

United States Senate

WASHINGTON, DC 20510

September 25, 2024

The Honorable Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th St SW
Washington, DC 20219

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Acting Comptroller Hsu and Chair Powell,

I write to you today with renewed concern about recent reporting that the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board (Fed) may allow New York Community Bank (NYCB) to escape regulatory oversight despite the agencies having identified “systemic failings” in the bank’s operation and management.¹ Allowing NYCB to evade penalties under these circumstances would be a dereliction of duty and would represent a failure by the OCC and the Fed to ensure the safety and soundness of the banking system. This lapse in supervision would be especially concerning considering that NYCB is run by former OCC Comptroller Joseph Otting and former Treasury Secretary Steven Mnuchin, who have a prior history of “widespread misconduct”² in managing failed bank OneWest³—history that should have been scrutinized by the OCC and the Fed pursuant to their statutory mandate to review changes in bank control.⁴ To the extent that the OCC has identified significant management failures at NYCB, the OCC must act quickly to address them. Given the bank’s history and the significant risks it poses to the U.S. financial system, the OCC must consider implementing an Individual Minimum Capital Ratio (IMCR).

The OCC Wrongly Approved Back-to-Back Bank NYCB Mergers

The OCC’s record of failure with NYCB is now over three years old. In May 2021, NYCB submitted a merger application to the Federal Deposit Insurance Corporation (FDIC) with the

¹ The Capitol Forum, “Financials Friday: Following Complications from Merger, New York Community Bank May Have to Hold More Capital as Regulator Mulls Enforcement Action,” July 5, 2024, on file with Office of Senator Elizabeth Warren.

² The Intercept, “Treasury Nominee Steve Mnuchin’s Bank Accused of ‘Widespread Misconduct’ in Leaked Memo,” David Dayen, January 3, 2017, <https://theintercept.com/2017/01/03/treasury-nominee-steve-mnuchin-bank-accused-of-widespread-misconduct-in-leaked-memo/>.

³ New York Community Bank, “Leadership Team,” <https://ir.mynycb.com/about-us/officer-and-director-profiles/default.aspx>; New York Community Bank, “Person Details,” <https://ir.mynycb.com/about-us/officer-and-director-profiles/person-details/default.aspx?ItemId=5d942e9a-0752-46c6-ad2b-a1d518f9aee4>.

⁴ Federal Register, “Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company,” May 7, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-09948.pdf>.

intent to buy Flagstar Bank (Flagstar).⁵ When “no one at the FDIC was comfortable” approving the merger, NYCB and Flagstar schemed to restructure their merger so FDIC approval was no longer needed.⁶ Flagstar converted from a federal savings bank that was under FDIC oversight to a national bank, which is regulated by the OCC.⁷ In October 2022, the OCC approved the merger, without addressing the risks raised in the initial FDIC review. In the OCC’s approval order, Flagstar defended their decision to re-charter as a “business decision” and indicated that “preference of charters does not constitute a statutorily relevant consideration under the [*Bank Merger Act*].”⁸ The OCC ignored the flags raised by the FDIC and was wrong to have approved this merger.

Only six months after the faulty Flagstar merger, NYCB took over the failed Signature Bank, which led to the near-collapse of NYCB. The OCC approved NYCB’s purchase of Signature Bank after Signature Bank’s failure in March 2023.⁹ Conspicuously, NYCB’s Chief Risk Officer and Chief Audit Executive left their positions shortly after the merger, leaving the bank woefully unprepared to scale their risk management with the corresponding increase in bank assets.¹⁰ Indeed, CEO Joseph Otting acknowledged that the bank “grew very quickly” but “both the talent and infrastructure” of the bank’s risk management division were “not in place.”¹¹ The OCC, as NYCB’s regulator, is tasked with overseeing NYCB’s risk management and yet did not raise flags related to NYCB’s internal struggles. On the brink of failure, NYCB accepted a capital infusion from private equity firms spearheaded by former Treasury Secretary Steven Mnuchin, who tapped fellow Trump-era financial regulator Joseph Otting as NYCB’s new CEO.¹²

⁵ Bank Reg Blog, “A Little More Regulatory Context on NYCB,” February 11, 2024, <https://bankregblog.substack.com/p/a-little-more-regulatory-context>.

