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April 1st, 2019

Comptroller Joseph Otting
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Dear Comptroller Otting:

I write with concerns about clear conflicts of interest that may impact your decision-making in your role as Comptroller of the Currency.

In January of this year, the U.S. Government Accountability Office (GAO) issued a report and recommendations to prevent what the GAO called “weaknesses” in the Office of the Comptroller of the Currency (OCC)’s efforts to mitigate the risk of regulatory capture.¹ My concerns echo those of the GAO and stem from the risk of agency exposure to conflicts of interest, particularly relating to the OCC’s administration of the Community Reinvestment Act (CRA).

First, I would like to note the OCC’s decision to levy fines against Citigroup for Citibank’s preferential treatment of white borrowers in offering home loan discounts--a violation of the Fair Housing Act.² Citibank had weak systems associated with its relationship pricing program, as you articulated in this recent penalty.³

1. Bank of America, JPMorgan Chase, Wells Fargo, and other banks have the same “relationship” pricing promotions that Citibank used. What have you done to examine

¹ “Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture,” *U.S. Government Accountability Office* (January 2019) at: <https://www.gao.gov/products/GAO-19-69>

² Kate Berry, “Citi mortgage discount program violated Fair Housing Act: OCC,” *American Banker* (March 2019) at: <https://www.americanbanker.com/news/citibank-mortgage-discount-program-violated-fair-housing-act-occ>

³ “Office of the Comptroller of the Currency Fines Citibank, N.A. \$25 Million for Violating the Fair Housing Act,” *Office of the Comptroller of the Currency Press Release* (March 2019) at: <https://www.occ.treas.gov/news-issuances/news-releases/2019/nr-occ-2019-27.html>

potential fair lending violations with regard to relationship pricing arrangements at other financial institutions?

The penalty the OCC assessed against Citigroup is a step in the right direction. However, the GAO last month issued a report articulating its belief that the OCC is at high risk of regulatory capture, defined by the GAO as “when regulators act in the interest of the industry they’re regulating, rather than in service of the public good.” They provided nine recommendations to address that risk. These recommendations range from “revis[ing] Large Bank Supervisions policy to require documentation of communications with banks, including those between executive and senior management and banks, that inform supervisory decisions,” to “systematically track[ing] and monitor[ing] Large Bank Supervisions use of informal recommendations.”⁴

The OCC is susceptible to regulatory capture in administering the CRA. That could compromise the CRA’s purpose of encouraging banks to serve the credit needs of all communities, including low-income areas, where they receive deposits. CRA exams evaluate many variables, including whether the bank has locations in low-income neighborhoods and the percentage of mortgages the bank makes to lower-income borrowers.⁵ According to a Harvard Joint Center for Housing Studies report issued in 2000, 20% of loan growth to lower-income communities can be directly attributed to the bank investments required by the CRA.⁶

CRA exams are conducted infrequently, so the scores banks receive are usually dated. But, when a bank wants federal regulatory approval for a deal like a merger, regulators consider the bank’s compliance with the CRA at that moment in time and the bank’s promises for future compliance measures.⁷

Lack of compliance with the CRA provides a basis for community groups to oppose potential bank mergers. CRA-based merger opposition comments submitted by community groups are historically considered within the OCC’s merger-approval process. Such comments may extend the approval timeline for a proposed merger and potentially strengthen the commitments banks make to invest in their communities.

The Wall Street Journal reported last month that “the OCC is instructing examiners to investigate some of the claims separately, rather than addressing them within the merger-approval process.” Side-tracking CRA claims makes it less likely that negative input from community groups will

⁴ “Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture,” *U.S. Government Accountability Office* (January 2019) at: <https://www.gao.gov/products/GAO-19-69>

⁵ Rachel Louise Ensign and Ryan Tracy, “Bankers vs. Activists: Battle Lines Form Over Low-Income Lending Rules Treasury Secretary Steven Mnuchin and OCC head Joseph Otting want to overhaul the Community Reinvestment Act, in part based on their experiences running OneWest,” *Wall Street Journal* (September 2018) at: <https://www.wsj.com/articles/mnuchins-fight-with-activists-inspired-community-reinvestment-act-revamp-1537885753>

⁶ *Id.*

⁷ *Id.*

influence the review timeline for a merger application or the ultimate set of CRA-based commitments required.

Community groups submit their comments during the merger-approval process with the specific intent that the OCC consider those comments when deciding whether to approve or reject the merger request. The comments could as easily weigh in favor of approval versus denial. 12 CFR § 5.33: “Business combinations involving a national bank or Federal savings association,” requires that the OCC deny a merger application “unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction.”

If the OCC fails to consider community group comments during a merger-approval process, that would directly contradict the law. 12 CFR § 5.33 also states: “When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.”⁸

2. How are your proposed changes to community group comment consideration during the merger-approval process consistent with 12 CFR § 5.33?

