

**Fake It Till They Make It: How Bad Actors Use Astroturfing to
Manipulate Regulators, Disenfranchise Consumers and Subvert the
Rulemaking Process**

Written Testimony of

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Chairman Green, Ranking Member Barr and Members of the Subcommittee, thank you for holding this important hearing today and for inviting the California Reinvestment Coalition (CRC) to testify.

Paulina Gonzalez-Brito and CRC

My name is Paulina Gonzalez-Brito. I am the Executive Director of the CRC. The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner.

We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement, and have the tools necessary to build household and community wealth.

Over the last 30 years, CRC has grown into the largest statewide reinvestment coalition in the country, with a membership of 300 organizations that serve low-income communities and communities of color.

CRC has our main office in San Francisco, and an office in Los Angeles.

Introduction

In this testimony, I wish to highlight to following points:

1. The ability of communities to have their voices heard through a fair and transparent public comment process is central to the Community Reinvestment Act and its effective implementation.
2. During the merger of OneWest Bank and CIT in 2014 and 2015, CRC uncovered facts that confirmed that the public comment process had been compromised and that fabricated comment letters were submitted in support of the bank merger.
3. Corruption of the public comment process in this way impairs administrative decision making and thereby harms the public interest, breeds distrust in the process and is likely to lead to diminished public participation, and undermines our democracy.
4. CRC has called for the Office of the Comptroller of the Currency (OCC) to: conduct an investigation into who corrupted the public comment process during the OneWest merger; revise the approval order to delete reference to letters of support for the merger or, in the alternative, note that some of these support letters were found to be “fabricated;” and develop and publicize a process that ensures that such breaches will not recur.

Further, the Comptroller's Licensing Manual notes that the OCC welcomes public comments and is committed to providing the public with easy access to public information on filings. Any interested person may comment in writing on any filing for which public notice has been published. Specific comments assist the OCC in understanding the matters that commenters believe merit investigation and consideration, and allow the OCC to review potential issues more completely.⁴

The way in which CRA regulation and implementation build community input into the process enables affected communities to have a voice as banks seek to grow their businesses. This dynamic encourages dialogue that can lead to reinvestment commitments by banks to communities that ensure that communities don't get left behind, while at the same time helping banks serve their communities through profitable and safe lending and investment opportunities. These commitments are often reflected in CRA agreements, or Community Benefits Agreements.

A Federal Reserve study found CRA agreements increased bank lending to LMI borrowers and borrowers of color by up to 20 percent.⁵ CRC negotiates formal written CRA agreements with banks, which benefits both communities and financial institutions. Over the past three years, CRC has worked with communities and financial institutions to secure more than \$50 billion in new CRA commitments.⁶ These commitments are addressing critical community needs that help to create a more just, equitable, and robust economy, uplifting low-income people and people of color.

Currently, the OCC under Comptroller Otting is proposing dramatic changes to CRA rules⁷ that CRC, our members and allies believe will be harmful to communities. The proposal would likely lead to far less meaningful community input as CRA implementation would move to formula-based approaches and rely on bank performance data that is less transparent and available to the public than is the case today. All of this comes at the expense of community input, community partnerships, and any activity that cannot be quantified into dollars that can support the OCC's one ratio framework. There is no apparent and meaningful way to incorporate community comments on local credit needs or on bank performance; community input comes second to target dollar goals.

Comments from the public, including community groups, can shed light on issues and conduct

⁴ Office of the Comptroller of the Currency, "Comptroller's Licensing Manual: Public Notice and Comments," November 2017, available at: <https://www2.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/file-pub-lm-public-notice-and-comments.pdf>

⁵ Raphael Bostic and Breck Robinson, "Do CRA Agreements Influence Lending Patterns?" 2002, Retrieved from <https://lusk.usc.edu/research/working-papers/do-cra-agreements-influence-lending-patterns>

⁶ CRC's recent community commitments with banks can be found at <http://www.calreinvest.org/publications/bank-agreements>.

⁷ See Federal Register Vol. 85 No. 6, January 9, 2020, available at: <https://www.fdic.gov/news/board/2019/2019-12-12-notice-dis-a-fr.pdf>

about which regulators are not aware, and can highlight the extent of particular concerns about certain institutions on the part of the public. But when the public comment process is undermined, the impact on communities is great.

OneWest/CIT Merger: a Case Study in “Fabricated Comments”

When CIT and OneWest Bank filed their applications to merge with the Federal Reserve and the OCC in 2014, it triggered a public comment process. CRC, and many of our members, allies, and other groups based in Southern California availed ourselves of the right to comment on what we viewed as a highly problematic merger of two highly problematic financial institutions. CRC extensively documented our numerous concerns about the merger in a series of comment letters to banking regulators, Freedom of Information Act (FOIA) requests, research and data analysis, and testimonials.

