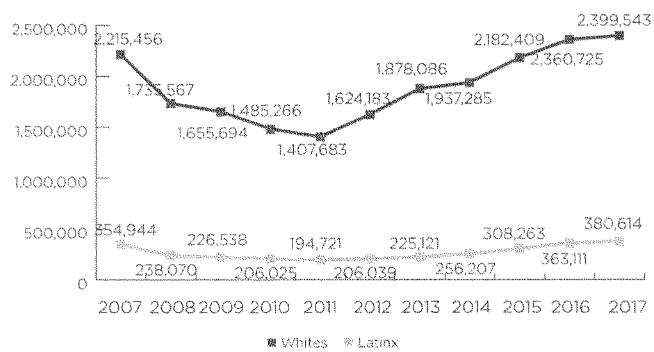
Figure 3: A Comparison of Home Purchase Originations by Race and Ethnicity 2007 and 2017

While the share of Latinos and other minority groups heading new households has grown in the last decade, the share of home purchase loans made to eligible borrowers in these communities remained relatively unchanged.



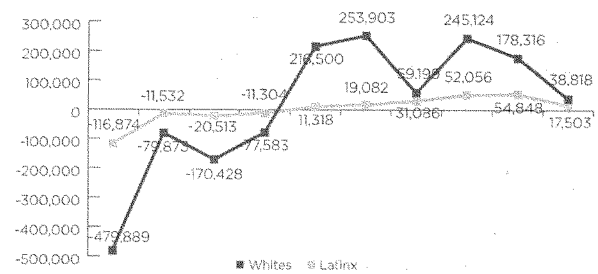
Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018.

Figure 4: The Number of Originations to Latinos Has Increased Slightly Since 2007



Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018.

Figure 5: The Number of Mortgage Originations Per Year Has Increased Since 2007

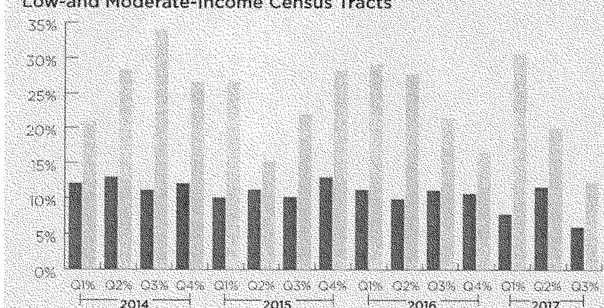


Source: UnidosUS calculations using data from Consumer Financial Protection Bureau, HMDA Database public use data, 2018.

Latinos and the Community Reinvestment Act

The year 2017 marked the 40th anniversary of the Community Reinvestment Act (CRA). CRA was enacted to encourage banks to serve low-and moderate-income neighborhoods by making direct investments and providing affordable bank and credit services to the communities in which they are located. CRA has helped make affordable homeownership possible for millions of Americans with modest incomes, including Latinos. Studies show that even during the Great Recession, homeowners with a mortgage spurred by CRA were more likely to sustain homeownership.[12] Since the end of the Great Recession, the CRA bolstered home lending for low-and moderate-income communities, especially for Latinos. Since 2014, CRA helped facilitate between 15% to as much as 35% of home loans to Latinos, about two to three times the share of loans facilitated to Whites (see Figure 6).

Figure 6: CRA has Increased the Percentage of Loans to Latinos in Low-and Moderate-Income Census Tracts



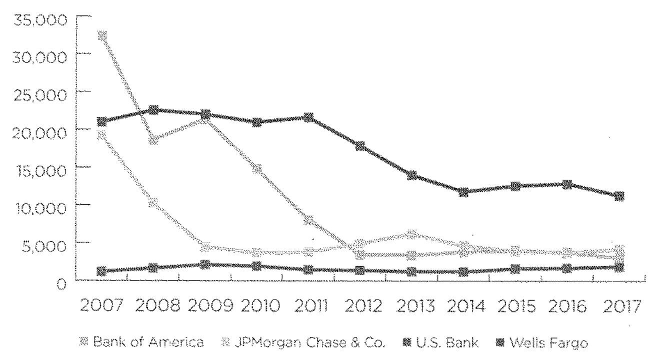
	2014 Q1%	2014 Q2%	2014 Q3%	2014 Q4%	2015 Q1%	2015 Q2%	2015 Q3%	2015 Q4%	2016 Q1%	2016 Q2%	2016 Q3%	2016 Q4%	2017 Q1%	2017 Q2%	2017 Q3%
White	12.1	13	11.1	12.1	10.1	11.2	10.2	13	11.2	9.9	11	10.7	7.8	11.6	6
Latino	20.9	28.3	34	26.7	26.7	15.2	21.9	28.2	29.1	27.8	21.4	16.7	30.7	20	12.3

Source: National Mortgage Database, National Survey of Mortgage Originations Public Use File, November 8, 2018.

The Rise in Non-Bank Lending

Non-bank lending has failed to fill the gap left by traditional banks since the end of the Great Recession. Since 2007, home lenders adopted more stringent lending standards, limiting the pool of mortgage applicants eligible to qualify for a mortgage. By some estimates, these standards screened out about six million eligible borrowers—including numerous Latinos.[13] Meanwhile, the largest banks significantly reduced their mortgage lending to borrowers with modest incomes.[14] This retreat has hindered Latinos' prospects for qualifying for an affordable home loan. Between 2007 and 2017, the three largest banks have reduced home purchase lending to Latinos by 43% (Wells Fargo), 66% (J.P. Morgan Chase), and 90% (Bank of America) (see Figure 7).

Figure 7: Home Purchase Originations by Top Banks to Latinos

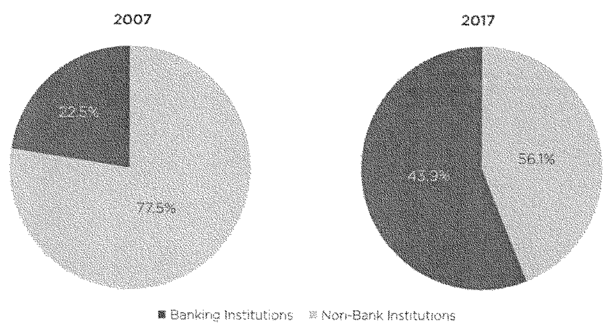


	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
	21,023	22,603	22,030	21,013	21,666	17,911	14,057	11,803	12,621	12,886	11,352
	19,222	10,267	4,479	3,684	3,816	4.943	6,236	4,659	3,928	3,751	4,214
	32,370	18,680	21,388	14,956	8,090	3,518	3,397	3,876	4,031	3,803	3,113
	1.207	1.658	2,134	1,950	1,472	1,397	1,226	1.218	1,630	1,724	1,916

Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Home Purchase Originations are for single-family, first-lien, owner-occupied housing units, and does not include manufactured homes.

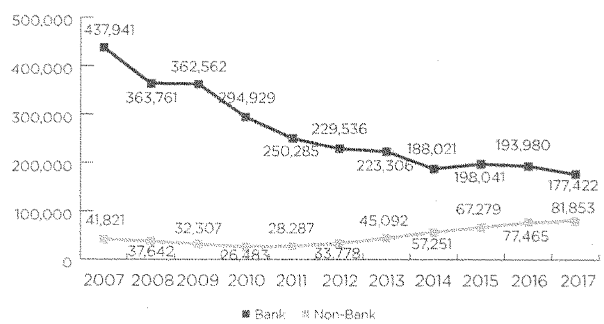
Since the end of the Great Recession, non-bank lenders have increased home mortgage lending, (Figures 8, 9, and 10). Yet, non-bank lending did not fully offset the effects of bank lenders' reducing home purchase lending to borrowers with modest incomes.[15] Similarly, non-bank lenders have not bolstered home purchase mortgage originations to Latinos. Between 2007 and 2017, bank lending to Latinos declined by approximately 73%, compared to a decline of approximately 60% for Whites. In the same time period, non-bank lending to Latinos increased about 200%, compared to about 104% to Whites. Even so, the reduction in home purchase lending by top bank lenders influenced Latinos' access to home purchase mortgages to a greater degree than the increase of lending by non-banks.

Figure 8: Share of Home Purchase Originations by Type of Financial Institution 2007 and 2017



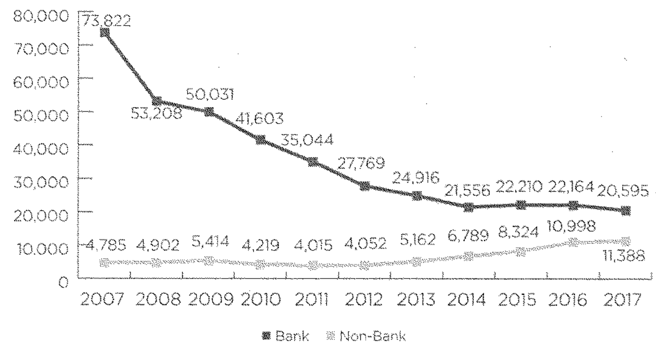
Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018.

Figure 9: Home Purchase Originations by Top Lenders Between 2007 and 2017 for Whites



Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Figure 10: Home Purchase Originations by Top Lenders Between 2007 and 2017 for Latinos

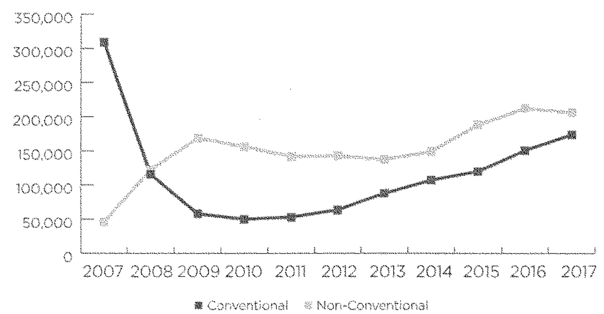


Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Latinos overwhelmingly rely on non-conventional loans, such as FHA. The rate of non-conventional mortgages for Latinos has more than quadrupled since 2007, largely due to an increase in FHA loans (see Figure 11). In 2017, more than half of the loans that were originated for Latinos were non-conventional, representing an increase of 41.6% since 2007 (see Figure 12).

Since the Great Recession, FHA has been a critical source of financing for cash-strapped, credit-eligible borrowers—especially Latinos—who are less likely to have wealth passed down from previous generations. Yet, FHA's initial mortgage insurance premiums and fees required for the life of the loan, have added to Latinos' overall mortgage costs.

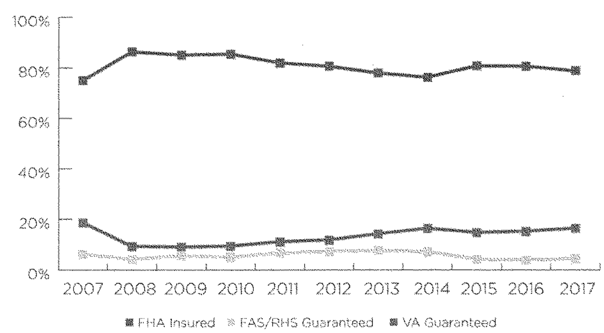
Figure 11: Latino Conventional vs. Non-Conventional Originations



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
■	309,395	115,694	57,894	49,918	53,003	63,470	87,594	107,199	119,820	150,589	173,852
▒	5,549	122,376	168,654	156,107	141,718	142,569	137,527	149,008	188,443	212,522	206,762

Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Figure 12: Non-Conventional Originations to Latinos



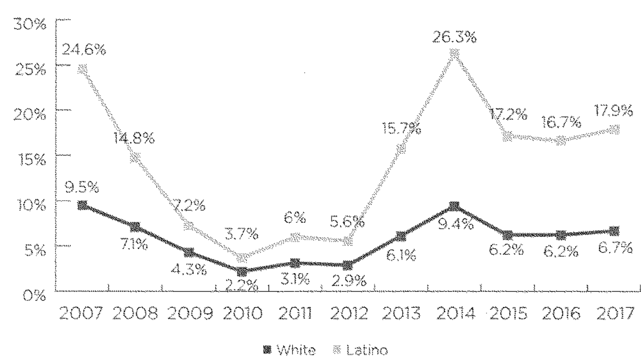
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
■	74.9%	86.4%	85.2%	85.5%	82.1%	80.7%	78%	76.3%	80.9%	80.7%	79%
▒	6.3%	4.2%	5.8%	5.1%	6.8%	7.4%	7.7%	7.2%	4.3%	3.9%	4.5%
■	18.7%	9.3%	9.1%	9.4%	11.1%	11.8%	14.2%	16.4%	14.8%	15.3%	16.5%

Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Higher-Cost Loans Dominate the Latino Home Purchase Market

Disparities in mortgage costs continue for Latinos. While Latinos were less likely to receive a higher-cost loan in 2017 than in 2007, Latino borrowers were still more likely to pay more for a loan to purchase a home than White borrowers (see Figure 13). In 2007, 25% of Latino home loans were higher-priced. Since then, higher-priced lending to Latinos plummeted to below 5% in 2010, spiked up to 26% in 2014, and by 2017 had declined to 18%. While higher-priced lending to Whites followed a similar pattern in the past decade, higher-priced lending remained below 10%. In 2017, about 7% of mortgages to Whites were higher-priced—eleven percentage points lower than Latinos (see Figure 13). Since the Great Recession as bank lending to Latinos declined and the percentage of non-conventional loans made to Latinos increased steadily. Between 2012 and 2014, there was a significant spike in the incidence of higher priced lending to Latinos. These trends, especially in 2014, suggest that more affordable loan options became limited, and Latinos' were more likely to be approved for higher priced loans.[16]

Figure 13: Incidences of Higher Priced Lending Have Declined Slightly for Latinos Since 2007

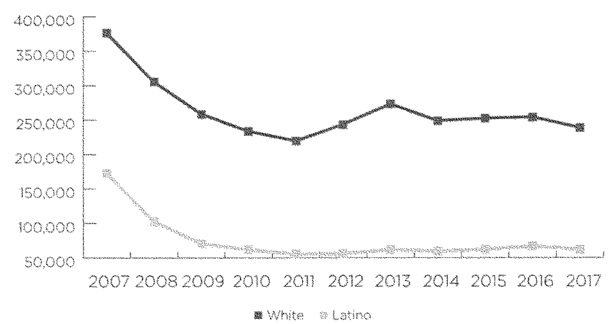


Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Mortgage Denials Have Declined for Latinos

Latinos face dual barriers of access to credit and affordability. In the past decade, fewer Latino borrowers were denied a home loan (see Figure 14). In 2007, approximately 173,000 Latino applicants were denied a mortgage and the most common denial reason was credit history. In 2017, approximately 62,000 Latinos were denied a mortgage and the most common denial reason was an applicants' debt-to-income ratio (DTI) (see Figure 15). The increase in denials due to DTI points to growing challenges in Latinos' ability to afford a home in their community.

