S. HRG. 115–340

UPDATE FROM THE COMPTROLLER OF THE CURRENCY

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING THE EFFORTS, ACTIVITIES, OBJECTIVES, AND PLANS OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY WITH RESPECT TO THE CONDUCT OF SUPERVISION, REGULATION, AND ENFORCEMENT OF FINANCIAL FIRMS SUPERVISED BY THE OCC

JUNE 14, 2018

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

Available at: http://www.govinfo.gov/

U.S. GOVERNMENT PUBLISHING OFFICE
31–583 PDF WASHINGTON : 2018

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MIKE CRAPO, Idaho, *Chairman*

RICHARD C. SHELBY, Alabama	SHERROD BROWN, Ohio
BOB CORKER, Tennessee	JACK REED, Rhode Island
PATRICK J. TOOMEY, Pennsylvania	ROBERT MENENDEZ, New Jersey
DEAN HELLER, Nevada	JON TESTER, Montana
TIM SCOTT, South Carolina	MARK R. WARNER, Virginia
BEN SASSE, Nebraska	ELIZABETH WARREN, Massachusetts
TOM COTTON, Arkansas	HEIDI HEITKAMP, North Dakota
MIKE ROUNDS, South Dakota	JOE DONNELLY, Indiana
DAVID PERDUE, Georgia	BRIAN SCHATZ, Hawaii
THOM TILLIS, North Carolina	CHRIS VAN HOLLEN, Maryland
JOHN KENNEDY, Louisiana	CATHERINE CORTEZ MASTO, Nevada
JERRY MORAN, Kansas	DOUG JONES, Alabama

GREGG RICHARD, *Staff Director*
MARK POWDEN, *Democratic Staff Director*

ELAD ROISMAN, *Chief Counsel*
JOE CARAPIET, *Senior Counsel*

ELISHA TUKU, *Democratic Chief Counsel*
LAURA SWANSON, *Democratic Deputy Staff Director*
AMANDA FISCHER, *Democratic Professional Staff Member*

DAWN RATLIFF, *Chief Clerk*
CAMERON RICKER, *Deputy Clerk*
JAMES GUILIANO, *Hearing Clerk*
SHELVIN SIMMONS, *IT Director*
JIM CROWELL, *Editor*

C O N T E N T S

THURSDAY, JUNE 14, 2018

WITNESS

UPDATE FROM THE COMPTROLLER OF THE CURRENCY

THURSDAY, JUNE 14, 2018

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. The Committee will come to order.

Today we will hear from Comptroller of the Currency Joseph Otting. Since being sworn in last November, Comptroller Otting has been focused on rightsizing regulations and furthering the mission of the OCC.

Recently the OCC, along with four other regulators, issued a proposal to make revisions to the Volcker Rule. In May, the OCC issued a bulletin related to short-term, small-dollar lending. The OCC has also been looking at modifying and modernizing how regulators apply the Community Reinvestment Act.

Comptroller Otting has also identified reviewing compliance with anti–money-laundering laws as a priority of the OCC. In addition, the Comptroller has said he expects the OCC to announce in July a final decision on a specialty bank charter for FinTech companies. I look forward to hearing more about some of these important initiatives today.

In addition, the OCC will need to implement a number of provisions from S. 2155, the bipartisan economic growth legislation that President Trump signed into law on May 24th.

Among the provisions that the OCC will need to write rules to implement are: the community bank leverage ratio, which exempts highly capitalized banks from the international Basel III risk-based capital requirements; the exemption from appraisal requirements for banks in rural areas that suffer from shortages of qualified appraisers; the requirement that certain acquisition, development, and construction loans not be subject to punitive capital requirements; reduced reporting requirements and extended exam cycles for certain small banks; the requirement to promulgate regulations to remove central bank deposits from the denominator of the supplementary leverage ratio for certain banks; the exemption from stress testing for certain financial institutions, including the immediate exemption for financial companies with less than $100 billion in assets; and the provision permitting certain Federal savings as-

sociations to elect to operate with the same powers and duties as national banks without going through the onerous charter conversion process.

These provisions, and others in the legislation, rightsize regulations for community banks, credit unions, midsize banks, and regional banks, making it easier for consumers and small businesses to get mortgages and obtain credit.

Absent excessive regulatory burden, local banks and credit unions will be able to focus more on lending, in turn propelling economic growth and creating jobs.

I look forward to engaging with the OCC, and with other agencies charged with implementing S. 2155 over the coming months to ensure that their interpretations are consistent with the intent of the Members of Congress who voted for the legislation and with this Committee's goal of promoting economic growth.

Our economy is strengthening, and the positive effects of the banking bill and tax reform are just starting to be felt. Layered together, these policies and others are creating conditions in our country that enable growth.

I look forward to building on this momentum moving forward.

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Thank you, Comptroller Otting, for joining us today.

In the more than 7 years since we passed Wall Street reform, our financial system is much stronger than it was at the outset of the Great Recession.

Much of that hard-earned progress, however, has been threatened in the 7 months since Comptroller Otting took over at the OCC—an agency that is supposed to be a watchdog for our Nation's largest banks.

Comptroller Otting has said that the banks are, in his word, his agency's "customers" and "partners." That is the exact mindset that contributed to the crash. We thought we got rid of the Office of Thrift Supervision because it was an industry lapdog. Perhaps it has been reincarnated at the OCC.

The real customers of the OCC are the Ohio families and people across the country who suffer when the people they pay to ensure the stability of our financial system do not do their jobs.

Mr. Otting, if you have not heard me say this, certainly your staff has, and my colleagues in this Committee have heard it many times, but the Zip code my wife and I live in, in Cleveland, Ohio, 44105, had more foreclosures in the first half of 2007 than any Zip code in the United States, and I see every day going to and from my house the results of those foreclosures and the results of that devastation.

In one of his first acts as Comptroller, Mr. Otting reversed course on changes meant to prevent OCC from becoming too close to the banks it oversees. Comptroller Otting decided that examiners should continue to work out of the bank's headquarters instead of the OCC to save money. Penny wise, pound foolish, but I guess befitting a partnership.

It is not as if the banks have been suffering lately.

The FDIC released data last month showing that the industry increased its profits by 13 percent last year. Oh, but when you add the tax bill into account, their profits increased 28 percent.

Rather than invest in their workers and communities, big banks are plowing profits into pushing up their stock price. The ten largest U.S. banks bought back $67 billion—$6,700 million—in stock in 2017, an increase of 70 percent over 2016. They just do not seem to have enough, do they?

The CEOs of the six largest banks, already making tens of millions of dollars a year, got an average 22 percent raise last year. For the CEO of Well Fargo, it was 36 percent last year.

And, oh, yeah, the average bank teller in this country makes $26,000 a year. Twenty-six thousand dollars a year. Tens of millions for CEOs, $13 an hour for the average bank teller.

When times are good, as they are in the ninth year of a recovery, banks should prepare for the tough times ahead. Instead, our watchdogs are loosening the rules that should be guarding us against the next crash.

Right now, the OCC and the Fed are considering a proposal to weaken protections and give a $121 billion boost to the eight largest U.S. banks.

Comptroller Otting announced that he wants banks to get back into the business of payday loans, something that had been prohibited since 2002. He has pulled back on guidance meant to protect the banking system from reckless corporate lending.

And he has other plans—plans that deeply concern Members of this Committee, I think on both sides of the aisle, and deeply concern the civil rights community—to gut the Community Reinvestment Act, a 40-year-old law that pushes banks—very profitable banks, I might add—to serve their communities. The CRA emerged out of the civil rights movement to address generations of exclusion and discrimination in bank lending. I do not know if Comptroller Otting has read a book called "The Color of Law" that recently came out. I would recommend it. I think it will give you a better historic knowledge of why CRA matters. That long legacy is a part of why we still have a racial wealth gap today.

It is clear that Comptroller Otting has not learned the hard lessons of the recent past, including the OCC's history of working to stop State and local protections on subprime mortgages, ATM fees, and credit card rate hikes. He is suffering from the same collective amnesia that a number of Members of this body suffer from, simply forgetting what happened 10 and 12 years ago.

Right now, families in Ohio and Idaho and across the country, in Hawaii and Alabama and Pennsylvania and South Dakota, especially people of color, cannot afford to return to the risky practices Comptroller Otting is considering.

I look forward to hearing your testimony and answers to the Committee's questions.

Chairman CRAPO. Thank you, and thank you, Comptroller Otting, for being with us today. You now have the time. Please make your presentation, and we will proceed with that.

I should alert the Members of the Committee we have a vote at 10:30, but we intend to try to keep the hearing going by rotating in and out as we need to.

Comptroller Otting.

STATEMENT OF JOSEPH M. OTTING, COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. OTTING. Thank you very much, Chairman Crapo, Ranking Member Brown, and Members of the Committee. Thank you for the opportunity to share my priorities as Comptroller of the Currency and my views on reducing unnecessary regulatory burden and promoting economic opportunity.

The Office of Comptroller of the Currency's mission is to ensure that our Federal banking system operates in a safe-and-sound manner, provides fair access, treats their customers fairly, and complies with applicable laws and regulations. We can accomplish that mission and rationalize our regulatory framework so that the system can help create jobs and economic opportunity.

My written testimony details the conditions of the Federal banking system, risks facing that system, and my partners. These priorities include modernizing the Community Reinvestment Act; to increase lending, investments, and financial education where it is needed most; and encourage banks to meet consumers' short-term, small-dollar credit needs to provide consumers with additional safe, affordable credit choices.

My priorities also include enhancing bank security and anti–money laundering compliance so that banks can provide a more effective means to support law enforcement and comply with statutory and regulatory requirements more efficiently. I also support simplifying regulatory capital requirements, recalibrating the Volcker Rule, including that the agency operates in a safe-and-sound manner and operates effectively and efficiently.

Today I want to discuss the importance of the quality of the work accomplished at the OCC. Since becoming Comptroller, I have been struck by the professionalism and caliber of the agency staff. The agency's 4,000 employees serve our Nation by performing the important task of supervising more than 1,300 national banks, Federal savings associations, and Federal branches of foreign banks. While the vast majority of the institutions we oversee are small community banks, the system also includes the large, most globally active banks in our country.

Successful supervision requires a corps of professional examiners supported by lawyers, economists, information technology specialists, policy experts, and others. Few Americans know the OCC, but the majority of them have a relationship with at least one of the banks we supervise. It is not an overstatement to say our Nation's banking system is the most respected in the world, due in large part to the quality of the supervision the OCC provides.

The OCC is unique among Federal banking regulators. It is the sole regulator exclusively dedicated to prudential supervision. Undistracted by multiple mandates, we remain a laser focus on bank safety, soundness, and compliance. The agency takes a risk-based approach to supervise, tailoring its oversight to the risks and business models of each bank. At the same time, its broader national perspective provides value in identifying risk and concerns that may face similar banks or the broader system. Our risk-based approach allows us to adapt to the ever-changing environment and

to prioritize our regulatory resources on the risks with the greatest potential to disrupt the industry and harm its customers. Our approach may mean lower risks receive less attention compared with more immediate concerns, but also the agency has the ability to adapt quickly.

History demonstrates the value of an agency with such singular focus and mature capabilities regarding regulation and supervision.

Following the crisis of 2008, our country's banking system recovered faster than the rest of the world because regulators and bankers together recognized losses and worked through troubled assets more quickly than our international counterparts. U.S. banks recapitalized faster, established stable liquidity, while other global economies lagged.

Our economy recovery has been steady. We are now in the second longest period of expansion in our Nation's history, and banks have been part of that success. Our banks have capital and liquidity approaching historic highs. Credit and asset quality are near pre-crisis quality, and bank risk management is better than at any time in my 35-year career. This is a testament to good supervision as well as sound bank management. That strength helps bank realize their potential of being engines of job growth and economic opportunity.

I congratulate the Chairman and this Committee on passing the Economic Growth, Regulatory Relief, and Consumer Protection Act. The act achieves common-sense, bipartisan reforms that eliminate unnecessary burdens, promote economic growth, and continue to safeguard core elements of safety and soundness in our system.

I am fully committed to implementing the changes in the law as quickly as possible. I will work with my fellow regulators on a collaborative interagency basis where appropriate. When existing rules may conflict with the Economic Growth Act or the statute provides transition periods or where the law requires agency rulemaking for implementation, the OCC plans to supervise institutions consistent with the intent of the law, including with respect to the amendments to the stress testing requirements and will not enforce requirements on banks that the bill intends to eliminate.

As a bank executive, I relied heavily on the judgment and experience and counsel of the OCC examiners. They helped me to identify issues and address them effectively before the concerns became serious problems. I felt the OCC examiners understood what we as bankers were trying to achieve and how we worked to meet the financial needs of our customers. I slept better knowing the OCC supervised my bank, and you can sleep better knowing that the men and the women of the OCC are on the job.

In closing, I want to congratulate you, Chairman Crapo, on your leadership of this Committee, and thank you for allowing me the time to share my perspective as Comptroller. I look forward to your questions.

Chairman CRAPO. My first question is going to be on your horizontal review. I appreciate the letter you sent me earlier this week about the OCC's horizontal review of sales practices at large and midsize banks with significant retail customer sales activities. Can you just tell me about the OCC's findings and what you found and learned in this horizontal review?

Mr. OTTING. Sure. Chairman Crapo, in 2016 the OCC started what we call a "horizontal review." It is frequently that we will do horizontal reviews amongst the agencies when we see particular risks that we think can be contained throughout the industry.

We concluded that review in the fourth quarter of 2017. It was the primary focus of the agency over about an 18-month period. More than 40 national banks were involved in that, and we looked at the new account openings without customer consent, which included mortgages, auto, credit cards, checking accountable, savings accounts, money market accounts, and then any products that would be joined by those products, which may include overdraft protection or other items.

The banks completed a look-back over a 3-year period, which included hundreds and hundreds and millions of new accounts. We sent the final letters to the bank CEOs on June 4th. We did follow up to the Chairman and Ranking Members of Congress with a recap on June 11th, which you referenced. The OCC did not find persuasive or systemic issues in regard to the improper account openings, but did find the need for banks to improve their policies, procedures, and controls. And I would say the key takeaway from this was that our focus of having institutions develop better controls and better policies around it, but we did not find the issues that this was systemic across the industry.

With this horizontal, we issued over 250 MRAs, and 20 percent of those have been closed. And to put that into a kind of context, we currently have 4,000 MRAs outstanding. So while substantial, it was not, you know, I think illustrative of it being a large issue.

Our findings were that less than 20 accounts out of the hundreds and hundreds of millions, less than half of those were due to unauthorized account openings. And I would also make note that it was determined that where there was an account that was opened, the banks are creating reimbursements for those dollar amounts, and we feel every consumer will be reimbursed if they can document that account was opened inappropriately.

Chairman CRAPO. Thank you. So the short summary is that about 20,000 accounts were identified where the documentation was not present or could not be located out of around 300 million accounts that were reviewed?

Mr. OTTING. Yeah, we actually think the numerator is more between 500 and 600 million.

Chairman CRAPO. OK. So 500 to 600 million reviewed and around 20,000 that were identified. And of those 20,000, is it a conclusion that all 20,000 of those were wrongly opened or just not documented?

Mr. OTTING. No, we estimate slightly half of those were opened inappropriately, and the other half there was missing documentation that the banks could not prove that they had the data to open the accounts.

Chairman CRAPO. All right. Thank you. I appreciate that, and I appreciate the attention that has been given to this issue.

My last question will be related to the company-run stress test. You referenced this in your opening statement. As you know, the stress tests are due for financial companies with total assets between $10 billion and $50 billion in July, and I strongly encourage

you and the other banking regulators to provide guidance to financial companies about how S. 2155 will be implemented and make sure that financial companies with less than $100 billion in total assets receive the relief the bill intends immediately, consistent with congressional intent.

Can you commit to me that you will work quickly on implementing S. 2155 generally and to provide guidance on stress tests for financial companies with total assets of less than $100 billion specifically?

Mr. OTTING. Yes, Chairman Crapo, first of all, thank you very much. We have made that statement to the financial institutions. We have made that statement publicly. And then in regards to the overall implementation, we have created a critical path document that I have in my possession where we have harnessed resources within the agency. We have identified items that can be done within the agency, and then the ones that require interagency, and there has already begun a process of discussing and creating teams to work on the interagency activity. So we fully intend to dedicate the necessary resources to achieve that objective.

Chairman CRAPO. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

At the hearing yesterday, Mr. Comptroller, you were asked if you believed discrimination exists. You said that because you have never personally observed it, you cannot say. But you have had "friends from the inner city" tell you it exists and you believe them. And you were asked if you have ever read about discrimination, you said that you did, but that writers are only correct about half the time, and then you said you do not read newspapers. These are unbelievable statements for any adult in America, especially one that took an oath of office like you did, but let me ask you a couple of questions.

Does hiring through the old boys' network serve as a headwind for women and minorities, whether in banking or Government?

Mr. OTTING. My response to that would be I would not support those kind of activities. I think there are equal employment opportunity laws in this land that people adhere to, and I am not aware of any old boy network that I would associate with the banking industry. So I personally do not—have not observed that activity, and I would also say, to answer your question, if there was a network like that, I would not support that, and——

Senator BROWN. Well, you cannot—I know you do not read newspapers. You could not go to the *New York Times* and say, "This is the good old boys' discriminating network." But let me give you an example. When you and Secretary Mnuchin and the rest of the OneWest board signed a consent order with regulators—we know about all the foreclosures that your bank did—signed a consent order over foreclosure misconduct, your nine-member board—I could read the names; I will not bother—they were all men. I do not know if you set out to say, "I am only going to hire men," but I have got to think the old boys' network that you ended up being part of would have something to do with it.

So it begs the question to me that you have never seen discrimination, in your mind, but some friends from the inner city told you

there was discrimination, so you believe them even though you only believe half of what you read in the newspaper. And then you are saying that you never saw any discrimination in hiring even though, coincidentally, all nine of the people on your board were men. I do not know if they were all white men. I assume—I do not make assumptions, but I know they are all men.

So does that not suggest to you maybe there is an old-boys' network in hiring and that maybe people that look like you and me and Schatz and Van Hollen and Jones and Toomey and Rounds, that we might have an advantage in hiring because we know people that look like us and that is who usually gets hired for banks? Did that ever occur to you?

Mr. OTTING. First of all, I appreciate you do recognize that I signed that consent order right after I joined the bank, and I am proud to say that we diversified that board under my leadership. So I do not think it stayed in the format that you describe.

Senator BROWN. But they go there, these 10 men. I am not saying you did it. I am saying you do not seem to recognize that discrimination exists——

Mr. OTTING. What I said was——

Senator BROWN. ——because you have never seen discrimination.

Mr. OTTING. What I said was that under my leadership we diversified that board, and so that would give you an indication while I was there, the actions that I took. There are tools, trainings, and laws in place to avoid discrimination. There is lots of evidence of inequity in the world. I would tell you just because I have not personally experienced it that I am not saying it is not——

Senator BROWN. No, no, no. You did not say—you have said you did not personally—you said you have never seen it, but some friends in the inner city——

Mr. OTTING. No, that is not true. I mean, being part of an institution or bank over the course of my career, I have—there have been instances among employee groups——

Senator BROWN. That gives me a little more confidence.

Mr. OTTING. ——they get referred to HR. There are investigations, there is corrective action. What I was saying was I personally have never experienced it.

Senator BROWN. I think you said you personally did not see it, but——

Mr. OTTING. Well, then, let me correct the record.

Senator BROWN. OK. I think you said it a number of times. So why should—with your—I am sorry to say it this way, but your insensitivity generally to these issues just evidenced by your response to——

Mr. OTTING. That is not true.

Senator BROWN. Well, insensitivity——

Mr. OTTING. That is not——

Senator BROWN. I read your testimony in the House, but let me go to this: So, fundamentally, why should the public trust you to overhaul the Community Reinvestment Act, a product of the civil rights movement meant to address generations of segregation and exclusion, if you do not seem really—I mean, you just do not even seem certain that discrimination exists. In response to Congressman Capuano and Congressman Cleaver, you did not ever say,

"Yeah, discrimination exists. I know it exists." You had to come to the conclusion it exists because a "friend in the inner city" told you it exists. So why should we trust you, the public, the Congress, the civil rights community, to address generations of segregation and exclusion by overhauling the Community Reinvestment Act the way it should be overhauled? Convince me.

Mr. OTTING. Thank you very much for that question. I think if you look at my top three agendas, two of those top three are redefining CRA and small-ticket lending, which go right to the core of what you are describing, the people in America that need the most help. I am all about expanding CRA into the low- to moderate-income areas across America, and small-ticket lending, when we took banks out of that space that offered a fair alternative to people, people ended up with check cashers, payday lenders, liquor stores. That is not the source where people can go and get quality bank products and get back into mainstream banking. So two or three of my core agenda items are focused right on those people you are describing.

Senator BROWN. So if you—OK. I hear you. If you cannot just directly say to a congressional hearing discrimination exists, will you make this promise? You are arguing now that you say, yes, you recognize that it does exist. Will you promise us to move forward on a CRA overhaul only if you have the full support of the civil rights community? Only if you have the full support of the civil rights community. I understand you said you are going to do an overhaul. Overhaul can mean a lot of things. It can be deregulation——

Mr. OTTING. They will be one of the——

Senator BROWN. ——it can be a lot of things.

Mr. OTTING. ——to provide us feedback through the ANPR, and they will be at the table discussing——

Senator BROWN. I understand they will be at the table, but some people are at the table and ignored by others at the table. Will you commit to this Committee——

Mr. OTTING. They will be at——

Senator BROWN. ——that if there is not consensus in the civil rights community, you will not move that direction on CRA overhaul?

Mr. OTTING. They will be at the table having discussions like all parties involved in the CRA——

Senator BROWN. That is the most you are going to commit?

Mr. OTTING. I stand by my answer.

Senator BROWN. OK.

Chairman CRAPO. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman. I cannot help but observe that there are more than a handful of Senate delegations from various States, including Pennsylvania and Ohio, which consist exclusively of middle-aged white males. It is not obvious to me that the voters of those States are all part of a good old boys' network.

Let me raise a question about Madden v. Midland, a decision I am sure you are aware of. The Second Circuit Court of Appeals ruled that nonbank entities, when they purchase loans and debts originated by a national bank, will no longer be entitled to the Federal preemption from the State usury laws. This is a big departure

from the practice and the precedent that had prevailed under the valid-when-made principle. Even the Obama administration argued that the Madden decision was wrongly decided. And the result of it, of course, is uncertainty on the part of a potential buyer of a bank asset, uncertainty as to whether or not these usury laws will apply.

A dramatic reduction in credit access for low-income people has already occurred. Quite predictably, if banks cannot be confident that they can sell these loans, they are just not going to originate them in the first place. And Columbia Professor Robert Jackson, who is now a Democratic member of the SEC, found that borrowers with credit scores under 625 saw a 52-percent reduction in credit access after the Madden decision.

Now, the Second Circuit based their decision in part on the notion that they allege that the ability to sell these instruments to nonbank buyers—the inability to do so would not hinder national banks' operations.

So my question for you, Comptroller Otting, is: Is it your understanding that the ability to buy and sell loans that banks originate is, in fact, an important part of how they manage their credit exposure, their business generally, and that it is good for consumers for banks to be able to sell these assets broadly, including to nonbank entities?

Mr. OTTING. Yes, I do agree. I also do agree, I think, that the Madden ruling was inaccurate. I think national banks need the ability to originate those credits per the National Banking Act and then be able to distribute and sell those loans. That does create a capacity in the marketplace for the originators. And a lot of banks are interested in that product, and so I think it expands the choices for consumers.

Senator TOOMEY. And are there specific steps you could be taking at the OCC to try to solve the problems that are created by this decision?

Mr. OTTING. I would have to—I believe we filed a brief—we did file a brief in this matter supporting our position.

Senator TOOMEY. OK. I would urge you to continue to pursue that as much as you can because I think this is simply making credit less available, especially to low-income borrowers, as long as this stands.

The second point I wanted to raise is, as you are aware, there have been instances where regulators have used guidance issuance as a way to circumvent the Administrative Procedures Act and impose their will without going through the proper rulemaking. The CFPB did so in the case of the indirect auto lending rule, and Congress repealed that when the GAO determined that that guidance constituted a rulemaking. GAO also determined that the leverage lending guidance constituted a rulemaking.

My question for you is—I would just like for the record for you to assure us that you do believe that a binding rule must go through the APA process, must go through the rulemaking process, and that a guidance issued by a regulator should not constitute a binding rule.

Mr. OTTING. I do agree that a rule should go through the binding process. I think there was one item, the leverage lending, that the

OCC could be accused of using that as a rule. We have done an incredible amount of in-depth training and discussion within the agency with our examiners that that is this particular guidance. I have publicly said that on a number of occasions when I have had speeches to recognize that guidance is guidance and rules are rules. And so I think we have taken an aggressive posture to make sure that that is known within the agency.