During this time, Joseph Otting, then CEO of OneWest Bank, took the unusual step of soliciting his Wall Street contacts and business partners, urging them to support the merger by going to OneWest Bank’s website to submit a letter to the regulators.⁸ CRC obtained one of these solicitations, which included a form letter to send to bank regulators. The form letter attested to the fact that the bank was being well managed (presumably by Comptroller Otting), that OneWest Bank was doing a good job serving southern California communities (it wasn’t), and that regulators did not need to hold public hearings on the merger (they eventually did). The letter provided no supporting data to justify or even explain the claims and conclusions made. It read:

“I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.”⁹

CRC, genuinely surprised that people would actually be in support of this problematic merger, began to look at the letters of support that were submitted in favor of the Bank, at the Bank’s direction, and apparently via the Bank’s website. We observed a number of anomalies. In one batch of 593 petitions in support of the OneWest merger and opposed to a public hearing that was posted on the Federal Reserve’s website, nearly 100% had Yahoo email accounts, an oddity that heightened our concerns given Yahoo’s relatively small share of the email market. In addition, a significant number of these emails were sent very late on February 13 or very early on

⁸ Matthew Monks and Elizabeth Drexheimer, “OneWest Seeks Wall Street’s Help Lobbying Yellen on CIT,” Bloomberg, January 8, 2015.

⁹ See David Dayen, “The Fake Public Comments Supporting a Bank Merger Are Coming from Inside The House,” The Intercept, September 29, 2018.

February 14, 2015, including a large share around 2am on Valentine's Day.

And consistent with reports at the time, a large number of emails supporting the merger that used the language from the Bank's website to which Joseph Otting referred his contacts were seemingly from lawyers (from dozens of law firms); real estate, investment, and accounting firms; branch and supply services providers; and from individuals outside the state of California.¹⁰

How much weight should regulators give to a bank support letter submitted by a contractor who relies on business from the Bank CEO who requested the letter, or a letter from the CEO's Wall Street acquaintance who asserts, presumably based upon nothing but the request of the CEO, that the bank is doing a good job serving the community in Los Angeles, and there is no need for a public hearing on the merger?

According to a report by the US Treasury Department, run by Secretary Steve Mnuchin, Comptroller Otting's former boss at OneWest Bank, equal weight should be given to supporters and opponents of mergers.¹¹ We are concerned that such recommendations only encourage astroturfing and fabricated comments by corporations, which dilutes and distorts the public input process by adding voices that are not necessarily interested or knowledgeable about the issues at hand, but are being employed primarily in the service of well-resourced and self-interested shareholders, managers, vendors, or similar stakeholders in the corporation.

Given the anomalies in the email support for this problematic merger, we became suspicious. On September 21, 2015, our fears were confirmed when CRC received an email directly from one such "supporter" of the merger who was upset that his name and his address had been used without his authorization to support a bank merger he seemingly had never heard about before. Specifically, the author noted,

"I am writing your (sic) this email regarding this bogus email (cut and pasted below), sent to comments.applications@ny.frb.org and We.licensing@occ.treas.gov by you on my behalf which I came across on the internet today, the email address (redacted)@yahoo is not mine and I did not authorize or send this email, and I did not authorize for you to use my name and address to be used for any support of One West and CIT Merger, I have no affiliation or whatsoever to this (sic) companies and would like you to stop using my name, address, or email address, or I will have to go through legal action and notify proper authorities regarding this matter. I value my privacy and identity and take this matter seriously. Thanks, (redacted).

¹⁰ To review "support" letters submitted in favor of the merger, see: https://www.federalreserve.gov/bankinfo/Comment_Letters_2-7-15_to_2-19-15.pdf While the Federal Reserve website still provides access to these comment letter, the OCC website seemingly does not.

¹¹ In a report issued under Secretary of the Treasury Mnuchin, Treasury notes that "regulators should give careful and equal weight to the views of individuals who support and oppose the activity," from, "A Financial System That Creates Economic Opportunities: Banks and Credit Unions," U.S. Department of the Treasury, June 2017.

Below his comments was a copy of the email letter in support of the merger using the same language found on the OneWest bank website and to which Joseph Otting directed his contacts, sent to the banking regulators purportedly in support of the bank merger and against the call for a public hearing on it. The above email was sent to CRC staff, and to the two regulators overseeing the OneWest/CIT merger – the OCC and the Federal Reserve Bank of NY.

It was only happenstance that this one individual discovered his name had been used fraudulently to support the merger, and that he then reached out to CRC. If others had their names used without their authorization, they might very well never realize this to be the case, and the regulators might never know as well.

CRC attempted to investigate further to see if other supposed “supporters” of the OneWest merger had their identities stolen as well. In a review of 25 of the petitions from the batch of 593 yahoo emails, 12 listed street addresses that could not be verified by the United States Postal Service as legitimate addresses.

Additionally, in a follow up “spot check” of approximately 150 email addresses attributed to the petition organized by OneWest, 25 of the email addresses appeared non-existent. However, as with the case of the individual who emailed our offices, if email addresses were created in the name of real people without their knowledge, then it might be difficult to detect the fraud because those emails wouldn’t necessarily bounce back as non-existent.