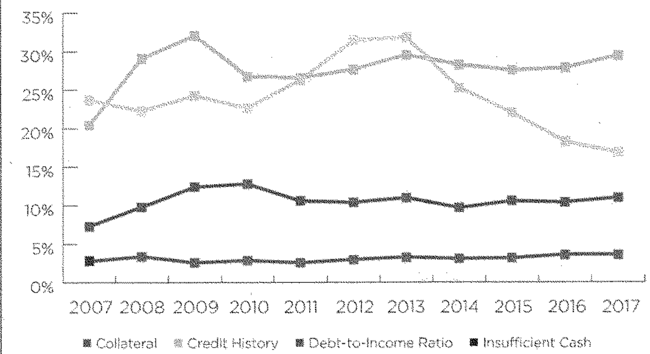
Figure 14: Home Purchase Mortgage Denials to Latinos Have Declined Since 2007



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
■	376,655	305,635	258,617	233,739	219,547	243,451	273,419	248,817	252,417	254,313	238,820
▒	172,994	102,551	70,590	61,933	55,308	55,941	61,947	59,578	62,055	66,690	62,471

Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018. Figure includes all HMDA-tracked bank and non-bank, single-family, first-lien, owner-occupied housing units. The figure does not include manufactured homes.

Figure 15: Top Home Purchase Mortgage Denial Reasons for Latinos



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
■	7.3%	9.8%	12.4%	12.8%	10.6%	10.4%	11%	9.7%	10.6%	10.4%	11%
■	23.7%	22.3%	24.3%	22.7%	26.3%	31.5%	31.9%	25.3%	22.1%	18.3%	16.9%
■	20.4%	29.1%	32.1%	26.8%	26.6%	27.7%	29.6%	28.3%	27.6%	27.9%	29.5%
■	2.8%	3.4%	2.6%	2.9%	2.6%	3%	3.3%	3.1%	3.2%	3.6%	3.6%

Source: Consumer Financial Protection Bureau, HMDA Database public use data, 2018.

Profile of New Latino Homeowners in 2017

Since the end of the Great Recession, new Latino homeowners with higher credit scores have accounted for most of Latino's homeownership growth. Beginning in 2017, the credit scores of Latino mortgage applicants approved for a home purchase mortgage began to rise, while DTI and payment-to-income ratios began to decline. These trends suggest potential barriers for eligible Latinos who reside in high-cost areas or have a credit score below 700.

Average Credit Score at Origination:
680

DEBT
Average Debt-to-Income Ratio:
39.1

Average Payment-to-Income Ratio:
22.6

Mortgage Delinquencies in 2017

Since the Great Recession, the declining foreclosure rate has supported the story of recovery and restoration in the nation's housing market. However, this is not the story for many hard-working, credit-worthy Hispanics. Since 2014, the percentage of Latino homeowners who made their mortgage payments on-time declined. According to data from the National Survey of Mortgage Originations at the start of 2014, nearly all (98.7%) Latino homeowners were current on their payments, yet by the third quarter of 2017, the percentage of Latino homeowners who were current on their mortgage payments had fallen by 21 percentage points.[17] Additionally since 2014, the number of Latino homeowners who were behind on their payments has grown, with an increases in the percentage of homeowners who missed one or more payments. Homeowners who miss three or more payments, or are more than 90 days past due, are at risk of foreclosure. These trends, coupled with demographic trends, indicate growing weakness in the housing market and concerns about Latino homeowners' ability to remain in their homes and sustain homeownership to build wealth.

Among Latinos who are not current on their mortgage payments:

30-59 days past due:
61.71%

60-89 days past due:
5.45%

90+ days past due:
34.83%

Conclusion

Ten years have passed since the Great Recession, and by many indicators, our nation's economy and housing market have rebounded. But for the Latino community, the last decade has not represented a full recovery from the significant loss of jobs, homes, and wealth experienced in the wake of the financial crisis. At the same time, new household formation and data on Latino homeownership show that Latinos saw gains in the last 10 years, yet improvements did not equal a full recovery, and disparities persist. This lack of progress has been exacerbated by the growing absence of affordable lending to low-and moderate-income communities, and the eligible Latino borrowers' limited access to affordable loan products.

Making home loans to families of modest means is a profitable, proven business. Yet since the end of the Great Recession, leading lenders with national footprints have shied away from the home purchase market. This has left many new Latino customers on the sidelines, just as they become upwardly mobile. This retreat will impede future growth in the nation's housing market and economy, affecting the ability of eligible borrowers to obtain affordable home financing and, possibly stymy the housing industry's contribution to economic growth.

To ensure that Americans, including Latinos, continue to benefit from homeownership, a responsible lending commitment by financial institutions, together with modest regulatory incentives, and federal investments is needed. Building on existing incentives such as the affordable housing goals and a national duty to serve, and investments in housing counseling, is also a smart business move for the nation's lenders. Just as these models have proven to be successful in the past, partnerships between lenders and the federal government can bring standardized underwriting and origination systems to the housing market and promote access to affordable homeownership.

Endnotes

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16 Bayer, Patrick, et al. "What Drives Racial and Ethnic Differences in High-Cost Mortgages? The Role of High-Risk Lenders." January, 2017. Accessed June 2, 2019. http://real.wharton.upenn.edu/~fferreir/documents/hhx035.pdf

17 UnidosUS Calculations from the National Mortgage Database, National Survey of Mortgage Originations Public Use File, November 8, 2018.

Appendix A. Latino Households in High-Cost Metropolitan Areas in 2017

Metropolitan Area	Home Price-to-Income Ratio	# ALL Households	# Latino Households	% Latino Households (of All Households)
Santa Cruz-Watsonville, CA	10.7	95,536	21,458	22.40%
San Jose-Sunnyvale-Santa Clara, CA	10.0	647,891	128,156	19.70%
Los Angeles-Long Beach-Anaheim, CA	9.5	4,320,174	1,473,113	34%
Urban Honolulu, HI	9.2	311,451	21,477	6.90%
Santa Maria-Santa Barbara, CA	9.0	144,015	47,108	32.70%
San Francisco-Oakland-Hayward, CA	8.9	1684081	264,496	15.70%
Kahului-Wailuku-Lahaina, HI	8.7	54,434	4,347	8%
Napa, CA	8.7	49,044	11,549	23.50%
Santa Rosa, CA	8.4	190,058	32,638	17%
San Luis Obispo-Paso Robles-Arroyo Grande, CA	8.3	105,044	16,449	15.60%

Source: Tabulations of National Association of Realtors, Metropolitan Median Area Prices, and Moody's Analytics Forecasts. Note: Home prices are the median sale price of existing homes and incomes are the median household income within markets.

ATTACHMENT B

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November 14, 2018

SUBMITTED VIA REGULATIONS.GOV
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency (OCC)
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Re: ANPRM on Reforming the Community Reinvestment Act's Regulatory Framework, Docket ID: OCC-2018-0008

Dear Chairman Otting and members of the Legislative and Regulatory Activities Division,

On behalf of UnidosUS (formerly the National Council of La Raza), we are writing to express our concerns regarding the Office of the Comptroller of the Currency's (OCC) advanced notice of proposed rulemaking (ANPRM) on Reforming the Community Reinvestment Act (CRA) Regulatory Framework (RIN 1557-AE34). Specifically, we ask that the OCC and its fellow regulators (the Federal Deposit Insurance Corporation (FDIC) and the Board of Governors of the Federal Reserve System (the Fed)) proceed in a way that not only improves and strengthens the CRA—without violating the original intent of the law or related civil rights laws.

UnidosUS is the largest Latino civil rights organization dedicated to improving life opportunities for the nation's 58 million Hispanics.[1] Through a network of nearly 300 affiliated community-based organizations, UnidosUS reaches millions of Latinos each year in 37 states, Puerto Rico, and the District of Columbia. To achieve its mission, UnidosUS expands opportunities for Latinos through capacity-building assistance to a national network of multi-service affiliate organizations rooted in Latino communities; robust and tested program models; applied research, policy analysis, and advocacy; and civic engagement efforts, providing a Latino perspective in five key areas: assets/investments; civil rights/immigration; education; employment and economic status; and health. For almost three decades, UnidosUS has conducted research and analysis and has testified in front of Congress on issues related to improving the financial standing of Latinos; including strengthening the CRA and the Home Ownership and Equity Protection Act (HOEPA), supporting strong fair housing and lending laws, and expanding access to affordable credit. In addition, UnidosUS manages a network of over 50 community-based, HUD-approved housing counseling agencies in more than 20 states across the country. Since its inception in 1997, the UnidosUS Housing and Wealth Alliance has helped over 590,000 families with their housing counseling needs.

In short, we have experience as both consumers and lenders. Our subsidiary, the Raza Development Fund (RDF), is the nation's largest Latino community development financial institution (CDFI). Since 1999, RDF has provided $400 million in financing to locally based development projects throughout the country. This work has not only supported the Latino community through pre-development loans, organizational assessments and a range of unconventional lending products, but has substantially increased UnidosUS's institutional knowledge of how Latinos interact with the mortgage and real estate markets, their credit and capital needs, and the impact of government regulation on lenders.

Given the significant impact that CRA has had on access to credit since its enactment, many of the proposals or examples contained in the ANPRM are troubling and potentially harmful for low-income consumers. Additionally, many of the proposals as articulated or contemplated within the ANPRM may have an adverse, disparate impact on Latinos and other individuals of color—which could violate the Equal Credit Opportunity Act (ECOA)[1] or Title VIII of the Civil Rights Act of 1968 (Fair Housing Act of 1968)—and should not be adopted.[2] Accordingly, we urge the OCC and fellow prudential banking regulators (the FDIC and the Fed) to consider a proposed rulemaking process that would: 1) do no harm; 2) increase the size and impact of investment in LMI communities; and 3) expand access to affordable credit for communities.

Background

Congress enacted the CRA with the belief that financial institutions have a responsibility to meet the credit needs of the entire community that they serve, including meeting the needs of low-and moderate income (LMI) neighborhoods, as well as inner city, older, and predominantly minority neighborhoods.[3] This is clear from the remarks of Senator William Proxmire (D-WI), the principal sponsor of the Act, on the Senate floor clarifying the intent of the law. He articulated:

> *The committee included title IV to reaffirm that [banks] are indeed chartered to serve the convenience and needs of their community, and as the bill makes clear,* ***convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans. . . .*** *Mr. President[,] the solution to housing and economic development needs is not simply a Federal program, a Federal charge . . . . What it takes is the kind of resources that the local financial institutions have, and they have plenty. . . . The private sector has the capital, the know-how, and the efficiency to do the job. And the banking industry must be encouraged to reinvest in local needs . . . We need to encourage bankers to get out of the office and walk around the block and find loan opportunities here at home.*[4]

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[1] 15 U.S.C. §§ 1691-1691f (1976).
[2] 42 U.S.C. §§3601-3619, 3632 (1982 & Supp. III 1985).
[3] Marscio, Richard D. "Fighting Poverty Through Community Empowerment and Economic Development: The Role of the Community Reinvestment and Home Mortgage Disclosure Acts." *New York Law School Journal of Human Rights*12 (1995): 281-89. Accessed October 10, 2018. Fighting Poverty Through Community Empowerment and Economic Development: The Role of the Community Reinvestment and Home Mortgage Disclosure Acts.
[4] 123 *Cong. Rec.* 17,630 (1977) (emphasis added).

In addition to meeting the credit needs of communities, CRA was also enacted to combat "redlining," the discriminatory practice of marking off areas on maps where banks avoided investments based on community demographics.[5] Neighborhoods that were considered high risk, or deemed "hazardous" were often redlined, denying occupants or potential occupants' access to capital investment which could have improved the housing and economic opportunities of residents.[6] Additionally, the purportedly "hazardous" neighborhoods were often comprised primarily of LMI consumers and communities of color. Even today, two-thirds of neighborhoods that the Home Owners' Loan Corporation (HOLC) classified as "hazardous" in 1935 to 1939 remain inhabited disproportionally by individuals of color.[7]

Due to its requirement for banks to meet the credit needs of their communities and intent to combat redlining, CRA has become one of the most important tools that LMI households and communities of color have to access mainstream banking services, credit, and investments. CRA has helped to revitalize neighborhoods and enable non-traditional borrowers—including many Latinos—to gain access to financial services and benefit directly from investments made by large mainstream banks that may have otherwise have left the community underserved. CRA has also been an important tool—albeit indirectly—in mitigating the effects of discrimination and disparate treatment of individuals of color and immigrants within mainstream financial markets.[8] Specifically, CRA has led to $1.7 trillion in lending to economically distressed areas since its enactment and has partially been responsible for the gains in credit in low and moderate income (LMI) communities and communities of color.[9] Another 2017 study found that CRA increased credit activity by 9% from 2004 to 2012 and the number of credit visible individuals in the community by 7%.[10] Still another study found that between 2010 and 2016, the CRA expanded the number of small business loans in LMI neighborhoods by 38%.[11]

With this legal and substantive background in mind, below we address some of the specific questions raised in the ANPRM.

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[5] Sen. William Proxmire stated that "the CRA responds to nationwide demands that Congress do something about redlining." 123 *Cong. Rec.* 17,604 (1977).
[6] "Redlining Was Banned 50 Years Ago. It's Still Hurting Minorities Today." *Washington Post*. March 28, 2018. Accessed October 10, 2018. https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?noredirect=on&utm_term=.019bbd88d58a.
[7] Ibid.
[8] *See infra* at note 14.
[9] "Banking on Local Communities." *New York Times*, April 15, 2004. Accessed October 10, 2018.
[10] Federal Reserve Bank of Boston. "Using Credit Reporting Agency Data to Assess the Link between the Community Reinvestment Act and Consumer Credit Outcomes." Federal Reserve Bank of Boston. March 04, 2014. Accessed October 10, 2018. https://www.bostonfed.org/publications/community-development-discussion-paper/2013/using-credit-reporting-agency-data-to-assess-the-link-between-the-community-reinvestment-act-and-consumer-credit-outcomes.aspx.
[11] Dore, Tim and Traci Mach. "Recent Trends in Small Business Lending and the Community Reinvestment Act." *FEDS Notes* (2018). Accessed October 12, 2018. https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-small-business-lending-and-the-community-reinvestment-act-20180102.htm.

