

June 7, 2020

The Honorable Brian P. Brooks  
Acting Comptroller of the Currency  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> St. SW  
Washington, DC 20219

Dear Acting Comptroller Brooks:

As the new acting Comptroller of the Currency, you have a vital responsibility: ensuring the safety and soundness of the nation's nationally chartered banks and protecting consumers during a nearly unprecedented economic and public health crisis. Unfortunately, your immediate predecessor, Comptroller Otting, a former banking industry insider who arrived with an ideologically-driven agenda, engaged in multiple rulemakings<sup>1</sup> that weakened critical safeguards, increasing risks to consumers and the financial system.

The last significant action of Mr. Otting's tenure was the rushed release of a final rule<sup>2</sup> to "gut"<sup>3</sup> the nation's anti-redlining law, the Community Reinvestment Act (CRA), which came one day before he officially announced his resignation.<sup>4</sup> This new rule would make it easier for banks to ignore and discriminate against minorities and the communities in which they live, and the rewrite was panned by community advocates, regulators, and bankers themselves: "Banking trade groups said it had been put together hastily without enough testing. The [Federal Reserve Board of Governors (Fed) and Federal Deposit Insurance Corporation (FDIC)] refused to sign on. And community groups fear that the revision would ultimately hurt the poor."<sup>5</sup>

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<sup>1</sup> Politico, "FDIC approves Volcker revamp, in latest move to roll back bank rules," Katy O'Donnell, August 20, 2019, <https://www.politico.com/story/2019/08/20/volcker-rule-joseph-otting-banks-1672620>; American Banker, "OCC offers road map for banks to bypass 'Madden' ruling," Neil Haggerty, November 18, 2019, <https://www.americanbanker.com/news/occ-offers-roadmap-for-banks-to-bypass-madden-ruling>.

<sup>2</sup> Office of the Comptroller of the Currency, "Community Reinvestment Act Regulations," Final Rule, <https://www.occ.gov/news-issuances/federal-register/2020/nr-occ-2020-63a.pdf>.

<sup>3</sup> New York Times, "Bank Regulator's Battle with Anti-Redlining Law Comes to an End," Emily Flitter and Jeanna Smialek, May 28, 2020, <https://www.nytimes.com/2020/05/28/business/economy/community-reinvestment-act-joseph-otting.html>.

<sup>4</sup> Office of the Comptroller of the Currency, "Comptroller of the Currency Joseph Otting to Step Down, Brian P. Brooks to Become Acting Comptroller of the Currency on May 29, 2020," May 21, 2020, <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-66.html>.

<sup>5</sup> New York Times, "Bank Regulator's Battle with Anti-Redlining Law Comes to an End," Emily Flitter and Jeanna Smialek, May 28, 2020, <https://www.nytimes.com/2020/05/28/business/economy/community-reinvestment-act-joseph-otting.html>.

I am writing today to urge you to withdraw this hastily-finalized rule and reaffirm the Office of the Comptroller of the Currency's (OCC) mission to ensure that banks "operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations."<sup>6</sup>

The CRA is a civil rights law that was passed by Congress in 1977 to prevent redlining, the refusal of banks to provide access to financial services to communities with large numbers of low-to-moderate income (LMI) individuals and minorities.<sup>7</sup> Specifically, the law provided that "regulated financial institutions have [a] continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."<sup>8</sup> The OCC, FDIC, and the Fed examine bank compliance with this law by issuing CRA "credits" when a bank engages in qualifying lending, service, and investment activities within their assessment areas.<sup>9</sup> CRA credits are ultimately converted into a single composite rating that is used as a factor when regulators evaluate banks' requests to move their offices, open new branches, or engage in a merger or acquisition.<sup>10</sup>

In the over four decades since the CRA was enacted, the need for changes to the law has become clear. In 2018, roughly 98 percent of all banks examined received passing ratings on their CRA exams.<sup>11</sup> At the same time, millions of Americans, particularly those in minority communities, report not having sufficient access to basic banking services.<sup>12</sup> As a result, there have been calls to strengthen the CRA and increase the rigor of examinations, so banks are required to truly meet the needs of these communities.<sup>13</sup> Unfortunately, under Comptroller Otting, who was nominated by President Trump in June 2017 and confirmed by the Senate later that year<sup>14</sup>, the OCC took a different approach that makes a mockery of the law's intent.