⁶ The Capitol Forum, “Flagstar Bancorp/New York Community Bancorp: When FDIC Rebuffed Merger Bid, Banks Restructured Deal So OCC Would Review It,” October 18, 2022, <https://thecapitolforum.com/flagstar-bancorp-new-york-community-bancorp-when-fdic-rebuffed-merger-bid-banks-restructured-deal-so-occ-would-review-it/>.

⁷ Bank Reg Blog, “A Little More Regulatory Context on NYCB,” February 11, 2024, <https://bankregblog.substack.com/p/a-little-more-regulatory-context>.

⁸ Office of the Comptroller of the Currency, conditional approval letter #1299,” October 27, 2022, p. 7, <https://occ.treas.gov/topics/charters-and-licensing/interpretations-and-actions/2022/ca1299.pdf>.

⁹ NPR, “New York Community Bank agrees to buy a large portion of Signature Bank,” The Associated Press, March 20, 2023, <https://www.npr.org/2023/03/20/1164638154/new-york-community-bank-agrees-to-buy-a-large-portion-of-signature-bank>.

¹⁰ Bloomberg, “NYCB’s Tense Talks With Watchdog Led to Moves That Rocked Market,” Hannah Levitt et al., February 5, 2024, <https://www.bloomberg.com/news/articles/2024-02-05/nycb-s-tense-talks-with-watchdog-led-to-moves-that-rocked-market>.

¹¹ Yahoo Finance, “Q2 2024 New York Community Bancorp Inc Earnings Call,” July 26, 2024, <https://finance.yahoo.com/news/q2-2024-york-community-bancorp-072036378.html>.

¹² Reuters, “NYCB closes \$1 bln capital infusion deal, announces reverse stock split,” March 11, 2024, <https://www.reuters.com/business/finance/nycb-closes-1-billion-capital-infusion-deal-2024-03-12/>; Bloomberg, “NYCB Ballooned Despite Real Estate Warnings in Years Before Fall,” Max Abelson, March 5, 2024, <https://www.bloomberg.com/news/articles/2024-03-05/nycb-stock-dive-bank-ballooned-despite-real-estate-market-warnings>; Financial Times, “How Steven Mnuchin pulled off a \$1bn deal to steady a teetering US bank,” Joshua Franklin et al, March 8, 2024, <https://www.ft.com/content/c8cc942d-66df-4a7f-a6a9-5d5816ccc6f8>.

History Repeats Itself

Mr. Mnuchin and Mr. Otting have a “long history” together, even before their time in the Trump administration.¹³ They worked together at OneWest bank from 2010 to 2015, orchestrating a takeover eerily similar to NYCB’s: Mr. Mnuchin bought a struggling OneWest and brought on Mr. Otting to run the bank.¹⁴ They oversaw an operation that was called a “foreclosure machine,” repossessing the homes of tens of thousands of American families between 2009 and 2015 and intensifying the economic pain of the Great Recession.¹⁵ Despite the fact that there were programs available specifically to help banks like OneWest work with families to modify their mortgages and keep them in their homes, OneWest instead pursued an aggressive strategy of foreclosing on families to rack up profits. OneWest executed 39% of all foreclosures on federally-insured reverse mortgages from April 2009 through April 2016, despite servicing approximately 17% of the market.¹⁶

OneWest used illegal tactics like “robo-signing”—falsifying key documents—to create a wave of foreclosures that kicked more than 36,000 families out of their homes.¹⁷ In one case in Florida, OneWest foreclosed on a 90-year-old woman over a 27-cent payment error.¹⁸ In another case in Minnesota, a homeowner in a foreclosure dispute with OneWest came home in the middle of a blizzard to find that the locks on her house had been changed.¹⁹

Under their tenure, OneWest was accused of “shoddy foreclosure practices and avoiding business in minority neighborhoods.”²⁰ A New York State Supreme Court judge called OneWest’s foreclosure practices: “harsh, repugnant, shocking, and repulsive.”²¹ OneWest eventually settled with the Department of Housing and Urban Development on allegations of redlining as well as with the Office of Thrift Supervision for “deficiencies and unsafe...practices

¹³ New York Times, “Steven Mnuchin Backs New York Community Bank in \$1 Billion Deal,” Rob Copeland, March 6, 2024, <https://www.nytimes.com/2024/03/06/business/nycb-overhaul-cash-mnuchin.html>.