Revising or Transforming the Current Regulatory Approach

Question 7:

We urge the OCC to continue using the current general framework of rating banks based on their lending, investments, services, and other factors, including the number of complaints and responses, a bank's public file, evidence of discriminatory practices, and a bank's assessment area. We are troubled that, in a memorandum released by the Department of the Treasury in May of 2018, Treasury proposed switching its rating process to one ratio composed of the dollar amount of a bank's CRA activities (loans, investments, and services to LMI individuals) divided by the bank's assets.[12]

The clear language of the CRA states that banks "have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[13] The key word in this language is the word "local." A single ratio or metric—as proposed in the Treasury memorandum—derived from a banks' CRA activities divided by its' total assets cannot tell an examiner, a bank, or a member of the public how responsive a bank is to its various service areas or different needs in a particular assessment area.

In particular, some banks may be tempted to find the lowest risk loans with the highest yields in just one or two LMI neighborhoods—without regard to the broader needs of diverse groups in their community. Similarly, some banks may seek out a small number of large dollar loans and investments only marginally benefitting LMI residents to boost their numerator in the one ratio. Either option would be problematic. The first clearly disregards the stated intent of the CRA to "help meet the credit needs of the local communities in which they are chartered." Both options could result in a disparate impact upon racial and ethnic minorities—in violation of ECOA and/or the Fair Housing Act of 1968.[14] Even though CRA ratings have not been as effective in

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[12] "Community Reinvestment Act - Findings and Recommendations." U.S. Department of the Treasury. April 3, 2018. Accessed October 10, 2018. https://home.treasury.gov/sites/default/files/2018-04/4-3-18 CRA memo.pdf.
[13] 12 U.S.C. §§ 2901(a)(1)-(3) (2006).
[14] It is well known that individuals of color have historically had difficulty accessing credit, and when they are able to do so, obtain lower dollar amounts. For example, the overall rate of mortgage denials for individuals of color was between 13.5% and 18.4%, while the denial rate was only 8.8% for Whites. In 2017, the average value of home purchase loans for individuals of color ranged from $224,000 to $230,000, while the average value for Whites was $254,000. Similarly, access to credits for minority-owned businesses is still a challenge, as approval rates for credit for individuals of color is 6% to 19% lower than that of Whites. In 2006, the average loan amount for high-sales minority firms was $149,000, while the non-minority average was more than twice this amount at $310,000. "Large Numbers of Loan Applications Get Denied. But for Blacks, Hispanics and Asians, the Rejection Rate Is Even Higher." *Washington Post.* May 23, 2018. Accessed October 10, 2018. https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c_story.html?utm_term=.0d4073abd59a; data obtained from 2017 Home Mortgage Disclosure Act (HMDA) data provided by the Consumer Protection Bureau, https://www.consumerfinance.gov/data-research/hmda/explore; "2016 Small Business Credit Survey: Report on Minority-Owned Firms." Fed Small Business. Accessed October 10, 2018. https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms; [14] "The State of Minority Business Enterprises: An Overview of the 2007 Survey of Business Owners."

driving investment as we had hoped, a single ratio or metric would do nothing to strengthen CRA's effectiveness.

Therefore, we urge the OCC and its fellow regulators to continue their ratings and examinations using the current framework that includes lending, investment, and services tests—to avoid running afoul of the original intent of the law and prevent disparate impacts upon minority communities. If the OCC wishes to revise this standard, they should work with Congress in order to amend the law, rather than attempt to change the law through regulations.

Question 11:

12 U.S.C. §§ 2901(a)(1)-(3) requires banks to help meet the credit needs of the local communities in which they are chartered and serve the convenience and needs of the communities in which they are chartered to do business.[15] In order to determine whether banks are meeting this requirement, bank examiners are currently required to consider community comments on local needs and how well banks are responding to these needs.

Sole reliance on a single metric devalues community input on community needs or the bank's performance not adequately captured by the metric, effectively remove the "community" from the *Community* Reinvestment Act. This would clearly violate the intent and purpose of the CRA, specifically a bank's requirement to "serve the convenience and needs of the communities in which they are chartered."[16] As such, we strongly disagree with any proposals that would adopt one ratio to measure a bank's CRA activities.

There may be ways to more effectively capture the quality as well as quantity of community involvement beyond the often "process-focused" listing of meetings or events that banks offer to demonstrate consultation, and we and our partners would be happy to discuss these in the context of the current regulatory framework.

Question 12:

The CRA is focused on the outcome of the banks' activities—namely, meeting the credit needs of their communities. Quantitative measures are surely helpful as one of several criteria against which to assess effectiveness, but qualitative judgments are also crucial. Sole reliance on average rates and dollar amounts, would allow some banks to focus on the amount of money that was provided to a community, rather than actual outcomes of the dollars in a community.

As articulated by the ANPRM, how community development services are quantified is not specified by the text of the CRA or its regulations. The ANPRM suggests that these community development services might be quantified using average rates to calculate a specific dollar amount or value for these services. By attempting to quantify community development services

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Minority Business Development Agency. April 19, 2017. Accessed October 10, 2018. https://www.mbda.gov/page/state-minority-business-enterprises-overview-2007-survey-business-owners-0.

[15] 12 U.S.C §§ 2901(a)(1)-(3) (2006).

[16] Ibid.

using a dollar amount or average rates runs the risk of banks utilizing the rates most favorable to them, regardless of the actual impact on LMI neighborhoods or individuals.
Thus, a more appropriate measure would be to measure through standardized methods how many LMI individuals were assisted—and to what degree—by community development services, investments or grants, rather than how much money was spent on facilitating these services.

Redefining Communities and Assessment Areas

Question 13:

A financial institution's first step in complying with the CRA is to delineate the community it serves. The regulations mandate that a map be used and that the delineated area may not exclude LMI neighborhoods.[17] Additionally, the regulations provide specific methods for delineating a community in one of three ways including: 1) a Standard Metropolitan Statistical Area (SMSA), 2) an institutions effective lending territory or the local area around each office that makes a substantial portion of its loans, or 3) any other reasonably delineated area that meets the purpose of the CRA and does not exclude LMI areas.[18]

With the advent of internet banking and the changing nature of technology, the current approach for delineating assessment areas should be expanded—but not at the expense of weighing physical branches. Our research demonstrates that bank branches remain extremely important in providing access to financial services and credit to LMI communities and communities of color.[19] According to the FDIC's National Survey of Unbanked and Underbanked Households, 71.6% of Latinos visited a bank branch in 2017, with more than 25% visiting a branch 10 or more times in 2017.[20] Research also shows that there is a direct correlation between the number of bank branches and ATM's located in a neighborhood and the credit opportunities available to the surrounding community.[21] Unless full-service branches remain included in a bank's CRA rating and are prioritized in that rating, full-service branches within LMI communities and communities of color may be targeted for branch closures that would disproportionately and disparately reduce the quantity and quality of the financial products and services available to them.

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[17] 12 C.F.R. § 228.41
[18] Ibid.
[19] "Profiles on Latino Banking: Technology." Accessed October 10, 2018. http://publications.unidosus.org/bitstream/handle/123456789/1401/lb_technology.pdf?sequence=1&isAllowed=y
[20] "2017 FDIC National Survey of Unbanked and Underbanked Households." October 23, 2018. Accessed October 26, 2018. https://www.fdic.gov/householdsurvey/2017/2017report.pdf.
[21] Ozgur Emre Ergungor, *Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods*, Journal of Money, Credit, and Banking, September 2011, https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1538-4616.2010.00343.x

Question 14:

12 U.S.C 2901(a)(1)-(3) requires that banks must serve the convenience and needs of the communities in which they are chartered to do business.[22] Similarly, agency guidelines state assessments areas must include "the geographies where the institution has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies in which the institution originated or purchased a substantial portion of its loans."[23]

Full-service bank branches are the most common way households access their finances, according to the FDIC.[24] UnidosUS research shows that Latinos' most common savings method is depositing funds into a savings account at a bank.[25] Activities made from full branches, staffed by customer service personnel, should continue to be weighted heavily in comparison to other activities. Areas beyond or outside of bank branches, including remote investments and deposit-taking ATMs, should be considered in the "aggregate," and not weighted as heavily as activities from fully-staffed bank branches. Otherwise, the importance of branches will be diluted. The single exception to this standard might be city- or MSA-wide activities—such as an affordable housing or small dollar lending program—that is limited or targeted specifically to LMI individuals and families. Otherwise, affording CRA credit for MSA-wide activities that may serve predominantly affluent populations, especially under the "one ratio" standard contemplated by the ANPRM, would actually encourage the divestment of bank branches in LMI areas, resulting in disparate impact upon communities of color—including Latinos— as articulated in the response to question 13.

Question 15:

We oppose the suggestion of automatically categorizing certain community and economic development loans or investments by banks under the CRA. Community and economic development activities, as well as revitalization and stabilization activities, are clearly defined in current agency guidance documents.[26] CRA guidance documents encourage lenders to target activities in Neighborhood Stabilization Program areas as designated by U.S. Department of Housing and Urban Development, as well as, disaster areas designated by U.S Federal

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[22] 12 U.S.C 2901(a)(1)-(3) (2006).
[23] "Large Institution CRA Examination Procedures." Board of Governors of the Federal Reserve System. April 2014. Accessed October 2018. https://www.federalreserve.gov/supervisionreg/caletters/CA_14-2_attachment_1_Revised_Large_Institution_CRA_Examination_Procedures.pdf.
[24] FDIC, "Brick and Mortar Banking Remains Prevalent in an Increasingly Virtual World," FDIC Quarterly, 2015, Volume 9, No. 1, https://www.fdic.gov/bank/analytical/quarterly/2015-vol9-1/fdic-4q2014-v9n1-brickandmortar.pdf
[25] "Banking in Color: New Findings on Financial Access for Low- and Moderate-Income Communities." Accessed October 10, 2018. http://publications.unidosus.org/bitstream/handle/123456789/1203/bankingincolor_web.pdf?sequence=1&isAllowed=y.
[26] "CRA: Community Development Loans, Investments, and Services." Office of the Comptroller of the Currency. March 2014. Accessed September 2018. https://occ.gov/.

Emergency Management Agency—giving them further guidance on where and how to respond to underserved and LMI geographies.[27]

Implementing a definition or a categorization of loans and investments could create an overly prescriptive framework that actually discourages banks from responding to local consumer needs. This designation could also result in many banks ignoring the unique needs of LMI communities or communities of color if they fall outside of the pre-designated categories. Similarly, limiting activities to those that are pre-defined by the government would prevent local community groups from prioritizing their own needs, precludes their ability to articulate concerns to local banks, and would discourage innovation. Such effects may well violate the language and intent of the CRA, as articulated in response to ANPRM question 11.

Additionally, these activities could have a disparate impact on communities of color.
If the OCC and its fellow regulators would like to expand the current definition of community and economic development activities, they should consider the following lending activities, services, and investments:

- Investments in community-based organizations, such as community development finance institutions (CDFIs). A bank can better target its investment in LMI individuals and neighborhoods through community-based organizations located within its assessment areas that are trusted by and currently serving LMI borrowers. CDFIs often offer economically disadvantaged individuals and communities experiencing historical disinvestment a range of financial services and credit products, including student loans, small business loans, personal loans or home loans, or other innovative products.[28]
- Investments in nonprofit housing counseling agencies and programs. Decades of research, including our own, has shown that housing counseling helps improve outcomes for LMI mortgage borrowers, from gaining an affordable mortgage and obtaining sustainable homeownership.[29]
- Foreclosure prevention programs. A bank has a variety of tools that it can use to help a homeowner struggling to make their mortgage payments, including modifying mortgage payments, reducing interest rates and reducing the principal mortgage amount to allow homeowners to sustain homeownership.

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[27] "CRA 101: An Introduction to the Community Reinvestment Act." Federal Reserve Bank of Richmond. Accessed October 9, 2018.
https://www.richmondfed.org/~/media/richmondfedorg/conferences_and_events/community_development/2012/cra_intro_050212.pdf

[28] "CDFI Products and Services." CDFI Coalition. 2018. Accessed October 9, 2018. http://cdfi.org/cdfi-products-and-services/.

[29] Abdighani Hirad, and Peter Zorn. "A Little Knowledge Is a Good Thing: Empirical Evidence of the Effectiveness of Pre-Purchase Homeownership Counseling." Harvard Joint Center for Housing Studies. August 2001. Accessed October 9, 2018. http://www.jchs.harvard.edu/sites/default/files/liho01-4.pdf. and Erika Hizel, Charles Kamasaki, and Geraldine Schafer. "Increasing Hispanic Homeownership: Strategies for Programs and Public Policy." UnidosUS. June 9, 2002. Accessed October 9, 2018. http://publications.unidosus.org/handle/123456789/1082.

- FinTech investments for LMI consumers. LMI households and communities of color have long been precluded from formal banking institutions. FinTech could be utilized by banks in order to better assist these communities and provide access to financial services to all Americans.

In sum, we believe that instead of attempting to presumptively assume that certain kinds of loans or investments effectively further the purposes of CRA—an exercise that seems both unnecessary and dangerous—regulators should assess the actual impact of such services on LMI families.

Question 16:

The plain language of the CRA clearly states that banks must "demonstrate that their deposit facilities serve the convenience and needs to of the communities in which they are chartered to do business."[30] Allowing banks to count a large amount of loans or services outside the communities in with they are chartered toward CRA credit—as contemplated in question 16—could violate the clear language of the CRA.

Allowing banks to provide a large number of loans or services outside of the communities in which they are chartered could have a devastating and discriminatory impact on LMI communities and communities of color. Since 1996, banks covered by the CRA have invested more than $980 billion in historically underserved zip codes through loans, investments, and philanthropy.[31] Local institutions lending in the communities they know best make homeownership, entrepreneurship and even basic banking services more accessible—especially in LMI communities and communities of color.

Therefore, the OCC and its fellow regulators should ensure that if banks seek CRA credit for services to areas or populations outside that bank's CRA assessment area(s), such services should receive significantly less consideration than a bank's activities in the communities in which they are chartered. The sole potential exception to this standard, as noted above, might be a city-or MSA-wide program exclusively targeted to and benefitting LMI individuals, such as an affordable mortgage program.