From the start, the rulemaking process was tainted by Comptroller Otting's own conflicts of interest. Prior to joining OCC, he was CEO of OneWest Bank<sup>15</sup>, where you also served as Vice

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<sup>6</sup> Office of the Comptroller of the Currency, "About Us," <https://www.occ.treas.gov/about/index-about.html>.

<sup>7</sup> Congressional Research Service, "The Effectiveness of the Community Reinvestment Act," Darryl E. Getter, January 16, 2020, <https://www.crs.gov/Reports/R43661?source=search&guid=239c71ad1c62451399179b300fcadfb9&index=1>.

<sup>8</sup> 12 U.S.C 2901.

<sup>9</sup> Assessment areas are based on the location of a bank's branches and lending activity and cannot arbitrarily exclude LMI communities. Congressional Research Service, "The Effectiveness of the Community Reinvestment Act," Darryl E. Getter, January 16, 2020, <https://www.crs.gov/Reports/R43661?source=search&guid=239c71ad1c62451399179b300fcadfb9&index=1>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Federal Deposit Insurance Corporation, "2017 National Survey of Unbanked and Underbanked Households," October 2018, <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>.

<sup>13</sup> National Community Reinvestment Coalition, "Warren Housing Bill Presents a Clear Choice on CRA," Josh Silver, October 12, 2018, <https://ncrc.org/warren-housing-bill-presents-a-clear-choice-on-cra/>.

<sup>14</sup> Office of the Comptroller of the Currency, "Joseph M. Otting Takes Office as the 31<sup>st</sup> Comptroller of the Currency," November 27, 2017, <https://www.occ.gov/news-issuances/news-releases/2017/nr-occ-2017-141.html>.

<sup>15</sup> Office of the Comptroller of the Currency, "Joseph M. Otting," <https://www.occ.treas.gov/about/who-we-are/comptroller/bio-comptroller-joseph-otting.html>.

Chairman from 2011 to 2014<sup>16</sup> and was sued by community groups in 2017 for “discrimination in the locating, maintaining, consolidating and closing of retail branches and attendant services in a manner which did not and does not give equal access to all consumers and home loan seekers based on race, national origin and/or color.”<sup>17</sup>

Starting with the release of the Advanced Notice of Proposed Rulemaking (ANPR) in 2018, Comptroller Otting focused his efforts on creating a new single dollar-volume metric by which CRA activity would be measured. Such a metric would essentially allow banks to satisfy their CRA obligations by making a few large investments each year while ignoring the needs of the communities in which they are located.<sup>18</sup> The Fed, which worked with your agency and the FDIC behind the scenes to incorporate feedback from the ANPR into a concrete proposal, did not sign on to the Notice of Proposed Rulemaking (NPR) that was issued, largely as a result of the heavy reliance of this proposal on the dollar volume metric.<sup>19</sup>

Indeed, during a time of nearly-unprecedented political polarization, Comptroller Otting managed to unite consumer and community groups<sup>20</sup>, elected officials<sup>21</sup>, outside experts<sup>22</sup>, and the banking industry<sup>23</sup> with agreement over how fundamentally flawed his plans were. But instead of making a meaningful attempt to address the serious shortcomings of the proposal, Mr. Otting unilaterally rushed to release a final OCC rule in the middle of a global pandemic only to announce his resignation a day later. As a result, Mr. Otting has made it easier for banks to discriminate against individuals and communities, and created a complex system where banks have different CRA rules based on the regulatory agency that charters them.<sup>24</sup> Such a process benefits no one. Additionally, while the final rule does not contain some of the most egregious elements that were included in the NPR, preliminary analyses continue to indicate that the

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<sup>16</sup> Office of the Comptroller of the Currency, “Brian Brooks,” <https://www.occ.treas.gov/about/who-we-are/comptroller/bio-brian-brooks.html>

<sup>17</sup> Housing Discrimination Complaint from California Reinvestment Coalition and Fair Housing Advocates of Northern California, <http://calreinvest.org/wp-content/uploads/2019/07/Complaint-Submitted-to-HUD-1.pdf>.