While you were CEO of OneWest Bank, OneWest asked regulators to approve the bank’s plan to merge with CIT. OneWest and CIT began conversations with community groups from which they anticipated merger opposition on the basis of CRA noncompliance. At one meeting, you said that groups opposing the merger would not be receiving any donations from the bank.⁹

You also set up a website through which individuals could submit form letters supportive of the merger.¹⁰ According to the Federal Reserve, 2,177 supportive comments were filed, of which 2,093 were “substantially identical form letters.” Only 51 commenters provided oral comments in support of the proposal.¹¹ In fact, almost 600 “supporter” letters had Yahoo email addresses—about 30%, when Yahoo only controlled 3% of the email market.¹² To add to the dubious

⁸ 12 CFR § 5.33: “Business combinations involving a national bank or Federal savings association,” at:

<https://www.law.cornell.edu/cfr/text/12/5.33>

⁹ Rachel Louise Ensign and Ryan Tracy, “Bankers vs. Activists: Battle Lines Form Over Low-Income Lending Rules Treasury Secretary Steven Mnuchin and OCC head Joseph Otting want to overhaul the Community Reinvestment Act, in part based on their experiences running OneWest,” *Wall Street Journal* (September 2018) at:

<https://www.wsj.com/articles/mnuchins-fight-with-activists-inspired-community-reinvestment-act-revamp-1537885753>

¹⁰ Rachel Louise Ensign and Ryan Tracy, “Bankers vs. Activists: Battle Lines Form Over Low-Income Lending Rules Treasury Secretary Steven Mnuchin and OCC head Joseph Otting want to overhaul the Community Reinvestment Act, in part based on their experiences running OneWest,” *Wall Street Journal* (September 2018) at:

<https://www.wsj.com/articles/mnuchins-fight-with-activists-inspired-community-reinvestment-act-revamp-1537885753>

¹¹ “Order Approving the Acquisition of a Bank Holding Company,” FRB Order No. 2015-20, *Federal Reserve System* (July 2015) at: <https://www.federalreserve.gov/newsevents/pressreleases/files/orders20150721a1.pdf>

¹² David Dayen, “The Fake Public Comments Supporting A Bank Merger Are Coming From Inside the House,” *The Intercept* (September 2018) at: <https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/>

veracity of those comments, a high number of the comments were submitted in the middle of the night on February 14, 2015, and approximately 1/3 of the email addresses provided by those “supporters” bounced back, including fairly obviously fake accounts like: gooeypooley69@yahoo.com.¹³

In August of 2018, the OCC released an Advance Notice of Proposed Rulemaking “seeking comment on the best ways to modernize the regulatory framework implementing the Community Reinvestment Act (CRA).”¹⁴ You started this process unilaterally and without fellow regulators like the Federal Reserve or Federal Deposit Insurance Corporation.

In reference to that planned modernization, you have indicated that your own experiences with the OneWest/CIT bank merger have significantly influenced your viewpoint: “I went through a very difficult period with some community groups that didn’t support our community, who came in at the bottom of the ninth inning, that tried to change the direction of our merger, and so I have very strong viewpoints.” You have also stated that part of your modernization plan is to prevent community groups from “pole vault[ing] in and hold[ing] [bankers] hostage.”¹⁵

3. Do you intend to recuse yourself from the new rule-making, given the irregularities confirmed in OneWest’s CRA review process while you were CEO? If not, how will you engage in this rule-making without prejudice extending from your experience with the OneWest/CIT merger?

Please respond to these inquiries in writing by April 15th.

Sincerely,



Congresswoman Katie Porter

¹³ “Fact Sheet: Joseph Otting’s Record at OneWest Bank,” *California Reinvestment Coalition* (July 2018) at: <http://calreinvest.org/wp-content/uploads/2018/07/CRC20Fact20Sheet20Joseph20Otting20Record20at20OneWest20Bank.pdf>

¹⁴ “OCC Seeks Comments on Modernizing Community Reinvestment Act Regulations,” *Office of the Comptroller of the Currency Press Release* (August 2018) at: <https://occ.treas.gov/news-issuances/news-releases/2018/nr-occ-2018-87.html>

¹⁵ Rachel Louise Ensign and Ryan Tracy, “Bankers vs. Activists: Battle Lines Form Over Low-Income Lending Rules Treasury Secretary Steven Mnuchin and OCC head Joseph Otting want to overhaul the Community Reinvestment Act, in part based on their experiences running OneWest,” *Wall Street Journal* (September 2018) at: <https://www.wsj.com/articles/mnuchins-fight-with-activists-inspired-community-reinvestment-act-revamp-1537885753>