Question 17:

As a general rule, expanding community development activities to include ancillary workforce development and social service activities, as proposed in this question, are outside the original intent of CRA. In most cases, these activities neither assist in meeting the credit needs of the local communities, nor do they serve the convenience and needs of their communities. As

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[30] 12 U.S.C. §§ 2901(a)(1)-(3) (2006).

[31] Velasquez, Sharon. "CRA 'Reform' Is an Attack on Communities of Color." *Common Dreams*. March 01, 2018. Accessed October 09, 2018. https://www.commondreams.org/views/2018/03/01/cra-reform-attack-communities-color.

Senator Proximire clearly stated from the Senate floor as the CRA was debated: "convenience and needs of their community, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans. . . .".[32]

One might imagine circumstances in which a bank's investment might support workforce development activities—e.g., financing a child care center that trains local residents for the jobs created—but such an investment would receive full CRA credit under rules. It is difficult to imagine when social services or apprenticeships unrelated to the purposes of CRA should be awarded CRA credit equal to that of meeting the credit needs of local communities. Thus, these ancillary activities should not receive equal weight to lending or investments that directly benefit LMI residents, and the extent to which they are counted at all should depend on the extent to which their principal beneficiaries are LMI residents.

Question 18:

Senator Proxmire made it clear that banks should be investing in their local communities principally through direct loans, not through other kinds of investments. He stated from the floor of the Senate that "the private sector has the capital, the know-how, and the efficiency to do the job. And the banking industry must be encouraged to invest in local needs, rather than continuing to favor speculative loans to shaky foreign regimes, to REITS, to unnecessary supertanker fleets, to bank insiders, and all of the other questionable ventures that have managed to get credit while our local communities starve."[33]

The regulations for the CRA define community development activities as loans, investments, and services that have a primary purpose of "community development."[34] Certain activities such as a bank's investment in loan-backed securities are considered a qualified investment under current CRA examination and regulatory guidance, and a bank may receive credit for these activities that "benefit its assessment area(s) or a broader statewide or regional areas that includes the bank's assessment area(s)."[35]

However, this type of activity should not receive significant CRA consideration, especially in light of Senator Proximire's statements. Purchasing a loan-backed security is a financial transaction that does not itself provide or facilitate financing to an LMI borrower since the very existence of the security demonstrates that loan already was originated by another entity. Through a loan origination, the bank is issuing credit to an LMI borrower and, therefore, internalizing its affirmative obligation to lend to LMI borrowers. This activity disavows the bank's obligation to lend to LMI borrowers, gives the bank credit for an activity that it

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[32] 123 *Cong. Rec.* 17,630 (1977).
[33] 123 *Cong. Rec.* 17,630 (1977).
[34] 12 CFR 25.12(g) and 195.12(g).
[35] "CRA Investment Handbook." Federal Reserve Board of San Francisco. March 2010. Accessed October 2018. https://www.frbsf.org/community-development/files/CRAHandbook.pdf.

participates in for its own profit and convenience, and may result in disparate and discriminatory impacts on persons of color.[36]

Question 21:

Senator Proxmire made it clear in 1977, under their charters, banks should be granting loans and extending credit in their local communities.[37] Thus, under the clear intent of the CRA, mortgage and consumer lending should continue to be considered as CRA activities, provided their principal beneficiaries are LMI families in the bank's service area(s).

Limiting loans to certain areas or borrowers, as suggested by this question, would enable banks to cherry pick their investments to select the loans that are most favorable or are the most profitable—at the convenience of the bank—rather than responding to local needs. Therefore, banks should receive credit for consumer lending when they can demonstrate that their products are responding to local needs and are affordable and not predatory.

Question 22:

Consumer credit is often an important stepping stone to larger lines of credit, such as mortgages and business loans, and a common need for LMI households.[38] As such, banks should receive CRA credit for consumer lending when they can demonstrate that their products are responding to inadequately served local needs and are affordable—meaning they are offered to LMI borrowers at or below market interest rates. This will ensure that LMI communities have access to financial services that meet their needs as intended by CRA legislation.

A prime example of this would be offering affordable small dollar, consumer loans. Affordable consumer lending options would benefit LMI consumers who are more inclined to experience income volatility, and have trouble weathering unexpected expenses. Specifically, Latinos are more likely to experience a 50% drop in income than their white counterparts,[39] and need small dollar credit to assist in weathering unexpected expenses. This is confirmed by the 2017 Federal Reserve's Survey of Household Economics and Decisionmaking (SHED), which shows that 53% of Latinos would not be able to afford a $400 emergency, compared to 33.97% of Whites.[40] Without access to safe and affordable consumer loans, LMI communities and communities of color often are forced to resort to predatory alternative lenders. Under the CRA, banks should be

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[36] Ibid.
[37] 123 *Cong. Rec.* 17,630 (1977).
[38] "Small Dollar Consumer Loans: Nonprofit Lenders Making A Difference." Credit Builders Alliance. 2013. Accessed October 2018. https://www.creditbuildersalliance.org/download/6399/.
[39] Loprest, Pamela, Aust Nichols, and Gregory Acs. "Risk and Recovery: Understanding the Changing Risks to Family Income." Urban Institute. October 2009. Accessed September 2018. https://www.urban.org/sites/default/files/publication/32996/411971-risk-and-recovery-understanding-the-changing-risks-to-family-incomes.pdf.
[40] "Board of Governors of the Federal Reserve System." The Fed - Money Stock and Debt Measures - H.6 Release - April 26, 2018. June 19, 2018. Accessed October 09, 2018. https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-dealing-with-unexpected-expenses.htm.

rewarded for offering or otherwise investing in these products, as they would be responsive to community needs in a modern economy. Affordable consumer lending, however, should not be a substitute for offering the other loan products, such as mortgages and small business loans clearly envisioned by the drafters of the legislation.

Question 25:

As Senator Proximire clearly stated from the Senate floor as the CRA was debated: "convenience and needs of their community, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans. . . . "[41] Under current CRA examination guidelines, a bank's loan originations qualify for more credit on the lending test than its loan purchases, which currently receive consideration as a qualifying activity on the investment test.[42]

As contemplated by question 25, a bank's loan originations and loan purchases should not receive equal consideration when evaluating that bank's lending performance. Purchasing a loan does not have the same effect as directly issuing a loan. Only loan origination requires the proactive and affirmative outreach activities to underserved members of the banks' community as envisioned by the drafters of CRA. Therefore, any proposal to give equal consideration for loan purchases would, we believe, violate the original intent of the law.

Additionally, giving equal consideration to a bank's loan purchases runs the risk of further exacerbating disparities in home lending to LMI borrowers. According to 2017 HMDA data, Latinos received less than 9% of all home purchase loans, while 65% of loans issued to Whites.[43] And, Latinos were about twice as likely as Whites to be denied mortgage credit.[44] Since the financial crisis of 2007, the largest bank lenders have decreased home lending to LMI borrowers.[45] Scaling back of LMI lending has a disparate impact on Latinos, who are more likely than Whites to be LMI borrowers.[46]

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[41] 123 *Cong. Rec.* 17,630 (1977).
[42] Darryl E. Getter. "The Effectiveness of the Community Reinvestment Act." Federal Reserve Bank of New York. January 7, 2015. Accessed September 2018. https://www.newyorkfed.org/medialibrary/media/outreach-and-education/cra/reports/CRS-The-Effectiveness-of-the-Community-Reinvestment-Act.pdf.
[43] "Data Point: 2017 Mortgage Market Activity and Trends." May 2018. Accessed October 10, 2018. https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfp_hmda_2017-mortgage-market-activity-trends_report.pdf.
[44] Ibid.
[45] "The Decline in Lending to Lower-Income Borrowers by the Biggest Banks." Accessed October 10, 2018. https://www.federalreserve.gov/econres/notes/feds-notes/the-decline-in-lending-to-lower-income-borrowers-by-the-biggest-banks-20170928.htm.
[46] DeSilver, Drew, and Kristen Bialik. "Blacks, Hispanics Face Mortgage Challenges." January 10, 2017. Accessed October 10, 2018. http://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans/.

Question 27:

The text of the CRA clearly states that regulated banks are required "to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business."[47] Therefore, bank delivery channels, branching patterns and branches in LMI areas should remain a part of CRA evaluations as they fulfill the true intent of the law.

Full-service bank branches are the most common way households access their finances, according to the FDIC.[48] Similarly, research also shows that there is a direct correlation between the number of bank branches and ATM's located in a neighborhood and the credit opportunities available to the surrounding community.[49] Branch closures create a negative ripple effect on local lending, concentrating in LMI communities and communities of color.[50] Research has not demonstrated that ATMs (deposit-taking or otherwise), telephone banking, internet banking, or banking services delivered through mobile device applications is an adequate substitute for full-service branch banking in meeting the needs of underserved communities—especially Latinos. Despite the shift to financial technology, branches remain the more effective delivery channel for helping LMI consumers access personal, home and business loans, as well as other banking services. While bankers should be encouraged to offer low-cost financial technology products to underserved communities, until such time as research demonstrates definitively that tech-based systems equally serve LMI and minority communities, such encouragement should not come at the expense of branch banking. The omission of branches in CRA exams would have disproportionate and disparate impact on LMI communities as banks continue to close full-service branches and shift their services to mobile platforms, and thus should not be considered.

Recordkeeping and Reporting

Question 31:

The intent of CRA was not to minimize the record keeping burden on banks, nor have we seen convincing evidence that CRA compliance is inherently burdensome. In fact, to the extent that some banks complain about excessive paperwork, our impression is that such paperwork is often generated as an attempt to substitute for actual lending to LMI communities. The economic impact of CRA-related data collection, recordkeeping, and reporting should not guide CRA regulations or modernizations efforts, and in any event current evaluation policies are accommodating to CRA-regulated banks by accounting for their size and scope. Such accommodations include: reporting timelines based on banks' size as measured by assets,

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47 "12 U.S.C. § 2901.

48 FDIC, "Brick and Mortar Banking Remains Prevalent in an Increasingly Virtual World," FDIC Quarterly, 2015, Volume 9, No. 1, https://www.fdic.gov/bank/analytical/quarterly/2015-vol9-1/fdic-4q2014-v9n1-brickandmortar.pdf

49 Ozgur Emre Ergungor, "Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods," Journal of Money, Credit, and Banking, September 2011, https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1538-4616.2010.00343.x

50 Nguyen, Hoai-Luu Q. "Do Bank Branches Still Matter? The Effect of Closings on Local Economic Outcomes." MIT Economics. December 2014. Accessed September 2018. http://economics.mit.edu/files/10143.

tailored start dates per institution and the ability to request short-term delayed start date.[51] Moreover, given advances in technology, we believe that tracking the demographic and other characteristics associated with loans to LMI individuals or communities is far less expensive than at any time in the history of the Act. Efforts to undermine reporting requirements are thus unnecessary, and would weaken examiners' and advocates' ability to ensure that banks are meeting local needs. Examiners should instead consider examining banks more frequently, allowing for yearly examinations, for all large institutions regardless of their previous score so that examiners can evaluate and respond adequately; otherwise, examiners are assessing outdated activities that may have already been addressed by banks.

Conclusion

A strong CRA continues to be needed. While CRA has had a positive impact on communities—especially communities of color—homeownership rates, and small business lending rates to LMI individuals and individuals of color are still significantly lower than high-worth individuals and Whites, while minorities' loan denial rates invariably are higher. For example, the overall rate of mortgage denials for individuals of color was between 13.5% and 18.4%, while the denial rate was only 8.8% for Whites.[52] And access to credits for minority-owned businesses is still a challenge, as approval rates for credit for individuals of color is 6% to 19% lower than that of Whites.[53]

Given the significant impact that CRA has had on access to credit—especially to LMI communities and communities of color—since its enactment, many of the proposals or examples contained in the ANPRM are troubling and potentially harmful. Specifically, many of the proposals may have an adverse, disparate impact on Latinos and other individuals of color—which could violate the Equal Credit Opportunity Act (ECOA)[54] or Title VIII of the Civil Rights Act of 1968 (Fair Housing Act of 1968).[55] Accordingly, we urge the OCC and its fellow regulators (the FDIC and the Fed) to consider a proposed rulemaking process that would: 1) do no harm; 2) increase the size and impact of investment in LMI communities; and 3) expand access to affordable credit for communities.

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[51] "Community Reinvestment Act: Supervisory Policy and Processes for Community Reinvestment Act Performance Evaluations." OCC: Bank Secrecy Act (BSA). June 15, 2018. Accessed October 09, 2018. https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-17.html.

[52] "Large Numbers of Loan Applications Get Denied. But for Blacks, Hispanics and Asians, the Rejection Rate Is Even Higher." May 23, 2018. Accessed October 10, 2018. https://www.washingtonpost.com/realestate/large-numbers-of-loan-applications-get-denied-but-for-blacks-hispanics-and-asians-the-rejection-rate-is-even-higher/2018/05/22/dac19ffc-5d1b-11e8-9ee3-49d6d4814c4c_story.html?utm_term=.0d4073abd59a.

[53] "2016 Small Business Credit Survey: Report on Minority-Owned Firms." Fed Small Business. Accessed October 10, 2018. https://www.fedsmallbusiness.org/survey/2017/report-on-minority-owned-firms.

[54] 15 U.S.C. §§ 1691-1691f (1976).

[55] 42 U.S.C. §§3601-3619, 3632 (1982 & Supp. III 1985).

Thank you for your consideration. Please contact Jennifer Brown, Esq., Senior Policy Advisor for Economic Policy at UnidosUS (jbrown@unidosus.org) if you should have any questions.

With regards,

Eric Rodriguez, Vice President of Policy & Advocacy
UnidosUS

ATTACHMENT C

UNIDOSUS
STRONGER COMMUNITIES. STRONGER AMERICA.

PolicyLink

The Future of Banking:
Overcoming Barriers to Financial Inclusion for Communities of Color

UNIDOSUS
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UnidosUS, previously known as NCLR (National Council of La Raza), is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers that affect Latinos at the national and local levels.

For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger.

For more information on UnidosUS, visit www.unidosus.org or follow us on Facebook and Twitter.

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PolicyLink

PolicyLink is a national research and action institute advancing racial and economic equity by **Lifting Up What Works®**. We work to ensure that all people in America are economically secure, live in healthy communities of opportunity, and benefit from a just society.