<sup>18</sup> Comment Letter from Opportunity Finance Network to Comptroller Otting Re Reforming the Community Reinvestment Act Regulatory Framework, November 19, 2018, [https://ofn.org/sites/default/files/resources/PDFs/Policy%20Docs/2018/OFN\\_CRA\\_ANPR\\_11.19.18.pdf](https://ofn.org/sites/default/files/resources/PDFs/Policy%20Docs/2018/OFN_CRA_ANPR_11.19.18.pdf).

<sup>19</sup> American Banker, “Fed won’t move on CRA reform this year: Otting,” Brendan Pedersen, November 20, 2019, <https://www.americanbanker.com/news/federal-reserve-wont-move-on-cra-this-year-otting>.

<sup>20</sup> Comment Letter from National Consumer Law Center to Comptroller Otting Re Notice of Proposed Ruelamking, Community Reinvestment Act Regulations, January 28, 2020, [https://www.nclc.org/images/pdf/NCLC\\_CRA-Letter-1-28-20.pdf](https://www.nclc.org/images/pdf/NCLC_CRA-Letter-1-28-20.pdf).

<sup>21</sup> American Banker, “Maxine Waters to crash FDIC meeting on CRA Revamp,” Neil Haggerty, “ December 12, 2019, <https://www.americanbanker.com/news/maxine-waters-to-crash-fdic-meeting-on-cra-revamp>.

<sup>22</sup> Urban Institute, “Community Reinvestment Act Comment Letter,” April 8, 2020, <https://www.urban.org/sites/default/files/publication/102005/community-reinvestment-act-april-8-2020-comment-letter.pdf>.

<sup>23</sup> Wall Street Journal, “Bank CEOs Courted By Regulator on Low-Income Lending Overhaul,” Andrew Ackerman, February 21, 2020, <https://www.wsj.com/articles/top-u-s-regulator-said-to-lobby-bank-ceos-on-overhaul-of-low-income-lending-rules-11582309318> ,

<sup>24</sup> The OCC regulations apply only to all nationally chartered banks and savings associations, <https://www.helpwithmybank.gov/about/index-about-us.html>.

evaluations would still rely heavily on the dollar volume metric and diminish the importance of banks having physical branches in LMI communities.<sup>25</sup>

Mr. Otting’s rushed rewrite of the CRA during a nationwide public health and economic emergency has failed every test of ethics, fairness, and competence. You now have an opportunity to undo this damage, and you should do so immediately. First, you should withdraw the final CRA rule to provide clarity to all stakeholders that the implementation of these regulations will never see the light of day. Second, you should recuse yourself from all future CRA rulemakings given your experience at OneWest and work on the final rule that was issued.<sup>26</sup> When a new permanent Comptroller is confirmed, he or she should work with the Fed and FDIC to move forward. This should be a joint effort that conducts meaningful outreach to community groups that represent the minority communities and LMI individuals that will be most affected by this rulemaking. When we emerge from this global pandemic, regulators should develop and issue a new proposal that meaningfully takes into account feedback received after a substantial period for public comment and modernizes the CRA in a way that strengthens, and not undermines, the law’s original intent.

Fed Governor Brainard was correct when she said that “it is much more important to get [CRA] reform right than to do it quickly.”<sup>27</sup> You must take advantage of your unique opportunity to reset the process to get this rulemaking right.

Sincerely,



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Elizabeth Warren  
United States Senator

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<sup>25</sup> National Community Reinvestment Coalition, “Summary of Fact Sheet on the OCC’s Final CRA Rule,” Josh Silver, May 21, 2020, <https://ncrc.org/summary-fact-sheet-on-the-occs-final-cra-rule/>.

<sup>26</sup> BankingDive, “OCC defends timing, lack of regulatory support for CRA revamp,” Anna Hrushka, May 21, 2020, <https://www.bankingdive.com/news/CRA-occ-federal-reserve-Otting-FDIC-regulatory-support/578421/>

<sup>27</sup> New York Times, “Fed Charts a New Path as Regulators Revisit Bank Rules for Poor Communities,” Jeanna Smialek and Emily Flitter, January 8, 2020, <https://www.nytimes.com/2020/01/08/business/economy/fed-banks-poor-communities.html>.