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

Written Testimony

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Mr. Chairman, Ranking Member, and Honorable Members of the Subcommittee, thank you for the opportunity to provide this written testimony.

NALCAB - National Association for Latino Community Asset Builders is a national non-profit organization with a mission to strengthen the economy by advancing economic mobility in Latino communities. NALCAB is the hub of a national network of more than 120 mission-driven organizations, in both urban and rural communities, in 40 states and DC that build affordable housing, address gentrification, support small business growth, and provide financial counseling on issues such as credit building and homeownership. Our vision is to dramatically scale the flow of public and private sector capital that responsibly meets the asset building needs and opportunities in the communities and families we serve. We achieve our mission and vision by strengthening and coordinating the capacity of our Network members to leverage and deploy capital; and, by informing investors and policy makers with research, advocacy and technical advice. As a grant maker and a lender that is certified by US Treasury as a Community Development Financial Institution (CDFI), NALCAB regularly partners with banks to make investments that have a positive impact in low- and moderate-income communities. NALCAB participates with other national and regional organizations in a Collaboration to Strengthen the CRA that has engaged regulators and Members of Congress in recent years to advocate for CRA modernization that puts the credit needs of low- and moderate-income people and communities of color first.

My name is Noel Andrés Poyo. I am the Executive Director of NALCAB. I have more than twenty years of experience in community development finance and I have been deeply engaged in the policy debate related to the CRA in recent years. From 2015-2017, I advised Chair Yellen and the Board of Governors of the Federal Reserve as one of fifteen members of the Fed's Community Advisory Council. I also advise executive leadership at JP Morgan Chase, BBVA Compass Bank and Capital One Bank as a member of their respective Community Advisory Boards. I am proud to serve on the Board of Directors of the Center for Responsible Lending, the nation's leading research and advocacy organization focused on combating predatory lending.

The CRA is Critical for Addressing A Significant Macroeconomic Concern

It is important to recognize that the future strength and competitiveness of the US economy relies on achieving far broader financial inclusion in our economy. It is a pressing macroeconomic concern that huge portions of our population, including many of the nation's youngest and fastest growing demographic segments, are still struggling to rebuild their wealth in the post-recession era. To illustrate the point, consider that Hispanics have significantly fewer assets, lower income and strikingly less access to credit than the non-Hispanic White population, but Hispanics make up 18% of the population and are projected by the Census to make up 28% of the US population in 2060. This is the same reality for African Americans, for significant segments of the Asian Pacific-American population, for many working class Whites and for many residents of rural and tribal communities, among others. This is not a Latino thing, or rural thing, or an African American thing, this is about the future of US economy. We are all in this together. NALCAB highlights this with the hashtag #LatinoEconomicEngine.

The CRA is a critical tool for achieving broader financial inclusion. The law was a landmark response to discriminatory practices that targeted communities of color. Unfortunately, these practices continue today. The CRA requires regulated banks to responsibly meet credit needs of low- and moderate-income people in the communities they serve and it is a fundamental pillar of the multi-billion dollar community development sector. In an economy that is characterized by enormous disparities in wealth that correlate strongly to race, ethnicity and geography, and in the wake of a tax reform that produced windfall profits for banks and their high wealth investors, the CRA is needed more than ever.

The Need for a Responsible CRA Reform Effort

The CRA is working. Further, the CRA can and should be improved. There is no question that, in a time of increased income and wealth disparities, reforms should be made to the CRA to more effectively meet the credit needs of our nation's diverse communities and to take into account the evolution of today's banking sector. The highest-level principle for CRA modernization must be to put the credit needs of low- and moderate-income people and communities of color first. We need a responsible and inclusive process for modernizing CRA that ensures that it maintains its statutory focus of investing in LMI communities. The National Community Reinvestment Coalition has authored clear and important set of principles for CRA reform. Responsible CRA reform has the potential to benefit LMI communities and advance a more balanced and equitable economy.

For close to ten years, the Federal Reserve has led the prudential regulators in a process of incremental CRA reform that resulted in published regulatory guidance and which was on track to achieve a broad consensus on CRA reform. In each step of the process, the Federal Reserve collaborated with fellow regulators at the OCC and the FDIC, and solicited input from a wide range of stakeholders, including consumer advocates, the community development industry and regulated banks. Comptroller Otting chose to ignore the Federal Reserve's well-established momentum and instead has sought to move forward an effort to dramatically rewrite CRA regulations based on little other than his own ideas.