¹⁴ *Id.*

¹⁵ ProPublica, “Trump’s Treasury Pick Excelled at Kicking Elderly People Out of Their Homes,” Paul Kiel and Jesse Eisinger, December 27, 2016, <https://www.propublica.org/article/trump-treasury-pick-excelled-at-kicking-elderly-out-of-their-homes>; Business Insider, “Treasury Secretary Mnuchin is angry about an unflattering nickname he wholeheartedly deserves,” Pedro Nicolaci da Costa, August 2, 2017, <https://www.businessinsider.com/mnuchins-onewest-bank-has-long-record-of-mortgage-foreclosures-2017-8>.

¹⁶ Senator Elizabeth Warren, “Led by Merkley, Warren and Sanders, Senate Democrats Roll Out New Website Inviting Personal Stories from Americans Hurt by Foreclosure King Steve Mnuchin,” press release, December 16, 2016, <https://www.warren.senate.gov/newsroom/press-releases/led-by-merkley-warren-and-sanders-senate-democrats-roll-out-new-website-inviting-personal-stories-from-americans-hurt-by-foreclosure-king-steve-mnuchin>.

¹⁷ *Id.*

¹⁸ Politico, “Trump Treasury pick made millions after his bank foreclosed on homeowners,” Lorraine Woellert, December 1, 2016, <https://www.politico.com/story/2016/12/trump-treasury-foreclosed-homes-mnuchin-232038>.

¹⁹ The Intercept, Treasury Nominee Steve Mnuchin’s Bank Accused of ‘Widespread Misconduct’ in Leaked Memo,” David Dayen, January 3, 2017, <https://theintercept.com/2017/01/03/treasury-nominee-steve-mnuchins-bank-accused-of-widespread-misconduct-in-leaked-memo/>.

²⁰ Bloomberg, “Nominating Mnuchin for Treasury Will Dredge Up Mortgage Meltdown Controversies,” Zachary R. Mider, November 22, 2016, <https://www.bloomberg.com/news/articles/2016-11-22/trump-treasury-contender-mnuchin-found-profits-in-mortgage-mess>.

²¹ The American Prospect, “The Revolving Door and the Assault on Community Reinvestment,” Bartlett Naylor, November 21, 2018, <https://prospect.org/economy/revolving-door-assault-community-reinvestment/>.

in the [OneWest's] residential mortgage servicing.²² Both settlements were for practices that took place under the leadership of Mr. Mnuchin and Mr. Otting.²³ NYCB is one of the nation's largest residential mortgage lenders²⁴ and the past conduct of NYCB's new leadership counsels for increased scrutiny to protect our financial system and the people who would be hurt by another major bank collapse.

When Mr. Mnuchin and Mr. Otting took control of NYCB, the Fed and the OCC were required to conduct thorough character and fitness evaluations pursuant to the regulators' authorities under the *Change in Bank Control Act*.²⁵ Under U.S. law, banks must notify regulators of any changes to the bank's board of directors or senior executive officers.²⁶ Regulators have discretion to disapprove the bank's proposed leadership changes if "the competence, experience, character, or integrity of the individual... would not be in the best interests of the depositors...or in the best interests of the public."²⁷ Any assessment of Mr. Otting's and Mr. Mnuchin's fitness for the roles of Chief Executive Officer and Lead Independent Director at NYCB,²⁸ respectively, must have included detailed reviews of their malfeasance at OneWest.

The OCC's Lax Oversight of NYCB is Dangerous

The OCC's failure to appropriately supervise NYCB continued until the bank nearly failed. When it approved the NYCB-Flagstar merger, the OCC stipulated that, for two years, each of NYCB's dividends must receive a prior determination of no objection from the OCC.²⁹ The OCC reviewed NYCB's financial statements each quarter but still allowed NYCB to pay dividends, up until the first quarter of 2024, when NYCB abruptly slashed its dividend payment.³⁰ Instead of urging caution, the OCC decided to let NYCB run wild and take unnecessary risks.