Senator TOOMEY. So just to be clear, if you believe that it is necessary to have a binding rule on leverage lending, you would pursue that through the Administrative Procedures Act?

Mr. OTTING. We would, correct.

Senator TOOMEY. Thank you very much.

Thanks, Mr. Chairman.

Senator BROWN [presiding]. Thanks, Senator Toomey.

I just want to correct the record on the Ohio delegation. On the Democratic side, there are five members of the delegation. There are two African American women, one white woman, and two white men. So I——

Senator TOOMEY. I said Senate.

Senator BROWN. Well, I am saying the delegation. And that is about the same—well, the delegation as a whole is about the same size as the OneWest board.

Senator Schatz.

Senator SCHATZ. Thank you.

In October of 2017, the OCC made a pretty significant change in how OCC evaluates banks' performance under the Community Reinvestment Act, and this change is significant. It is a little technical, but it is baffling. Before the change, if a bank engaged in discriminatory lending practices, that activity logically impacted that bank's CRA rating. That is intuitive because the CRA was passed to stop discriminatory lending practices. But now the OCC has decided that a bank's discriminatory lending practices should not impact the CRA score if the discrimination is not related to CRA lending. Under this new approach, a bank that discriminates and engages in illegal activities, as long as it is lending outside of CRA lending, could get an excellent CRA rating. Why?

Mr. OTTING. I think the issue in October was it went from a 2 downgrade to 1 downgrade. But I——

Senator SCHATZ. Why?

Mr. OTTING. That was made at that particular time—it was prior to my arrival in the agency. I would be happy to look at that and follow up with you.

Senator SCHATZ. You do not know why?

Mr. OTTING. I do not have the facts why that decision was made. It was prior to my arrival in the agency. I have been more focused on——

Senator SCHATZ. So CRA was passed to stop redlining, correct?

Mr. OTTING. Yes. It was one of the reasons——

Senator SCHATZ. Right, one of the reasons. And if a bank is engaged in discriminatory lending, the OCC would want to make sure that that stops?

Mr. OTTING. Oh, definitely.

Senator SCHATZ. So then why would we ignore evidence of discriminatory lending practices when evaluating a bank's CRA performance?

Mr. OTTING. I do not think it would be ignored. Going through the process—if you understand what generally happens when we start a CRA exam, we review the HMDA data——

Senator SCHATZ. So let me just read from the document: "This principle ensures that the CRA evaluation does not penalize a bank for compliance deficiencies or illegal credit practices unrelated to its CRA lending activities."

Mr. OTTING. I apologize. I do not have that data in front of me. I would be happy to go back and review it and come back and either meet with you one-on-one or have our staffs discuss it.

Senator SCHATZ. You do not know why this happened? You do not know that——

Mr. OTTING. It happened prior——

Senator SCHATZ. Because, first of all, you said—hold on a second.

Mr. OTTING. It happened prior to my arrival.

Senator SCHATZ. Hold on.

Mr. OTTING. I have not focused on that——

Senator SCHATZ. Not 6 years prior to your arrival.

Mr. OTTING. Yeah. Probably 60 days before my arrival.

Senator SCHATZ. Sixty days?

Mr. OTTING. Yes.

Senator SCHATZ. And we are here to talk about CRA, and you do not know why this happened or exactly what happened, because you just said it downgraded it in terms of the score, but it actually says "does not penalize a bank for compliance deficiencies or illegal credit practices related to its CRA lending activities." So the question becomes: Why would we do that if the CRA is established for the purpose of preventing discriminatory practices?

Mr. OTTING. Senator Schatz, I would be happy to review that data.

Senator SCHATZ. Well, what do you think?

Mr. OTTING. I have focused more on how can we make CRA more effective, how can we be more inclusive.

Senator SCHATZ. OK. Now that you know a little bit about this, what do you think?

Mr. OTTING. My own personal viewpoint is that we should never allow discrimination in any kind of lending activities to occur, and if it does, it should have an impact on their CRA rating.

Senator SCHATZ. Will you commit to revisiting this decision?

Mr. OTTING. Oh, absolutely.

Senator SCHATZ. Thank you.

Another question. Will you commit to providing the Committee with a comprehensive and detailed summary of the findings from OCC's sales practice review?

Mr. OTTING. Senator, there is a long legislative, regulatory, and case history protecting confidential supervisory information for good reason. Maintaining confidential supervisory information promotes more effective supervision and the orderly function of the national banking system. Maintaining the privileged and confidential information also protects the agency's prerogative to take additional supervisory enforcement action on that information——

Senator SCHATZ. Who wrote that?

Mr. OTTING. Huh?

Senator SCHATZ. Who wrote what you just read?

Mr. OTTING. I wrote it. I wrote it in conjunction with my staff. I view at this point in time we are in the middle of supervisory action, and to release that information would be inappropriate.

Senator SCHATZ. I guess the problem is that one of the things that we are hearing is that the Wells Fargo problem is much more widespread than we had initially thought, that it is not confined to Wells Fargo. I understand that your supervisory procedures—that there is a tension here in terms of maintaining confidentiality, and I respect that. But there is a pretty significant issue if we find out that what happened at Wells Fargo was actually widespread across the economy and across the country, and because of this objective you have to maintain confidentiality and discretion, that American consumers are getting screwed and they do not get to find out about it until 18 months later or 3 years later. That is a problem.

So what are you going to do about that part? How are you going to address that tension?

Mr. OTTING. First of all, I can assure you, based upon the data that I have personally reviewed, that that is not accurate. Your statement is not accurate. This was not systemic across the banking industry. There were isolated cases of it. And so I can assure you that as we go through the supervisory data that employees—and there has been——

Senator SCHATZ. So you are able to talk a little bit about the data. So if these data change, if there is an indication that there is something more widespread, will you provide that information to the Committee?

Mr. OTTING. I would be happy to come back to the Committee and have a discussion.

Senator SCHATZ. Should I take that as a yes?

Mr. OTTING. Yes.

Senator SCHATZ. OK. Thank you.

Chairman CRAPO [presiding]. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman. Comptroller Otting, first of all, thank you. I appreciate the opportunity here to visit with you.

I was just curious earlier when Senator Brown had asked some questions concerning CRA, you mentioned the availability of or at least the need for the availability of some short-term, small-dollar lending. I want to go into that a little bit because millions of Americans use small-dollar loans to pay for unexpected expenses, car repairs, medical bills, and it is pretty clear that there is a significant demand for these products, and having establish institutions actually offer them can provide the market with better alternatives and more competition than simply payday lending or in some cases where they are literally going to a loan shark to get a loan, because they are going to get it from someplace.

I am just curious. While the banks probably have some additional clarity, can you talk a little bit about your focus and your thoughts about how to provide for that market for those small-dollar loans on short-term time periods?

Mr. OTTING. Sure. Senator Rounds, we issued a bulletin about 2 weeks ago to the national banks where we indicated to them that we encourage them to participate—there are two market segments here that people can get confused by. There is the 45 days or less, which generally is referred to as "payday lending." That generally has one payment based upon a paycheck or an event occurring. And then there is the 46 days or more where generally there is some term associated where there are multiple payments usually from that. What we addressed in the bulletin was that 45 days or longer. And in 2013 banks basically exited that market, and for the life of me, I do not understand, if you take, you know, the banks out of a space that were providing a critical source of capital, that it did not end up being worse for consumers and they had less choice.

So one of my initiatives was to get banks back into that space and do it in a fair and, I think, economically viable way for consumers, that they have an alternative from financial institutions. So I have personally met with all the large bank CEOs—I started doing this after I arrived—to encourage them that we would be releasing a bulletin, and many of the financial institutions now are looking at products. It does take a while to go through a risk management review as they bring these products back up online, but I am confident more banks will enter into that sector. And we also provided a lot of clarity for our smaller community banks that this is something that we want them to do.

Senator ROUNDS. I think that probably is an unsung part of a major improvement in banking opportunities for a significant part of our population across the board.

Mr. OTTING. I agree.

Senator ROUNDS. Let me ask also about ag lending a little bit. In the upper Midwest, in South Dakota, you know, we have suffered through some low commodity prices. We had a drought last year that significantly impacted our ability to actually raise crops. Credit is critical, and I think this year once again we are going to have the same challenges.

Can you talk a little bit about what you are seeing, the observations of the reports that you have had with regard to ag lending, the challenges there and what you see as perhaps either modifications or things that we can do to perhaps improve our ability to actually lend to these producers during some tough times?

Mr. OTTING. I think there are two things kind of occurring that people are concerned. In addition to natural disasters, I think, you know, there is an expectation of softening of commodity prices. And then you get the kind of double whammy of an increasing of interest rates. So I think our examiners, you know, in that space are spending a lot of time talking to the banks about their plans with their customers to get them through this period of time. As you know, the volatility in the ag market, you know, we can have a couple rough years, and then hopefully followed by solid years that allows farmers to be recapitalized. But, you know, the intent is—what we are hearing is banks are prepared to work with their clients to get through these difficult periods.

Senator ROUNDS. I guess the point I would like—I am glad you make it. These banks have to be able to work with their clients.

They know them. They have had relationships that in many cases go for generations.

The one thing I would not want to have happen is because of audit procedures or inappropriate guidance that these banks be pressured into not allowing them to do what they do best, which is to make appropriate judgment decisions about the extension of credit in what can be challenging cyclical times for ag producers. And it sounds like you are on board with that.

Mr. OTTING. Yes, I am.

Senator ROUNDS. Thank you.

Let me ask one last thing, just on cyberissues. Do you feel comfortable that, with regard to the financial institutions, there is a broad understanding of the critical need to protect our assets that are related or directly connected with our cyberlinks?

Mr. OTTING. Yes, on an annual basis, the national banks, we go in and part of our annual examination we look at the security perimeters. We look at the hardware, we look at the software, we look at the patchwork, and we make assessments of that for each individual bank, and if we see any deficiencies, we will generally issue MRAs for correction.

We also look as part of that process, you know, at what does their recovery platform and program look like. I would say that we are confident that the banks that we provide oversight to, it is high attention both by management and boards. However, I would say, you know, the consumer today has become so reliant upon their debit card and credit card and carry a lot less cash that that would be the thing that would worry me. If we were down for a couple days, people could not buy gas in the morning, get Starbucks coffee, stop and get lunch, go to the grocery store because we have become such a card-based industry.

There also is a lot of coordination amongst the interagencies with Treasury on cyber-related issues, and we are meeting tomorrow afternoon on this topic. So it is receive the attention, but it is the unknown, as you know, Senator Rounds, that gives us all angst, I think, as we try to manage our way through this.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman. Thank you for being here today.

So banks get charters from the Government, which entitles them to special privileges. In exchange the Government expects them to meet the credit needs of communities in which they operate. And that is the idea behind the Community Reinvestment Act, or the CRA.

The OCC is responsible for enforcing that law, and you have said you are supportive of the intent of the law, but you think it needs to be updated, and I just want to explore a little bit about what that means.

Last year JPMorgan Chase admitted that its African American and Hispanic borrowers systematically got mortgages with higher rates and fees than comparable white borrowers. And according to a new report, African Americans make up 47.7 percent of the popu-

lation of Washington, DC, but they received only 2 percent of JPMorgan Chase's mortgage loans in the city in 2015 and 2016.

So are JPMorgan's practices consistent with the CRA's intent that banks "meet the credit needs of their communities"?

Mr. OTTING. Based upon their rating that they have in their CRA, I would say at an overall organizational perspective they do. I think in Washington, DC, you are aware they do not have branches. They have a specific business line. I think the intent of JPMorgan is to open up a retail banking franchise, and I think that would aid some of the issues that you have described.

Senator WARREN. So you are saying that when they admit that African American and Hispanic borrowers systematically got mortgages with higher rates and fees than comparable white borrowers, that was OK? In fact, I see——

Mr. OTTING. I did not say that was OK.

Senator WARREN. ——that they were rated by your group as satisfactory or outstanding on every one of their publicly available CRA evaluations?

Mr. OTTING. I did not say the issue you described was satisfactory. I said as an overall organization they received a satisfactory rating.

Senator WARREN. So you get a satisfactory rating even if you are engaging in that kind of behavior?

Mr. OTTING. There is a multitude of factors that go into a CRA——

Senator WARREN. All right. Well, then let us look at another bank. A new report found that 54 percent of black families, 45 percent of Latino families who tried to get a mortgage from TD Bank are turned down. That is more than three times higher than the industry average. Are TD Bank's lending practices consistent with the intent of the CRA?

Mr. OTTING. I do not—I am not familiar with TD America's actual community reinvestment, but I would say from a fair lending perspective, the facts that you are submitting would indicate that they have fair lending issues.

Senator WARREN. Issues. It turns out that the regulators who report to you seem to think that it is all OK. TD Bank has received either a satisfactory or outstanding rating on every one of its publicly available CRA examinations in the past 20 years.

So let us take a look at one more bank: OneWest, which I know you are familiar with because you used to run it. Community groups filed a fair housing complaint against OneWest at HUD in 2016 citing widespread discrimination against Asian, black, and Latino mortgage applicants. While Latino borrowers took out 22.4 percent of mortgage loans in Southern California, only 8.4 percent of OneWest's mortgages went to Latinos. OneWest apparently avoided putting branches in minority communities and failed to maintain the foreclosed properties in minority neighborhoods.

Mr. Otting, do you think your former bank's track record is consistent with the intent of the CRA?

Mr. OTTING. I do think that we were consistent with the intent. I think that you are looking at an incredibly small population that you based your statistical analysis on there, and that was our view-

point from the beginning, that we were not in the mortgage business at that point in time.

Senator WARREN. Your bank had one out of 74 branches in Southern California, just one was in a majority minority neighborhood in that entire region. And this is the fundamental question about the CRA. You get that banking charter in return for serving the community. But evidently the community that OneWest wanted to serve was not the Latino community, the African American community, or the Asian American community.

Mr. OTTING. Could I offer a correction on one thing? We did not open but one or two branches the entire time. We inherited every one of those branches from failed institutions, and you are focusing on the lowest to low. If you looked at the low to moderate, we did have more dispersion into those markets.

Senator WARREN. I am sorry. I am just looking at the facts that are part of the public record here.

Mr. OTTING. The facts that maybe come from a particular organization that was trying to——

Senator WARREN. These are the facts that are in the public record. You had one out of 74 branches—no point in going back over the data. I am running out of time here. But, you know, what bothers me is, despite obvious attempts to avoid serving communities of color, OneWest passed all of its CRA exams. And so the problem I am facing here is that you say the CRA needs to be updated, and I am concerned that the man who ran OneWest, the man who said that the banks are his customers—the banks, not the American people—at the OCC, and the man who said yesterday in a hearing that he had personally never observed discrimination is not the right man to rewrite the Community Reinvestment Act.

The CRA needs to be a lot tougher than it is today. The standards need to be higher. The enforcement needs to be more rigorous. Studies show all across this country that black and Latino borrowers get far less access to mortgage credit than comparable nonminority borrowers, and yet 98 percent of banks today are passing their CRA exams.

If you weaken the CRA now, you are only going to push even more struggling families across this country out of the middle class.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Tillis.

Senator TILLIS. Mr. Otting, you did not get an opportunity to respond to that last loan, so before I ask you some questions, do you have anything that you would like to add with respect to the prior discussion with Senator Warren?

Mr. OTTING. No, I would say I—first of all, it will not be me who will do the CRA changes. It will be the communities to which the CRA is generally deployed. And I have been a big supporter of how we can drive further and deeper into the communities across America, and I think my track record stands for itself on those.

Senator TILLIS. Well, that was going to be my first question. When you get to the unbanked or underbanked communities that do need access to financing through lenders, what does the world look like a year or 2 years from now if you are successful with making that a priority?

Mr. OTTING. I think when you look at CRA today, there are three things we would like to solve for. Today we do not have a good economic measurement way that we can compare across different financial institutions in different markets. And so one of the frameworks that we have been talking about is using a balance sheet item, whether that is deposits, Tier 1 capital of total assets, and then an NCB could add up their CRA activities and come up with a percentage.

Second of all, we would like to expand what qualifies for CRA today. It is narrowed down to predominantly residential mortgages and multifamily, and we think there are many more community activities plus small business lending is capped at $1 million of revenue.

And then the third is we do CRA exams every 3 years, and it takes us 6 months to 24 months to turn those around. If we can fix the economic side of that, we can turn those around much faster.

And then I would say with some of the small-ticket lending things that we are proposing that we have given banks insight, we want banks back into those—lending in those communities where Senator Rounds said, you know, we have a big void of banks playing a role in inner-city America of offering credit.

Senator TILLIS. Incidentally, do you think the banking regulatory reform act that we sent to the President that is now the law, do you think that that will also play a role in terms of easing the burden on the smaller banks and community banks and possibly getting lending flowing as you are working on the CRA?

Mr. OTTING. I definitely do. I think in a number of those instances, community banks that have been so focused internally on regulation now will be freed up to serve their customers in their community.

Senator TILLIS. Mr. Otting, when you were here for your confirmation hearing, I asked you how many tips there were on a spear, and I think we got it cleared out. There are two ends, but only one tip. And the reason I mention that is that we still have a lot of—we are at least getting to a more rationale framework for regional banks and smaller banks, community banks. But we still have a lot of confusion about just who is regulating what in the financial services industry. And I think you and I may have a difference of opinion on a single regulator for Volcker.

I think Mr. Quarles is doing a pretty good job of engaging the other regulators, so I am trying to understand—that may be an issue that we will be at odds with each other. I am trying to understand why you would have a fundamental disagreement with Volcker coming under the Fed.

Mr. OTTING. Well, first of all, I do agree with you, we have a very good relationship with Randy Quarles. I think he has done an incredible job.

The other comment I would make is that every week the FDIC, the Fed, and myself, the leaders meet. We have lunch once a month. We have an open forum to talk about any outstanding issues. So I think recently here we have really gotten strong momentum on our ability to work across the agencies.

I think on particularly Volcker, if you look at where the activity is, it is probably 45 percent in banks and 55 percent of the holding company, and I think they have such a critical element that our examiners are responsible for not to have a voice in the final rule would be a fatal flaw.

Senator TILLIS. Speaking of the Volcker Rule and the proposed changes, what do you think those proposed changes are likely to do in terms of positive impact on the regulated community?

Mr. OTTING. I think it will bring clarity. It will bring clarity for the banks, and it will bring clarity for the examiners as we are trying to determine the proprietary trading element. I think, you know, I personally commend what the Committee and legislators did regarding the law of excluding banks of $10 billion or less. And over $10 billion we have gone to an accounting methodology. It may not be the best solution, but it is a solution that I think we can all get behind.

Senator TILLIS. I know we are running tight on time for votes, so I will just let you know that I am going to submit a couple of questions for the record. One has to do with a discussion on exempting investment and venture capital from the Volcker Rule, but we will send that as a question for later this week.

Thank you very much of your time.

Senator BROWN [presiding]. Senator Jones.

Senator JONES. Thank you. Mr. Otting, thank you for being here, and I am going to be short because I have got to get over to vote.

Getting back to CRA is probably one of the most important things you are going to do for the folks of Alabama. So in the modern CRA exam, the type of action a bank takes is extremely important. Lending counts differently than investment, which counts differently than service. I think everybody tends to agree that we need to be encouraging and crediting more types of CRA-eligible actions, but there are concerns that if we start—about blurring those lines.

My question to you is: What types of actions should count differently for CRA credit? What type of action like lending, investment, and service do you believe are more important to fulfill the CRA requirements?

Mr. OTTING. If your question is if we could place an emphasis, where would we like to see that emphasis?

Senator JONES. Yes.

Mr. OTTING. Senator Jones, most CRA activity today is really single-family mortgages and multifamily in low- to moderate-income areas. And one of the bad parts of that is single-family mortgages often get packaged up in low- to moderate-income areas, and they can be sold amongst institutions. And so a new incremental dollar does not get created when that pool gets sold, but a bank will get credit. And I think we should bring a stop to that.

Then I think there are some core areas that we should look at. Today if a small business is $1 billion in revenue, over that will no longer qualify for CRA credit. And I am a believer that if a business in East Los Angeles has $1.5 million of revenue and it is going to create 10 jobs and it is a heavily blighted area, we should give that CRA credit.

I am also a believer in the inner cities of America. I understand the difference between church and state, but in most black and Latino communities, the church is where people go for their financial counseling and their job disciplines and help around training. And today if it has got a church associated with it, it is excluded from CRA. And I think what you need to do is isolate the community centers associated with churches and give them credit for CRA accordingly.

Senator JONES. Thank you. You have made some comments—you know, I think banking has made great advances recently about trying to reach consumers outside their physical branches. But you have made comments that seem to de-emphasize the importance of branches. In Alabama that is really important. I mean, we have got so many communities that broadband does not touch, especially high-speed broadband. I think a lot of banking is personal in those communities.

So what is your view on the importance of branches and how assessment areas should be calculated?

Mr. OTTING. I think assessment areas continue to be important in virtually all communities. I would say, Senator, I think assessment areas, though, have actually restricted CRA investment. I can give you an example. When I was running OneWest Bank, L.A. County was our assessment area, but we were also in Inland Empire, Venture, Riverside, and Orange County. And on one particular street, if the investment was on the south side, we did not get credit and on the north side we did. So I think you have to look at, you know, are we defining assessment areas too narrowly for people to invest in their community? I do believe around the branches we need to make sure that institutions are serving the communities around their branches. And then we have the whole issue of when entities do not have branches, where should they be doing their community development activities? And I think personally it should be where the customers are.

Senator JONES. All right. Well, thank you.

Mr. Chairman, I will yield the balance of my time so I can get over to the vote. We will have some questions for the record.

Thank you, Mr. Otting.

Senator BROWN. Thank you, Senator Jones.

Comptroller Otting, you said you want the OCC to be more responsive, you said, to our customers, which are the banks. How do the American people trust you to protect them from a financial crisis that cost them their jobs, their homes, their retirement, their neighborhoods if you say your customer is the banks, if you are there to serve the banks? How can they trust you to protect them from another financial crisis?

Mr. OTTING. I think, Senator Brown, most of those comments were isolated to when I was talking about that, you know, I want to partner with banks to get them deeper involved in the communities across America. What I mean by that is low- to moderate-income areas. I want them to be more active in participating in credit at the lower economic scale. I think we can partner with the banks and help encourage them to move in that space. We have well-defined risk assessments categories that are set forth, and when we examine a bank, these are done within the examination

staffs that I have no influence on. And so I think you have to bifurcate between where we want to partner and what is our responsibility as an examiner.

Senator BROWN. Well, I hear you, and that is a pretty good answer. But in the context of you said we want more of a partnership with the banks as opposed to a dictatorial perspective under the prior Administration, you compared decisions by Comptroller Curry to the "Wrath of Khan". That suggests more—that suggests something different and your partnership term. I guess I would ask you this: After the global economy crashed a decade ago and the banks' contribution to that crash, they just had a record year, 13 percent increase in profits, had a decade mostly of more profits every year, double-digit percentage profits, and growth in most of these years. So it sounds to me like you think the banks have had it pretty tough, and it is mostly about deregulation for them.

Mr. OTTING. First of all, the comment on the "Wrath of Khan" had to deal with the leverage lending guidance, which we were not supposed to be using guidance as a rule. And what occurred there was they were implementing the leverage lending guidance as a rule, and I wanted it to be very clear that that is guidance, that it is not a rule, as was referenced earlier in this conversation.

Regarding, you know, your point about deregulation of the bank, I do not—you know, I am comfortable with the framework of our regulation. I just think there are certain aspects that we can look at that it will be better for consumers, it will be better for the banks, and it will be better for the economy if we can remove things that I do not think aid the safety and soundness. Some of those are like BSA. I am a big believer people should not take bad money, put it into the system and take it out, but today we are producing 10 million pieces of paper that I do not think add value to the BSA process. If we can improve that, we can actually fix—correct and find the bad guys simpler, that is the thing I want to focus on.

Senator BROWN. The previous Comptroller was less concerned—he did not use the term "partner" as liberally as you did, but he was more concerned about fixing what led to the 2008 collapse. He commissioned a study by experts and decided to remove bank examiners from the banks themselves and sent OCC staff back at OCC headquarters. One of your first acts as Comptroller was to reverse that decision, which you say was based on your personal experience, which to that point included about a month on the job at OCC. The New York Fed decided to move examiners out of the banks. The San Francisco Fed decided to move them out of the banks after they failed to catch the Wells Fargo fake account scandal.

What do you know that the predecessors with more years of experience at two of the most important Feds in the country did not know?

Mr. OTTING. I do not think my 30 days was the relevant baseline to that. I think it was, you know, my roughly 35 years in the banking industry. And I would ask—I would be happy to share with you our model in the OCC so you understand that.

We have three primary groups: we have a community bank model, we have a midsize model, and we have a large bank model.

Our community bank model is actually done on regional offices where the examiners are actually domiciled in those regional offices. Our midsize bank, it is kind of a split between some are onsite and some are local. And our large banks are onsite.