Comptroller Otting's Approach to CRA Reform Undermines the CRA and Will Lower the Bar for Banks to Meet Their Community Reinvestment Obligations

Comptroller Otting's proposal ignores public input previously received through the Advance Notice of Proposed Rule Making (ANPR)

The Office of the Comptroller of the Currency released an ANPR in the fall of 2018 to solicit comments on CRA modernization. There were widespread and well-documented concerns regarding Mr. Otting's approach from consumer protection advocates, community development practitioners, large portions of the banking industry and Members of Congress.

- A Collaboration to Strengthen the CRA, a coalition of national and regional organizations representing consumers, communities of color and the community development industry, published a letter raising concerns that Comptroller Otting's approach would undermine the CRA.

- The National Community Reinvestment Coalition authored an opinion piece in the New York Times that correctly warns against the Comptroller's approach to CRA reform.

- The California Reinvestment Coalition released a statement reflecting the concern of its membership about the ANPR.

- Financial Services Committee Chairwoman Maxine Waters released a statement expressing "great concern" about the ANPR when it was released and has since raised concerns about the Comptroller's approach on numerous occasions.

- Fifteen US Senators felt the need to express their concern in a letter that regulators, "avoid proposals that could undermine the continuing effectiveness of the CRA."

An overwhelming majority of respondents to the ANPR, including many from the banking industry, expressed two key concerns: first, that CRA modernization should focus on the credit needs of LMI communities; and second, that creating a single metric or "one ratio" approach to ratings was flawed. The Notice of Proposed Rulemaking (NPR) recently published by the OCC proposes an approach that is contrary to both of these key points and that, if enacted, will substantially lower the bar for bank compliance with the CRA.

Comptroller Otting's proposal reduces the focus on LMI populations

If enacted, the provisions of the recently published NPR would reduce the focus on LMI populations by dramatically widening the range of what activities are eligible for CRA credit, including investments that do not serve LMI people, such as renovations to certain professional football stadiums. This approach relies on the dubious logic that if an investment happens near low-income people, it will somehow benefit those people, without regard to any measures of the quality or impact of the investment.

Comptroller Otting's proposal will reduce investments in rural and other hard to serve places

The CRA rating system described in the NPR relies heavily on a single metric and allows banks to perform poorly in half of their assessment areas and still allow a "top of the house" single metric to largely determine the rating. This is particularly troubling for rural communities. The markets where banks currently have the greatest difficulty meeting their CRA obligations are typically rural and small urban areas. Under Mr. Otting's proposed rule, a bank could fail to serve these areas and still achieve their desired CRA rating by making investments where it is easier and less costly for the bank.

Comptroller Otting's proposal will reduce the availability of capital for community development finance

Mr. Otting's proposal, if enacted, will reduce the availability and distribution of capital in the community development finance sector. The rule allows banks to receive "double credit" for investments in CDFIs, among other categories of investments. This method will narrow the diversity of who receives CRA investments, while effectively reducing the amount of investment that banks will need to make in order to achieve the same level of qualifying investment that they receive under the current rule. The "double credit" method is a double-edged sword for CDFIs and the low-income housing tax credit industry.

Further, the proposed method of allowing banks to argue for "partial credit" for investments that have partial benefit to a qualifying population or area will allow banks to argue for credit on a wide range of its existing non-CRA motivated business activity, effectively reducing the true community development investments needed to pass the CRA exam.

There is no way to assess what impact Mr. Otting's proposal will have on CRA ratings
The dramatic changes to the CRA regulation proposed by Mr. Otting will significantly impact bank CRA ratings, however the OCC has no way of assessing what the impact will be. While the Federal Reserve has developed a system for assessing the impact of its proposals as compared to actual ratings over the past decade, the OCC has no such method of validating how the proposed rule will change bank ratings. Prior to any final rule being issued, OCC should develop a data-driven methodology for determining the potential impact on CRA ratings and publish its projections.