I attached questions in my April letter relating to the OCC's ineffective supervision of NYCB that went unanswered in the OCC's response.³¹ Now, new reports of "systemic failings" indicate that the OCC is continuing to fail at addressing risks in its regulated entities. Given the ongoing

²² *Id.*

²³ Los Angeles Times, "HUD approves settlement with OneWest Bank resolving redlining allegations," Andrew Khouri, July 29, 2019, <https://www.latimes.com/business/story/2019-07-29/hud-settlement-onewest-bank-redlining-allegations#:~:text=The%20U.S.%20Department%20of%20Housing,as%20redlining%20in%20Southern%20California>.

²⁴ Revolving Door Project, "Trump Lackeys Run to Rescue Ailing Bank in Predictable—And Telling—Move," Kenny Stancil, March 15, 2024, <https://therevolvingdoorproject.org/trump-lackeys-run-to-rescue-ailing-bank-in-predictable-and-telling-move/>.

²⁵ 12 U.S.C. 1817(j).

²⁶ 12 U.S.C. § 1831i(a).

²⁷ *Id.*

²⁸ New York Community Bank, "Leadership Team," <https://ir.mynycb.com/about-us/officer-and-director-profiles/default.aspx>; New York Community Bank, "Person Details," <https://ir.mynycb.com/about-us/officer-and-director-profiles/person-details/default.aspx?ItemId=5d942e9a-0752-46c6-ad2b-a1d518f9aee4>.

²⁹ Reuters, "NYCB closes \$1 bln capital infusion deal, announces reverse stock split," March 11, 2024, <https://www.reuters.com/business/finance/nycb-closes-1-billion-capital-infusion-deal-2024-03-12/>; Bloomberg, "NYCB Ballooned Despite Real Estate Warnings in Years Before Fall," Max Abelson, March 4, 2024, <https://www.bloomberg.com/news/articles/2024-03-05/nycb-stock-dive-bank-ballooned-despite-real-estate-market-warnings>.

³⁰ Nasdaq, "NYCB Dividend History," <https://www.nasdaq.com/market-activity/stocks/nycb/dividend-history>.

threats from regional bank failures,³² I am deeply troubled by the OCC's failure to answer my previous questions—and your agencies' inability or unwillingness to rein in unruly banks.

The OCC Should Consider an IMCR for NYCB

If the OCC has indeed identified “systemic failings” at NYCB, the agency must impose stronger controls on the bank. In his response to my April letter, Comptroller Hsu said: “I have consistently emphasized to bankers the importance of guarding against complacency and having strong risk management systems in place.”³³ Given the reports of recent OCC findings of “systemic failings” at the bank—and the history of NYCB’s failed leadership at OneWest—the OCC’s current approach to overseeing NYCB is not adequate.

The OCC has existing authority under Title 12 to establish a minimum, higher capital requirement for banks under its jurisdiction,³⁴ and the OCC has employed IMCRs in at least two recent instances³⁵ in order to address acute threats to the safety and soundness of the banks it supervises. Grounds for establishing an IMCR include: the overall condition of the bank, the urgency of the threats to the bank’s safety and soundness, and the liquidity, capital, and other financial ratios of the bank.³⁶

Comptroller Hsu has repeatedly touted the need for strong oversight of large banks like NYCB. In July, he said: “large banks need strong foundations...to be resilient, resolvable, and manageable” and that banks need to have enough “capital to absorb losses, liquidity to mitigate and withstand runs, operational resilience to maintain critical operations, and recovery planning to ensure options in stress.”³⁷

I am encouraged by the report that the OCC is “weighing whether to require the bank to hold more capital as a part of an enforcement action.”³⁸ In order to protect the banking and financial system, it should do so as quickly as possible.

³¹ Letter from Acting Comptroller Michael Hsu to Senator Elizabeth Warren, May 13, 2024, https://www.warren.senate.gov/imo/media/doc/occ_response_to_ew_051324.pdf.

³² Bloomberg, “More US Regional Bank Failures May Be Coming,” David Rovella, June 11, 2024, <https://www.bloomberg.com/news/newsletters/2024-06-11/bloomberg-evening-briefing-more-us-regional-bank-failures-may-be-coming>.

³³ Letter from Acting Comptroller Michael Hsu to Senator Elizabeth Warren, May 13, 2024, https://www.warren.senate.gov/imo/media/doc/occ_response_to_ew_051324.pdf.