On the onsite bank examiners, just so you understand my comfort with this, is we do rotate those examiners every 5 years, so an examiner cannot—and often we do it before the 5-year period, because we were rotating these people amongst financial institutions across America.

Second of all, we maintain both decentralized and centralized resident experts on various activities. So an examiner who does an examination is generally consulting BSA, CRA, compliance specialists, and there are those people looking over that work and often participating in those exams that are in a centralized environment. We have what we call a "deputy comptroller" that is assigned to each bank that provides oversight, that is actually not in the banks, that is offsite in the process. And my experience as a CEO of a bank, having onsite bank examiners that could go to any meeting they wanted, see any data they wanted, ride up and down the elevator with the employees and hear the chatter, what was going on in the bank, gave them the ears and eyes by being in that institution and what was going on. And I think other than one instance that I can remember in the last 5 to 7 years, that model has worked to our benefit.

Senator BROWN. Well, that was a good answer, again, but I hope you appreciate the suspicion and the skepticism and the lack of trust that American—that a broad swath, I think the overwhelming majority of the American people have toward banks and what the financial institutions, what Wall Street did to this country 10 years ago, what banks like OneWest did to this country—there was a long article in the Columbus Dispatch, a series of articles, I believe, about what your former bank—and I am not holding you responsible. I am not sure you were there at this exact, precise time, but what it did to force foreclosures more than there would have been with a different kind of institution, with robo-signings and other things. And, I mean, there is a reason that the public has a suspicion and a skepticism about the banking sector and the regulators. When this Administration—I mean, this Administration looks like a retreat for Wall Street executives, and when we see the Administration, the decisions they make on regulation, when we see the regulators that are put in place, so many of them come from Wall Street or come from banks, I would hope you would have an appreciation that when you do things like this and move the regulators into the banks, the public already thinks they are too close to you, the regulators are too close to the banks, anyway, and I hope you will have some appreciation.

Let me move on to something else. Your OGE filings show that you purchased hundreds of shares in financial companies, including shares of a company the OCC supervises after your nomination was announced but before you took office. You then, to my understanding—and tell us if we are wrong—claimed the right to avoid an immediate tax hit on gains from the sale of those shares, meaning you loaded up on stocks, financial stocks, which are the ones we are most interested in, before your confirmation and then you

deferred taxes on your purchases. Even if that is not illegal—and I do not know that there has ever been any—I am not saying there has been any prosecutorial action aimed at you. But even if it is permissible, why is it advisable to buy financial stocks after you are nominated for this position? Wouldn't it make more sense to tell your broker to stop purchases of financial stocks once you were under consideration for one of the most powerful bank regulating jobs in the country?

Mr. OTTING. First of all, I was in constant communication with the Treasury Department ethics department through this entire process. No one had ever at any point in time told me that was improper or illegal.

Second of all, I would tell you that all of my proceeds were third-party managed. I had no input, no decisions, no involvement in any of those decisions. And so those decisions were being done entirely independent of any input or involvement of myself, and they constantly are rotating in and out of sectors and different stocks.

What I would tell you is at the point in time that I was sworn in, you know, all of that activity was stopped, and then it took us a period of time to go through the dissolution process. But there was no, you know, bank stocks under the guidance of the OCC——

Senator BROWN. OK. I mean, to rely on the ethics people at this White House when a story just came out that one of two of the President's relatives' unpaid advisers made $80 million in his first year in office and all the stories with all the strongmen around the world and the discussions of the President making money and all that, all of those things, I do not really rely—I do not think you should rely on them on the ethics questions. But didn't it strike you as a little weird and that it would send a message to a skeptical public that you get nominated, you go and buy bank stocks after you are nominated? I mean, aren't we brought up to think at least it matters what people think about us that it could look like it is wrongdoing, it could look like you did it for the wrong reasons? I do not question your integrity here, but maybe your judgment. You buy stocks after you get appointed to a job like this. Didn't it occur to you that—sure, you run it by the ethics committees at the White House, whoever, whatever they are. But didn't it occur to you that you have some judgment to exercise here?

Mr. OTTING. Senator Brown, you may not be aware, but I began my nomination process in February of 2016, and I was sworn in and confirmed on November 27th of 2017—or excuse me, I have that backwards. In February—so almost 10 months that I was waiting to go through the process. So I would agree if this was a 30- or 60-day process it would have—but my investment advisers who has sole discretion on these investments were independently making those decisions.

Senator BROWN. I am just flabbergasted that that—because you had to wait 8 months, you could not buy stocks and you could not direct them to buy stocks somewhere else. I mean, you have made your mind up on this, but I am just flabbergasted that the ethics in this town now, "because I had to wait 8 months, I am going to buy financial stocks, then I am going to be the regulator here," and the ethics people at the White House with a capital E said it was OK.

Let me ask another question. You approved recently a rule to weaken capital by $121 billion at the eight largest banks. FDIC did not sign on to this change. Are you at all concerned about risk to financial stability?

Mr. OTTING. First of all, we have a rule that is out for comment, and we will expect to get those comments back. You are also aware the Economic Act will change some of the provisions of that because of some of the institutions that we were looking to figure out what to do with the custody banks in the Economic Act. That is resolved. So I do not think the way it is currently formatted today will be the way that it is implemented, because it would be a little bit of double counting.

Senator BROWN. But you approved it that way.

Mr. OTTING. Yes, but I also want you to be aware that number would be as if in its single element the leverage ratio was the sole determinant. But that is actually a backstop capital ratio, and there are other ratios that will be more——

Senator BROWN. Well, why do you think it is——

Mr. OTTING. Because you have——

Senator BROWN. I am sorry, Mr. Otting. If you argue that it does not do damage to do this, which I guess you are arguing, why would it be something that you would want to do. Why should the bank—so the banks can be more profitable? Is that the reason? Have more money?

Mr. OTTING. Because the leverage ratio treats all risk equally, and by focusing on the leverage ratio and that being the hindrance, it potentially could force a bank into higher-risk issues at the expense of lower-risk issues.

Senator BROWN. Are you arguing the eight largest banks are not doing well?

Mr. OTTING. No, I am not arguing that.

Senator BROWN. OK. I guess the question is: Why weaken capital now in the ninth year of a recovery with potential trouble ahead when the banks are more profitable than ever? You know, this recovery does not last forever. It started with the auto rescue. We have had—that is 8 years, 8-plus years, 90-some months of job growth. Job growth admittedly was less in the first year of the Trump administration than it had been in the number of years prior to that. So it does not really matter who gets credit for it, but the recovery will end at some point. Don't you want the banks to be prepared for what they were not prepared for in 2007 and 2008? And does relaxing capital standards, doesn't it speak to that?

Mr. OTTING. The Federal Reserve—and I think Mr. Quarles made this comment that, you know, we felt it was $400 million when you take into account all the other ratios. So I do agree we want the industry to be well capitalized. We want them to understand their risks, and we want them to have high-quality liquidity to get through the next cycle.

Senator BROWN. Going back to the whole issue of skepticism and cynicism about you, us—I mean, I will throw all of us into this. It is not just the regulators. It is the Senate, it is the House. It is the CEOs that make tens of millions of dollars while a bank teller makes $12, $13 an hour. At my high school reunion 2 years ago, I sat across from a bank teller who had done it for 30 years, and

she makes $30,000 a year after 30 years. So with the skepticism people have toward bank executives and the cynicism and bank regulators, I just do not think that giving them more—I mean, they have done so well in the last few years thanks in part to the bail-out with taxpayer dollars. They have done so well with the tax cut. They have done so well with the Crapo deregulation bill that my colleague, the Chairman, introduced and go through the Senate with Wall Street's loud approval. We are doing—it is just one thing after another we see you doing and Vice Chair Quarles doing and probably the FDIC starting to do, one thing after another that the banks ask for. And if we keep doing things the banks ask for, particularly since that is almost surely because the economic cycle is going to contribute to problems 1 year, 2 years, 5 years, 10 years down the road—maybe you and I will be gone by then, but it just continues to create—to contribute to that cynicism.

Let me ask one more question, and I think colleagues will be back. Let me go back to CRA. You have said that your CRA proposal will simplify the CRA to judge banks based on one ratio, not the multipart test used today. How do you verify that banks are meeting unique credit needs of different communities if you measure CRA based on one specific blunt ratio?

Mr. OTTING. Well, I think the ratio starts actually to make a determination at a macro level, is that institution dedicating enough of whatever you choose it to be to the communities to which they operate? So there will be other factors that will be important in that overall element, including things like, you know, where are you lending, what type of activities that you are doing. We also are proposing like a two times multiple for equity investments because one of the things we see a deficiency in, a lot of the CVFIs need equity. They can get debt, but they cannot get equity. And so we want to encourage financial institutions to participate in some of that activity.

Senator BROWN. OK. Thank you. And thank you for bearing with us.

Mr. Chairman, thank you.

Chairman CRAPO [presiding]. All right. Thank you for your patience with us, Mr. Comptroller. I had a couple further questions, and we do expect another Senator to come back who has got some questions. And then we will probably be close to the end of the hearing.

Comptroller, I understand that some of the national banks are contemplating eliminating their holding companies because they engage in only traditional activities directly permissible for the bank. For example, national banks used to need to have holding companies to be able to branch interstate, but the law has changed, and that has not been the case for some time.

While the process for the dissolution of a holding company is fairly straightforward, there are some challenges because of certain antiquated provisions in the National Bank Act. Can you describe those challenges and what the OCC or Congress might do to address them?

Mr. OTTING. Yes, thank you very much, Senator Crapo. We have seen a significant increase in interest of banks that are predominantly doing core banking-related activities across America with

our current structure of requiring multiple boards, multiple compliance, multiple BSA-related activities at both the holding company and the board—or, excuse me, and the bank, that a lot of banks are looking at, you know, can we consolidate any activities in the holding company into the bank and then have dissolution to the holding company.

You know, it is our viewpoint today there are a couple of these that are in the queue today that we feel we have the authority that we can do work-arounds. I do believe there would be some legislative actions in the future that would make that easier as more banks decide to do that. There are two primary ones that, as you know, the current provisions do not require a bank to file the SEC documentation around financial data, and banks are concern if they do consolidate into the bank, that they would not have that as a vehicle to get their information into the hands through the normal practice and procedures. And so we have worked with the SEC, and we think we have a memorandum of understanding of how to accomplish that for banks that want to accomplish that. That was one of the, I think, significant issues.

And the other significant issues, you know, the way that the Bank Act requires if an entity wants to issue new shares, any incremental amount of new share would require a vote of all shareholders. And at the holding company, they can authorize the issuance of shares, and so this would require a vote for each individual share issuance. And that probably today I would say would be the primary concern that most banks would have about eliminating the holding company.

Chairman CRAPO. All right. And so you will work on trying to facilitate those changes that can be achieved regulatorily?

Mr. OTTING. Yeah, I think we have shared with your staff, you know, some of the recommendations on that, and we would be—I do think this has the potential to be sizable in numbers as others go through that process and then recognize the ability to reduce their regulatory burden.

Chairman CRAPO. All right. And, again, I think you said this, but with regard to what Congress might need to do, it would be helpful to have your suggestions as to what is beyond the authority of the agency.

Mr. OTTING. Right.

Chairman CRAPO. One other question—well, a couple other questions. I was encouraged that the regulators recently issued a proposed rule on Volcker, and I am sure you will receive many comments and letters, and it is my hope that you will review them carefully as you consider the impact of the proposal on firms' trading and fund activities, including their investment portfolios.

I also hope you will look for additional opportunities to simplify the rule's operation by rationalizing metrics reporting and narrowing the scope of covered funds, among other items.

Can you commit to carefully review the comments received on the Volcker Rule and adjust the proposal to address legitimate issues raised by commenters?

Mr. OTTING. Absolutely. That is part of our normal process. We do expect to get a sizable amount of comments back on this. This was a five-agency Notice of Proposed Rulemaking, which, you

know, in itself was kind of a miracle. But we were able to kind of get it through the process. And I think one of our big challenges historically is how do we examine against the Volcker Rule on the proprietary trading. And I think we at least have a solution that we will build on in the years to come.

Regarding the covered funds, you know, one of the provisions that the Volcker Rule did is that banks used to invest in various funds in their communities that then funneled capital into generally small businesses, and small businesses often have a tough time going from where they are 100 percent owned by a family to being a public company, and that created a bridge for a lot of those companies, and that activity has been virtually eliminated. And so I think, you know, maybe not today but in the long run we can look at that and say, you know, is there a source of capital that is needed in the market to be able to help businesses continue to grow, that, you know, someday we may bring back in, and I think that is perhaps what you were referencing in your comments.

Chairman CRAPO. Yes, and I appreciate that. I also appreciate the fact that you and the other agencies finally got together and made some progress on this. And I do not want this to be misunderstood. I appreciate the progress that has been made. I just think that more can be made, and I was hopeful to see a little more out of the ultimate outcome.

One last thing from me, and I apologize that I had to step out because of the votes, but I know that there were a lot of questions on CRA, and I suspect you did not get to give your full answers in response on some of them. Is there anything you would like to make clear or add to what you have said with regard to the questions you have received on the CRA today?

Mr. OTTING. Yes, thank you very much. You know, I have been either a user or an implementer of CRA at financial institutions for over 25 years. I have designed programs that are specific markets, and I have been involved in markets where across the United States where CRA is used. We today, you know, in 40 years have created an incredibly complex, difficult system for financial institutions to understand. Often the week before the CRA team comes in from their examinations, they do not know if they are going to get a good rating or bad rating. Often they find that products that they thought qualified, that they made investments in or made loans against do not qualify. And so I think the ability to bring clarity—we are at a point in time where we can bring clarity to the CRA process, which I think will encourage more institutions to go deeper into their communities and remove the restrictions that I think historically have caused CRA to be held back.

There are three primary things that we are trying to solve for. The first is to come up with a more objective way to measure a financial institution's success and commitment to their communities. I talked about using a balance sheet item and adding up all the CRA activity and using that item to be able to come up with a percentage. I think that has universal appeal.

The second part is we really feel we should expand the products and services that do qualify under CRA. We have narrowed it very narrowly now to mortgages in multifamily in low- to moderate-income areas, and I think we can expand that to more small business

lending, more community centers, and encouraging banks to do more. And we will give banks a read on the front end if they want to make an investment so they are not kind of making it and then hoping it qualifies.

And then the last thing, which is, you know, exams are done every 3 years, and every 3 years it usually takes us 6 to 24 months to issue a CRA report. If a bank wants to close a branch or open a branch or enter a new product line or make an acquisition or divestiture, often they are challenged by some certain community groups about whether they are in compliance with CRA. If we can fix the first one, I think that can solve the third part of this, and we can allow banks then to be—we can encourage banks to be able to say that they are in compliance with CRA on a continual basis if they report that data.

So I am highly encouraged—I just want to instill it is a false narrative if anybody thinks we are trying to bring CRA down. We actually think this is an opportunity to partner with community groups and banks to make CRA better.

Chairman CRAPO. All right. Thank you very much. I appreciate that.

Senator Cortez Masto, you are next. I have not been able to vote on the second vote yet, so I will ask you to be very brief if you can because we have got a couple of Senators here and we need to wrap up. So to the extent you can keep it to right at 5 minutes or less, I would appreciate it.

Senator CORTEZ MASTO. Absolutely.

Chairman CRAPO. I apologize for that.

Senator CORTEZ MASTO. Thank you. Thank you, Mr. Chair. Thank you, Mr. Otting, good to see you again.

So, clearly, the concern that you have seen from many of my colleagues with respect to the Community Reinvestment Act and ensuring there is no discrimination in lending, and I know the OCC is required to ensure that the banks comply with laws prohibiting the unfair and discriminatory lending, correct?

Mr. OTTING. That is correct.

Senator CORTEZ MASTO. And so with that, you are ensuring the banks——

Mr. OTTING. But, Senator, not with CRA. That is fair lending. Actually, there are fair lending exams done based upon the HMDA data. So fair——

Senator CORTEZ MASTO. That you do.

Mr. OTTING. That is correct.

Senator CORTEZ MASTO. Correct. Thank you. And so in ensuring that there is no discrimination, let me ask you this: Are you ensuring that the banks are complying with the Fair Housing Act?

Mr. OTTING. Am I ensuring that they are complying with the Fair Housing Act?

Senator CORTEZ MASTO. Correct.

Mr. OTTING. Yes, we are.

Senator CORTEZ MASTO. And are you ensuring they are complying with the Equal Credit Opportunity Act?

Mr. OTTING. Yes, we are.

Senator CORTEZ MASTO. And has your office reported any violations of those acts to DOJ?

Mr. OTTING. Yes, we have.

Senator CORTEZ MASTO. So they are actively looking at that now. Thank you very much.

Let me ask you this: Going back to the CRA enforcement, it is my understanding you have instructed your bank examiners to change how they consider CRA bank exams. Is that true?

Mr. OTTING. Not to my knowledge.

Oh, we are—I believe we are sending out a bulletin today. So there are bulletins that we send out where we update procedures, and it either is—yeah, we have been holding a—we frequently will provide Q&A or bulletins as updates, and so we have been holding, hoping we were going to get the ANPR out, and so there were some updates that went out, if that is what you are referencing, to our CRA——

Senator CORTEZ MASTO. Updates in how the bank examiners will be and the criteria they will be looking at when they are engaging in these exams? Is that what——

Mr. OTTING. No, no.

Senator CORTEZ MASTO. OK.

Mr. OTTING. The criteria has been—you know, for banks over $1,236,000,000, there is a point system that is lending investments and then a service——

Senator CORTEZ MASTO. Well, let me ask you this, because I am just trying to get to something specific, and I only have so much time, so I appreciate—and I want to let my colleagues also ask—my understanding is that the bank examiners consider the CRA when they are engaged in these bank exams. Isn't that correct?

Mr. OTTING. We actually do specific CRA——

Senator CORTEZ MASTO. And are they looking to ensure that there is no discriminatory lending going on as part of the CRA review?

Mr. OTTING. So what occurs in a CRA exam is we do a HMDA review first to ensure that we can rely upon the information that the financial institution has given us. It does not mean that they are doing a fair lending exam at the same time they are doing a CRA exam.

Senator CORTEZ MASTO. But are they still looking at data points that may——

Mr. OTTING. Yes, the HMDA——

Senator CORTEZ MASTO. Well, let me ask you this: As part of their CRA exam, are there any concerns that they look at data points that they look at to ensure there is no discrimination in any manner whatsoever? They do not look a any of that, any of the HMDA points, there is nothing in the mortgage lending or anything that they look at to ensure there is no discrimination? Because that is what I am hearing you tell me, that your bank examiners do not look for that.

Mr. OTTING. Let me be clear.

Senator CORTEZ MASTO. OK.

Mr. OTTING. So prior to a CRA exam starting, we do a HMDA review to determine the accuracy of the data. If there are items that are discovered in the HMDA that would lead our suspicion that there is not—that there are fair lending questions, then we are required by statute to do within 12 months a fair lending ex-

amination. We are also frequently doing fair lending examinations independent of CRA.

Senator CORTEZ MASTO. OK. And so knowing this—and I know the OCC supervises about 1,000 banks, correct?

Mr. OTTING. 1,300.

Senator CORTEZ MASTO. OK. And how many of those banks, if you know, make fewer than 500 mortgage loans or home equity loans?

Mr. OTTING. We looked at that data, and it is less than 5 percent.

Senator CORTEZ MASTO. OK. And then as you well know, Congress passed a law——

Mr. OTTING. Five percent of the volume, I am sorry.

Senator CORTEZ MASTO. OK. And Congress passed a law that exempted banks that make fewer than 500 mortgage loans from reporting publicly on much of the loan and borrower characteristics like points and fees, interest rate, and other indicators of loan quality. So how can you ensure without that data—let me finish my question.

Mr. OTTING. OK. I want to——

Senator CORTEZ MASTO. OK, and then you can clarify. I will let you clarify. How can you ensure that without that data that you are not determining that there is the presence of discrimination or not if you do not have all of the information you need to make that determination?

Mr. OTTING. So just as a point of clarification, those banks that will be excluded still have a HMDA lite that they have to file. The enhanced HMDA data is what the other financial institutions will submit.

Senator CORTEZ MASTO. No, I recognize that. That is why I opposed it. I think HMDA lite does not give us enough information to determine whether there is discrimination or not, and that is my question to you. Without that additional data, how do you ensure there is no discrimination?

Mr. OTTING. We have historically used the HMDA data to point us in the direction where we think that there is——

Senator CORTEZ MASTO. Do you still have access to all of the HMDA data or just the HMDA lite, like you called it?

Mr. OTTING. Well, only the institution—well, it has been being enhanced, and there is new enhancement based upon the CFPB's criteria. But what will occur is that data will come in to us for 95 percent of the volume; 5 percent of the volume will be HMDA lite.

Senator CORTEZ MASTO. OK. So you are only referring and utilizing HMDA lite data, is what I hear. And I know my time is up. I would defer to my colleagues.

Mr. OTTING. Five percent of the data.

Senator CORTEZ MASTO. Thank you.

Chairman CRAPO. Thank you very much.

Senator Menendez? And, again, I did not think you had come in. I have not voted yet, so I need to ask you to please stay right to your 5 minutes if you can so I can wrap the hearing up.

Senator MENENDEZ. All right, Mr. Chairman. The second vote just began, and this is the problem with conducting hearings while

voters are—I will object on the floor from now on to having committees meet while——

Chairman CRAPO. Well, then you can take your time, and I will ask them to hold the vote open. It is still a 5-minute timeframe.

Senator MENENDEZ. Mr. Otting, the horizontal review of sales practices that has been completed for which I understand you have reiterated here today that you are not going to publicly release detailed findings. I sent a letter this morning to you along with several of my colleagues on the Committee asking for more information, and I have to say the reality is that your citing confidential supervisory information is spurious. The OCC has provided public reports on unsafe and unsound banking practices before, namely, during the independent foreclosure review, after millions of Americans were harmed by unfair and predatory foreclosure practices. In that case the OCC provided critical information to the public explaining how mortgage services had failed to service distressed mortgage loans and outlined how those institutions would remediate borrowers.

I am the Ranking Member of the Senate Foreign Relations Committee. I understand all about classified information. This is not classified. This is an effort not to have the ability for the public to understand that the institutions that they are banking at may very well have had the same practices as we have seen before.

So, you know, when you were in front of this Committee for your confirmation last year, you refused to provide State-by-State information on the number of OneWest foreclosures in our States, and today as Comptroller you refuse to provide information about consumers that have been harmed not only by Wells Fargo—of course, we know that—but by Wells Fargo-style sales practices.

So I have to ask myself: Who are you trying to protect? Who are you trying to protect: hardworking American families or big banks?

Mr. OTTING. I am trying to protect American consumers, and——

Senator MENENDEZ. Well, you are not doing that when you do not disclose.

Mr. OTTING. Well, first of all, this is not an unsafe and unsound manner. You quoted unsafe and unsound manner, and you may have not been in the room when I gave the statistics, but out of between an estimate of 500 to 600 million accounts, we found 20,000 items. Of those——

Senator MENENDEZ. That is 20,000 too many.

Mr. OTTING. I would agree with you, 20,000——

Senator MENENDEZ. Why can't we know who the 20,000 are, what practices took place at those institutions?

Mr. OTTING. This is a regulatory matter. There are MRAs open that we continue to go through. I have publicly said that this was not a systemic issue in the industry, and as we work through the MRAs and clean these issues up, all consumers that, if they were harmed, will receive restitution.

Senator MENENDEZ. Well, I think that people should know the institutions that they are banking, whether they have these practices, whether they were among the 20,000 who were hurt or those who were not. And unless you know whether an institution was conducting those practices, you will not know whether that is an institution I should be banking with. So you are doing the con-

sumer universe a huge discredit, and you seem to be shilling for the banks. I have to be honest with you.

Let me ask you, do you believe—let me go to a different topic, because I could not believe the answers you gave yesterday at the House Financial Services Committee. Are you sitting before this Committee telling a Hispanic American that there is no discrimination in this society and that there is no discrimination in mortgage lending?

Mr. OTTING. I did not say that.

Senator MENENDEZ. OK. Can you tell me, is there discrimination in mortgage lending?

Mr. OTTING. I believe that there is. I think there is disparate impact that occurs in America. What I said was I had not personally observed it, but many people who——

Senator MENENDEZ. But when you were pressed consistently to say do you believe it, you did not give the answer you have given me today. So I am happy to see that you have finally come to the conclusion, whether you have experienced it, seen it, or not, that, in fact, there is discrimination in the mortgage lending field.

Mr. OTTING. I do not think that comment was right. When I was pressed yesterday, I said that people that I care about, I love, and I have friendships have told me that there is discrimination, and I believe those people.

Senator MENENDEZ. Will you commit today to retain assessment areas with a local geographical focus under the Community Reinvestment Act which helps ensure that banks are combating historic redlining and lending in low- and moderate-income communities?