For more information on PolicyLink, visit www.policylink.org or follow us on Facebook and Twitter.

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ABPN ASSET BUILDING POLICY NETWORK

The Asset Building Policy Network (ABPN) is a coalition of the nation's preeminent civil rights and advocacy organizations committed to expanding economic opportunities for low-income members of communities of color. Citi is the sole corporate supporter and a founding member of the ABPN.

ABPN
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The Future of Banking:
Overcoming Barriers to Financial Inclusion for Communities of Color

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This report is dedicated to the 96 million people in the United States who are struggling the most with poverty and financial insecurity. We hope it illuminates a path to forward progress.*

* Previously published reports by PolicyLink have cited 106 million people living in poverty, which was calculated using the American Community Survey (ACS) data. Other researchers choose to use the Current Population Survey (CPS) data because it is the dataset used by the Census Bureau to make official estimates of the number of people in poverty. Using that data, one finds the figure of 96 million.

PREFACE

When we talk about banking, we may not immediately make the connection to economic opportunity. However, the financial services system impacts many parts of our daily lives. Whether the most vulnerable have access to financial tools to make the economy work for them and whether the system is responsive to their financial needs are questions of economic justice and opportunity. Many of the nearly 100 million people living in or near poverty lack full access to financial services, which stymies opportunities for economic well-being and upward mobility. This report, *The Future of Banking*, investigates barriers low- and moderate-income (LMI) consumers of color face in engaging with the ever-changing financial system.

This report follows up the Asset Building Policy Network's (ABPN) 2014 *Banking in Color*, which surveyed more than 5,000 low-income individuals about their interactions with the financial mainstream. This revealing look into the experiences within LMI communities of color with financial institutions shed light onto some of the challenges that approximately 63 million underbanked and unbanked people face every day.

In *The Future of Banking*, we look deeper and wider into those experiences, and connect the dots across the financial system as a whole—from banking and regulation, to financial technology and policy. Drawing on the experiences of LMI consumers of color, bankers, financial technologists, regulators, and policymakers, this report seeks to better understand the limitations of the current financial system and identify areas for innovation. It is our hope that this holistic view can help paint a picture of what a future banking system can entail that helps the 63 million who are currently un- or underbanked advance up the financial and economic ladder.

EXECUTIVE SUMMARY

As currently structured, the financial services industry makes financial inclusion—access to useful and affordable financial products and services that meet people's needs[1]—very difficult for low- and moderate-income (LMI) people of color. Financial exclusion exacerbates other economic challenges such as low wages and unaffordable housing and creates barriers to economic opportunity and mobility. This report, based on focus groups and interviews with community leaders and residents, and policy experts, describes the barriers to financial inclusion faced by lower-income people of color and shares ideas and solutions that can enhance full financial access and inclusion.

Some of the barriers to safe, regulated financial services include:

- Prohibitive identification requirements to open bank accounts.
- High interest loans, fees, and costs for accounts.
- Language barriers and lack of culturally relevant services available.
- Lack of access and inclusion within the credit system.
- Checking account reporting practices that bar populations from becoming banked.
- Scarcity of bank branches in low-income communities of color.

These barriers often compel LMI populations to rely on high-cost alternative financial services (AFS), which hold a virtual monopoly of the financial marketplace for people who are underbanked and unbanked. These services have historically left many households in perpetual cycles of debt and financial ruin. This underscores the need for more financial protections, but recent federal action has drastically weakened the Consumer Financial Protection Bureau (CFPB), the primary agency tasked with informing consumers about their rights and reining in potentially dangerous financial service practices.

For some segments, financial technology firms, or "fintechs" have developed solutions to barriers outlined above. However, despite their promise, fintech products and services generally do not cater to the needs of LMI consumers. There are many data protection and security concerns, and an uncertain regulatory climate creates the potential for predatory practices and abuses.

Innovation and technology can play an important role in advancing financial inclusion and equity. Our interview and focus group respondents identified and helped to shed light on several innovative steps, such as alternative credit ratings factors, new business models for financial institutions, and new types of loan products. Based on these conversations, we offer recommendations to expand access to financial services, help LMI consumers of color build wealth, and reach full financial inclusion. Our recommendations include:

- Creating a nationwide network of financial system "navigators" for the underbanked and unbanked.
- Increasing the accessibility, accountability, and utility of financial institutions to meet LMI consumers' needs.
- Adopting a more inclusive credit rating system that works for all.
- Increasing transparency, and reforming the checking account reporting system.
- Increasing credit availability to LMI consumers.
- Strengthening federal consumer protections and safeguards for financial products, while fostering innovations for fintechs and traditional banking products to enhance financial inclusion.

Given that the financial services industry is essential to the nation's economy,* we must ensure that the most vulnerable populations are brought into the economic mainstream. As financial services, fintech, public policy, and regulations continue to evolve within a changing global economy, it is essential to continuously focus on the goal of financial inclusion for all. An economically just society cannot be achieved without ensuring meaningful access to safe, affordable, and closely regulated financial services for LMI consumers of color and others who have historically been excluded.

* The financial services industry represents approximately 20% of the nation's GDP.

INTRODUCTION

Systemic failures in the financial sector led to the financial crisis of 2007-2008 and the Great Recession that followed. These crises disproportionately impacted low- and moderate-income (LMI)* communities of color through job loss, foreclosures and an unprecedented loss of wealth. During the recession, Latinos' household wealth declined by 66%, and Blacks' by 53%, while White households lost 16%.[2] After the recession's official end, White household wealth began to recover, while Black and Latino families continued to lose wealth for years, causing the long-standing racial wealth divide to grow even wider.[3] Ten years after the financial crisis, communities of color have yet to fully recover,[4] and the financial system has failed to solve the problems that devastated communities of color. To help the most impacted communities recover and rebuild, the banking and financial services industry must increase their focus on serving LMI households, businesses, and communities of color. This report explores key opportunities within the banking industry, policy, and regulation that can lead to financial inclusion for all.

Key terms

AFS (used in the plural): Alternative financial services, such as payday lending, pawnshop loans, and rent-to-own stores

Financial inclusion: Access to affordable financial services, credit, and capital for households and entrepreneurs

LMI: Low and moderate income, defined as having household income up to 200% of the federal poverty line

Unbanked: No one in the household has a checking or savings account

Underbanked: Someone in the household has a checking or savings account, but they still used high-cost AFS in the past year

* In this report, LMI households include those with income below 200% of the federal poverty line.

In 2014, UnidosUS, the National Urban League (NUL), and the National Coalition for Asian Pacific American Community Development (CAPACD), who were working in partnership as the Alliance for Stabilizing Our Communities' network, published *Banking in Color*, a groundbreaking look into how the mainstream financial industry was underserving LMI consumers of color. *Banking in Color* revealed key insights from over 5,000 survey participants across several U.S. cities and neighborhoods of Black, Latino, and Asian American Pacific Islander (AAPI) heritage. It captured details of how LMI households of color were managing their finances and how they interacted with the financial services industry—from banks and financial technology (fintech), to payday lenders and check-cashing services. The report offered recommendations for policymakers and the financial services industry to meet some of the financial service needs of LMI communities of color.

Since *Banking in Color* was published, there have been advances in technology, and several efforts and policies have helped to incrementally expand access to affordable financial services for LMI communities, including many of the 63 million adults who are unbanked or underbanked.[6] Consumer protections have also changed dramatically during this time period. For instance, the federal Consumer Financial Protection Bureau (CFPB) installed several protections in the financial market, including rules for pre-paid debit card products and regulations to protect consumers from ruinous payday lending practices. Many cities made strides from 2014 to 2016, such as New York's move to permit the use of municipal identification cards to help undocumented immigrants and others gain easier access to bank accounts. While these changes were hard won and championed by consumer advocates, recent political shifts under the Trump administration have threatened these gains and put future advances for financial inclusion and enhanced consumer protections in great jeopardy.

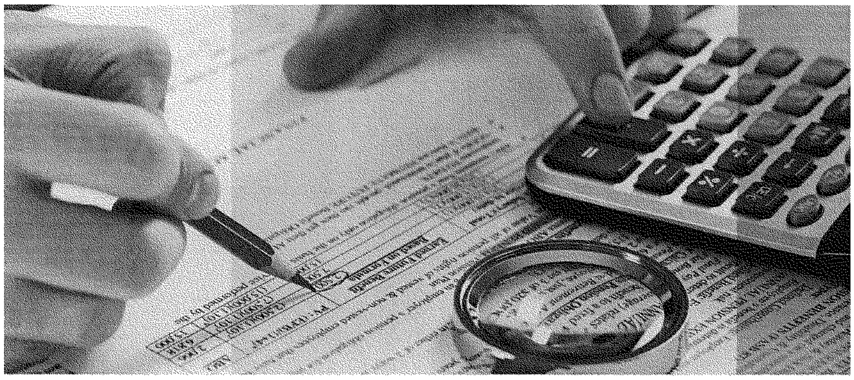
Financial and economic data for LMI consumers today remain bleak:

- Of the approximately 96 million people living on household incomes less than 200% of the federal poverty guideline, more than half (54%) are people of color.[7]
- Those with low- and moderate-incomes face numerous barriers to accessing regulated, low-cost, financial services that could improve their financial footing.
- 63 million adults in the United States are unbanked—with no member of the household having a checking or savings account—or underbanked—where someone has an account, but they still relied on high-cost AFS in the past year.[6]
- These barriers particularly impact communities of color; nearly half of all Black (47%) and Latino (43%) households are unbanked or underbanked.[6]

Being disconnected from mainstream financial services carries major costs for LMI consumers. In 2017, the unbanked and underbanked LMI populations, and those with little or no credit history, spent more than $173 billion in fees and interest for alternative financial services (AFS) such as check cashing, payday lending, pawn shop loans, and rent-to-own stores that notoriously charge upwards of 400% APR.[8-10]

To understand these barriers to financial inclusion and to offer recommendations on solutions, PolicyLink and UnidosUS coordinated with other members of the Asset Building Policy Network (ABPN)* to examine the challenges LMI consumers of color face in their interactions with the financial sector, considering evolving technology, public policy shifts, and decreased consumer protections. Drawing on focus groups with LMI consumers and interviews with experts from across relevant sectors, we highlight persistent barriers to financial inclusion, note opportunities for innovation, and make recommendations for public policy, regulation, and financial product development that can enhance financial inclusion for all. This report focuses on the financial services sector as a key lever within a broader context of creating a more equitable economy that enables all people to fully participate, prosper, and reach their potential.

* The Asset Building Policy Network (ABPN) was established in 2009 as a partnership between the National Urban League, National Coalition for Asian Pacific American Community Development (CAPACD), National Association of Latino Community Asset Builders (NALCAB), Prosperity Now, PolicyLink, UnidosUS, and the Leadership Conference on Civil and Human Rights, funded by Citi Community Development. Citi is the sole corporate supporter and a founding member of the ABPN.



WHY FINANCIAL INCLUSION MATTERS: THE FINANCIAL CASE FOR EQUITY

By the end of this decade, more than half of the children in the United States will be of color. By 2030, the majority of the young workforce will be of color.[11] By 2044, the United States will be a majority people-of-color nation,[12] and America's economic strength will depend on people of color contributing fully—as financially and economically secure innovators, workers, entrepreneurs, and leaders. Yet, as America undergoes this momentous demographic transition, economic and racial inequalities are compounding, and inequities remain widespread across multiple indicators from education to employment to wealth and health. For our nation and its economy to thrive, communities of color must access the opportunities they need to live healthy, economically secure lives and reach their full potential. This is no longer just a moral imperative—it is now crucial to the future of the American economy.

Financial inclusion is an important marker of economic health, yet 63 million people are not fully included in the regulated and mainstream financial system. The benefits of financial inclusion, which most middle- and upper-income households take for granted, include affordable and convenient tools for managing finances, savings, and building wealth. Financial products like checking accounts; interest bearing and investment savings accounts; auto loans, home mortgages, business loans; and bill-pay services offer banked households ample opportunity to manage, build, and preserve wealth. Government regulations on mainstream financial products protect their investments, prevent usurious fees, and disclose information needed for sound financial decision-making.

For LMI consumers of color, affordable and convenient financial products are remarkably hard to come by. Janneke Ratcliffe of the Consumer Financial Protection Bureau writes, "Mainstream [financial service] providers have little interest in competing for this high frequency/low-balance business, forcing lower-income families to rely on [AFS like] check cashers, payday lenders, pawn shops, automobile-title lenders, high-priced credit cards, tax refund advance lenders, and predatory mortgage lenders."[13] These AFS do not allow consumers to build credit histories, accumulate savings, or to take steps toward financial security. Worse, these AFS strip massive amounts of wealth from LMI communities. Each year, for-profit tax preparers collect $2 billion from the Earned Income Tax Credit for working LMI families, and AFS charge more than $173 billion in interest and fees.[8] AFS are not only extremely costly; they tend to be unregulated or underregulated, and they often prey upon LMI communities of color, exploiting the precariousness and lower financial capability of consumers.[14-16] Black and Latino consumers disproportionately fall prey to high-cost AFS.[14,17] Such services stand in the way of full financial inclusio—access to affordable financial services, credit, and capital—which is critical to facilitate economic mobility for LMI families and communities.

Consumers are increasingly aware of the high costs associated with payday lending and other AFS, and are interested in more affordable ways to meet their financial needs through mainstream financial institutions.[5] However, mainstream financial institutions also charge fees that strip wealth from LMI consumers. Most banks charge substantial fees for covering purchases when consumers overdraw their accounts, called "courtesy overdraft services." Such fees earned banks and credit unions between $12.6 and $32 billion in 2012—a substantial source of revenue.[18] The median debit purchase amount that incurs an overdraft is just $24.00, and median overdraft fee is $21.61 for those enrolled in overdraft protection. Since most overdrafts are repaid within three days, this is the equivalent of a 10.955% APR.[19]

These staggering figures illustrate both the harm done by a two-tier financial system, and the value of safe financial inclusion for vulnerable populations. The harms must be addressed across industry, while ensuring safe access and inclusion for those who have been historically excluded.