³⁴ 12 U.S.C. 1464(s)(2); 12 U.S.C. 3907(a)(2).

³⁵ S&P Global, “Bank regulators hiking capital requirements for CRE-concentrated banks,” Zoe Sagalow and Xylex Mangulaban, June 11, 2024, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-regulators-hiking-capital-requirements-for-cre-concentrated-banks-81984388>.

³⁶ 12 USC 1464(s)(2); 12 USC 3907(a)(2).

³⁷ The Office of the Comptroller of the Currency, “Remarks by the Acting Comptroller of the Currency Michael Hsu at the Exchequer Club,” July 17, 2024, <https://www.occ.treas.gov/news-issuances/speeches/2024/pub-speech-2024-79.pdf>.

³⁸ The Capitol Forum, “Financials Friday: Following Complications from Merger, New York Community Bank May Have to Hold More Capital as Regulator Mulls Enforcement Action,” July 5, 2024, on file with Office of Senator Elizabeth Warren.

I am re-sending my questions from my April letter and have additional questions about this matter in response to the new reports of “systemic failings.” I request your responses no later than October 11, 2024.

1. Why did the OCC approve the Flagstar/NYCB merger?
2. What risks did the OCC recognize when approving this merger, and how were they addressed?
3. Did the OCC consult with the FDIC before approving the Flagstar/NYCB merger?
4. At what point did the OCC notice NYCB’s struggle to adjust to new capital standards, and when did the OCC vocalize their concerns to NYCB leadership?
5. Why did the OCC wait until the fourth quarter of 2024 to pressure NYCB to cut its dividend?
6. Was the OCC aware of NYCB’s material weaknesses in its internal risk controls prior to the bank’s March 2024 announcement?
 - a. If the OCC was aware, what steps did they take to remedy the material weaknesses? Did the OCC notify other relevant financial regulators, such as the Securities and Exchange Commission?
 - b. If the OCC was not aware of NYCB’s material weaknesses, what changes in its review processes will the OCC implement to recognize similar weaknesses in future assessments?
7. When did the OCC start urging NYCB to cut their dividends and shore up their cash reserves?
8. What other actions did the OCC take to address capital reserves and other risks?
9. What changes has the OCC made to its supervisory and examination practices in response to the March 2023 bank failures?
10. Are reports that the OCC identified “systemic failings” within NYCB accurate?
11. If so,
 - a. When did the OCC identify NYCB’s “systemic failings?”
 - b. What were these “systemic failings?”
12. Have you or anyone employed at the OCC or the Fed spoken with Joseph Otting or Steven Mnuchin since they took control of NYCB?
 - a. What were the natures of those discussions?
13. What tools does the OCC possess to manage and mitigate “systemic failings?”

14. What supervisory tools has the OCC used to date with regard to NYCB?
15. Under what circumstances does the OCC implement an IMCR?
16. Has the OCC considered implementing an IMCR in regard to NYCB?
 - a. If yes, please provide all documentation relating to those discussions.
 - b. If no, please explain why the OCC has not considered implementing an IMCR.
17. Did the OCC or the Fed review the competence, experience, character, and integrity of Joseph Otting for his role as Executive Chairman, President, and Chief Executive Officer at NYCB?³⁹
 - a. If yes, please provide the results of the investigation.
 - b. If no, please explain why the OCC chose to not conduct a routine investigation of Joseph Otting.
18. Did the OCC or the Fed review the competence, experience, character, and integrity of Steven Mnuchin for his role as lead independent director at NYCB?⁴⁰
 - a. If yes, please provide the results of the investigation.
 - b. If no, please explain why the OCC chose to not conduct a routine investigation of Steven Mnuchin.
19. What is the nature of the request submitted to the Fed on August 28, 2024, apparently on behalf of Steven Mnuchin's family members, to acquire control of voting shares of NYCB?⁴¹ Please provide a detailed, narrative description of the nature of the application and the review the Fed intends to conduct of this application.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

³⁹ 12 U.S.C. § 1831i(e).

⁴⁰ *Id.*

⁴¹ Federal Reserve System, Federal Register Notice, "Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company," August 28, 2024, <https://www.federalregister.gov/documents/2024/08/28/2024-19382/change-in-bank-control-notices-acquisitions-of-shares-of-a-bank-or-bank-holding-company>.