Mr. OTTING. I think there has to be a new look at assessment areas. I do think that around branches that we have to protect that banks are participating in the low- to moderate-income communities. But, Senator Menendez, my experience and other people's experiences is that assessment areas also can restrict investments. And so I just think we need to think through what is an assessment area.

We also have financial institutions today that have no branches, but they have customers, and I think we need to think through what are we going to call—what is the assessment area for those institutions.

Senator MENENDEZ. Let me tell you, I will make sure, along with national leading civil rights groups, that you understand that there is discrimination in our society in this regard, and that you do not water down what limited protections already exist.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. And welcome.

I am going to follow up on a couple of questions that have been asked. One was by Senator Warren regarding the case that was brought against OneWest for alleged discriminatory practices. To your knowledge, is HUD still engaged in an investigation of that complaint?

Mr. OTTING. Are you referencing the HUD on the financial freedom where OneWest Bank paid a fine?

Senator VAN HOLLEN. I am referencing the case that was brought with respect to the alleged discriminatory lending that was referenced by Senator Warren earlier.

Mr. OTTING. I do not know if that is a HUD issue. The accusation by community groups was that OneWest Bank, when you looked at effectively our fair lending data, we had out of proportions for the community. And I do not have it in front of me, Senator Van Hollen, but it was an incredible—I think it was less than 100 mortgages that they used to base that data on. So it was not a statistical relevant—I mean, we were low in certain particular areas, but it was not like you had a statistical relevant population in the narrative to make that accurate assessment.

Senator VAN HOLLEN. I guess my question is——

Mr. OTTING. But that was not a HUD——

Senator VAN HOLLEN. Was a complaint filed in that case? And has that issue been resolved?

Mr. OTTING. It was filed by a nonprofit organization.

Senator VAN HOLLEN. And is that case still pending, to your knowledge?

Mr. OTTING. To the best of my knowledge.

Senator VAN HOLLEN. It is still pending?

Mr. OTTING. Yes.

Senator VAN HOLLEN. Have you been questioned in that case?

Mr. OTTING. I have not.

Senator VAN HOLLEN. OK. Because the comments you made in the House yesterday obviously generated a lot of understandable concern, and in my State of Maryland, in Baltimore, a case was brought against Wells Fargo back in 2011 for pricing discrimination. Baltimore City alleged that Wells Fargo steered minorities into subprime loans, gave them less favorable rates than white borrowers, and foreclosed on hundreds of Baltimore homes, creating blight and high public safety costs. And in this case, in fact, Wells Fargo conceded that this had happened and paid a penalty of $7.5 million to the city of Baltimore.

Do you have any reason to contest the conclusion that there was pricing discrimination in this case in Baltimore City?

Mr. OTTING. I do not.

Senator VAN HOLLEN. OK. I want to get to some of the issues of regulatory capture, and you and I have had an exchange of letters, and I welcome the opportunity to follow up even further on that. I believe that Senator Brown referenced the GAO report where they looked into the situation, and you are aware of the fact that there was a case where Wells Fargo alerted a bank to the fact that there was going to be an OCC investigation? Are you aware of that case?

Mr. OTTING. I think it was an OCC employee alerted Wells Fargo.

Senator VAN HOLLEN. I am sorry. Yes, an OCC employee embedded in Wells Fargo.

Mr. OTTING. That is what the allegations were, yes.

Senator VAN HOLLEN. And there was since a recommendation based on a 2013 study from outside peer groups recommending a separation; in other words, recommending that OCC employees not be embedded in banks because they would treat them too much

like customers as opposed to being on the lookout for potential wrongdoing and hold people accountable. So my question is: You have decided not to pursue that recommendation. Did you do any kind of study that would contradict or conflict with the 2013 finding?

Mr. OTTING. I covered this earlier, but I want to make sure that I have a chance to cover it with you. Just so you understand, we have three kind of models in the OCC: we have a community banking model, we have what we call a midsize bank model, and we have a large bank model.

On the smaller end, we service those banks by regional locations in the OCC so examiners are not embedded in the banks. In the midsize bank group, we have a split where some are in and some are out. And in the large bank, we have them resident onsite at the large banks, and that is the category you want me to described, but I just wanted—so you understood it.

Senator VAN HOLLEN. Yeah, understood.

Mr. OTTING. So when I got here and examined it and also based upon my background and knowledge, I looked at the procedures and processes, and just so everybody is aware, every 5 years we rotate—actually, it is less than 5 years. We rotate the examiner in charge of a financial institution, so we do have a rotation.

Second of all, we have resident experts that are both in the field and in Washington that review all the examination papers and data for accuracy and make sure that no one could take data and make inappropriate conclusions. And then we also have what we call a "deputy comptroller" that is centralized and has oversight for that financial institution.

So while it could happen, I thought that the controls were in place, and the fourth category from my experience as a CEO, having resident onsite examiners who have open architect access to anything going on in that bank, they can go to risk meetings, credit quality meetings, they can go to credit approval meetings, wander around the bank, be able to interact with people, I think actually provides better risk management by——

Senator VAN HOLLEN. I appreciate that. I think the issue here is that obviously there may be some benefits. The question is whether the benefits outweigh the risks, and there have been now a number of independent analysts that looked at this particular situation with respect to OCC and said it is too great a risk that you will have regulatory capture. And so my question was: Did you undertake any independent study——

Mr. OTTING. I did not. I reviewed——

Senator VAN HOLLEN. ——in reversing this conclusion?

Mr. OTTING. ——the situation, and I am only aware of one time where that has been——

Senator VAN HOLLEN. All right. Well, I look forward to following up.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator.

Comptroller Otting, I appreciate you coming here before us today, but also putting up with the inconveniences that have been caused by us having to shift around for votes. We appreciate the work that you are doing and, again, appreciate the fact that you

would come here and report to the Committee. I look forward to our further work with you.

That does include all of the questions, and this hearing is adjourned.

Mr. OTTING. Thank you.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

Today, we will hear from Comptroller of the Currency Joseph Otting.

Since being sworn in last November, Comptroller Otting has been focused on right-sizing regulations and furthering the mission of the OCC.

Recently, the OCC, along with four other regulators, issued a proposal to make revisions to the Volcker Rule.

In May, the OCC issued a bulletin related to short-term, small-dollar lending.

The OCC has also been looking at modifying and modernizing how regulators apply the Community Reinvestment Act.

Comptroller Otting has also identified reviewing compliance with anti–money laundering laws as a priority of the OCC's.

In addition, the Comptroller has said he expects the OCC to announce in July a final decision on a specialty bank charter for FinTech companies.

I look forward to hearing more about some of these important initiatives today.

In addition, the OCC will need to implement a number of provisions from S. 2155, the bipartisan economic growth legislation that President Trump signed into law on May 24th.

Among the provisions that the OCC will need to write rules to implement are:

- The community bank leverage ratio, which exempts highly capitalized banks from the international Basel III risk-based capital requirements;
- The exemption from appraisal requirements for banks in rural areas that suffer from shortages of qualified appraisers;
- The requirement that certain acquisition, development, and construction loans not be subject to punitive capital requirements;
- Reduced reporting requirements and extended exam cycles for certain small banks;
- The requirement to promulgate regulations to remove central bank deposits from the denominator of the supplementary leverage ratio for certain banks;
- The exemption from stress testing for certain financial institutions, including the immediate exemption for financial companies with less than $100 billion in assets; and
- The provision permitting certain Federal savings associations to elect to operate with the same powers and duties as national banks without going through the onerous charter conversion process.

These provisions, and others in the legislation, right-size regulations for community banks, credit unions, midsize banks, and regional banks, making it easier for consumers and small businesses to get mortgages and obtain credit.

Absent excessive regulatory burden, local banks and credit unions will be able to focus more on lending, in turn propelling economic growth and creating jobs.

I look forward to engaging with the OCC, and with other agencies charged with implementing S. 2155, over the coming months to ensure that their interpretations are consistent with the intent of the Members of Congress that voted for the legislation and with this Committee's goal of promoting economic growth.

Our economy is strengthening, and the positive effects of the banking bill and tax reform are just starting to be felt.

Layered together, these policies and others are creating conditions in our country that enable growth.

I look forward to building on this momentum moving forward.

PREPARED STATEMENT OF JOSEPH M. OTTING

COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY

JUNE 14, 2018

Introduction

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for the invitation to testify today. I am pleased to have the opportunity to share my priorities as Comptroller of the Currency and update the Committee on the supervision, regulation, and enforcement of financial institutions within the regulatory purview of the Office of the Comptroller of the Currency's (OCC). I intend to work diligently to ensure that the institutions within the Federal banking system operate in a safe-and-sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. I am honored to serve as the 31st Comptroller of the Currency, alongside nearly 4,000 men and

women who share a deep dedication to the agency's mission. During my tenure, I look forward to advancing financial institution regulation with a focus on promoting the long-term health of the institutions we supervise and improving their ability to serve their customers and meet their communities' needs. In my testimony today, I will share my views on the condition of the Federal banking system, the risks facing that system, and my priorities as Comptroller of the Currency.

Before I turn to those topics, however, I want to congratulate Chairman Crapo on his leadership toward the successful enactment of S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act). The Economic Growth Act contains a number of important, bipartisan provisions that will have a meaningful impact on OCC-regulated institutions. Those include provisions reducing the number of community banks and savings associations subject to the Volcker Rule; a simpler capital regime for highly capitalized community banks and savings associations; allowing qualifying banks under $5 billion in assets to file a simplified call report; expanding eligibility for an 18-month exam cycle to well-managed and well-capitalized banks under $3 billion in assets; exempting certain mortgage loans for properties located in rural areas from appraisal requirements; and adding greater financial protections for our military servicemembers and veterans. The law also raises the thresholds for application of the Federal Reserve Board's enhanced prudential standards for bank holding companies to focus on the very largest companies, right-sizes stress testing requirements, and provides Federal savings associations with less than $20 billion in assets the flexibility to exercise the powers of national banks without changing charters, an important improvement championed by Senators Moran and Heitkamp, and suggested by the OCC.

The OCC will work closely and cooperatively with our fellow financial regulators to ensure that all of these important reforms are implemented quickly so that financial institutions can continue to create jobs and promote economic opportunity in a safe, sound, and fair manner.

Condition of the Federal Banking System

As of the end of the first quarter of this year, the Federal banking system comprised approximately 1,325 national banks, Federal savings associations and Federal branches of foreign banks (banks) operating in the United States. These banks range in size from small community banks to the largest most globally active U.S. banks. Approximately 1,061 of these banks have less than $1 billion in assets, while more than 60 have more than $10 billion. Combined, these banks hold $11.8 trillion or about 67 percent of all assets of U.S. commercial banks. These banks also manage almost $51 trillion in assets held in custody or under fiduciary control, which amounts to 42 percent of all fiduciary and custodial assets in insured U.S. banks, savings associations, and national trust banks. The Federal banking system holds two-thirds of credit card balances in the country, while holding or servicing almost half of all residential mortgages. Through their products and services, a majority of American families have one or more relationships with an OCC-regulated bank.

Because of the reach of the Federal banking system and the essential role it plays in meeting the financial services needs of so many Americans, their businesses, and their communities, it is critical that the system operate in a safe-and-sound manner, provide fair access to financial services, treat customers fairly, and comply with laws and regulations. That is the unique mission of the OCC.

The OCC employs nearly 4,000 people, two-thirds of whom are bank examiners, overseeing the Federal banking system. The majority of those examiners are dedicated to the daily supervision of community banks and work in offices and banks across the Nation.

Supervision by Risk

The OCC applies a supervision by risk approach to the banks the agency supervises. Supervision by risk focuses on assessing risk, identifying existing and emerging issues, evaluating the effectiveness of a bank's risk management systems in appropriately controlling risk, and ensuring that bank management takes corrective action before problems compromise the safety and soundness of a bank. This approach requires an understanding of the operations of each bank or thrift and the systems each has in place to control risk, with consideration of the institution's size, scope of operations, complexity, and the risks presented by its business model.

Our supervision by risk framework establishes an examination philosophy and structure that is used at all national banks, Federal savings association, Federal branches of foreign banks, and national trust companies. This approach includes a

common risk assessment system (RAS)[1] that evaluates each bank's risk profile across eight risk areas—credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation—and assigns each bank an overall composite rating and component ratings on the bank's capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risks using the interagency Uniform Financial Institutions Ratings System (informally known as CAMELS).[2] Specific examination activities and supervisory strategies are tailored to each bank's risk profile. These strategies are updated and approved annually. While tailored to each individual bank's risk profile, they also incorporate key agency supervisory priorities for the coming year.

To reflect the different expectations for controls and risk management between banks of varying sizes, operations, and complexity; our bank supervision programs and core examination procedures for determining a bank's RAS and CAMELS ratings are aligned across two primary lines of business: Midsize and Community Bank Supervision and Large Bank Supervision.

Our community bank supervision program is built around local field offices in more than 60 communities throughout the United States. Every community national bank is assigned to an examiner who monitors the bank's condition on an on-going basis and who serves as the focal point for communication with the bank. The primary responsibility for the supervision of individual community banks is delegated to a local Assistant Deputy Comptroller, who reports to a district Deputy Comptroller, who in turn, reports to the Senior Deputy Comptroller for Midsize and Community Bank Supervision. This structure allows community and midsize banks to benefit from assigned teams with thorough knowledge of local conditions and support from national resources with broad industry insight.

The frequency of on-site examinations for community banks follows the statutory provisions set forth in 12 U.S.C. 1820(d),[3] with on-site exams occurring every 12 to 18 months. The scope of these examinations is set forth in the OCC's Community Bank Supervision handbook[4] and requires sufficient examination work and transaction testing to complete the core assessment activities in that handbook, and to determine the bank's RAS and CAMELS ratings. On-site activities are supplemented by off-site monitoring and quarterly analyses and discussions to determine if significant changes have occurred in the bank's condition or activities.

The OCC's Large Bank Supervision program is centralized and headquartered in Washington, DC. It is structured to promote consistent uniform coordination across institutions. As part of the Large Bank program, the OCC assigns examination staff who are resident on-site at the institution and who conduct on-going supervisory activities and targeted examinations in specific areas of focus. This process allows the OCC to maintain an on-going program of risk assessment, monitoring, and communication with bank management and directors. Given the volume and complexity of the literally millions of transactions that flow through large banking organizations each day, it is not feasible to review every transaction in each bank, or for that matter, every single product line or bank activity in each supervisory cycle. Nonetheless, the scope and frequency of the OCC's targeted examinations and our constant, day-to-day supervision ensure that examiners complete sufficient work and transaction testing throughout the year to complete the core assessment activities set forth in the OCC's Large Bank Supervision handbook,[5] and to determine the bank's RAS and CAMELS ratings. The on-site teams at each bank are led by an Examiner-in-Charge, who reports directly to the Deputy Comptrollers in our Large Bank Supervision Office, and in turn, to our Senior Deputy Comptroller for Large Bank Supervision. On-site examiners are supported by specialized examiners in the OCC's lead expert program and the Compliance and Community Affairs unit which provides a

---

[1] See OCC Bulletin 2015-48, "Risk Assessment System". December 3, 2015 (*https://www.occ.gov/news-issuances/bulletins/2015/bulletin-2015-48.html*).

[2] See Comptroller's Handbook, "Bank Supervision Process" booklet, which explains UFIRS/CAMELS. (*https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/bank-supervision-process/pub-ch-bank-supervision-process.pdf*).

[3] 12 U.S.C. § 1820(d) prescribes the annual examination requirement. As noted earlier, that provision has been amended by the Economic Growth Act to expand eligibility for an 18-month exam cycle to well-managed and well-capitalized banks under $3 billion in assets.

[4] "Community Bank Supervision" booklet of the Comptroller's Handbook. October 2017 (*https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/community-bank-supervision/index-ch-community-bank-supervision.html*).

[5] "Large Bank Supervision" booklet of the Comptroller's Handbook. October 2017 (*https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/large-bank-supervision/pub-ch-large-bank-supervision.pdf*).

horizontal view across the industry, a focus on particular risks, and can quickly share insight from that broader perspective.

Supporting OCC examination staff is a nationwide network of lawyers, economists, accountants, compliance, and administrative and policy experts who together make the OCC the world's preeminent prudential supervisor. This network of experts brings a broad national perspective to complement the deep local expertise of the assigned exam teams.

The quality of that supervision contributes to the strong condition of the Federal banking system today. The system has rebounded from the crisis. Capital and liquidity are near historic highs. Bankers understand the risks facing their banks better than at any point in my 35-year banking career. Return on equity and asset quality are approaching precrisis levels. Bank profitability improved in 2017 when compared with 2016 on a pretax basis. OCC-supervised banks reported healthy revenue growth in 2017 compared with 2016. Net income was flat for banks with total assets less than $1 billion and declined 8.5 percent for the Federal banking system because of the effect of the Tax Cuts and Jobs Act. Pretax income rose 4 percent in 2017 for the Federal banking system and more than 7 percent for banks with assets less than $1 billion. That improvement continued into the first half of this year, and the economic environment is expected to continue to support loan growth and bank profitability through 2019.

Risks Facing the Federal Banking System

Despite the relative strength of the banking system and health of the economy, the regulators' job is to peer over the horizon and assess any gathering storm clouds. The OCC publishes its view of risks facing the banking system twice each year in its *Semiannual Risk Perspective*.[6] Our objective is to provide transparency around trends and potential risks so that the industry takes these risks into account and adjusts their practices accordingly. The most recent edition of the report, published on May 24, primarily focuses on credit, interest rate, operational, and compliance risks.

Credit Risk

At this point in a long economic expansion, asset quality metrics are, as is typical, very good, and changes in risk appetite and external factors are the primary drivers of credit risk and future performance. While overall credit quality remains strong, bankers must remain vigilant about the potential effects of competition and undue complacency on the quality of new loans and credit risk management. Recent reviews of underwriting indicate that satisfactory policies and practices exist to guide lending decisions and that, thus far in this economic cycle, banks as a whole are operating within established risk tolerances. Competition for quality loans remains strong, however, and examiners note evidence of eased underwriting, increased commercial real estate concentration limits, and a higher level of concerns related to policy exceptions. The accommodating credit environment warrants a continued focus on underwriting practices to monitor and assess credit risk and prevent lender complacency.

Overall lending grew 3.6 percent within the Federal banking system in 2017. That growth continues the positive trend of the last several years, albeit somewhat slower in 2016 and 2017 than in previous years. Commercial loan growth for large banks, which hold more than 83 percent of all loans, fell to 4.2 percent, down from the 10-percent level 2 years ago. Although loan growth has slowed, growth rates still represent a healthy economy. Midsize and community banks continued to experience significant loan growth, particularly in commercial real estate and other commercial lending, which grew almost 9 percent last year. Such growth heightens the need for strong credit risk management and effective management of concentration risk.

Interest Rate Risk

At the same time, rising interest rates also pose a number of potential risks for some banks. Although rising interest rates generally increase net interest margins at small banks, bank investment portfolios with concentrations of long-duration and low, fixed-rate assets could erode in value as interest rates rise, particularly if they increase more abruptly than expected. Rising interest rates also likely will increase the cost of deposits because of competitive pressures particularly for banks with total assets of $250 billion or more that are subject to additional regulatory liquidity

---

[6] See "Semiannual Risk Perspective", Spring 2018, at *https://www.occ.gov/publications/publications-by-type/other-publications-reports/index-semiannual-risk-perspective.html.*

requirements.[7] Banks should be modeling these potential risks as part of sound balance sheet management.

Credit risk is also likely to increase as interest rates rise. Rising interest rates will often increase debt service costs and may affect credit affordability as well as repayment capacity of some financially stretched customers.

Operational Risk

Operational risk remains elevated as banks adapt business models to the evolving banking environment, transform technology and operating processes, and respond to increasing cybersecurity threats. The speed and sophistication of cybersecurity threats show no signs of abating. Banks face constant threats from bad actors seeking to exploit personnel, processes, and technology. Some of these threats target large quantities of personally identifiable information and proprietary intellectual property to facilitate fraud and misappropriation of funds at the retail and wholesale levels. Other threats are aimed at disrupting or otherwise impairing operations. Failure to maintain proper controls over cybersecurity can lead to material negative effects on financial institutions, consumers, and national and economic security. Banks also continue to rely on third-party relationships to support a significant number of key services and operations because of the greater economies of scale and advanced technical resources that allow them to manage operations better and more efficiently. Banks need to manage risks associated with using third parties[8] through appropriate due diligence and risk oversight to ensure controls protecting the confidentiality, integrity, and availability of systems and data are maintained. Increasing consolidation among large technology service providers has created third-party concentration risk, in which a limited number of providers service large segments of the banking industry for key financial services. Operational events at these larger service providers could affect large parts of the financial industry, if not properly managed by the service providers and the banks that rely on their services. The OCC and the other Federal banking agencies continue to prioritize supervisory activities related to these large service providers.

Cybersecurity and operational issues have a greater potential to affect individual consumers, business, and communities than ever before. As innovation and technology moves us toward greater interconnectedness and reliance on online transactions, outages and breaches generate greater disruption in how we conduct our lives and businesses. Extended outages of bank websites and applications, automated teller networks, or payments systems can paralyze commerce and undermine overall confidence in our system. To avoid these consequences, banks, retailers, nonbank service providers, and regulators must be vigilant in working together to protect the system and improve its resiliency.

Compliance Risk

Compliance risk remains elevated as banks manage risks in an increasingly complex environment and work to comply with evolving regulations.

The dynamic nature of money-laundering and terrorist-financing methods present challenges for banks to comply with the Bank Secrecy Act (BSA) requirements. Banks offer new or evolving delivery channels that increase customer convenience and access to financial products and services, and they must maintain a focus on refining or updating BSA compliance programs to address vulnerabilities in these new delivery channels that criminals seek to exploit. At the same time, recent changes to the regulatory framework implementing the BSA increase the burden of complying with the law. One example involves the Financial Crimes Enforcement Network's (FinCEN) new requirements for conducting customer due diligence and documenting the beneficial ownership of companies conducting financial transactions. While these new requirements enhance the transparency and confidence of financial transactions, they place significant new burden on financial institutions.

Other complex and constantly changing regulations also strain bank compliance management systems and change management processes, which increases operational, compliance, and reputation risks. Recent regulatory changes in the consumer compliance area include changes in the requirements under the Home Mortgage Disclosure Act and Military Lending Act, and implementation of the integrated mortgage disclosures under the Truth in Lending Act and the Real Estate Settlement Procedures Act. Banks need consumer compliance risk management and audit

---

[7] See OCC Bulletin 2014-51 (*https://www.occ.gov/news-issuances/bulletins/2014/bulletin-2014-51.html*), which describes the Liquidity Coverage Ratio final rule and provides a link to that rule.

[8] See OCC Bulletin 2013-29, "Third-Party Relationships" (*https://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013-29.html*).

functions sufficient to promote ongoing compliance with regulations, even those that change on a frequent basis.

My Priorities as Comptroller of the Currency

As Comptroller, my short-term priorities have focused on initiatives to help banks promote job creation and economic opportunity while continuing to operate in a safe, sound, and fair manner. These priorities include modernizing the regulatory approach to the Community Reinvestment Act (CRA), encouraging banks to meet consumers' short-term, small-dollar credit needs, enhancing our supervision of BSA/anti–money laundering (AML) compliance and making it more efficient, simplifying regulatory capital requirements, and reducing burden associated with the Volcker Rule. At the same time, we continue to enhance the agency's effectiveness and efficiency.

Modernizing Our Approach to the CRA

During the four decades since the CRA became law, the regulatory approach to implementing that law has become too complex, outdated, cumbersome, and subjective. We have an opportunity to modernize the regulatory framework around CRA to better serve its original purpose and encourage more investment and banking activity supporting the people and communities needing it most.

As a banker for more than 30 years, I saw firsthand the benefit of CRA activities and how they make communities more vibrant. I believe in the power of community reinvestment to reinvigorate financially distressed areas and to give residents of those neighborhoods new hope and new economic opportunities. I have been involved in directing hundreds of millions of dollars in community development, reinvestment, and support for groups that provide important services to their communities, and I want to expand the types of activities eligible for CRA consideration to include more small business lending and community development activities and strengthen the CRA regulatory framework to benefit future generations.

Stakeholders from all perspectives have called for modernizing the current regulatory framework for the CRA. Members from both sides of the aisle have described their frustration with some of the CRA regulatory framework's current limitations. Many have complained of significant administrative burden, lack of incentives for investment, and failure to adapt to advances in banking such as interstate branching and digitization of services. Others have complained about the limited opportunity for bank activities to qualify for CRA consideration. Bankers and community groups alike criticize the length of time between the issuance of CRA performance evaluations, the unwieldly length of performance evaluation reports, and the lack of transparency, clarity, and flexibility with respect to regulatory requirements and processes. The complaints I hear most frequently are that the current approach to evaluating CRA performance is too subjective and costly.