While the financial services sector plays a critical role in the economic well-being of families and communities, we recognize that the financial sector does not operate in isolation. It is interwoven with a variety of other sectors and systems that hinder economic outcomes for the 96 million people living in or near poverty in the United States, particularly the 63 million people who are unbanked or underbanked. The legal, health care, education, tax, and financial services sectors each play critical, specific roles in undermining LMI households' ability to achieve financial security and, in turn, economic mobility.[20] Each of these systems requires significant and comprehensive reforms to improve economic outcomes at scale for people living in or near poverty, and this report focuses on just one of them—the financial services sector.

METHODOLOGY

This report draws upon data from two sources: focus groups with LMI consumers of color; and interviews with experts from several sectors: financial services, financial technology (fintech), policy, regulation, and community advocacy.

Community focus groups with LMI consumers of color

UnidosUS conducted nine focus groups in communities of color in four U.S. cities: Los Angeles, California; San Diego, California; Chicago, Illinois; and Philadelphia, Pennsylvania. These groups were conducted in partnership with UnidosUS's partner agencies, National Coalition for Asian Pacific American Community Development (National CAPACD) and the National Urban League, and were recruited from community-based service providers that specialize in financial capability and education services for low-income residents.

Over the course of nine moderated discussions, 90 focus group participants shared insights from their experiences using financial services. Focus group participants ranged in age from 18 to 79 and were clients of the participating community-based organizations. They were selected primarily based on having familiarity and exposure to banking and credit systems, and the majority reported low- to moderate-income. Efforts were also made to ensure gender balance. Focus groups were conducted in English, Spanish, Thai, and Cantonese between March 2018 and May 2018.

Expert interviews

PolicyLink conducted research interviews with 17 experts and leaders from four categories:

- *Financial services institutions*: Executive staff at mainstream banking and financial institutions and community development financial institutions (CDFIs)
- *Fintech*: Executive staff of current and former fintech companies
- *Civil rights and advocacy organizations*: Senior leadership at organizations focused on expanding civil rights and/or economic opportunities for LMI communities, particularly communities of color
- *Federal policymakers and regulators*: Senior staff of federal elected officials and staff of regulatory agencies.

Detailed notes from interviews were analyzed thematically, and issues that were common across respondent categories were identified. The interview and focus group respondents' views shared in this report reflect their experience as leaders within their respective fields and/or as consumers. To protect our respondents' privacy and maintain confidentiality, we have omitted identifying details from the report.

FINDINGS

A. Barriers to Financial Inclusion

Interview and focus group respondents identified six major barriers to financial inclusion: Unaffordable accounts, language barriers, credit history requirements, checking account reporting, the scarcity of bank branches in lower-income communities, and identification requirements.

Costly accounts

"They're living so close to the edge that paying a $25 overdraft fee is worse than check cashing."

A major challenge among LMI banking respondents were the high fees mainstream financial institutions charge for basic banking services. Account maintenance fees, initial deposit requirements, and minimum-balance requirements at mainstream financial institutions are burdensome and often prohibitive for LMI consumers. The costs of banking are also higher for communities of color than for White communities on average. Compared to the average costs and fees paid by White consumers for checking accounts, financial institutions charge Latinos $262 more, Black consumers $190 more, and Asian American consumers $26 more.[21] Interview respondents noted that bank fees often exceed the exorbitant costs of check-cashing services, which on average drain 10% of low-income users' annual income.[22] A financial institution leader described this issue by stating, "They're living so close to the edge that paying a $25 overdraft fee is worse than check cashing." Another respondent from a financial institution described this as a mismatch between traditional bank accounts and LMI consumers' needs: "They go 13 cents over and incur $40 in fees, for instance. The typical amount putting someone in the red is very small, but there is no forgiveness and no buffer built-in."

While many consumers are aware that they can bypass monthly account maintenance fees by utilizing services like direct deposit, consumers whose employers do not offer direct deposit—approximately 18% of the U.S. workforce in primarily low-wage jobs—are left out of this benefit.[23] Discrepancies in account costs at different financial institutions also requires vigilance on the part of consumers to ensure they are accessing the most affordable accounts and services. Consumers often change banks to avoid high fees, as one focus group participant noted: "Anything with low fees and higher interest, I'm there." Participants in San Diego said that the high cost of living in their community made banking fees an additional burden to factor into their budget. Across all nine focus groups, high account fees were identified as a common challenge in banking. In Los Angeles, a focus group participant said that the fees charged on her savings account made her feel as though "you're punished for trying to save."

Language barriers

The lack of language access services at mainstream banks, both in terms of their staff and written materials, is an impediment to accessing financial services, particularly for low-income consumers whose first language is not English. Language barriers were prevalent for non-English speaking participants in the Asian American Pacific Islander (AAPI) focus groups from Chinese and Thai communities. In the Philadelphia focus group conducted in Cantonese, participants noted that to access financial services or help in-language, either in person or over the phone, they were limited to the few financial institutions in their immediate community. A Chinese respondent said that she opened an account at a Cantonese-speaking bank near her but did not believe they provided access to the same services as larger banks. Participants from the Chinese and Thai focus groups in Los Angeles described challenges conducting banking transactions online and on phones because services in their languages were simply not available. In the Los Angeles focus group, a participant said, "Language barriers keep people from knowing what is even available to them." In Philadelphia, Chinese community members said that because they generally watch television broadcast in Cantonese, they are not informed of local services unless businesses advertise on these channels, and that they did not see many financial services through this medium.

For non-English speaking consumers, there can also be cultural and generational barriers to banking. In the Thai community in Los Angeles, older non-English speaking community members who need banking assistance must overcome a cultural stigma to seek help from younger community members who speak English.

When financial institutions invest in resources that reflect the language needs of their clients, consumers' banking experiences seem to improve. In contrast to the experiences of the Thai and Cantonese-speaking focus groups, Spanish-speaking Latino focus group participants in Chicago were able to access more banking services in-language in their communities. They felt confident that they could speak to bank branch staff in person if needed and access services online. However, participants from this focus group who only spoke Spanish said that they were intimidated when going into an unfamiliar financial institution if they did not know whether there would be Spanish-speaking staff available to help them.

A respondent from an advocacy organization noted that language inaccessibility contributes to the "credit invisibility" of immigrant populations, where individuals have no U.S. credit records. One Cantonese-speaking participant in Philadelphia wanted to buy a car when she first moved to the United States but was denied a car loan. She said she was not given the reason for the denial, nor was she given resources to help her along. Participants in this focus group reported that language barriers make it hard for them to access credit, credit guidance, or financial advice in general.

In addition to language barriers, other issues of cultural capability and sensitivity within financial services were a notable theme for respondents, who reported an overall lack of institutional and cultural acceptance. Some regarded this as an overall impediment to their long-term financial security. In the Chicago focus group, several Muslim participants discussed barriers to interest-bearing accounts such as savings accounts and retirement accounts because earning interest is prohibited by their religion. Participants from this community said that there was not enough information provided by financial institutions about alternative long-term savings products, and as a result they knew members of their community would avoid savings accounts altogether.

Credit barriers

Poor credit and the lack of established credit are significant barriers for LMI consumers attempting to access mainstream banking and/or credit products and services. Nearly 30% of consumers in low-income neighborhoods are credit invisible, meaning they have no record with the three nationwide credit reporting agencies — Experian, TransUnion, and Equifax. An additional 15% have records that are deemed "unscorable" due to insufficient credit history. Black and Latino consumers are also more likely to be credit invisible or deemed unscorable than White consumers.[24] In all, one in 10 U.S. adults (26 million people) are credit invisible, and an additional 19 million have unscorable credit files.[25] A leader from a national policy organization explained the problem:

> A lot of people, mostly low-income, mostly people of color, don't have an entryway into the financial system, and the credit score is your ticket into accessing the financial system. Without either a strong credit score or a prime credit score, or some people don't have a score at all, you can't get access. The credit system as it's set up is really meant to reward people who participate in the mainstream credit market... So, if you're a young person out of college and you're able to get a good credit card, you're able to participate. If you get student loans and pay those back, you're able to participate. If you can't access those things, you basically can't get into the system. The credit system doesn't recognize those folks.

Lack of credit history directly excludes vulnerable consumers from the financial and economic mainstream. This exclusion leads LMI populations directly toward more predatory, alternative financial services (AFS). One focus group participant described it this way, "When you have good credit, they open the door. When you have bad credit, they take away the key." A financial institution executive highlighted the value of good credit, saying, "Credit is an asset. Credit can be your best asset. People say poverty is expensive; bad credit can be really *expensive*. If you raise your credit, this can literally generate hundreds of extra [dollars] each month."

"When you have good credit, they open the door. When you have bad credit, they take away the key."

Knowledge about credit, and the factors impacting credit scores, vary across LMI communities. Focus group respondents who enrolled in financial counseling or prospective homebuyer education classes said they learned the most about their credit in these settings. They were also seen as experts in their own networks and were often the people who their friends and family went to for financial information and advice.

While most focus group participants understood the importance of having good credit and the opportunities that came with having a good score, there was often misunderstanding about how much control consumers had over their score and the discretion a lender had in offering a line of credit. A woman in Philadelphia described an attempt she made to access a loan from her financial institution to help pay bills until she received her paycheck days later. She was denied the loan and was told by her bank that she did not have sufficient credit history. She believed that her relationship with the bank as a long-time account holder should have been enough for her to be a creditworthy borrower, since they knew she had regular deposits into her account from her job. Another participant in Philadelphia was denied a car loan and did not realize it was because the student loan she co-signed with her daughter impacted her debt-to-income ratio and her credit score.

Across the focus groups, a number of participants shared experiences with attempting to access credit. Several participants who had qualified for loans for lower amounts than they originally sought believed that banks offered them the smaller loan amounts due to their low incomes. From these experiences, many myths and misconceptions exist among LMI consumers who are underbanked. Several focus group respondents noted that if they had a low credit score, they would avoid applying for new credit, even though doing so could ultimately improve their score. In Chicago, several African American focus group participants believed that income and race were weighted heavily into a person's credit score. A woman in Philadelphia described credit bureaus as "the original gangsters, because they have their own system," that was not transparent or logical to most in her community.

Focus group participants in Philadelphia said they believed credit and lending decisions were related to race:

> White people don't have perfect credit but because they want certain properties near the city of Philadelphia, or any other major city...they're preventing [non-White] people who want to fix their homes and who have owned their homes... they're rejecting those people... there's a big banking issue with red-lining.

Another participant echoed this, saying, "They're not lending Black people money to fix up their houses."

Checking account reporting issues

Another critical barrier to banking relates to the lesser-known system of checking account reporting that banks utilize to determine customer eligibility to open or maintain ordinary checking accounts. Two private companies, ChexSystems and Early Warning Services, create files on consumers who have had an unpaid negative balance or were suspected of fraud on previous checking accounts.[26] Banks pay a fee to access these databases. Although these systems were originally intended to detect fraud, in practice, they exclude more than a million people from accessing retail banking accounts, often due to relatively small infractions like bouncing a check or incurring a checking overdraft fee.[27]

As one financial institution executive stated, "A quick one or two strikes, and you end up with a Chex report." This "Chex report," which remains on the consumer's file for up to seven years,[26] serves as a banking blacklist prohibiting LMI consumers from entering the financial mainstream. A federal regulator stated that although "70% [of those with reports] are people who made mistakes and couldn't afford to pay," staff at financial institutions tend to "see someone on ChexSystems as a fraudster" who intentionally cheated the system. Unlike credit scores, most consumers are unaware of the checking account reporting system and have little knowledge of how to identify or correct errors that may be on record. Similarly, staff at financial institutions tend to be unaware of how to help clients remedy their checking account reporting histories. Ultimately, these systems are "a much bigger barrier to financial inclusion than most people realize," as a community advocate observed, adding, "If we want to get 70 million people banked, a large portion of that is due to them being barred due to [checking account reporting issues]."

Limited access to bank branches

A barrier to accessing financial services and products is the relative scarcity of bank branches in many low- and moderate-income neighborhoods[16] and most markedly in Black neighborhoods.[28] The trend points to even fewer bank branches in the future, particularly in communities of color, as many banks close physical branches in favor of doing more business online.[29] In Philadelphia, a focus group participant stated that in her community, "...banks are closing up and moving further out." When describing how she had kept an account for decades, though her bank had been acquired by larger banks more than once, another participant noted that, "All the banks have left me, I never left my bank." In the same vein, a financial institution leader observed that financial education for LMI individuals can be beneficial, "but if the individual doesn't have access to a financial product, then it doesn't do any good...We tell them they should save, but there are no bank branches in their neighborhood."

Though there are more account services available online, and many institutions no longer require a customer to be at a branch location to open an account, physical presence still has an impact on whether LMI communities of color are banked. Convenience is often cited as one of the major factors that determine where people bank. Focus group participants noted that a bank's proximity to home or work was an important factor when choosing where to open an account. Not all respondents regularly used a physical branch location to deposit or withdraw funds, but nearly all respondents had opened their accounts in person at a financial institution. Most of the focus group participants had used online or mobile services, but when asked how they resolved questions or problems with an account, the majority said they preferred to resolve issues in person at a branch. The next most popular option was to handle concerns over the phone. A participant who preferred going in person to her bank said she preferred it to online banking because "computers make so many mistakes." Access to conveniently located ATMs to access cash was also important across focus group participants, regardless of whether people preferred to use a branch or did most of their banking online or via mobile phones. Bank branches bring benefits to LMI communities which are lost when branches close. One important way that bank branches benefit communities is through their obligations to provide credit in their local neighborhoods under the Community Reinvestment Act (CRA). Passed in 1977 to remedy some banks' refusal to lend in lower-income areas and communities of color, the CRA created "a continuing and affirmative obligation on banks to help meet the credit needs of the local communities in which they operate [branches]."[30] Banks no longer have CRA obligations in communities once branches close their doors, resulting in diminished credit access for those communities. A federal policymaker described the various ways that physical banks benefit communities: "There still are benefits to banks because they have to comply with the CRA, so something has to go back into the community. There are also consumer protections that you have with a bank that you don't have with [non-bank online payment services]..."

Importantly, bank closures have a prolonged negative effect on the credit supply to small businesses, and these effects are concentrated in areas with low-income and high proportions of residents of color.[31]

Identification requirements

Identification requirements to establish or access bank accounts pose a significant barrier for LMI consumers, particularly immigrants and those with very low incomes. Many financial institutions do not accommodate alternative forms of identification, such as matricula consular IDs or municipal IDs. While other banks formally accept alternative forms of identification, participants indicated that individual branches still refuse to accept them as valid. This is one example of the inconsistent requirements across the industry, which discourage low-income and immigrant populations from engaging with mainstream banks. One regulator stated that their team had investigated banks' various requirements and discovered that often, "if you had two bankers from the same institution, there was no agreement about what the rule required... The problem isn't regulation, but consistent interpretation" and enforcement.