Inconsistency among the prudential regulators undermines the CRA
Comptroller Otting's decision to move forward with an NPR without the Federal Reserve creates uncertainty and inconsistency among the prudential regulators, which undermines the CRA. It is not surprising that the Board of the Federal Deposit Insurance Corporation (FDIC) supported Mr. Otting's proposal primarily because Mr. Otting himself serves on the FDIC board, along with his former business partner and current Treasury Secretary Steven Mnuchin, as well as a third Trump Administration appointee, FDIC Chaiwoman Jelena McWilliams. In a strongly worded dissent, the fourth FDIC Board Member Marty Gruenberg described Otting's approach as, "a deeply misconceived proposal that would fundamentally undermine and weaken CRA." If the NPR becomes a final rule, creating two different CRA systems, Congress will need to step in to legislate a consistent CRA system.

Comptroller Otting's Troubling Track Record With Regard to the CRA Undermines the Credibility of His Proposal

Mr. Otting was controversial well before he was nominated by President Trump to become Comptroller of the Currency. His track record as CEO of OneWest Bank raises troubling questions about his commitment to the fundamental concept of community reinvestment. Under Mr. Otting's leadership, OneWest failed to adequately serve African American and Asian American communities, failed to provide credit to small businesses and engaged in a troubling pattern of foreclosure. Further, OneWest was among the less than 4% of banks that failed to pass its CRA exam.

Since his appointment as Comptroller, Mr. Otting has been clear about his approach to reform and his lack of interest in taking into account input from others. He described banks as the OCC's customers and has placed more emphasis on how CRA affects banks rather than how it meets the credit needs of consumers and strengthens communities. His public statements have often reflected an intent to minimize public input while amplifying special interests within the financial services industry. Consistent with this public record, Mr. Otting chose to limit public comments on the recent Notice of Proposed Rulemaking to an unusually short 60 day period, despite widespread calls for a longer comment period. The Comptroller has made spurious claims that consumer and community-serving organizations support his agenda. Not only is this false, but his approach does not even appear to reflect a consensus within in the banking industry. Given the Comptroller's past challenges complying with the CRA as the CEO of OneWest Bank, there is a mounting public perception that he seeks to undermine the CRA based on a personal grievance.

Mr. Otting's attempt to dramatically rewrite CRA regulations is the latest in a series of actions by Trump Administration appointees that seek to advance special interests and ignore broad public consensus. For example, the payday industry has clearly influenced CFPB leadership. In June 2019, Director of the Consumer Financial Protection Bureau, Kathy Kraninger, following the policy of the Bureau's previous Acting Director and now White House Chief of Staff Mick Mulvaney, suspended the 2017 rule that limited abusive practices by payday lenders. This occurred after millions of dollars in contributions were made to the Trump campaign and associated SuperPACs from the payday industry.

Simply put, on the matter of CRA reform, Mr. Otting and his approach lack credibility.

A Better Way Forward on CRA Reform: The Federal Reserve's Data Driven Approach

Based on more than a decade of work by Federal Reserve Governors and staff and wide ranging public input around the concept of CRA reform, Fed Governor Lael Brainard made a speech in March 2019 that articulated a way forward on CRA and reflected a balance of input from industry and community-serving organizations. It is unfortunate that Comptroller Otting chose to walk away from negotiations with the Federal Reserve to achieve a joint proposal. By moving forward without the Federal Reserve, Mr. Otting is undermining the CRA by creating inconsistency among the regulatory agencies.

In a speech on January 8, 2020, Governor Brainard publicly described a detailed proposal for CRA modernization that represents a better way forward. The OCC NPR should be measured against the Federal Reserve's approach as presented by Governor Brainard.

Conclusion

Mr. Otting's proposal will effectively gut the CRA. It will be particularly harmful to rural communities and will reduce investment in the community development finance sector. The overall effect of Mr. Otting's proposal will be to lower the bar for banks to meet their community reinvestment obligations.

NALCAB is recommending that its Network Members object to the approach to CRA modernization embodied in Mr. Otting's proposal, publicly and through the OCC's official public comment process. We thank the House Financial Services Committee for holding this hearing and exercising its important oversight authority with respect to this misguided proposal.

Respectfully submitted.