To begin the process of modernizing the CRA, the Federal banking agencies are discussing an Advanced Notice of Proposed Rulemaking (ANPR) soliciting comments from stakeholders on how best to modernize the CRA regulatory framework. We have an opportunity to consider a transformational CRA framework that would: (1) expand and provide clarity regarding the bank activities that receive CRA consideration; (2) revisit the concept of assessment areas; and (3) increase the transparency of how bank CRA performance is measured by using quantitative standards that are applied consistently.

First, we should expand the types of activities that qualify for CRA consideration. Over the years, opportunities for CRA consideration have focused heavily on single- and multifamily residential lending. While necessary for a vibrant community, residential lending is not the only activity that can have a meaningful impact in these communities. Communities also need more small business lending, student lending, economic development opportunities, and in some cases, additional opportunities for consumers to access credit including responsible, short-term, small-dollar consumer loans. These activities deserve more consideration during CRA evaluations. We have the opportunity to encourage banks to help neighborhoods become communities where families can make a living and not just reside.

Second, we need to revisit the concept of assessment areas. Limiting assessment areas to a bank's branch-based footprint has become an impediment to investment and providing capital in areas of need that the bank may serve. I have seen situations where projects have not received CRA consideration merely because they were on the wrong side of a street. I have also seen needy communities go unserved or have much needed resources delayed because of a lack of clarity in current regulations. In reconsidering assessment areas, we need to broaden our thinking to include all areas where institutions provide their services rather than only narrow geographies defined by branches and deposit-taking automated tellers.

Third, we need to develop a metrics-driven approach to evaluating CRA performance using clear thresholds. Such changes could make facts and data regarding a bank's CRA activity more transparent and available to the public more frequently. Establishing clearer, more transparent metrics for what banks need to do to achieve a certain CRA rating would allow stakeholders to understand how a bank is working to meet the credit needs of its community, provide a more objective base for examiner ratings, and allow regulators to report on aggregate activity to show a bank's overall performance. Clear thresholds would minimize subjectivity, encourage consistency, and promote transparency in contrast with today's evaluations that may rate similar activities differently from bank to bank and make comparisons across institutions difficult and less meaningful. This type of change would also help regulators to make decisions that rely on CRA data more quickly and to produce more concise and meaningful performance evaluations.

The ANPR will solicit comments on all possible approaches to modernizing CRA, including modest changes to the existing CRA framework and more transformational changes. It also will seek feedback on allowing community banks to retain a more traditional approach based on their business models.

Once published, I encourage all stakeholders to provide their thoughts on how to improve our approach to the CRA regulatory framework to better encourage banks to meet the credit needs of their communities, including those in low- and moderate-income neighborhoods, consistent with the safe-and-sound operation of these institutions. I recognize that there are many people and organizations with decades of experience in this important field. I look forward to publishing the ANPR and reviewing the comments received as we move ahead.

Encouraging Banks To Meet Consumer's Short-Term, Small-Dollar Credit Needs

Millions of Americans rely upon short-term, small-dollar credit to make ends meet, but have few choices in this area. According to one study, U.S. consumers borrow nearly $90 billion every year in short-term, small-dollar loans typically ranging from $300 to $5,000.[9] Consumers need safe, affordable choices, and banks should be part of that solution. While banks may not be able to serve all of this market, they can reach a significant portion of it and bring additional options and more competition to the marketplace while delivering safe, fair, and less expensive credit products that support the long-term financial health of their customers.

That is why the OCC clarified its position in a bulletin published on May 23, 2018, that encourages banks to offer responsible short-term, small-dollar installment loans to help meet the credit needs of their customers.[10]

Banks are well suited to offer affordable short-term, small-dollar installment lending options that can help consumers find a path to more mainstream financial services without trapping them in cycles of debt. When banks offer products with reasonable pricing and repayment structures, consumers can benefit from banks' other financial services such as financial education and the opportunity to build a positive credit record.

Banks should consider the following three core principles when offering short-term, small-dollar lending products.[11]

- All bank products should be consistent with safe-and-sound banking, treat customers fairly, and comply with applicable laws and regulations.
- Banks should effectively manage the risks associated with the products they offer, including credit, operational, compliance, and reputation.
- All credit products should be underwritten based on reasonable policies and practices, including guidelines governing the amounts borrowed, frequency of borrowing, and repayment requirements.

The agency's bulletin also highlighted reasonable policies and practices specific to short-term, small-dollar installment lending, including:

- Loans and terms that align with eligibility and underwriting criteria. Products should be designed to achieve reasonable borrower affordability and repayment.
- Loan pricing that complies with applicable State laws and reflects overall returns reasonably related to product risks and costs. The OCC views unfavorably

---

[9] Refer to Center for Financial Services Innovation, "2017 Financially Underserved Market Size Study", pp. 44–47, for revenue and volume data on pawn loans, online payday loans, storefront payday loans, installment loans, title loans, and marketplace personal loans.

[10] See OCC Bulletin 2018-14, "Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending" (*https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html*).

[11] Refer to OCC NR 2017–118.

an entity that partners with a bank with the sole goal of evading a lower interest rate established under the law of the entity's licensing State(s).

- Analysis that uses internal and external data sources, including deposit activity, to assess a consumer's creditworthiness and to effectively manage credit risk. Such analysis could facilitate sound underwriting for credit offered to consumers with an ability to repay but who do not meet traditional standards.
- Marketing and customer disclosures that comply with consumer protection laws and regulations and provide information in a transparent, accurate, and customer-friendly manner.
- Loan servicing processes that assist customers, including distressed borrowers. To avoid continuous cycles of debt and costs disproportionate to the amounts borrowed, timely and reasonable workout strategies should be used.
- Timely reporting of a borrower's repayment activities to credit bureaus. Borrowers should have the ability to demonstrate positive credit behavior, build credit history or rebuild credit scores, and transition into additional mainstream financial products.

The Pew Charitable Trusts praised the OCC's action when announced by saying the action encourages "the other Federal bank and credit union regulators to follow the Comptroller's lead and institute the necessary standards to ensure the development of safe and affordable small installment loans that will save millions of borrowers billions of dollars a year." The OCC also is working with Congress to encourage the banking sector to offer additional short-term, small-dollar lending products to meet consumer needs.

Enhancing BSA/AML Compliance

The BSA and AML laws and regulations exist to protect our financial system from criminals who would exploit that system for their own illegal purposes and from use of that system to finance international terrorism. Bank regulators, law enforcement, national security personnel, and bankers must continually adapt to increasingly sophisticated criminals and other illicit actors who take advantage of the Nation's banks and financial system. While regulators and the industry share a commitment to fighting money laundering and other illegal activities, the process for complying with current BSA/AML laws and regulations has become inefficient and costly. Banks spend billions each year to comply with BSA/AML requirements. We need to reform the BSA/AML to be more efficient while improving the ability of the Federal banking system and law enforcement to safeguard the Nation's financial system from criminals and terrorists.

In May, the Federal banking regulators met to discuss ideas on how to improve our approach to implementing BSA/AML laws and regulations and presented those recommendations to the Department of the Treasury and FinCEN.

There are several improvements that the OCC believes could be addressed through regulation and others that would need legislative relief. Opportunities include:

- Allowing regulators to schedule and scope BSA/AML examinations on a risk-basis and identifying ways to conduct associated examinations in a more efficient manner.
- Considering changes to the threshold requiring mandatory reporting of Suspicious Activity Reports (SARs) and currency transaction reports and simplifying reporting forms and requirements.
- Working with law enforcement to provide feedback to banks so that they understand how SARs and other BSA report filings are used and can provide the most useful information.
- Exploring the use of technologies to reduce reporting burden and provide more effective access and information to law enforcement and national security personnel.

I look forward to working with my fellow banking regulators, Treasury, FinCEN, law enforcement, and national security personnel in the coming months to identify changes we can implement to reduce the burden of complying with BSA/AML laws while also improving how we protect our financial system. I also look forward to working with Members of this Committee who are interested in improving the BSA/AML laws.

Simplifying Regulatory Capital and the Volcker Rule

Following the financial crisis, bankers, regulators, and policymakers responded by appropriately focusing on improving the quality and quantity of capital and liquidity

in the banking system. As a result, today's financial institutions have capital and liquidity near historic highs. At the same time, calculating regulatory capital has become too complex. Even some of the most seasoned bankers need the assistance of a capital expert to understand and explain how the various categories of capital are counted. This results in regulatory and business inefficiency and places an unnecessary burden particularly on well-capitalized community and midsize banks.

In late October 2017, Federal bank regulators proposed a rule intended to reduce burden by simplifying several requirements in the agencies' regulatory capital rule.[12] Most aspects of the proposed rule would apply only to banking organizations that are not subject to the "advanced approaches" in the capital rule, which are generally firms with less than $250 billion in total consolidated assets and less than $10 billion in total foreign exposures. The proposal would simplify and clarify a number of the more complex aspects of the existing capital rule. The Federal banking agencies received a number of comments on various aspects of the proposal and are working together to consider what changes to the proposal would be appropriate in light of the different ideas and suggestions provided in the comments. Additionally, one area of the proposal—the treatment of acquisition, development, and construction loans—has been superseded by the Economic Growth Act. As we move forward with our efforts to simplify and clarify our regulatory capital requirements, the agencies will, of course, make any changes necessary to conform our capital rules to the new law.

In April of this year, the OCC and the Board of Governors of the Federal Reserve System proposed a rule that would further tailor leverage ratio requirements to the business activities and risk profiles of the largest domestic firms.[13] Currently, firms that are required to comply with the "enhanced supplementary leverage ratio" are subject to a fixed leverage standard, regardless of their systemic footprint. The proposal would instead tie the standard to the risk-based capital surcharge of the firm, which is based on the firm's individual characteristics. The resulting leverage standard would be more closely tailored to each firm. Importantly, the Economic Growth Act includes a provision (section 402) that requires the agencies to make changes to the calculation of the supplementary leverage ratio for banking organizations engaged in custody, safekeeping, and asset servicing activities. As we move forward with the changes required by the new law, we will need to consider whether the proposed recalibration of the enhanced supplementary leverage ratio remains appropriate, or whether additional fine tuning will be necessary.

I also look forward to working with fellow regulators to update regulations to implement additional relief authorized in the Economic Growth Act. Among those provisions are section 201 which allows banks that exceed a "community bank leverage ratio" (tangible equity to average total consolidated assets of 8 percent to 10 percent) to be deemed to be in compliance with current leverage and risk-based capital provisions. This will greatly reduce regulatory burden for well-capitalized, qualifying institutions.

Similarly, the agencies have been working to simplify the Volcker Rule[14] to ease associated burden, particularly for those community and midsize banks that do not pose systemic risk to the Nation's financial system and typically do not engage in the type of activities that the statute was intended to address. I also applaud the changes made by the Economic Growth Act to reduce the number of banks subject to the Volcker Rule and want to thank the many Members of this Committee who supported this reasonable exemption.

For those entities that remain subject to the rule, the OCC is committed to adding clarity and reducing unnecessary burden, as appropriate. In August 2017, the OCC sought public comment about what should be done to improve the current regulation implementing the Volcker Rule[15] and specifically invited input on ways to tailor the rule's requirements and clarify key provisions that define prohibited and permissible activities. The agency also sought input on how the Federal regulatory agencies could implement the existing rule more effectively without revising the regulation. The OCC has used comments to inform its dialogue with other Federal regulatory agencies.

The OCC has worked collaboratively with the other Federal regulatory agencies responsible for the Volcker Rule to develop a proposed rule that would clarify and streamline the current regulation. These proposed changes focus on reducing the subjectivity, and associated uncertainty, of the current rule. A key objective is to provide clear lines that enable firms to quickly and easily determine whether activi-

---

[12] 82 FR 49984 (October 27, 2017).
[13] 83 FR 17317 (April 19, 2018).
[14] 12 U.S.C. 1851; 12 CFR 44.
[15] 82 FR 36692 (August 7, 2017).

ties are subject to the rule. In this regard, the proposal seeks to eliminate the test that looks to the subjective intent of a transaction for purposes of determining whether it is proprietary trading and to focus on objective factors. For example, a trading desk that operates within a prescribed profit and loss threshold would be presumed to be operating in compliance with the rule unless the appropriate agency determines otherwise.

In addition, the proposed rule focuses on appropriate burden reduction by seeking to calibrate the regulation to the type and level of risk presented. For example, a bank with only moderate trading activities would be eligible for streamlined versions of the market-making and hedging exemptions relative to a bank that has significant trading activities. For banks with the most limited trading activities, there would not be any ongoing obligation to demonstrate compliance, although the rule's substantive restrictions on proprietary trading and covered funds activities would still apply. We believe these changes will reduce burden, particularly for smaller and midsize banks that remain subject to the Volcker Rule following the recent statutory amendment. We believe these changes will also improve the agencies' implementation of the Volcker Rule by allowing regulators to focus on the activities that were at the core of the statutory prohibitions.

Each of the five agencies involved in writing the rules implementing the Volcker Rule has adopted the proposal, and I look forward to working with my fellow regulators to finalize changes to the Volcker Rule later this year.

Agency Effectiveness and Efficiency

Ensuring that the OCC operates as effectively and efficiently as possible allows the agency to succeed in its mission, to be a responsible steward of every assessment dollar collected, and to maintain a professional and inspiring workplace for the men and women who contribute to the economic security of our Nation by supervising its banks.

Since I arrived at the OCC, we have greatly improved the agency's decision-making processes. Over the years, the OCC had developed a centralized and bureaucratic approach to decision making that required multiple officials and many layers of review to approve examiner guidance, internal policies, and public issuances. We have 3 months of data that tell us that the change is paying dividends. The average total time for executive managers to review documents and agency decisions is now less than 8 days, down from an average of nearly 22 in calendar year 2017. The revised process also pushes decision making down to appropriate staff. Under the revised process, for example, the Comptroller's approval has been required on 54 percent of the documents issued by the agency, compared with 97 percent of documents reviewed at the agency in 2017. This more efficient approval and coordination process reduces waste and allows more resources to be committed to executing decisions rather than coordinating their approval. We continue to look for opportunities to make that process even more efficient and reduce the time even further.

The agency has also focused on reducing its costs through gaining efficiencies and making better use of technology. When I arrived at the OCC, I was greeted with 18-inches of three-ring binders for briefings the next day. Executives would arrive to meetings with their binders and coordination packages would be copied and bound for each required signature. Today, we have significantly reduced paper received by the front office and coordinate all materials electronically. Executives largely rely on electronic communication, and staff share information and document decisions online. Moving to an online-only system has saved an incalculable amount of paper and time—time spent under the old process assembling and delivering paper packages for each reviewer. Now, because comments are now provided electronically, we have eliminated the need to copy and scan comments by reviewers, decipher handwritten notes, and track down the commenter when follow-up is required. Recordkeeping is accomplished more quickly because all the documents are electronic and easily saved to the initiating office's system of records.

The agency is also mindful of our responsibility to get the most out of every dollar assessed to the institutions we supervise and is working to reduce costs wherever it makes sense. At the beginning of fiscal year 2018, the OCC supervised 1,347 institutions and had authorized 3,945 full-time employees. After I became Comptroller, OCC management conducted a thorough budgetary review and identified efficiencies to fulfill our mission and lower our expected expenses by reducing the number of additional personnel we planned to hire during the year, prioritizing our work, completing that work more efficiently, and taking a closer look at actual versus planned spending for personnel travel and contracts. That effort reduced the amount we planned to spend in fiscal year 2018 by nearly $70 million, or about 5 percent of our expected costs.

As the agency looks ahead to fiscal year 2019, we will think even more critically and creatively about what we need to do our jobs successfully and reduce our anticipated costs further. There are many ways to save money and operate more efficiently and effectively, and currently none of them involve a reduction-in-force through layoffs or buyouts. As the agency plans its spending for fiscal year 2019 and beyond, we will seek to optimize our real estate strategy by shrinking our physical footprint and taking advantage of technology to reduce our costs. Our revised spending plan for the remainder of fiscal year 2018 and the budgets I authorize in the future will continue to provide the resources necessary for the agency to succeed in its mission and to provide employees an engaging and fulfilling work experience. The agency will continue to invest in training and career development while providing a professional, supportive workplace so that the agency can attract and retain the experience and talent it needs.

Conclusion

Thank you for the opportunity to provide my views on the condition of the Federal banking system, risks facings that system, and my priorities as Comptroller. I look forward to working with Members of this Committee, my fellow regulators, and the seasoned team at the OCC to address these important issues facing our Nation's banks and to further strengthen the Federal banking system.

I again congratulate the Chairman on his leadership and I thank the Committee Members for their important and formative work resulting in common-sense relief for community and midsize banks that was passed into law last month.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM JOSEPH M. OTTING

Q.1. Under your leadership, has the OCC experienced any reductions in staffing?

A.1. At the end of fiscal year 2017, the OCC employed 3,956 staff. As of May 31, 2018, the OCC employed 3,838 staff.

Q.2. If so, what reductions were the result of attrition versus other forms of staff reduction?

A.2. Fluctuation in the number of employees reflects seasonality and ordinary attrition. The OCC has not conducted and has no plans to conduct a reduction in force or other forms of layoffs. The agency does intend to operate as effectively and efficiently as possible with sufficient staff to fulfill its mission.

Q.3. Is the OCC anticipating future reductions in staffing? If so, please explain the number of staff reductions implemented or expected, and please list the locations of the staff reductions, including the division within the OCC and the geographic location.

A.3. The OCC is in the process of developing its strategic plan for fiscal years 2019–2023 and its budget for fiscal year 2019. The agency intends to operate more effectively and efficiently in the future. The budget and staffing levels will be set sufficiently to fulfill the agency's important mission, but these levels have not yet been determined for fiscal year 2019 and beyond.

Q.4. Also, please describe any other significant cost or expense reduction measures, including any reductions that could impact oversight of financial institutions. Finally, please describe any Administration recommendations or requests to reduce staffing or costs.

A.4. The OCC is in the process of developing its strategic plan for fiscal years 2019–2023 and its budget for fiscal year 2019. The agency intends to operate more effectively and efficiently in the future. The budget and staffing levels will be set sufficiently to fulfill the agency's important mission, but these levels have not yet been determined for fiscal year 2019 and beyond. Finally, the Administration has neither instructed nor advised the OCC to reduce staffing or costs.

Q.5. Does discrimination in housing exist? Does discrimination in banking exist? Does discrimination in lending exist?

A.5. I do not condone discrimination and believe more can be done to provide credit and banking services mare fairly. This is one of the reasons I support changes to the Community Reinvestment Act (CRA) to encourage more lending and investment activity in our communities and to expand banking services to more consumers and businesses, particularly in low- and moderate-income communities. One of the reasons the CRA was enacted was to address redlining activity in the United States. Even today, there are observable differences in the approval rates and distribution of housing, banking services, and lending by race and other attributes.

The OCC employs the tools and authority it has to combat discrimination. Examiners are required to complete a fair lending risk assessment for all OCC-supervised institutions during each supervisory cycle to guide the fair lending examination strategy for each

bank. Using a risk-based process to identify banks and focal points for fair lending examinations, the Home Mortgage Disclosure Act (HMDA) screening process is intended to supplement the fair lending risk assessments. Using a combination of statistical analysis based on the HMDA data as well as a review of the data collected using the OCC Fair Lending Risk Assessment Tool, the OCC identifies banks that exhibit higher fair lending risk for which a fair lending examination is required within the following fiscal year. In instances where the OCC has identified evidence of redlining or discriminatory practices, it has taken supervisory action, and where appropriate, made referrals to the Department of Justice and Department of Housing and Urban Development in accordance with OCC policy.

Q.6. In your testimony, you noted that you diversified OneWest's Board. Please provide a list of Board members, along with each individual's gender, race, and ethnicity, for each of the years you were employed at the bank.

A.6. As discussed at the hearing, during my tenure at OneWest, we diversified the Board of Directors from the one that was in place when I arrived. Public information about the board members of CIT Bank, N.A., is available on S&P Global at *https://platform.mi.spglobal.com/web/client?auth=inherit#company/officers?id=4227407*.

Q.7. In your testimony, you noted that you were "not aware" of an "old boys' club" in the banking industry.

A.7. I am not.

Q.8. What does research suggest regarding barriers to inclusion for women and persons of color in the banking industry?

A.8. While the banking industry is generally a leader in employee inclusion and diversity, current research suggests women and people of color continue to be underrepresented in the banking industry as a whole, and we should continue to encourage their participation.

Q.9. Do you believe you would be serving as Comptroller of the Currency if you did not have a prior relationship with Secretary Mnuchin?

A.9. I serve the country as Comptroller of the Currency because the President nominated me and the Senate reviewed my nomination and qualifications and voted to confirm me to this position.

Q.10. The Director of the Office of Minority and Women Inclusion (OMWI) at the OCC directly reports to the Comptroller, per Section 342 of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010. How many times have you met with the OCC OMWI Director? What specific objectives within the purview of the OMWI do you plan to accomplish during your tenure? What is your timeline for meeting your goals?

A.10. I meet at least monthly and more often as the need arises with the OCC's Executive Director for Workforce Diversity and Inclusion, Joyce Cofield. She and I also attend diversity meetings and events together, regularly.

More diversity broadly at senior level positions at the OCC is one objective. In addition, I am particularly committed to enhancing the participation of more Hispanics at the OCC in terms of overall representation throughout the agency as well as at the most senior leadership levels to address the low participation of Hispanics in our workforce. Women also are underrepresented in the examiner discipline and we are considering ways to address this. Finally, I am proposing a summer internship program for 2019 in which local high school students from low- and moderate-income areas could participate to increase their awareness of career opportunities at the OCC.

Q.11. According to the OCC's most recent No FEAR Act disclosure, the OCC will receive 52 EEO complaints in 2018. In comparison, the OCC received 23 EEO complaints in 2017, 18 in 2016, 15 in 2015, and 17 in both 2014 and 2013. What explains the jump in EEO complaints during your tenure?

A.11. The question incorrectly projects the number of complaints for 2018. The accurate projection is 26 not 52, based on the 13 complaints filed from October 1, 2017, to March 30, 2018. This figure is not a significant increase over 2017 and is still a low number for an agency of our size. I am committed to maintaining a workplace that is free from fear, harassment, and discrimination. The agency has made a concerted effort to make employees aware of all of the channels they have to voice concerns.

Q.12. The Comptroller has the discretion to waive confidential supervisory information disclosure restrictions generally applicable under 12 CFR Part 4 if the Comptroller determines such disclosure "may be necessary or appropriate." As such, will you use this discretion to make additional information public regarding the OCC's horizontal review of sales practice violations? If not, why not?

A.12. I have previously provided a public summary of the OCC's horizontal review of sales practices. Information that remains confidential supports ongoing supervisory activity. Release of any additional confidential supervisory information could prejudice or adversely affect future supervisory actions.

Q.13. Please list the 40 national banks subject to the OCC's horizontal review of sales practice violations, which concluded in the fourth quarter of 2017.

A.13. The banks reviewed included the largest national banks and Federal savings associations with significant consumer sales activity.

Q.14. Why did the OCC select a "look-back" period of 3 years for the horizontal review given that Wells Fargo admitted that the bank's unauthorized account scandal dated back to the year 2003?

A.14. The primary objective of the review was to determine whether systemic issues were occurring in the Federal banking system related to unauthorized account openings. Three years were sufficient for that purpose. While the look-back period was set by my predecessor, I agree with this timeframe.

Q.15. Your testimony noted that the OCC sent final letters to bank CEOs upon the conclusion of the horizontal review on June 4th.

Please provide the Committee with a sample of a final letter sent to a bank CEO.

A.15. Our formal communications with the institutions we supervise are confidential supervisory documents. However, a summary of our horizontal review was provided to the Chairman and Ranking Member in a letter dated June 11, 2018. The information provided in the June 11 letter was similar to that contained in the final letters to bank Chief Executive Officers.

Q.16. You noted in testimony that the OCC did not find pervasive or systemic issues in regard to improper account openings. Please explain why you view the OCC's findings to be nonsystemic.

A.16. Based on the hundreds of millions of accounts opened by the reviewed banks during the 3-year look-back period, neither the volume of accounts identified with issues nor the variety of root causes for those issues constituted a systemic issue.

Q.17. Please provide a copy of each of the five industrywide matters requiring attention.

A.17. The matters requiring attention (MRA) are confidential supervisory information. They generally involved deficiencies in policies, procedures, and controls as described in my June 11, 2018, letter to the Committee Chairman and Ranking Member.

Q.18. (MRAs) the OCC issued as a result of the horizontal review of sales practice violations. If the OCC intends not to provide such documentation, what is the rationale for keeping industrywide information private? To what extent have the MRAs been addressed by the banking industry?

A.18. The MRAs are confidential supervisory information. They generally involved deficiencies in policies, procedures, and controls as described in my June 11, 2018, letter to the Committee Chairman and Ranking Member. The MRAs support our ongoing supervisory activities. Release of any additional confidential supervisory information could prejudice or adversely affect future supervisory actions. The OCC is monitoring banks' actions to correct issues identified in the horizontal review, and approximately 20 percent of the MRAs have been remediated to date. Failure to correct the issues in a timely and effective manner may result in additional supervisory actions, including public enforcement actions if warranted.