"ID issues disproportionately affect LMI consumers, based on what I've observed. Those who can afford the least get the most hassle. It shatters the confidence we're trying to build with the customer."

Variation within and between banks makes it difficult for consumers to identify which banks accept alternative IDs. As a result, these consumers are reluctant to visit institutions out of fear of being turned away. One regulator noted:

> Fear in the community is so great that it's hard to convince folks that they can open an account with the identity documents they have. Holding a training to tell people which identity documents they need is complex in itself. People both need to understand which documents they need and be convinced that a bank is a safe *and* affordable way to keep your money.

A fintech leader noted, "ID issues disproportionately affect LMI consumers, based on what I've observed. Those who can afford the least get the most hassle. It shatters the confidence we're trying to build with the customer."

Another identification issue is that low-income consumers tend to have a smaller digital footprint, which makes it difficult to verify their identity electronically. A fintech expert suggested that financial institutions' initial screening protocols often flag low-income consumers because they live in "high-risk" neighborhoods. In order to verify their identity, the system would generate questions based on the consumer's credit history, such as, "You had an auto loan in 2006; what type of car was it?" When consumers have a limited credit history, the system cannot generate those verification questions, and instead, consumers are asked to go through the onerous steps of mailing, faxing, or hand-delivering copies of utility bills, Social Security cards, or other identifying documents. This time consuming and inconvenient process is often a prohibitive barrier to establishing accounts at mainstream financial institutions, excluding many LMI consumers from the rest of the financial and economic mainstream as well.

B. The Role of Fintech

Given the numerous barriers to accessing and utilizing mainstream financial institutions, many are looking to the financial technology sector, or fintech, to meet the financial servicing needs of LMI consumers. Referring to fintech's promise, a regulator stated, "Ways to disrupt the usefulness that people find in payday lending are very welcome." Indeed, fintech has great potential to provide services to LMI consumers in an affordable way, because of their reduced physical footprint and online business model. Since they work almost exclusively online or through mobile applications or "apps," fintech companies are not limited by brick and mortar locations or branches like traditional banks. While they offer convenience and accessibility to unbanked and underbanked individuals, the majority of whom have access to smart phones,[32] the lack of physical branches also means that fintechs have lower costs[33] and can pass along these savings to customers. Investments pouring into fintech have grown more than tenfold in recent years, reaching $19 billion in 2015,[34] indicating a thriving field with potential to fill many of the barriers and service gaps within traditional banks.

According to interview and focus group respondents, despite the promise of fintech products and services, most do not see fintechs centering on the needs of LMI consumers; data security remains an issue, and the lack of regulations leaves ample room for predatory practices.

One financial institution executive observed how many fintech firms "get a lot of money behind them, but then they don't know how to reach the consumers." As a result, several fintechs have turned to this respondent's organization, which specializes in serving LMI consumers, for advice on how to reach this population. When financial products are not designed with LMI consumers in mind at the outset, gaps in usability and access can often result.

For non-English speaking consumers in the focus groups, having apps developed in their language is a major factor in using fintech. The Spanish-speaking community in Chicago reported having more experience in using technology in their banking than the Thai or Cantonese-speaking focus groups. Latinos in Chicago said they saw advertisements for fintech companies on Spanish language television, and some had learned how to use specific apps by watching videos online. In San Diego, younger English-speaking Latinos were generally comfortable in trying new online banking services and in using features such as fingerprint identification to access them on their phones.

Data security is also an important concern. Several focus group participants noted that there is no clear process for LMI consumers to identify trustworthy digital financial services among thousands of choices. A fintech leader noted that fintech companies "are not catering to the needs of inexperienced users, so consumers instead opt for the store on the corner that's doing payday lending." Focus group respondents shared that though many had adopted mobile banking apps, they were skeptical about newer fintech products that were not tied to traditional banks because of concerns about data security and identity theft. For the Cantonese-speaking community in Philadelphia, the lack of apps available in their language made them skeptical of the overall usefulness of banking apps.

"Technology could help make products more affordable, but it also opens the door to predatory products. We must find a way to leverage tech innovation while also protecting vulnerable consumers."

Compounding the data security concerns of focus group participants were recent examples of data breaches at large corporations like Target and Equifax. This seemed to fuel distrust among respondents, evoking fears from those who did not regularly use apps to conduct financial transactions. One focus group member in San Diego said she used apps for banking despite her doubts about their security, because she felt there were no alternatives to send and receive payments among many in her network. There were generational differences in the regular use of fintech across focus groups, but respondents in every discussion described privacy and security concerns about these apps. People were concerned that if they lost their mobile phones, having banking apps would lead to security breaches and loss of their funds.

Respondents also raised concerns about consumer protections and fintech. They acknowledged the reality that fintech products do not come with the same degree of consumer protections and insurance as traditional banking accounts, and several raised concerns about fintech products that did not help consumers build credit. A policymaker explained:

> People will have either prepaid cards or [online payment services] and think that they are banked when they're really [not]... These products can open up doors, but I wonder about people getting left behind or thinking that they're getting something better, but it may not be better for them credit-wise and may not be improving their credit score. Or you may be "banking" with an entity that doesn't have insurance, so you could lose your investment or be taken advantage of.

While many fintech firms have embarked on innovative, cutting-edge approaches to address the needs of LMI consumers, they are not subject to the same regulations as financial institutions. Respondents noted that fintechs often blur the line between mainstream and non-mainstream financial services, leaving room for high-tech predatory products targeting LMI consumers, such as newer, online versions of payday lenders. A respondent from an advocacy organization expressed the concern this way: "Technology could help make products more affordable, but it also opens the door to predatory products. We must find a way to leverage tech innovation while also protecting vulnerable consumers."

Regulating fintech is one way to hold firms accountable to the needs and vulnerabilities of LMI consumers, and to address concerns about data security and trustworthiness of new kinds of non-bank financial institutions. One fintech leader advocated for "principles-based regulations that can evolve with technology." State consumer protection laws play an important role in regulating the fintech space, and in July 2018, the federal Office of the Comptroller of the Currency (OCC) announced that it will issue special-purpose national bank charters to non-depository fintech companies.[35] Many in the consumer advocacy arena have argued that by creating a new class of "national bank," the OCC would allow fintechs to circumvent state consumer protection laws like interest rate caps and limits on fees for loans and services.[36] To prevent widespread, predatory, high-tech AFS, it is essential that the special-purpose charters for fintechs take steps to ensure meaningful, enforceable, and consistent consumer protection standards.

C. Alternative Financial Services Fill a Dangerous Void

As mentioned previously, the high barriers to utilizing mainstream financial services and limited fintech options drive many LMI consumers to turn to high-cost AFS like payday lending, pawn shop loans, check-cashing, and auto title loans. Underserved communities paid more than $173 billion in fees and interest for AFS in 2017.[8] One financial executive mentioned that pawn shops are of particular concern, noting that "Their largest revenue stream comes from lending. In many states, there aren't usury laws around lending in pawn shops, so you can get $300 loans at 300% interest rate." Since pawn shops do not require established credit, a bank account, or a job, loans through pawn shops are one of few options available to the most vulnerable low-income consumers.[10]

Interview and focus group respondents pointed out that rent-to-own stores that sell items such as furniture, computers, and even car tires specifically target LMI consumers. Where middle- and upper-income consumers can often rely on reasonably priced credit cards or cash to make certain purchases, LMI consumers who lack the creditworthiness or reliable financing options often turn to rent-to-own services that can legally charge exorbitant rates and fees for financing. In one example, a computer priced at $851 would cost a borrower $4,459 if paid over the full duration of a rent-to-own store's 21-month term.[37] Further, if borrowers default on rent-to-own payments, severe consequences can result, such as the repossession of cars—the primary mode of transportation for many LMI workers and those seeking employment.

AFS provide services that LMI consumers need, including small-dollar and short-term loans. However, this comes at high cost. These products tend to be unaffordable, exploitative, and ruinous for LMI families and communities when AFS operate without meaningful market-based competition by more regulated financial institutions.

When asked if they had used an AFS in the past few months, the majority of focus group participants said they had not and specifically cited the high fees associated with products like payday loans as reasons to avoid having to use them. It is important to note, however, that focus group respondents were recruited from community-based service providers that specialize in financial literacy and education services for low-income residents.

D. Weakening of the Consumer Financial Protection Bureau

Consumers, who may often be unaware of their rights, are vulnerable to unscrupulous financial practices. The Consumer Financial Protection Bureau (CFPB) has a critical mission and purpose to inform consumers of their rights and promote consumer protections for financial products. One regulator explained that the CFPB's charge was to help the "common person," who may not understand the important role that consumer protections play in their financial condition. However, several interview respondents expressed concern that the CFPB has been significantly weakened under the current federal administration.

"I'm very concerned that some of the headway that the CFPB has made in the lives of consumers is really being disrupted significantly."

For instance, the 2018 reorganization of the CFPB stripped away the enforcement powers of the unit responsible for pursuing discrimination cases,[38] and added a new focus of addressing "outdated, unnecessary, or unduly burdensome regulations."[39] One banking executive described the "systematic dismantling of the CFPB" as a dire threat to the future of banking for LMI consumers. A regulator stated, "I'm very concerned that some of the headway that the CFPB has made in the lives of consumers is really being disrupted significantly." As a result of recent federal actions, the CFPB has decreased its focus on several threats to LMI consumer financial protections, such as the adoption of alternative credit-scoring models and tighter regulations on payday lending services.

E. Opportunities for Innovation

The challenges that LMI consumers of color face within the financial services sector are substantial but not insurmountable. Interview and focus group participants identified opportunities for innovation, industry improvements, and regulatory actions that would lower barriers to effective financial inclusion for LMI people of color. Respondents suggested innovations in several areas, including reforms to credit rating models, new business models for financial institutions, and ideas for connecting more vulnerable consumers to existing safe, affordable financial products that are more tailored to specific needs of LMI consumers and the most vulnerable of the underbanked population.

Alternative data for credit ratings

The barriers related to poor credit and limited credit-building opportunities for LMI consumers, immigrants, and others who are left out of the financial mainstream led many respondents to discuss alternative credit rating models. Under the present scoring system, public utilities, telecommunications companies, and landlords report delinquencies to credit bureaus that often harm credit, but they are not required to report on-time payments that could improve credit histories for LMI consumers.

Adding on-time payments from these sources could open the credit market to a larger segment of the 45 million responsible consumers and borrowers who are currently credit invisible and/or un-scorable.[24] This change would unleash the full financial market potential of those who have historically been excluded by increasing credit access to LMI households, non-native English speakers, immigrants, and other segments of the unbanked.[40] A community leader explained the strategy in this way:

> Most [LMI] people have a phone or cell phone and pay their bills regularly. That could be captured on a credit report. Right now, it isn't, unless you're delinquent. Those on-time payments could be captured into the credit system, showing that this person has a history of paying their bills on time. Same thing with utilities. [The goal] is really just to pull in more data so that people who are currently not visible to the credit system become visible.

There are varying perspectives among experts and advocates on the inclusion of alternative data like utility bills and rent payments for credit-scoring purposes. Some critics argue that amending the credit reporting system would harm people who are late in paying their rent or utilities. However, these delinquencies can already be reported to the credit bureaus. The experts we interviewed suggested that additional positive data and reporting requirements would have a net benefit by increasing the scoring potential of millions of LMI consumers who are not currently in the system at all. Policymakers should continue to weigh the options to reform the credit-scoring systems to help unlock the positive benefits for LMI consumers, who need access the most and pay the highest costs for being excluded.

New business models for financial services

As noted previously, the fees and balance requirements for ordinary checking accounts at commercial banks are often too costly, prohibiting LMI consumers from entering the financial system in a productive way. Interview respondents noted that this is largely due to outdated business models upon which most banks operate. A fintech leader explained, "Banks' business models are still reliant on overdraft fees. The business [revenue] model doesn't quite exist" that would allow banks to offer LMI consumers a truly free checking account that promises more long-term revenue once they are in the system. To address this issue, interview and focus group respondents emphasized the need for mainstream financial institutions to establish updated business models that allow for lower-cost financial services and fewer barriers to entry for new account holders. The Center for Financial Services Innovation (CFSI) suggests that financial services organizations should update their business models by using an expanded definition of "success" that includes positive outcomes for clients, as well as positive returns for the business. Doing so, according to CFSI, would improve consumers' financial health and enhance institutions' competitive advantage and financial returns from other products down the line.[41]

Innovative loan products

LMI consumers need low-cost, accessible financial services, including quick, affordable credit with flexible repayment options, in all areas of financial life—ordinary checking/savings options, auto-financing, home mortgages, small business supports, and long-term investment vehicles. Interview respondents emphasized the need for financial institutions to provide low-cost, small-dollar loans with shorter terms. They stressed this point due to the lack of market alternatives to AFS that are often predatory, overpriced, and fail to build credit histories. A federal regulator explained that people use payday loans because "It's convenient and they're friendly. It's convenient because it's quick and on demand, so they're happy to pay the fees. Banks could do that: banks can offer low-cost loans and turn them around quickly."

LMI consumers also need access to products that are specifically designed to help them establish and build their credit. Experts in the financial services field highlighted several models for consumer loans that were specifically designed to help LMI users manage and pay back debt, that also addressed the need to build credit, such as credit builder loans, small business micro-loans, and a loan fund for contractors. More widespread use of similar products could have long-term economic benefits for consumers far beyond their short-term needs. A financial institution executive described the benefits of one such loan product by saying, "...[T]hey can take care of a problem that they would've gone to a payday lender to address. When they do this loan instead, this actually builds their credit *and* takes care of the problem."

In discussing the need for affordable credit and loan products across various areas of financial life (home, auto, retirement, etc.), respondents highlighted lending models that incorporated financial education and coaching in tandem with the products themselves. Focus group participants felt empowered by learning how to navigate various aspects of the financial system, while simultaneously addressing a financial need. Several respondents expressed a desire and appreciation for services that helped them understand the fundamentals and importance of the financial service sector, and how it can be useful in their everyday lives and aspirations to purchase a home, pay bills, or save for the future. They expressed a desire to better understand the importance of credit lines and credit scores, and how good scores translate into cheaper pricing for financed goods and services.