Q.19. Please describe in detail the methodology used to conduct the horizontal review. How did the OCC review 500 to 600 million recently opened accounts, and determine that only 20,000 were unauthorized? What was the sample size of the accounts reviewed? Did OCC examiners inspect account opening documentation or files for signatures? How did OCC supervisors determine if signatures were legitimate?

A.19. The general methodology used to conduct the horizontal review was described in my June 11, 2018, letter to the Committee Chairman and Ranking Member. The review was conducted in three phases. Phase 1 determined whether systemic or bank-specific issues exist with regard to bank employees opening accounts on behalf of individual and small business customers without con-

sent. In phase 2, examiners evaluated sales goals, strategies, incentive compensation, and quota programs to determine if they appropriately balance sales and revenue targets with risk management and customer satisfaction. Phase 3 included large and midsize insured depository institutions with assets greater than $50 billion to determine if their risk management framework effectively controls risks associated with sales practices and incentive compensation programs. Specific review methods varied from bank to bank based on the risk characteristics and business portfolio of that bank. The 500 to 600 million number represents an estimate of the total number of accounts opened by the participating banks during the 3-year, look-back period.

Q.20. How did the OCC determine that of 20,000 authorized accounts, half were opened inappropriately and half were merely missing documentation? How did the OCC distinguish between those two categories?

A.20. The approximately 20,000 accounts with issues were identified through the 3-year look-back of accounts and supporting documentation used by the banks to open the accounts. More than half of the 20,000 accounts involved issues unrelated to the initial account authorization. In those instances where proof of authorization could not be provided, we determined the account merely lacked customer consent documentation if the consumer activated or used the product since opening the account. In other cases, known issues related to recordkeeping or system deficiencies were determined to be causes of poor or incomplete documentation.

Q.21. In a briefing with Senate staff conducted on June 8, 2018, the Senior Deputy Comptroller for Large Bank Supervision indicated that the CARD Act of 2009 (Public Law 111–24) may have contributed to banks' creating unauthorized accounts. Why does the OCC believe that the CARD Act led to the creation of unauthorized bank accounts?

A.21. To clarify, the CARD Act added a signature requirement for applications to open a credit card account by a consumer who is under 21, which we understand some banks interpreted as requiring signatures only in those limited circumstances. Credit cards were the products most often associated with concerns regarding unauthorized account openings. However, banks involved in the horizontal review have implemented more robust account opening and closing policies, procedures, and controls designed to reduce the potential for inappropriate activities or unauthorized account openings.

Q.22. Less than a month into your tenure at the OCC, you reversed a decision by former Comptroller Curry to bring bank examiners to OCC offices instead of keeping them on-site at the banks they supervise. At the hearing, you said that you made this decision to keep bank examiners on-site based on your 35 years of experience in the banking industry. It was unclear, however, what other perspectives, such as those of your fellow regulators, you considered in making this decision.

Please describe the process for making this decision.

A.22. As I discussed at the hearing, I relied upon my experience and judgment to make the decision. The value of retaining on-site examiners outweighs any benefit of removing them from bank premises. Open, effective communication and early identification of concerns are the keys to effective supervision, both of which are supported by an on-site presence. My decision is further supported by the practices at the OCC to rotate examiners-in-charge after 5 years, to provide oversight by Deputy Comptrollers assigned to OCC Headquarters, and to depend on off-site lead experts who provide a horizontal view of risks and practices across the agency. Also, there has been no study to date regarding the cost of moving examiners out of banks or showing that moving examiners would reduce the perception of regulatory capture.

Q.23. Did you solicit the views of or consult any individuals at (i) the OCC; (ii) the Federal Reserve Bank of New York; (iii) any other banking regulatory agencies; (iv) any industry groups; (v) any banks; or (vi) any groups representing the interests of consumers? If so, please describe these communications and provide any copies of the communications to the Committee.

A.23. No. I relied upon my experience and judgment to make the decision. My decision is further supported by the practices at the OCC to rotate examiners-in-charge after 5 years, to provide oversight by Deputy Comptrollers assigned to OCC Headquarters, and to depend on off-site lead experts who provide a horizontal view of risks and practices across the agency. Also, there has been no study to date regarding the cost of moving examiners out of banks or showing that moving examiners would reduce the perception of regulatory capture.

Q.24. Did you or any OCC staff conduct an economic or other analysis to support the decision? If so, please provide a copy of any such analysis to the Committee.

A.24. No, nor was there such a study conducted to determine the effect of moving examiners out of bank space to support the original recommendation in 2013.

Q.25. At the hearing, when asked why you purchased stock in financial companies after your nomination to lead the OCC, including banks regulated by the OCC, you noted that you played no role in these decisions, and that they were made by a third-party money manager. Given the potential for at least the appearance of a conflict of interest—if not a conflict of interest itself—why not instruct your money manager to place all your holdings in a passive investment, such as a broad-based index fund, or a blind trust? Wouldn't that better avoid the appearance of a conflict of interest?

A.25. I abided by all of the available guidance and ethics standards applicable to this and previous Administrations, and continue to do so.

Q.26. The OCC's proposal to weaken leverage limits for the biggest banks would, according to the OCC, reduce the required capital for the eight banks covered by the proposal by $121 billion. This reduction would increase the likelihood that such banks fail and would likewise increase the magnitude of harm caused by their failure,

potentially leaving taxpayers with the bill and increasing overall risks to financial stability.

A.26. The proposed changes would retain a meaningful calibration of the Enhanced Supplemental Leverage Ratio (eSLR) standards while not discouraging firms from participating in low-risk activities. The changes correspond to changes in the leverage ratio standard published by the Basel Committee on Banking Supervision in December 2017. It is unlikely that banks would release $121 billion in Tier 1 capital because of other binding constraints on liquidity and capital. The proposed eSLR standards along with current risk-based capital standards and other constraints applicable at the holding company level would continue to limit the amount of capital that global systemically important banking organizations (G–SIB) could distribute to investors, thus supporting the safety and soundness of G–SIBs and helping to maintain financial stability. I look forward to reviewing comments received on the proposal.

Q.27. Please provide a bank-by-bank breakdown of these reductions in capital across the eight national banks impacted by the proposal supervised by the acc.

A.27. As indicated above, it is unlikely that the national banks supervised by the OCC and affected by the proposal would release a combined total of $121 billion in Tier 1 capital. Other binding constraints on liquidity and capital, combined with current risk-based capital standards and other constraints applicable at the holding company level would continue to limit the amount of capital that these banks could release, thus supporting their safety and soundness and helping to maintain financial stability.

Q.28. What benefits would the OCC's proposal create?

A.28. The changes to the eSLR requirements proposed by the Federal Reserve and the OCC would tailor the requirement to the business activities and risk profiles of the largest banks. The proposed changes would retain a meaningful calibration of the eSLR while not discouraging banks from participating in low-risk activities. With the proposed modifications, the eSLR would serve as a backstop to the risk-based measures rather than the primary binding constraint. In addition, the proposed changes are aligned with recent changes to the leverage standard published by the Basel Committee on Banking Supervision in December 2017. Aligning with the Basel standard creates a more level international playing field, reducing disadvantages faced by U.S. G–SIBs in competing with international counterparts.

Q.29. What costs would the OCC's proposal impose (e.g., risks to the Deposit Insurance Fund, or decreased financial stability)?

A.29. The change to the eSLR requirements is being proposed by the Federal Reserve and the OCC.[1] We are unable to predict exactly how banks will choose to respond to these changes in regulatory capital under the rule and therefore to quantify the costs of the proposal. As part of the preliminary assessment of the potential effect of the rulemaking, OCC staff concluded that banks might re-

[1] See *https://www.occ.gov/news-issuances/news-releases/2018/nr-la-2018-36a.pdf.*

spond to a decrease in minimum required regulatory capital in three ways. First, all else equal, banks affected by the rule will have improved capital ratios, and they can elect to operate with these higher capital ratios. Second, if capital at the higher ratios exceeds regulatory minimums and the bank's internal capital requirements, the bank con choose to return some of this capitol to shareholders in the form of stock buy-backs or increased dividend payouts. Third, banks can choose to increase their assets until they achieve their targeted capitol ratio.

Q.30. How did the OCC determine that the benefits of its proposal would exceed the costs? Did the OCC perform any quantitative analyses? If so, please provide a copy of any such analysis.

A.30. The change to the eSLR requirements is being proposed by the Federal Reserve and the OCC.[2] Staff at the OCC conducted a preliminary assessment of the potential effect of the rulemaking. Staff did not quantify the potential benefits of the proposal, however, as part of the assessment OCC staff determined that the proposed rule would help alleviate any unintended distortive effects of the SLR, particularly for custody banks, and address concerns that the eSLR is punitive because it does not make accommodations for low-risk business models or low-risk assets such as central bank deposits and U.S. Treasury securities. Second, the proposed rule would retain the original purpose of the SLR which is to be a non-risk-based measure of a banking organization's overall leverage, including off-balance-sheet exposures. Third, the proposal would make the institution's eSLR buffer proportional to an institution's systemic riskiness as measured by its G–SIB buffer. This proportional approach is in alignment with recent Basel III reforms endorsed by the Basel Committee on Banking Supervision's oversight body, the Group of Central Bank Governors and Heads of Supervision (GHOS), reducing disadvantages faced by U.S. G–SIBs in competing with international counterparts.

Q.31. Asked during June 13th House Financial Services Committee hearing whether the current Volcker Rule has unacceptably "chilled" market-making functions, you replied: "I don't believe so." If the Volcker Rule is not unacceptably hurting market-making, then is the only benefit to the Volcker proposal a reduction in compliance costs?

A.31. Compliance cost and unnecessary burden on institutions that do not engage in the type of activities that section 13 of the Banking Holding Company Act (Volcker Rule) was intended to restrict are reason enough to revise the Volcker Rule. However, other reasons exist, which include providing greater clarity on the scope of activities that are covered by the rule and clarifying the compliance responsibilities for covered entities.

Q.32. How did the OCC determine that this reduction in compliance costs, or any other benefits, would exceed the benefits to financial stability and protection of the Deposit Insurance Fund that the current Volcker Rule provides? Did the OCC perform any quantitative analyses? If so, please provide a copy of any such analysis.

---

[2] See *https://www.occ.gov/news-issuances/news-releases/2018/nr-la-2018-36a.pdf.*

A.32. The OCC performed an analysis consistent with the Unfunded Mandates Review Act to evaluate whether the mandates imposed by the proposal may result in an expenditure of $100 million or more by State, local, and tribal governments, or by the private sector, in any one year. The OCC also performed an analysis pursuant to the Regulatory Flexibility Act on whether the proposal will have a significant economic effect on a substantial number of small entities. The OCC determined the proposal would neither result in expenditures in excess of $100 million, nor impact a substantial number of small entities. A copy of the OCC's analysis is attached.

Q.33. How does the OCC plan to surveil banks with below $100 billion in assets for resiliency to economic shocks in the absence of stress testing? How does the OCC plan to test for correlated risks across this cohort of banks?

A.33. The OCC's examinations of the institutions we supervise will continue to include evaluations of capital adequacy and stress testing. OCC Bulletin 2012-16, "Guidance for Evaluating Capital Planning and Adequacy," provides our examiners and the industry with our expectations in this area. This bulletin addresses the expectation for these institutions to "have a forward-looking assessment of the bank's capital needs, including capital needs that may arise from rapid changes in the economic and financial environment." Similarly, OCC Bulletin 2012-14, "Stress Testing–Interagency Stress Testing Guidance" addresses sound practices for effective stress testing. Further, our OCC subject matter experts monitor for correlated risks across product types and economic conditions.

Q.34. Please provide a list of all OCC rulemakings mandated by S. 2155 and an expected timeline of when the OCC will propose the required rulemakings.

A.34. The OCC expects to be engaged in at least 11 rulemakings to implement the following sections of the Economic Growth, Regulatory Relief, and Consumer Protection Act (Economic Growth Act):

Section 103. Exemption From Appraisals of Real Property Located in Rural Areas

Section 201. Capital Simplification for Qualifying Community Banks

Section 203. Community Bank Relief

Section 204. Removing Naming Restrictions Section 205. Short Form Call Reports

Section 206. Option for Federal Savings Associations To Operate as Covered Savings Associations

Section 210. Examination Cycle

Section 214. Promoting Construction and Development on Main Street

Section 401. Enhanced Supervision and Prudential Standards for Certain Bank Holding Companies

Section 402. Supplementary Leverage Ratio for Custodial Banks

Section 403. Treatment of Certain Municipal Obligations

The OCC can issue a rule to implement section 206, providing greater flexibility for Federal savings associations, on its own. The remaining rulemakings are joint or coordinated rulemakings and will require interagency work. We are currently engaged in discussions with the other regulators to develop timelines for these rulemakings.

Q.35. In your Senate testimony, regarding the OCC's 2013 leveraged lending guidance, you noted that you've emphasized to OCC examiners that "guidance is guidance and rules are rules . . . so I think we've taken an aggressive posture to make sure that that is known within the agency." The OCC has not rescinded this guidance, and yet you've downplayed its importance as a supervisory directive. How are OCC examiners currently using the 2013 leveraged lending guidance in their exams? How does this differ from how it was used in 2013 through April 2017?

A.35. Supervisory guidance outlines safe-and-sound banking and risk management principles and promotes transparency and consistency in the OCC's supervisory approach across banks. Guidance does not impose legally binding constraints on banks. The agency has stressed that examiners should focus on the deficient practice and the potential for the deficient practice to adversely affect the bank's condition or result in violations if not addressed. In some instances in the past, examiners may have inappropriately relied on guidance alone when citing compliance requirements and deficiencies. We have communicated extensively to OCC staff the differences between regulations and guidance.

Q.36. Regarding OCC deposit advance products guidance issued in 2013, you noted that, "banks basically exited that market, and for the life of me, I don't understand if you take, you know, the banks out of a space that were providing a critical source of capital, that it didn't end up being worse for consumers and they had less choice." Please provide any studies or research indicating that consumers were harmed following the issuance of this 2013 guidance and had less choice.

A.36. An example of analysis in this area was conducted by the Pew Charitable Trust.[3] The Board of Governors of the Federal Reserve System also published a study in 2016 that stated nearly half of adults were unprepared to cover an emergency expense of $400.[4] The general logic is that if you dramatically decrease supply for a product without reducing demand, the price of that product increases and terms often become less consumer friendly.

---

[3] See "Regulators Should Let Banks Get Back to Small-Dollar Loans", The Pew Charitable Trusts. January 7, 2016 (*http://www.pewtrusts.org/en/about/news-room/opinion/2016/01/07/regulators-should-let-banks-get-back-to-small-dollar-loans*) and "From Payday to Small Installment Loans", The Pew Charitable Trusts. August 11, 2016 (*http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/from-payday-to-small-installment-loans#O-overview*).

[4] See "Report on the Economic Well-Being of U.S. Households in 2015". Board of Governors of the Federal Reserve System. May 2016 (*https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf*).

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCOTT FROM JOSEPH M. OTTING

Q.1. I think the Community Reinvestment Act serves a valuable purpose. It isn't perfect . . . but few things are. That said, the Administration is on the right track in considering some changes to how we implement that law. Let's face it the CRA was first enacted in 1971. A lot has changed since then.

I want to focus your attention on the Opportunity Zones that tax reform created. We've got about 50 million Americans living in economically distressed communities around the country. These folks have a lot of potential, it's just the matter of unlocking it.

That's why my Investing in Opportunity Act directed the Treasury Department and all 50 governors to designate "Opportunity Zones" and invite more private investment into the places that need it the most.

So there's a shared objective with the CRA-increasing economic activity in underserved communities. To me, it would make a lot of sense to incorporate these Opportunity Zones with the CRA. Please answer the following with specificity:

Are you considering broadening CRA-eligibility to investments in Opportunity Zones? If so, could we give financial institutions CRA-credit for making such investments?

A.1. I would welcome considering making investments in Opportunity Zones eligible for CRA credit.

Q.2. What's your timeline on some of these proposed changes to the CRA?

A.2. I am working on an interagency basis with the intent to publish an ANPR as soon as possible. Comments from an ANPR may then inform an NPR, which is typically followed by a final rule.

I would like to bring attention to a subject we have discussed in the past nonbank SIFI designations. Secretary Mnuchin and I agreed on the perfect analogy for the designation process how it stands: It is like getting a speeding ticket in a neighborhood with no speed limit signs. I know the Administration is reforming the process. That aside, it still does not make sense to me that a group of bank regulators like you are making designation decisions for insurance firms. It is not that you are not bright folks—it is just that banking and the business of insurance are totally different.

Q.3. I hope the Administration keeps that in mind as it continues with reforming FSOC. I'm concerned that implementation of the Volcker Rule as it stands could dramatically slow down or even halt capital investments in the financial services sector, despite enactment of S. 2155, Section 203. The last thing we should do is discourage capital investments in the lending arena that do not pose a risk to insured deposit funds, which is what the Volcker Rule was designed to protect against.

Do you share this concern in regards to implementation of the Volcker Rule? If so, what is the OCC doing to rectify the situation?

A.3. The recent proposed changes to the Volcker Rule and the changes included in the Economic Growth Act would make significant improvement to the implementation of the rule by maintaining core prohibitions and protections while reducing burden on

banks that do not engage in the type of activities that section 13 of the Bank Holding Company Act (the Volcker Rule) was designed to restrict and providing greater regulatory clarity for all banks. I look forward to reviewing the comments received on the proposed changes to the Volcker Rule.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON FROM JOSEPH M. OTTING

Q.1. S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act was signed into law last month. Senator Jones and I were pleased that S. 2155 included our provision that clarified rules on High Volatility Commercial Real Estate (HVCRE), providing much needed, common-sense relief for acquisition, development or construction (ADC) loans. We're pleased that lower-risk loans and good business practices are no longer being penalized by vague, counterproductive regulations.

As you are no doubt aware, those changes were effective immediately, and they supersede contrary provisions of the current HVCRE rule. As a result, the HVCRE rule currently on the books is inconsistent with the law.

What steps are the OCC and the other Federal banking agencies taking to conform the HVCRE rule to what the law requires?

A.1. The OCC is working with the Federal Reserve and the FDIC to implement the new statutory requirements. With respect to HVCRE, the agencies noted that a depository institution would immediately be permitted to, consistent with the statute, risk-weight at 150 percent only those commercial real estate exposures it believes meet the statutory definition of an HVCRE ADC loan. When reporting HVCRE exposures on Schedule RC-R, Part II of the Consolidated Reports of Condition and Income (Call Report), depository institutions may use available information to reasonably estimate and report only HVCRE ADC loans. Depository institutions may refine these estimates in good faith as they obtain additional information but will not be required to amend previously filed regulatory reports as these estimates are adjusted. Alternatively, a depository institution may also continue to report and risk-weight HVCRE exposures in a manner consistent with the current instructions to the Call Report, until the agencies take further action.

Q.2. What are you planning to do in the meantime to assure banks that you and the other Federal banking agencies will not enforce the current rule in a manner inconsistent with this legislation?

A.2. The OCC together with the Federal Reserve and FDIC issued a Statement Regarding the Impact of the Economic Growth Act which addresses how the agencies plan to enforce the HVCRE requirements until a rule is finalized. See *https://www.occ.gov/news-issuances/news-releases/2018/nr-ia-2018-69a.pdf*.

Q.3. The OCC's supervisory manual makes it clear that there is a difference between, on the one hand, a Matter Requiring Attention (MRA) which is based on a violation of law, and, on the other hand, an MRA which is based on the local examiner's opinion of actions which the bank might take to improve the its ability to deal with future, hypothetical concerns or threats.

Will the OCC make it dear that the first kind of MRA is compulsory and could be subject to an enforcement action, and the latter is not, but rather a type of safe harbor or best practice?

A.3. The OCC uses MRAs to communicate the OCC's concern with a bank's deficient practices. In addition to a practice that results in a violation of law or regulation, deficient practices also include bank practices that deviate from sound governance, internal control, or risk management principles, and have the potential to affect the bank's condition if not corrected. The OCC's MRA policies indicates that MRAs are not used to communicate best practices or offer enhancements to a bank's practices that are not deficient.

Examiners may discuss recommendations for best practices or enhancements with banks informally; the OCC does not track such recommendations or include them in the report of examination, and there is no expectation for bank management to take action in response to recommendations. The OCC's Office of Enterprise Governance and the Ombudsman, which operates independently from the bank supervision process, maintains a bank appeals process. Banks may appeal agency decisions through this process, including material supervisory determinations such as MRAs, compliance with enforcement actions, or other conclusions in the report of examination.

Q.4. Yes or no, can an OCC examiner issue a "Matter Requiring Attention" to a bank for not following agency guidance that has not been subject to review under the Congressional Review Act?

A.4. No. Agency guidance alone does not have the same force and effect as a statute or regulation. Guidance generally outlines safe-and-sound banking or risk management principles and promotes transparency regarding the agency's supervision. No single risk management system works for all banks. Therefore, examiners assess each bank's risk management consistent with the bank's individual circumstances and risks. MRAs focus on the deficient practice and its potential to adversely affect the bank's condition or result in violations if not addressed. Referring to supervisory guidance may assist bankers in implementing sound risk management principles for certain activities, depending on the bank's circumstances.

Q.5. Senator: In Acting Comptroller Noreika's letter on the GAO determination that the joint agency guidance on leveraged lending constituted a rule under the Congressional Review Act (CRA) and therefore must be submitted to Congress for review as required by law, the OCC acknowledged that guidance cannot be used to create a legal obligation. While it seems the OCC leadership is on its way to complying with the law under the CRA, it has been brought to my attention that this has not changed the mindset of bank examiners.

To ensure bank examiners, and as importantly, bank compliance officers, understand that guidance is not legally enforceable, would you consider including a notice in examination and supervisory handbooks making clear that guidance cannot be the basis of enforcement actions?

A.5. We have communicated extensively with our examiners the important distinction between supervisory guidance and regula-

tions. Supervisory guidance does not have the force and effect of law or regulation, but provides transparency about the factors the OCC considers when exercising its supervisory authority. Examiners will continue to base their criticism of a supervised institution on the institution's deficient practices or its failure to comply with a specific law or regulation.

Q.6. Senator: In today's economic environment, a growing number of Americans are having trouble making ends meet. The Federal Reserve found nearly half of the country could not cover a $400 emergency expenditure, and many have few choices to turn to for help. Banks previously offered the deposit advance product (DAP) to help existing customers with proven income streams meet their critical needs, but in 2013 both the FDIC and OCC effectively regulated banks out of this space, pushing customers into the less regulated payday loan market.

Given the need for small-dollar credit and the benefit of permitting access to product from a well-regulated industry, will you revisit the 2013 guidance to allow responsible actors/banks to reenter this market?

A.6. The OCC rescinded that guidance in October 2017.

Q.7. Good actors and responsible banks/credit unions have left the small-dollar market as a result of overregulation: Where do consumers go to make ends meet considering this gap in the market?

A.7. I agree that guidance perceived as regulation caused certain banks to stop making demand-deposit advance loans in the short-term, small-dollar space, and no alternatives were apparently pursued by banks to service this space. As a result of the reduced supply, costs and features became less consumer friendly as consumers turned to available sources for such credit-payday lenders, check cashers, pawn shops. We need to do more as a Nation to encourage institutions to responsibly meet this consumer need. On May 23, 2018, the OCC issued a bulletin encouraging banks to offer responsible short-term, small-dollar installment loans and to remind banks of the core lending principles for prudently managing the risks associated with offering short-term, small-dollar installment lending programs. See *https://occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html*.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM JOSEPH M. OTTING

Q.1. Are banks restricted from providing capital and credit to businesses because of limitations of providing this capital and credit under various fund structures? Does the current covered fund structure limit this availability of capital and credit? How do you plan on narrowing this definition so that banks can engage in the lending and capital injection that continues to grow and stimulate the economy?

A.1. The Volcker Rule (section 13 of the Bank Holding Company Act) restricts banking entities from engaging in certain fund activities and investments. The NPR issued by the OCC, Federal Reserve, FDIC, Securities and Exchange Commission and Commodity Futures Trading Commission (the Agencies) solicits comments on

whether the regulatory provisions implementing this statutory provision—in particular the regulatory "covered fund" definition—has been imprecise and whether that has led to unintended consequences. The NPR requests comment on both the "base definition" of covered fund in section 10(b) of the regulation as well as potential exclusions to this base definition. Banks may continue to engage in fund activities and investments that are not covered by the Volcker Rule and are otherwise permissible for national banks. I look forward to exploring this issue further together with my counterparts at the other Agencies. The Agencies welcome specific examples from commenters an the types of activities that have been limited by the regulatory definition.

Q.2. The Volcker Rule was never intended to penalize bank lending, it was intended to reduce risky activities of banks, specifically proprietary trading. Under the current rule, banks are restricted from providing credit via various partnership structures.

Is that correct?

A.2. See response to Question 1 above.

Q.3. If the above is correct, does the OCC plan on addressing these limitations to promote lending?

A.3. See response to Question 1 above.

Q.4. Do you believe that the current definition of a covered fund is too broad?

A.4. See response to Question 1 above.

Q.5. If so, does the OCC plan on narrowing that definition so that the unintended consequences are eliminated?

A.5. See response to Question 1 above.

Q.6. I am aware of multiple examples where banks have passed on opportunities to engage in lending activities to entities since it was determined that such engagement would meet the current covered fund definition due to the recipients' business structure or strategy. However, to me, these examples do not appear to be consistent with the original intent of the Volcker Rule, and should not meet the definition of what a covered fund is.

Are you aware of such scenarios?

A.6. I am not familiar with specific examples you might be referencing and welcome the opportunity to discuss them with you.

Q.7. Do you think that regulators should limit a bank's ability to provide services to companies through a fund structure limitation? Are there scenarios where we would want to limit a bank's ability to provide such services via a fund structure?

A.7. See response to Question 1 above.

Q.8. Why would we allow a bank to provide debt or equity financing directly from its balance sheet to a company, but restrict them by providing financing through a covered fund?

A.8. See response to Question 1 above. Even absent the Volcker Rule, national banks are generally restricted in their ability to provide equity financing subject to certain limited exceptions. National banks may not generally acquire equity investments in venture capitol funds unless the fund qualifies as a small business invest-

ment company (SBIC) or public welfare investment fund. Both SBICs and public welfare investment funds are currently excluded from the Volcker Rule covered fund definition. Other "banking entities" subject to the Volcker Rule may have additional authorities to provide equity financing to portfolio companies and fund structures such as venture capital funds.

Senator: It is my understanding that under the Volcker Rule, a fund is considered "covered" if it avails itself of exemptions provided by the Investment Company Act, but that regulators have authority to exclude funds and have done so since first issuing regulations.

Q.9. Is that correct?

A.9. Section 13 of the Bank Holding Company Act generally restricts a banking entity from acquiring or retaining an ownership interest in or sponsoring a hedge fund or private equity fund. The statute defines hedge fund and private equity fund as an issuer that would be an investment company, as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the relevant agencies by rule determine. The current regulation includes the same definition referencing sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940. Consistent with the statute, the current regulation provides a number of exclusions, including for foreign public funds, loan securitizations, wholly owned subsidiaries, joint ventures, and small business investment companies, among others. The regulation also permits consistent with the statute certain additional covered fund activities, such as organizing and offering, underwriting, and market making with respect to a covered fund.

Q.10. It is my understanding that previous exclusions have included: foreign public funds; certain securitization vehicles; wholly owned subsidiaries; and joint ventures.

Can you look into these exclusions and communicate to me if these situations can be exempted under your existing authority in the final proposal that you and the other Volcker Regulators are currently engaged on?

A.10. The NPR requests comment on whether the Agencies should provide new exclusions in order to more effectively tailor the covered fund definition. The Agencies specifically requested comment on whether to exclude funds that lack certain characteristics of hedge funds and private equity funds, among other types of issuers. The Agencies welcome specific examples from commenters on the types of activities that have been limited by the regulatory covered fund definition.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED FROM JOSEPH M. OTTING

Q.1. As you know, the OCC is authorized to enforce the Military Lending Act (MLA), which is a bipartisan law enacted in 2006 that sets a hard cap of 36 percent interest for most loans to the military. On July 22, 2015, the Department of Defense finalized MLA rules that closed prior loopholes that allowed unscrupulous lenders to prey upon servicemembers and their families. As part of the con-

firmation process, I asked whether you would support and enforce these strong MLA rules to the fullest extent possible. You responded that you "would support and enforce strong MLA rules."

Since you have been confirmed, can you please tell us how you have lived up to this commitment?

A.1. I am committed to supporting and enforcing strong MLA rules. In May of this year, we issued OCC Bulletin 2018-11 with examination procedures to provide supplemental guidance to examiners regarding the MLA.[1] The Handbook provides background information on the MLA and its implementing regulation, as well as examination procedures. The Handbook is to be used in conjunction with other examiner guidance to assist examiners in determining the scope of the examination based on risk. Should the OCC identify deficiencies or violations, we will use our supervisory and enforcement authorities to address them.

Q.2. The OCC is also expected to enforce the Servicemembers Civil Relief Act (SCRA), but SCRA enforcement of the 6 percent interest cap on loans incurred prior to active duty or the SCRA's foreclosure protections has been inconsistent and subject to the discretion of our financial regulators. As part of the confirmation process, I asked how you would prioritize SCRA enforcement. You responded that you "would be supportive of SCRA being part of the regulatory exam process and would endorse a horizontal review in the industry."

Since you have been confirmed, can you please tell us how you have lived up to this commitment?

A.2. The agency includes examinations for compliance with the SCRA in its regular supervision of national banks and Federal savings associations. I am committed to ensuring that we continue to supervise for compliance with that statute, and take supervisory action, including enforcement actions, when warranted.

Q.3. If changes are made to the Community Reinvestment Act that lead to financial institutions, including those that have an online presence, to take deposits from communities but actually make less of an effort to reinvest in these same communities, would you consider that to be a good or bad outcome?

A.3. I would consider that to be a bad outcome, and it is one of the reasons that I believe assessment areas should be expanded and better defined.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM JOSEPH M. OTTING

Q.1. Please provide the following information, disaggregated by institution, about the findings of the horizontal review of sales practices:

The volume and type of misconduct uncovered.

A.1. Such detail beyond what was provided in my June 11, 2018, letter to the Committee Chairman and Ranking Member and my July 9, 2018, to you would be confidential supervisory information.

---

[1] See OCC Bulletin 2018-11, "Comptroller's Handbook, Military Lending Act", May 11, 2018 (*https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-11.html*).

Q.2. Whether, if any, Matters Requiring Immediate Attention were issued, and a description of when such misconduct occurred.

A.2. As stated in my testimony, there were more than 250 MRAs issued. Five types addressed broad weakness in policies, procedures, and controls. The remaining were bank specific. All reviewed banks received at least one MRA.

Q.3. The number of consumers impacted, disaggregated by State.

A.3. As stated during the hearing, the review identified approximately 20,000 accounts with potential issues, about half of those involved instances where proof of authorization could not be provided. The OCC is monitoring banks' corrective actions, including reimbursing consumers' applicable costs and fees when applicable.

Q.4. A description of any incentive compensation plans that may have encouraged the sales practice misconduct.

A.4. The review did not identify situations where the design of incentives or quotas resulted in widespread unauthorized account openings. In those limited instances where accounts were opened without authorization involving issues other than failure to maintain documentation, the most common factors included either short-term sales promotions without adequate risk controls, deficient account opening and closing procedures, or isolated instances of employee misconduct with no clear connection to sales goals, incentives, or quota programs. During the review, banks reassessed the design of their existing incentive programs and took steps to better balance sales, production, and revenue targets with risk management and customer satisfaction.

Q.5. A general summary of the Action Plans that the OCC required banks to create and the expected timeline of adoption of such Action Plans.

A.5. Action plans and timelines are specific to the findings of each bank and are confidential supervisory information. The OCC is monitoring bank compliance with action plans to ensure timely resolution.

Q.6. A progress report outlining banks' adoption of OCC's recommended inventory of practices to improve banks' management of sales practice risk.

A.6. The OCC continues to monitor banks' corrective actions.

Q.7. The amount of remediation payments required and the timeline for the completion of such remediation.

A.7. The OCC has not aggregated the dollar value of remediation payments. However, where unauthorized account opening or other inappropriate sales practices were identified, banks had already taken, or were in process of taking, remedial action. This could include closing the account, refunding or reversing any inappropriate fees or other customer charges, or correcting credit bureau information. In most cases, remediation has been completed or is underway now.

Q.8. Whether the banks that engaged in misconduct used, and/or seek to enforce, forced arbitration clauses in contracts used to create unauthorized accounts.

A.8. The review did not reveal any action by any bank to enforce forced arbitration clauses in contracts used to create unauthorized accounts.

Q.9. In your testimony on June 14, you said that the horizontal sales practice review included between 500–600 million accounts over a 3-year period.

What is the 3-year period covered by the review?

A.9. The review covered 2014–2016.

Q.10. Given the fact that Wells Fargo was engaging in these practices as early as 2009, and perhaps earlier, shouldn't the OCC conduct a second review with a longer look-back period to capture any misconduct that occurred prior to the 3-year period covered by the review?

A.10. The purpose of the review was to determine whether such practices presented a systemic problem. A 3-year look-back period is sufficient for that purpose. My predecessor determined the 3-year look-back period, and I agree with this timeframe.

Q.11. During a Banking Committee staff briefing with OCC staff on June 8, 2018, OCC Senior Deputy Comptroller for Large Bank Supervision Morris Morgan said that the CARD Act's digital verification requirements were partially to blame for the creation of unauthorized accounts uncovered in the horizontal review. Please identify what provision of the CARD Act Mr. Morris was referring to, and please provide an explanation as to why that provision is related to the creation of unauthorized accounts.

A.11. To clarify, the CARD Act added a signature requirement for applications to open a credit card account by a consumer who is under 21, which we understand some banks interpreted as requiring signatures only in those limited circumstances. Credit cards were the products most often associated with concerns regarding unauthorized account openings. However, banks involved in the horizontal review have implemented more robust account opening and closing policies, procedures, and controls designed to reduce the potential for inappropriate activities or unauthorized account openings.

Q.12. During the aforementioned briefing on June 8, OCC staff stated that the horizontal review was conducted in conjunction with the CFPB, FDIC, and Federal Reserve. Did any of the other agencies involved in the review issue any MRAs connected to the review?

A.12. I am not aware that any other agency took any action or issued any finding against the banks they supervise based on their review. The other Federal agencies are better positioned to answer questions about their actions.

Q.13. On June 15, 2018, the OCC rescinded its guidance for how examiners should evaluate large banks for compliance with the Community Reinvestment Act. What is your justification for rescinding this guidance?

A.13. The guidance was outdated. Since its publication in 2000, the regulations have been revised twice (2005 and 2010), and the sup-

plementary interagency Questions and Answers on Community Reinvestment have been revised numerous times.

Q.14. Do you believe that enforcement against discriminatory or unfair lending practices should work hand-in-hand with any revisions to the Community Reinvestment Act?

A.14. Fair lending laws (e.g., the Fair Housing Act, the Equal Credit Opportunity Act) and the CRA were enacted as separate statutes, and vary in terms of the banking regulators authority to take enforcement action. At the OCC, CRA evaluations and fair lending examinations are conducted separately, however, findings from one are considered during examinations of the other. Findings during a CRA evaluation can be used to prioritize and focus fair lending examinations. For example, the current CRA regulations require the OCC to determine whether assessment areas reflect illegal discrimination and to consider the effect of discriminatory or other illegal credit practices when assigning a bank's overall CRA rating. The agencies are discussing an ANPR to solicit input and feedback on ideas to revise or modernize the CRA.

Q.15. Do you believe that in some low income and hard-to-reach communities, physical branches are sometimes the only way to meet credit needs?

A.15. I believe branches remain an important part of bank services to their communities and for some services and some individuals. However, in same instances, internet banking, automated teller machines, loan centers, and FinTech may actually be better options.

Q.16. Will you commit to retain assessment areas with a local geographical focus under the Community Reinvestment Act, which help ensure that banks are combating historic redlining and actually providing access to credit in low- and moderate-income communities?

A.16. I have no intention to eliminate the concept of assessment areas. The intent is to identify a banks' assessment area more effectively to determine the geography in which a bank should be evaluated. That geography, however, may be better determined by considering where a bank provides its services, where its customers are located or through means other than where its branches or deposit-taking automated teller machines are located.

Q.17. The Treasury Report issued in April recommends that the Federal Reserve and FDIC adopt the OCC's new policy allowing banks with failing CRA ratings to merge or expand. Is it your opinion that regulators should allow banks with failing CRA ratings, which may be engaged in discriminatory lending practices; to merge and expand?

A.17. Applications should be considered based on their unique facts and circumstances. In some cases, denying an application based on a CRA rating alone could exacerbate the bank's ability to meet the credit needs of it's community.

Q.18. Comptroller Otting, when I asked you about the Dodd–Frank Section 956 incentive-based compensation rulemaking last July, you said "If confirmed, I would urge all the regulators to work to-

gether to finalize the rule as required by statute." But nearly a year later, and we have still don't have a final rule. How is it that you have had time to revisit capital rules, revisit leverage rules, revisit the Volcker Rule—all of which were finalized after years of deliberation, public comments, and input from other regulators—and you have not had time to finish the incentive-based compensation rulemaking for the first time? When will this rulemaking be finalized?

A.18. There is much to do, and I am proud of the progress we have made in the areas you mention. As you know, the law requires a joint rulemaking or guidelines regarding incentive-based compensation. I look forward to working with my fellow regulators to complete that rulemaking.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER FROM JOSEPH M. OTTING

Q.1. On May 25, 2018, I led 15 other Democrats in a letter to you, Chairman Powell, and then-Chair Gruenberg on the issue of potential new regulations on the Community Reinvestment Act (CRA). I think there's broad consensus on a number of ideas out there, making clearer which bank investments will qualify under the CRA, improving the consistency of CRA exams across banks, and adjusting the definition of a bank's assessment area to account for the technological innovations that have allowed banks to do significant business outside its branch footprint. But there are a couple of areas that the OCC, under your predecessor, Acting Comptroller Noreika, has led on that gave me and the 15 other Democrats some pause.

First, I have concern about the new policy that expands banks' ability to grow their footprint even if they have a "less than satisfactory" CRA rating. The prior policy was a strong presumption against expansion if a bank was failing to meet its CRA obligation. Given that one of the only formal consequences—and the most serious consequence—for the failure to receive a satisfactory rating on a CRA exam had been limits on expansion, I'm concerned that the change will cause banks to take their CRA obligations less seriously.

Do you support the change made by your predecessor? If so, what incentive will banks have to comply with the CRA and what will be the consequences for failing to do so?

A.1. I think applications should be evaluated by the unique facts and circumstances of each application. Denying applications on a near automatic basis because of a low CRA rating could have unintended consequences and may adversely affect a bank's ability to meet the credit needs of its communities. We do need to revisit CRA, including how we incent banks to loan and invest where it is needed most, and consider consequences for failing to do so.

Q.2. OCC CRA guidance used to say that if you are a bank that is not meeting your consumer protection responsibilities, that will negatively affect your CRA rating. New OCC guidance considers whether there is a nexus between a CRA rating and evidence of a consumer protection law violation, suggesting that some consumer

protection laws are not relevant to a bank's CRA rating. I find this suggestion troubling, given that the statutory purpose of the CRA is to require banks to demonstrate that they "serve the convenience and needs of the communities in which they are chartered to do business"—they are hardly doing so if they are violating laws that protect those communities.

Do you support the OCC's change? If so, why?

A.2. During my hearing I committed to reviewing the rationale for the previous policy change and am in the process of doing so. Consistent with the current regulations, the OCC considers violations of law that reflect discriminatory or other illegal credit practices in determining a bank's assigned rating. The regulations include specific examples such as violations of the Equal Credit Opportunity Act, the Fair Housing Act, or violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

Q.3. I've read reports about the OCC horizontal review that covered approximately 40 banks and their sales practices. I understand that the OCC has issued MRA letters to banks in the report about any found deficiencies covering more than 250 specific problems, including a number of issues beyond sales practices. These reports are deeply troubling.

Please describe the extent of problems that you saw.

A.3. I provided a summary of those findings in a letter to the Committee Chairman and Ranking Member on June 11, 2018, that included the following information. The review identified several common weaknesses in policies, procedures, and controls and in banks' risk governance frameworks related to account opening, account closing, account management, employee complaints, and employee fraud or misconduct. These common weaknesses were documented in MRAs issued to the participating banks. Most banks received MRAs regarding one or more of these common weaknesses. These MRAs were focused primarily on actions to strengthen operational risk governance and policies and procedures, and were not based upon findings related to unauthorized account openings. During the hearing, I confirmed that the review identified approximately 20,000 accounts with issues from among the hundreds of millions of accounts opened by reviewed banks during the 3-year look-back period. Approximately half of the 20,000 accounts involved issues unrelated to account authorization. In those instances where proof of authorization could not be provided, it was considered merely lack of documentation if a consumer continuously used the product since opening the account. In other cases, known issues related to recordkeeping or system failures were determined to be causes of poor or incomplete documentation.

Q.4. How many banks received MRA letters relating to your inquiry?

A.4. All of the reviewed banks received at least one MRA.

Q.5. Of those, how many would you say have very serious problems with their customer activities?

A.5. We take every MRA seriously. Failure to correct issues in MRAs in a timely and effective manner may result in additional

supervisory actions, including public enforcement actions, if warranted.

Q.6. Are there issues other than sales practices that your inquiry surfaced that you find very troubling?

A.6. The key issues related to policies, procedures, and controls. The OCC also issued MRAs related to bank policies, procedures, and controls. Failure to correct issues in MRAs in a timely and effective manner may result in additional supervisory actions, including public enforcement actions, if warranted.

Q.7. Why did the conduct uncovered not warrant a consent order with any bank? Do you anticipate that one or more banks will have more significant regulatory consequences as a result of this inquiry, such as a consent order or a fine?

A.7. The supervisory process is an incremental one that typically begins with an examination and includes discussions around any concerns found, which may include the issuance of MRAs. Failure to correct issues in MRAs in a timely and effective manner may result in additional supervisory actions, including public enforcement actions, if warranted. We continue to monitor banks' corrective actions.

Q.8. I've read that you do not intend to disclose any further information about the review. The OCC has broad authority to make public information that is otherwise considered confidential.

Given the widespread public interest in the subject—and the desire by banks who have not had any compliance issues to be in the clear—why have you decided not to release more information about the review?

A.8. We have ongoing supervisory actions regarding this matter. Releasing confidential supervisory information could prejudice or adversely affect potential future action by the agency.

Q.9. I'm interested in anti–money laundering compliance reform. Banks spend around $8 billion per year on AML compliance, which is nearly the cost to fund the entire FBI for a year. And for smaller banks, AML compliance costs are a disproportionately large share of their personnel and compliance expenses. And this Committee heard testimony earlier this year from law enforcement experts who agreed that the current system does not deliver outcomes that justify that kind of expense.

What steps are you taking now to ease the compliance burden and strengthen the efficacy of the compliance regime?

A.9. I agree we need to make compliance with the Bank Secrecy Act (BSA) and anti–money laundering (AML) lows and regulations more effective and efficient. We particularly need to find ways to reduce burden on small, less complex banks with lower risk profiles. I have made modernizing the regulatory approach to BSA/AML compliance one of my top priorities and am actively working with other regulators, Treasury, and the Financial Crimes Enforcement Network to identify changes we can make to improve how BSA/AML compliance works. Changes may include greater use of technology and analytics, clearer guidance, providing greater flexibility for regulators to implement a risk-based approach for less complex and well run banks, and revisiting thresholds for Sus-

picious Activity Reports and Currency Transaction Reports. In most cases the OCC does not write the rules and in some cases revising the rules will require statutory relief. Whatever actions we pursue, we must be careful to maintain or improve the protection of our Nation's financial system and continue to provide law enforcement the information and data it needs to succeed in its important job.

Q.10. How and on what subjects are you working with other regulators to improve the AML system?

A.10. We are having dialogue on a variety of ways to improve BSA/AML compliance such as greater use of technology and analytics, clearer guidance, providing greater flexibility for regulators to implement a risk-based approach for less complex and well run banks, and revisiting thresholds for Suspicious Activity Reports and Currency Transaction Reports.

Q.11. Are there any aspects of AML reform that you believe merit congressional action?

A.11. We are working on an interagency basis on a number of opportunities to make compliance with AML regulations work more efficiently. At this time, the only items that may require Congressional action include increasing thresholds for Suspicious Activity Reports and Currency Transaction Reports.

Q.12. The policy behind the Volcker Rule is to reduce risky activities in banks, in particular high risk proprietary trading. This is a worthy goal, as we never want banks to go back to that type of risky trading. The rule aims to achieve this in part by prohibiting banks from investing in hedge funds and private equity funds. I've heard, however, that the current definition has captured investments that seem far removed from the statute's original concern—such as an incubator for women-run businesses. It is critical to have an appropriate definition of "covered fund" that can balance the statute's command and goals, while ensuring banks can provide enough capital to companies looking to grow and innovate Under the current definition of "covered fund" in the Volcker Rule, there appears to be an inconsistency in the regulatory structure where banks are permitted to directly provide important types of capital and credit to businesses yet are materially restricted when doing so via a fund structure where the bank can diversify risk.

Do you believe that fund structures can diversify a bank's risk compared to portfolio investments?

A.12. It is entirely dependent on the structure and underlying assets of the fund, as well as the individual institution. The recent NPR requested comment on a characteristics-based exclusion from the covered fund definition for issuers that lack certain characteristics of hedge funds and private equity funds or that do not engage in activities that section 13 of the Bank Holding Company Act was designed to address. The Agencies welcome specific examples from commenters.

Q.13. If so, does this suggest that regulators can broaden the scope of qualifying fund investments while improving safety and soundness?

A.13. As reflected in the NPR's robust request for comment on the covered funds provisions, the Agencies are exploring whether there is opportunity to permit a broader range of activities and investments consistent with section 13 of the Bank Holding Company Act.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP FROM JOSEPH M. OTTING

Q.1. What response have you received from lenders in light of the OCC's May bulletin encouraging national banks and Federal savings associations to offer short-term, small-dollar installment loans?

A.1. In speaking about this and other priorities, lenders, community groups, social and religious organizations and legislators, have applauded the action.

Q.2. Have you gotten commitment to see installment loans at a scale that you believe would provide consumers with a better option than what's currently available through payday lending?

A.2. I expect large regional banks will be the first to return to this space and will offer consumers responsible, affordable options to meet their short-term, small-dollar needs.

Q.3. Has the OCC heard from lenders who are looking to extend credit in Indian Country or seen certain installment products that look promising for getting more credit into these communities?

A.3. Through various publications, the OCC encourages national banks and Federal savings associations to engage in consumer and commercial lending and with nonprofit partners working in Indian Country. Examples of such publications can be found at the following: *https://www.occ.gov/publications/publications-by-type/other-publications-reports/cdi-newsletter/extending-credit-indian-country-aug-2013/indian-country-ezine-table-of-contents.html*; *https://www.occ.gov/topics/community-affairs/publications/insights/insights-commercial-lending-indian-country.pdf*.

Q.4. Has the OCC run any analysis on what type of fee structure or interest rate would be necessary to achieve profitability for small-dollar loan-type products?

A.4. Loan pricing will be very bank specific to the cost and business goals of individual banks. Through our supervisory process, we will review and assess the appropriateness of pricing.

Q.5. Given the disruption in trade, rising interest rates, and depressed commodity prices, many farmers in North Dakota and across the region are carrying some of the highest levels of debt since the 1980's crisis. What is the OCC seeing in terms of the risk to our ag lenders and farmers in this environment?

A.5. Our most recent Semiannual Risk Perspective identifies agricultural lending as one of the risks that warrants further monitoring, stating that "low or declining prices for grain, livestock, and dairy that result in lower cash flow and increased farm carryover

debt for agricultural borrowers."[1] The report also states "In addition, while net farm income stabilized in 2017 due to improved yields, the outlook for 2018 is not favorable. Net farm income in nominal dollars is projected to decline to the lowest level since 2006, driven primarily by a decline in revenues and increased fuel and oil, interest, and labor expenses."

Q.6. Does the prospect of an increasingly high interest rate environment concern you?

A.6. Yes, interest rate risk is one of the four primary risks identified in our most recent Semiannual Risk Perspective. Rising interest rates pose risks that warrant monitoring. Multiple rate increases could negatively affect credit affordability, performance, and asset valuations. Additionally, in a rising rate environment, refinancing risk, underwriting behavior, and changing credit terms could limit future performance. There is also uncertainty in how bank deposits will react to increasing interest rates. Banks may experience unexpected shifts in liability mix or increasing costs that may adversely affect earnings or increase liquidity risk. Examiners will be working closely with banks to ensure their risk management activities effectively mitigate the risk associated with higher interest rates.

Q.7. What steps are you taking to work with lenders to help them assist our farmers with the operating credit they'll need to weather these challenges?