A community organization leader focused on financial coaching for residents described the value of one model that married good loan terms to credit counseling for LMI borrowers:

> One thing [a large national bank] had pre-foreclosure crisis, was a program where if you signed up for housing counseling, you'd pay no mortgage insurance—zero—for the life of the loan. It was below market interest rates. It was linked in partnership with housing counseling groups to say that the likelihood that these applicants are going into foreclosure is much less due to housing counseling. It made a huge difference in terms of housing payments.

However, the respondent suggested that they were not aware of similar programs since the foreclosure crisis. Several other respondents also observed that credit for LMI consumers had indeed "dried up" in recent years. One community leader stated succinctly, "We were trying to get rid of all the predatory financial products, but instead people aren't lending at all."

While this concern is substantiated,[42,43] a handful of mainstream financial institutions have stepped into this space and begun offering innovative loan products. One Community Development Financial Institution (CDFI) in our sample offers a range of loan products designed to meet the needs of LMI consumers. One of their executives described their small business micro-loans as "business loans in that five, six, seven, 12,000 dollar range, where even someone with perfect credit wouldn't get from a bank because it's just too small." If they became widely available, services of this kind would offer a viable, affordable alternative to payday lending.

Spotlight: Fuente Credito

Fuente Credito, a small-dollar credit pilot program coordinated by UnidosUS, facilitates access to affordable loans to help LMI consumers, with an emphasis on assisting immigrants to afford the costs associated with adjusting their immigration status or pursuing citizenship.

Fuento Credito:

- Enables community-based service providers to pre-qualify their clients for safe and affordable small-dollar credit or lending circles.
- Offers an online credit application designed to provide fast and personalized options for immigrants who need assistance in financing immigration fees related to Deferred Action for Childhood Arrivals (DACA), citizenship, or other legal services.
- Provides a secure website; compiles loan products from FDIC-insured credit unions, CDFIs and online lending circles; and leverages the expertise of UnidosUS Affiliate organizations in serving immigrant populations in culturally and linguistically relevant ways.

More information at www.fuentecredito.com.

Spotlight: Justine Petersen

Justine Petersen, a credit-building and microlending organization in St. Louis, Missouri, offers several loan products targeted to the needs of LMI consumers:

- **Small business micro-loans:** Loans typically up to $10,000 for small businesses that do not have access to commercial or conventional loans.
- **Contractor loan fund:** Offers short-term financing so contractors can afford to bid on larger construction jobs that require upfront capital but do not pay until the end of the project.
- **Credit builder loans:** Loans designed to build the practice of making on-time payments, while also saving or paying off a debt; all on-time payments are reported to the credit agencies.

More information at www.justinepetersen.org

The above findings from consumers and leaders from the community, banking, and policy sectors highlight numerous challenges that LMI consumers of color face in pursuit of financial inclusion, as well as opportunities for innovation. To address the challenges identified in this report, various sectors must work together, building on existing models, to create a truly inclusive financial system. The following section provides recommendations to move toward a financial system that advances full financial inclusion for LMI consumers of color and allows opportunity for safe innovation.

RECOMMENDATIONS: REFORMS TO POLICY, PRODUCTS, AND PRACTICES TO ADVANCE FINANCIAL INCLUSION

This research underscores ongoing barriers to financial inclusion that must be addressed to help the 63 million unbanked and underbanked reach financial inclusion. Altogether, the following recommendations can enhance industry practices, government policies and regulations, and support communities to collaborate with banks, fintechs, and public officials to advance full financial inclusion for LMI consumers of color.

Financial Services and Banks | Government
Community Organizations | Fintechs

Connect LMI consumers to appropriate financial products

Problem: Navigating the banking world is complicated, especially for people with low-income and those living in high-poverty neighborhoods. Barriers to access include identification requirements, language access, costly services, and limited product offerings that address the financial needs of LMI populations.

Solutions:

Create a nationwide network of "financial navigators." Financial institutions should collaborate with their local communities, government, fintech firms, and philanthropy to create a network of "financial navigators" who can reach customers within the underbanked and unbanked population nationwide, help them connect to appropriate financial products, and guide them as they progress through various financial needs.

- Navigators can build on existing networks of community-based credit and financial coaching/education models, and additional partnerships should be developed to reach full scale.

- Banks should tap into direct pipelines, resources, and connections in their existing networks and should partner with community organizations, online fintech platforms, government agencies that contract with local service providers, and others who can advance effective public/private/community partnerships to reach the underserved.
- Navigators' and partners' strategies and activities should advance opportunities to bank the underbanked by onboarding people into a safe banking relationship—a banking home—that connects them to the financial mainstream and offers opportunities for progression from "pre-prime" to prime credit products.

Build partnerships to meet the multidimensional needs of LMI and underbanked consumers. Financial institutions, fintechs, government agencies, and community-based organizations (CBOs) should build partnerships and referral networks to better serve the complex needs of LMI consumers and help underbanked individuals connect to the financial mainstream.

Financial institutions and fintechs should work in partnership with public agencies and CBOs to connect LMI clients to public resources, such as food assistance (Supplemental Nutritional Assistance Program, or SNAP), offer budgeting tools, and direct them to internal or external financial coaches or "navigators" (see above).

Public agencies and CBOs should establish relationships with reputable financial institutions, to which they can refer unbanked and underbanked clients, as well as those in need of particular financial products.

Financial Services and Banks | Fintechs

Increase accessibility and utility of financial products and services for LMI consumers

Problem: Many LMI consumers cannot afford to bank with mainstream financial institutions due to high fees and minimum-balance requirements. Faced with few affordable alternatives, LMI consumers spend millions in fees and interest for high-cost AFS each year. In addition, identification requirements and lack of linguistic accessibility prevent many LMI consumers, particularly immigrants, from achieving full financial inclusion.

Solutions:

Update business models to monetize client success. Banks and financial institutions should create new business models that refocus on customers' success.

- Reduce or remove initial deposit requirements, minimum-balance requirements, and high fees that deter LMI consumers.
- Create innovative loan products that work for LMI consumers, including short-term, small-dollar loans, and loans designed to build credit.

- Offer products that are sensitive to religious or cultural restrictions, outside of what is traditionally offered, particularly with savings products. This generates revenue for banks.
- Design products to meet clients where they are and help them move from "pre-prime" to prime credit status. This can help establish a healthy financial ecosystem of widely available supports, resources, tools, and products that work for people at every income level.

Increase language access. Financial providers should partner with effective language service providers to co-design and offer the full suite of products, services, and written materials for all common languages spoken within the banking footprint.

- Example: Offer remote translation services in banks where multilingual staff are not available.
- Partner with community-based organizations working with clients who are not predominantly English-speaking to develop fintech models.

Accept alternative identification. Banks and financial institutions should accept matricula consular and municipal identification cards, and Individual Taxpayer Identification Numbers (ITIN), and ensure consistent identification rules are transparent, enforceable, and made publicly available to all potential customers, staff, and community residents within the banking footprint.

- Conduct public awareness campaigns in target markets to inform the public of acceptable forms of identification, new developments toward language accessibility, and product offerings. Invite recommendations for product/service innovations that work for LMI users to attract them to the banking system in a safe, sustainable manner.
- Provide updated training to bank staff and customer service representatives to ensure that they have accurate information on bank policies guiding the acceptance of alternative forms of identification.

Government – Federal Policy and Regulations*

Reform policies and regulations to create meaningful access for LMI consumers

Problem: LMI people of color are excluded from the consumer credit and banking systems partially due to reporting systems practices, limited use of data, and a lack of consumer understanding of how to engage reporting systems and standards. Additional channels are needed to properly protect against fraud, and to assess creditworthiness, and federal consumer protections must set the standards for how all LMI consumers are protected under the law.

* The focus of this report is on federal reforms and needed protections that can be uniform across all U.S. vulnerable populations and jurisdictions.

Solutions:

Reward inclusive finance models. Federal regulators and policymakers should create a system of formal, public recognition and incentives for financial institutions that successfully serve LMI clients' financial needs and maintain branches in LMI communities.

- Metrics should be based on financial outcomes that are tied to enhanced economic mobility and financial capability. For instance, financial institutions may be recognized for offering a wide range of products that meet the needs of people from all wealth and income levels, and for successfully helping people to matriculate and graduate from starter checking accounts with no fees, to prime consumer or business loans.
- Credit bureaus should allow the reporting of credit activity by ITIN holders and clarify this in guidance to lenders.

Require transparency and access to checking account reporting systems. Oversight agencies should develop regulations to make the checking account reporting system more transparent to consumers, and actively encourage the industry to raise awareness about how to properly address concerns or discrepancies that exclude potential customers from banks.

- ChexSystems and Early Warning Services should be required to offer full, plain-language disclosures, similar to time-to-repayment tables that are required of credit card companies.
- Regulators should establish a clear process for resolving consumer disputes that require an agency response and provide public channels for consumers to report abuses.

Require review of alternative credit data. Credit reporting agencies should be required to explore the potential net benefits and consequences of adding alternative data sources to credit scoring algorithms.

- The long-term goal should be to reduce the number of credit invisibles and unscorables from 45 million[24] to zero.
- Government should consider the short- and long-term effects of credit bureau data collection to produce a uniform metric that is more inclusive for all segments of U.S. borrowers and potential borrowers.
- Alternative data considerations should include information such as on-time rent payments to corporate landlords, telecommunication services, and utilities.
- Policymakers should review this industry study to provide guidance on how to achieve the greatest benefit for all consumer segments, including underserved LMI users.

Expand the Community Reinvestment Act (CRA). Policymakers should update the CRA to include credit unions, non-bank mortgage originators, and fintechs within CRA jurisdiction, and maintain a focus that ensures access for underserved populations and communities.

- Representatives of some fintech products have argued that they exist to plug financial sector gaps in consumer lending and retail banking products. Thus, they should be subject to similar CRA obligations as other consumer retail banks.

Enhance federal consumer protections. The federal government (including all federal bank regulators such as Federal Deposit Insurance Corporation (FDIC), OCC, and CFPB) should recommit to protecting consumers and informing them of their rights.

- Prevent predatory lending practices: Regulators should renew their commitment to strengthening regulations on alternative financial services (AFS), including limits on fees, and require AFS to report on-time payments to credit bureaus.
- In order to address the decline in available affordable credit, particularly for LMI consumers and consumers of color,[42,43] regulators should set aside funding to encourage financial institutions to develop innovative loan products aimed at building wealth among LMI consumers, such as mortgage loans that are tied to the completion of financial counseling.
- Expand consumer education and make efforts more visible and accessible, particularly in communities with high concentrations of LMI populations. Information should be included in print and digital media, statement disclosures, written correspondence, and community-wide resources in all areas of consumers' financial lives (e.g., on bank statements, fintech, and financial institution websites; utility bills; etc.) and meet the language needs of non-English speakers.
- Enforce fair lending and anti-discrimination laws to protect against red-lining practices, allowing LMI communities of color to fully access credit.
- Encourage financial institutions to accept various forms of identification and the information necessary to open an account and have a sufficient customer profile.

Regulate and support fintech solutions that work for LMI users. Create a regulatory structure that fosters innovation while protecting consumers from predatory lending practices.

- Ensure products and services are safe, secure, and advance the financial interests of the end-user, particularly LMI users.
- Align fintechs' data security and consumer protections standards to match or exceed traditional banking product regulations under the original intent of the CFPB, regardless of agency jurisdiction (*i.e.*, Office of the Comptroller of the Currency, Federal Depository Institution Corporation, and others that may have different jurisdictional authority).

Community Organizations and Consumers

Raise awareness and encourage reform and innovation

Problem: The financial industry needs community input in product and service development, industry regulations, and corporate practices in order to reach the 63 million unbanked and underbanked adults, improve services for LMI consumers, and build a thriving system for all.

Solutions:

Connect community organizations with financial institutions. Community organizations should continue to seek out relationships with financial institutions in order to forge pathways for ongoing communication and innovation.

Expand community organizations' advocacy for inclusive, affordable financial products and services. Community organizations, which already play a critical role in understanding the financial needs of their members, should continue to listen to clients' needs and amplify their clients' voices in discussions with financial institutions, fintechs, regulators, and policymakers.

- Community organizations can provide simple ways for consumers to share their concerns, frustrations, and ideas.

Raise the voices of individual consumers. Individual consumers, including people struggling with low- and moderate-income, those who are frustrated with the high fees associated with AFS, those who want to become fully banked, and those who have innovative ideas for financial products and services, should share their thoughts with decision makers via community organizations and other advocacy efforts.

CONCLUSION

Low- and moderate-income people continue to face significant barriers to banking with mainstream financial institutions, including identification requirements, the high cost of services, language barriers, credit requirements, checking account reporting, and fewer bank branches in LMI communities. Although fintech holds promise, LMI consumers will still face obstacles to full financial inclusion if reforms, incentives, and careful regulations are not in place. Federal consumer protections are waning, and high-cost AFS remain problematic at wide scale. A comprehensive review and set of reforms are needed to ensure LMI communities will be able to access safe, affordable, and productive financial services and products that empower them to enter the economic mainstream. There is ample room for innovation to ensure that everyone has access to affordable short-term credit, retail banking, and savings for future events like retirement and children's education. Careful collaborations among financial institutions, fintechs, and government can lead to financial inclusion and success for those who are currently underbanked.

As financial services, fintech, policy, and regulation continue to evolve in response to a changing economy, it is essential to continuously focus on the goal of financial inclusion for all. A more equitable economy is possible if LMI consumers of color and others who have historically been excluded are ensured meaningful access to safe and productive financial services that help consumers participate, prosper, and reach their full potential. This report represents only a segment of concerns that were shared by LMI consumers and experts throughout U.S. communities. Government, philanthropy, banks, and fintechs need to hear community voices. Local efforts, state advocates, and national movements are essential to inform and reshape how the financial services industry interacts with the most vulnerable populations.

A financial economy that works for the 63 million unbanked and underbanked will also work for the 96 million living in or near poverty—and thus, for the nation. The nation needs the 63 million unbanked and underbanked as contributors to the mainstream financial economy and enhancing their financial inclusion will directly impact the nation's economic growth. It will support the emerging majority's ability to afford stable housing, build wealth, and to save for the future. The implications cannot be ignored: the future of the nation's economy is dependent on how low-income communities and communities of color are able to advance up the financial and economic ladder.

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