A.7. Examiners are working with bankers to appropriately identify risks in their portfolio that allows banks to proactively identify opportunities to work with borrowers early. Most OCC-supervised banks focused on agricultural lending have a long history with multiple economic cycles. Furthermore, the OCC issues publications related to rural development, for example, to encourage national banks and Federal savings associations to enter into partnerships with nonprofits to expand rural lending and educate them about applicable Federal loan guarantee programs. Examples can be found at the following: *https://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-usda-rural-housing-finance-program.pdf; https://www.occ.gov/topics/community-affairs/publications/insights/insights-usda-business-industry-guaranteed-loan-program.pdf*. Recently, the agency released a publication on the benefits of investments in rural broadband (*https://www.occ.gov/topics/community-affairs/resource-directories/rural-economic-development/bank-financing-for-rural-broadband-initiatives.html*).

Q.8. What are some of the activities that we should be encouraging banks to do that are limited by the covered funds section of the Volcker Rule?

A.8. The Volcker agencies are currently exploring the scope of covered funds provisions put forward in the implementing regulation. The recent Notice of Proposed Rulemaking (NPR) includes a robust request for comment on whether there are types of issuers or ac-

[1] See "Semiannual Risk Perspective", Spring 2018 (*https://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2018.pdf*).

tivities that have been inadvertently scoped into the Volcker Rule covered fund provisions and that may be excluded from the regulation consistent with the statute and safe-and-sound operations. In addition to requesting comment on the scope of the covered fund definition (see Question 9 below), the NPR requests comments on other aspects of the covered fund provisions, such as the scope of the so-called "Super 23A" provisions. I look forward to exploring these issues further with my counterparts at the other agencies. The agencies welcome specific examples from commenters on these issues.

Q.9. Are we harming financial innovation by the broad definitions of covered funds in the rule?

A.9. I look forward to reviewing the comments provided to the questions asked about covered funds in the recently issued NPR. In particular, the NPR solicits comments on whether the regulatory covered fund definition has been imprecise and whether that has led to unintended consequences. I look forward to exploring this issue further with my counterparts at the other agencies and welcome specific examples from commenters on the types of activities that may have been limited by the regulatory covered fund definition.

Q.10. How can we ensure that banks are not proprietary trading while also allowing them to help companies that need capital to grow and innovate?

A.10. The recent proposed changes to the Volcker Rule and the changes included in the Economic Growth Act make significant improvements to the implementation of the rule by maintaining core prohibitions and protections while reducing burden on small and midsize banks and providing greater regulatory clarity for all banks.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM JOSEPH M. OTTING

Q.1. Numerous studies, including a 2016 study from the Urban Institute, found that banks often charge single women significantly higher interest rates when they borrow money to purchase a home than single men. Women do, on average, make less money than men and have lower credit scores. But women are better credit risks. They tend to default on their loans less than men.

In addition, another study from Center for Public Integrity and REVEAL found that in 61 metropolitan regions, there were significant disparities by ethnicity in mortgage acceptance rates.

In your testimony before the House Financial Services Committee, you said you only believed about half of what you read on discrimination. Do you believe these two reports are accurate? Why or why not?

A.1. I have not read either report, but I am aware that such disparities exist. However, disparities alone do not indicate illegal discrimination has occurred in the underlying credit decisions.

Q.2. Please provide me a bibliography and links to research that OCC has led or reported on through your newsletters or other com-

munications in the past decade regarding gender; racial, ethnic or other bias in mortgage lending or bank services in the past 2 years.

A.2. The OCC, through its Community Affairs Division, has issued numerous publications to encourage banks to serve underserved communities including "Profitable Partnerships; Collaborating With Minority Depository Institutions". These publications can be found at *https://www.occ.gov/topics/community/affairs/publications/index-ca-publications.html*.

Q.3. Which of these documents have you read? Which of these do you agree with the conclusions?

A.3. I strongly support OCC developing publications on a wide variety of topics including encouraging banks to serve underserved communities.

Q.4. The Community Reinvestment Act was designed to equalize the financial playing field by encouraging banks to meet the credit needs of consumers in low-income neighborhoods, especially African American communities. Specifically, the CRA was designed to address discriminatory policies such as redlining. Under your leadership, the OCC is actively trying to change the Community Reinvestment Act. I am concerned that someone with such little familiarity nor sophistication about the long history of discrimination in lending and redlining is spearheading changes to CRA.

A.4. I have been involved in CRA lending and activities throughout my career of more than 30 years. I have a deep personal commitment to the goals of CRA and appreciation of its history and evolution. While CRA is color-blind, I strongly support increasing bank lending and activity in the communities and to the people who need it most, specifically in low- and moderate-income communities, which often are communities of color.

Q.5. Will you commit to make no changes to CRA enforcement until you have the support of the other regulators—the FDIC and Federal Reserve—and the consensus of community development and civil rights groups?

A.5. I support working jointly with fellow regulators at the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve whenever possible. I also support a broadly inclusive decision-making process that includes community development and civil rights voices. As Comptroller of the Currency, however, I have the responsibility and authority to act in the best interest of the Federal banking system and the consumers who depend on it to meet their banking needs and will act accordingly to fulfill that responsibility, including, when necessary, acting independently when I believe that is the right thing to do. In discussing CRA with hundreds of people across the country with diverse views, there is strong consensus regarding the need to update our approach to the CRA.

Q.6. I asked you about the number of banks supervised by the OCC which make fewer than 500 mortgage loans or home equity lines of credit in a year. You said those banks produce 5 percent of the volume of mortgage loans.

How many banks supervised by the OCC make fewer than 500 mortgage loans or home equity lines of credit in a year?

A.6. Based on 2017 HMDA data, 733 national banks and thrifts (OCC-supervised banks) reported data to either the OCC or the Bureau of Consumer Financial Protection. Of these, 555 OCC-supervised banks originated fewer than 500 closed-end mortgage loans. Overall, the banks that make fewer than 500 mortgage loans or home equity lines of credit in a year represent less than 5 percent of the total volume of those loan products.

Q.7. Congress passed a law that exempted banks that make fewer than 500 mortgage loans from collecting loan and borrower characteristics and reporting that data publicly. In our discussion, you said that examiners would only look at "HMDA-lite" information, meaning, examiners would NOT consider the expanded HMDA information required under Dodd–Frank, which would include credit scores, points and fees, loan terms, etc., for lenders which made fewer than 500 mortgage loans or home equity lines of credit unless they gathered it separately as part of an examination.

A.7. Section 104 of the Economic Growth Act provides regulatory relief to depository institutions that have originated less than 500 closed-end mortgage loans or less than 500 open-end lines of credit in each of the two preceding calendar years by generally exempting them from certain additional disclosure requirements under the HMDA. Examiners continue to receive basic HMDA information on all institutions, and can gather any necessary additional data as part of fair lending examinations. For institutions with more than 500 mortgages, agencies will receive the additional information beginning in 2019.

Q.8. To clarify, for the majority of regulated banks, OCC examiners will no longer have access to detailed loan characteristics like points and fees, interest rate, credit score, and other indicators of loan quality through HMDA. They will only be able to find detailed loan and borrower information if they receive it separately as part of the institutional exam. Is that correct?

A.8. To clarify, the OCC will receive the additional HMDA data on 95 percent of the loans originated within the Federal banking system starting in 2019. For institutions that make under 500 closed-end mortgage loans annually that are now exempt from providing certain additional HMDA data as required by the recent rulemaking, the OCC will continue to have access to necessary additional bank data during its fair lending examination process.

Q.9. Please estimate how much more costly the exams will be for OCC now that they may need to stay on site longer to review a bank's loan portfolio loan by loan instead of building on the HMDA data? How much longer will exams need to remain at banks for such reviews?

A.9. I do not anticipate any increase in cost to OCC exams or spending additional time on-site as a result of changes in HMDA reporting resulting from the Economic Growth Act.

Q.10. The Treasury Department released recommendations last April for modernizing CRA. Currently, the only penalties for failed CRA ratings is the possibility of denial of merger or branch applications, and would only apply to the approximately 2 percent of banks that fail their CRA exams. This is one of the few sticks that

motivates banks to pass their CRA exams. But Treasury recommended eliminating this penalty for failing exams.

With a lack of penalties, how do we ensure banks are improving their performance and fulfill their obligations under the law?

A.10. The statute, itself, does not provide enforcement authority to regulators as it is intended to encourage banks to meet the credit needs of the communities they serve, including low- and moderate-income communities. That is one of the many reasons we need to modernize the regulatory framework of the CRA to provide greater incentive for banks to lend and invest in the communities that need it most.

Q.11. Shouldn't there be a presumption that a bank with a failing CRA rating will not have its application approved until it passes its exam? If not what would be an incentive for the relatively few failed banks to improve their performance?

A.11. The facts and circumstances of each application should be evaluated on its merits. It would be counterproductive to deny an application that may increase services in low- and moderate-income communities simply because of a less than satisfactory CRA rating.

Q.12. Currently, the CRA service test places primary emphasis on bank branches while still considering alternative service delivery. Bank branches remain vital, specifically for low and moderate income communities and must be given strong consideration even while alternative delivery channels develop. Deemphasizing bank branches on CRA exams could cause banks to pay less attention to neighborhoods where they receive deposits (redlining or not reinvesting in neighborhoods generating deposits for banks was the major concern of lawmakers when they passed CRA).

Will bank branch presence remain the focus of the service test?

A.12. Branches remain a significant part of many banks' service models, but we must find a way to assess bank performance in those instances where banks provide services through other means or do not maintain a network of branches. In those cases, we should consider alternative ways of defining a bank's community. This could include considering where a bank's headquarters or major offices are, location of employees or where customers are located. Let me be clear, I do not intend to eliminate the concept of assessment areas. I hope they can be expanded and redefined to better capture a bank's service area.

Q.13. The Treasury report was unclear whether just investments should be considered outside of the current assessment areas or whether CRA exams should consider investments and retail lending.

What is your view on whether CRA exams should consider retail lending and investments?

A.13. We should expand investments and activities eligible for CRA consideration and incentivize institutions to engage in qualifying activities that contribute to creating greater opportunity in the communities banks serve, particularly low- and moderate-income communities. This is a subject that we should solicit feedback on through the Advance Notice of Proposed Rulemaking (ANPR) process.

Q.14. The OCC examined the opening of 500–600 million new accounts during a 3-year period and found roughly 20,000 without proof of authorization and other issues. Of those 20,000, the OCC believes "less than half" were unauthorized. They found 252 MRAs.

Were there any banks that you reviewed that did not have an MRA?

A.14. No. All banks had at least one MRA.

Q.15. How soon will harmed consumers see remediation?

A.15. Much of the required remediation has already been completed or is underway.

Q.16. Is the OCC considering any enforcement actions on its own, or in coordination with other agencies based on the horizontal review?

A.16. The agency is monitoring bank actions required to correct issues identified in the horizontal review through the normal course of our supervision process. Failure to correct issues in a timely and effective manner may result in additional supervisory actions, including public enforcement actions if warranted.

Q.17. Were incentive compensation practices part of the review? If so, did you provide MRAs for concerns that employees were compensated in ways that could lead to fraudulent acts? Please describe the compensation practices that would be concerning for incenting fraud.

A.17. In those limited instances where accounts were opened without authorization involving issues other than failure to maintain documentation, the most common factors included either short-term sales promotions without adequate risk controls, deficient account opening and closing procedures, or isolated instances of employee misconduct with no clear connection to sales goals, incentives, or quota programs.

Q.18. Senator: The Wells Fargo fraudulent account scandal, and the incentive-based cross-selling strategy that fueled it are a stark reminder of how important it is for financial regulators to finalize executive compensation rules. Section 956 of the Dodd–Frank Act directed regulators, including the Fed, to adopt joint rules aimed at prohibiting incentive compensation arrangements that might encourage inappropriate risks at financial institutions. The regulators made an initial proposal in 2011, then reworked the proposal and issued a new plan in 2016. The proposal increases in stringency based on the financial company's asset size with enhanced requirements for senior executive officers and significant risk-takers.

Given that this is not a discretionary requirement, but a mandatory one, what steps are you taking to implement and enforce this provision of the law?

A.18. The law requires the agencies to jointly issue rules or guidelines. The OCC remains committed to working with other regulators to complete the rule. In the meantime, OCC-supervised institutions will continue to be subject to the compensation requirements in 12 CFR part 30, appendix A (and, for larger institutions, appendix D). The joint OCC, FDIC, and Federal Reserve Guidance on Sound Incentive Compensation Policies also continues in effect.

Q.19. On December 6, 2017, you halted the removal of in-house bank examiners stating, "Upon review, it is not practical to continue the agency's efforts to move resident examiners out of on-site locations," You said, "The agency will continue to review its locations and real estate strategy to ensure they support the agency's mission in the most operationally and cost effective manner possible." However, on the same day, the Government Accountability Office (GAO) released a report indicating that Federal Reserve had not taken enough steps to address regulatory capture and ensuring independence for its examiners. GAO has previously found that regulators should be independent of inappropriate influence, including undue influence from the industry they are regulating. While the Federal Reserve has taken observers offsite in order to avoid regulatory capture, you have decided to keep OCC regulators on site.

What is your rationale for keeping regulators on site despite the evidence of regulatory capture?

A.19. Based on my experience and judgment, the value of retaining on-site examiners outweighs the benefit of removing them from bank premises. Open effective communication and early identification of concerns are the keys to effective supervision, both of which are supported by on-site presence. My decision is further supported by the practices at the OCC to rotate examiners-in-charge after 5 years, to provide oversight by Deputy Comptrollers assigned to OCC Headquarters, and to depend on off-site lead experts who provide a horizontal view of risks and practices across the agency.

Q.20. Why did the OCC issue a proposal with the Fed that would revise the enhanced Supplementary Leverage Ratio (eSLR) which according to the FDIC, could reduce bank capital by as much as $120 billion at the Nation's largest banks?

A.20. The changes to the eSLR requirements proposed by the Federal Reserve and the OCC would tailor the requirement to the business activities and risk profiles of the largest banks. The proposed changes would retain a meaningful calibration of the eSLR while not discouraging banks from participating in low-risk activities. With the proposed modifications, the eSLR would serve as a backstop to the risk-based measures rather than the primary binding constraint. In addition, the proposed changes are aligned with recent changes to the leverage standard published by the Basel Committee on Banking Supervision in December 2017. Aligning with the Basel standard creates a more level international playing field reducing disadvantages faced by U.S. G–SIBs in competing with international counterparts. It is also unlikely that banks would release $121 billion in Tier 1 capital because of other binding constraints on liquidity and capital. The proposed eSLR standards along with current risk-based capital standards and other constraints applicable at the holding company level would continue to limit the amount of capital that G–SIBs could distribute to investors, thus supporting the safety and soundness of G–SIBs and helping to maintain financial stability.

Q.21. What are your views on research from the Federal Reserve that suggests that current bank capital requirements are on the lower end of what is socially optimal, and that regulators should

consider raising them for the public's benefit and to mitigate future financial crises? Their research is backed by other research done by the Minneapolis Fed, FSB, Basel Committee, Macroeconomic Assessment Group, and the IMF.

A.21. While there has been research conducted in this area, I note that the recent proposed revisions to the eSLR requirements were approved by the Federal Reserve and are consistent with the leverage ratio standards published by the Basel Committee on Banking Supervision in December 2017.

Q.22. Will the OCC consider increasing capital requirements for the largest banks?

A.22. I have no plans to increase the overall capital requirements for the largest banks. The agencies will continue considering ways to simplify the capital rules for all of the banking organizations we regulate in order to reduce compliance costs. Some changes may affect banking organizations in different ways depending an the nature of their business and assets—for some, the capital requirements may increase slightly, for others, they could fall slightly—but we do not intend to significantly change overall capital levels.

Q.23. Are you concerned that granting a FinTech charter to a nonbank lending company or nonbank payments company would bring an end to the traditional separation of banking and commerce by allowing large commercial companies, like Amazon and Google, to obtain a national bank charter?

A.23. No. Granting a charter to a FinTech engaged in the business of banking does not change any of the legal and regulatory requirements prohibiting commercial firms from owning a bank. Further, we believe a FinTech charter is another way of providing consumers with more options and choices to meet their financial service needs.

Q.24. Recently, you expressed an unfavorable view of bank-non bank partnerships, where the "sole goal [is] evading" State-law rate limits. Given that a primary purpose for a nonbank lending company seeking a FinTech charter would be to evade State-law rate limits, why is creating a FinTech charter less unfavorable than bank–nonbank partnerships?

A.24. I reject the premise of the question. I do not agree that evading State-law rate limits are a "primary purpose" for a nonbank lending company to seek a national bank charter. There are many other business advantages, such as access to customers, scalability, cost of funds, and more effective supervision.

Q.25. Senator: In reference to FinTech Charters and small-dollar loans you have been quoted saying, "that as long as FinTech firms don't take consumer deposits, they will pose little risk to the financial system." Yet, small-dollar loans pose risks directly to consumers.

What measures will you have to protect consumers from being charged high interest rates or falling into debt traps?

A.25. With regard to FinTech lenders that became national banks, the new national bank would be subject to regular, rigorous examination and supervision, which nonbank lenders do not currently

face. With regard to short-term, small-dollar loans, that lending is still subject to Federal consumer protection laws, and regulations, including the prohibition against unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act.

Q.26. Senator: In a document released by the OCC titled "Exploring Special Purpose National Bank Charters for FinTech Companies", the agency cited 12 U.S.C. §1, 12 U.S.C. §1461, and 12 U.S.C. 3102 as statutory authority to grant banking charters to FinTech companies. However, the plain language reading of the statute does not clearly indicate that your office has this authority.

Can you specifically point out the section in the statute that gives your office authority to issue banking charters to FinTech companies?

A.26. Under the National Bank Act, the OCC has broad authority to grant charters for national banks to carry on the "business of banking." 12 U.S.C. sections 21 and 27. The OCC has interpreted the "business of banking" to include any of the three core banking functions of receiving deposits, paying checks, or lending money. The Act does not require that a bank take deposits in order to be engaged in banking. Rather, under the Act, performing only one of these three activities is sufficient to be performing core banking functions. This is reflected in the OCC's regulation 12 CFR 5.20, which provides that, to be eligible for a national bank charter, a special purpose bank must either be engaged in fiduciary activities or conduct at least one of three core banking functions: receiving deposits, paying checks, or lending money.

Q.27. What concerns, if any, do you have about Bitcoin and the use of other virtual currency in the U.S. banking system? Should banks promote or discourage their use? What protections are needed to ensure these cryptocurrencies can't be used to evade anti–money laundering and antiterrorism financing laws?

A.27. Regulators should continue to push for transparency and safeguards to prevent criminals from using cryptocurrencies to evade anti–money laundering laws and regulations or to fund other crimes. We also believe it is important to ensure that consumer protections are in place as the use of virtual currency expands.

Q.28. I believe it is important to promote diversity at the various financial agencies, including the OCC, and in the financial services sector.

What has OMWI Executive Director Cofield told you about discrimination at the OCC?

A.28. The OCC's OMWI office produces an annual report provided to Congress regarding the diversity of the OCC and briefs each business area on its diversity as it compares to the rest of the country and similar business functions elsewhere. The most recent report showed that as of September 30, 2017, the OCC's permanent workforce totaled 3,930 employees, a decline of 0.7 percent below the 3,958 permanent employees at the end of fiscal year 2016. The participation rate of females (currently 45.0 percent) in the OCC's workforce has remained fairly stable since fiscal year 2013 (a 0.6 percentage point decrease). Minority participation increased from fiscal year 2013 by 2.6 percentage points to 34.7 percent in fiscal

year 2017. At the end of fiscal year 2017, all major EEO groups were at or near parity with the 2010 national civilian labor force (NCLF) rates, with the exception of females and Hispanics. Although the OCC continues to work to address the law participation of Hispanics in its workforce, their overall participation rate remained below their NCLF rate (see table 2). In fiscal year 2017, the OCC slightly increased its Hispanic participation rate to 7.0 percent, from 6.9 percent in fiscal year 2016, and this was an improvement from 6.6 percent in fiscal year 2013. Hispanic participation rates are below parity in the following occupational positions—economists, bank examiners (females), and "all other series." Similarly, females across EEO groups in bank examiner positions participated below their occupational civilian labor force (OCLF) rates, and White females in economist and "all other series" positions participated below their respective OCLF and NCLF rates. [1]

Q.29. What steps can the OCC take to promote diversity within the financial system, especially with respect to the firms the OCC regulates?

A.29. Pursuant to the Dodd–Frank Act, the OCC and other OMWI directors collaboratively published a policy statement on June 10, 2015. The standards identified in the policy statement offer guidance and a framework to enable an entity to voluntarily assess its diversity policies and practices in the following key areas:

- Organizational commitment to diversity and inclusion
- Workforce profile and employment practices
- Procurement and business practices—supplier diversity
- Practices to promote transparency of organizational diversity and inclusion
- Entities' self-assessment process

In July 2016, the Office of Management and Budget approved the collection of voluntary self-assessment information from institutions. During the second quarter of fiscal year 2017, the OCC sent letters to 382 chief executive officers of institutions with 100 or more employees. Approximately 14.7 percent of the institutions provided their diversity self-assessments. The OCC OMWI director, along with OMWI directors at other agencies, conducts various outreach to institutions to engage them, discuss diversity, and solicit feedback on the diversity self-assessment process and perspectives of the institutions.

Q.30. Some of the biggest concerns regarding "Small-Dollar Loans," formerly known as "Payday Loans," are that consumers end up in "debt traps" in which consumers are borrowing one loan to pay off another. Recently, your office published a bulletin titled "Core Lending Principles for Short-Term, Small-Dollar Installment Lending" dated May 23, 2018, but fails to discuss this issue in detail. In your testimony, you mention that consumers benefit when banks offer "reasonable pricing and reasonable repayment structures."

What kinds of measures will you put in place to ensure that banks aren't charging too high interest rates?

[1] See OMWI Annual Report to Congress, FY2017 (*https://www.occ.gov/about/who-we-are/occ-for-you/diversity/and-inclusion-programs/omwi/omwi-annual-report-fy-2017.cid*).

A.30. Loan pricing should reflect overall returns reasonably related to product risks and costs and should comply with all applicable laws and regulations. If necessary, we can use our supervisory and enforcement powers to address unfair or deceptive acts or practices prohibited by the Federal Trade Commission Act, violations of other relevant consumer protection laws and regulations, and unsafe and unsound practices. Interest rates are determined based on the State where the national bank is located.

Q.31. Please indicate how a bank can offer a small-dollar loan at a "reasonable price" with a "reasonable repayment structure."

A.31. Banks can offer short-term, small-dollar loans in a responsible manner by following the three core principles included in the May bulletin:[2]

- All bank products should be consistent with safe-and-sound banking, treat customers fairly, and comply with applicable laws and regulations.
- Banks should effectively manage the risks associated with the products they offer, including credit, operational, compliance, and reputation.
- All credit products should be underwritten based on reasonable policies and practices, including guidelines governing the amounts borrowed, frequency of borrowing, and repayment requirements.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR JONES FROM JOSEPH M. OTTING

Q.1. The OCC's actions on the Community Reinvestment Act represent an excellent opportunity to modernize CRA rules—but there is also great risk at taking a step backwards. One area that I am especially concerned with is the potential that you undertake this effort alone—without the Federal Reserve and without the FDIC.

Will you commit to working and moving forward with the other regulators on an advanced noticed of proposed rulemaking? On the next step, a NPR? And on the final step of official rulemaking?

A.1. I support working jointly with fellow regulators at the FDIC and Federal Reserve whenever possible. I also support a broadly inclusive decision-making process that includes community development and civil rights voices. As Comptroller of the Currency, however, I have the responsibility and authority to act in the best interest of the Federal banking system and the consumers who depend on it to meet their banking needs and will act accordingly to fulfill that responsibility, including, when necessary, acting independently when I believe that is the right thing to do.

Q.2. The reports of the opening of unauthorized consumer accounts is extremely alarming for me.

What exactly is the timeline and procedure the OCC will follow in following up on the Action Plans that the OCC required banks to create? Once an Action Plan is created, what steps will the OCC

---

[2] See OCC Bulletin 2018-14, "Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending". May 23, 2018 (*https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html*).

take to ensure it is properly implemented? What are the regulatory options the OCC is considering if a plan is not properly developed or is not properly implemented?

A.2. OCC is monitoring banks' corrective action through the normal course of supervision, which for large and most midsize banks is a continuous process. While timelines vary based on the findings of particular banks, failure to correct identified deficiencies in a timely and effective manner may result in additional supervisory action, including public enforcement actions if warranted.

Q.3. Payday lending is an issue that is of great importance to me and to the State of Alabama. I believe your comments to encourage banks to enter small-dollar lending has merit—but I remain concerned on the lack of certainty about whether banks would be required to follow an ability to repay standard.

You have previously mentioned banks offering products to consumers who "have the ability to repay," but you don't offer specifics on how this would be measured. Does the OCC plan to move forward at any point with further guidance on these standards?

A.3. The OCC published core principles in its May bulletin,[1] but banks may identify unique and individual means to assess customers' ability to repay. The OCC does not want to stifle innovation or discourage lending by being overly prescriptive.

[1] See OCC Bulletin 2018-14, "Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending". May 23, 2018 (*https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-14.html*).