Subsequent investigation found approximately one-third of emails sent to these addresses of “supporters” of the merger bounced back, including from some with questionable addresses such as “gooeypooey69@yahoo.com.”¹²

CRC, along with Inner City Press/Fair Finance Watch, then submitted a detailed Freedom of Information Act (FOIA) request to the OCC seeking documentation relating to potentially false letters of support being filed as part of the merger process. The OCC produced in response, amongst other things, a file labelled by the OCC “OneWest CIT Bank Merger Fabricated Comment Letters,” that includes documents reflecting four email exchanges with the OCC from “supporters” of the merger who did not affirmatively support or even know about the merger.

These individuals communicated to the OCC:

*“This is to bring to your attention that **I received an email from the OCC regarding a subject that I am completely unaware of.** I DID NOT send the email below that you responded to. This is a fraudulent use of my email account. I will be working with my email hosting provider to ensure that this does not happen again. I will appreciate your reply acknowledging this very*

¹² See David Dayen, “The Fake Public Comments Supporting a Bank Merger Are Coming from Inside The House,” The Intercept, September 29, 2018.

important notice. Thank you very much!”

“I am NOT the writer of the communication below – name, address & zip are wrong:”

“I did not write this letter!”

“To whom it may concern< I never send (sic) this email. I am not aware of the merge of the companies Someone got a hold of my email address Sorry”

These four emails were sent in response to the OCC’s acknowledgement of their purported “support” of the OneWest merger. The support letters submitted to the OCC under their names used the language from the OneWest website to which Joseph Otting referred his contacts.

The FOIA response from the OCC also included an email from OCC staff to the legal counsel for OneWest Bank with the following note: “FYI and review. We would appreciate any information you can provide regarding this submission.” This note was forwarded along with the replies from consumers whose identities were fraudulently used to support the bank merger.

The FOIA response did not include any further information from the Bank or its counsel in reply to this request from the OCC. As such, we have no reason to believe any investigation of the “fabricated comment letters” was ever conducted.

How many “supporters” of the merger were not supporters of the merger, or where not even real people for that matter? We do not know. But that didn’t stop the Federal Reserve and the OCC from citing the “support” letters in the orders approving the merger of CIT and OneWest. The OCC order noted that, “Approximately 1,700 of the letters resulted from an email campaign initiated by CITG and OWB seeking support for the merger.”¹³ The Federal Reserve order approving the merger of holding companies noted that “A large number of commenters supported the proposal,” citing in a footnote that “Approximately 2,177 commenters supported the proposal, of which approximately 2,093 commenters submitted substantially identical form letters.”¹⁴

The OCC was on notice about “fabricated comment letters” as early as January 16, 2015, the date when two of the above email exchanges with defrauded consumers took place. The OCC and the Federal Reserve nonetheless conditionally approved the bank merger six months later, in July of 2015, again, citing the support letters in their approval orders. CRC raised concerns about the fraudulent support letters with the regulators once we received the communication from the

¹³ Office of the Comptroller of the Currency, “Application to Merge CIT Bank, Salt Lake City, UT with and into OneWest Bank, N.A., Pasadena, CA and Request Waiver of Residency Requirement,” Letter to Joseph M. Otting conditionally approving the application to merge, dated July 21, 2015, p. 2.

¹⁴ Federal Reserve System, “CIT Group, Inc. Livingston, New Jersey: Order Approving the Acquisition of a Bank Holding Company,” July 19, 2015, p. 4.

defrauded consumer in September of 2015. The OCC removed any conditions relating to the merger eight (8) months later, in May of 2016,¹⁵ without publicly addressing the fabricated comment letters.

CRC has called for an investigation into who was responsible for the fabricated emails, for changes to ensure that false bank support for a merger cannot again be allowed to corrupt the public comment process, and for the regulators to revise their orders to reflect that the support for the OneWest merger was suspicious at best.¹⁶ CRC is not aware that any of these remedies have been pursued or even considered by the OCC, including under Comptroller Otting.

CRC and Democracy Forward have submitted a FOIA request to the OCC to determine, amongst other things, whether there are any indicia of fabricated emails corrupting the current CRA rulemaking process.¹⁷

Community input and public participation are at the heart of the CRA. We fear these core principles of the CRA are in jeopardy under this OCC which seeks to stifle dissent and minimize involvement by community groups in the very reinvestment assessments and decisions that impact them greatly.

Corruption of the Public Comment Process Harms Communities

When astroturfing and similar measures are used to undermine the public input and comment processes, it is low-income communities and communities of color that suffer. The CRA framework has provided a perhaps unique, even if imperfect, opportunity for communities to have a seat at the table and their voices be heard by establishing that bank performance in meeting community credit needs is to be considered in corporate applications and in bank CRA examinations. This process necessarily requires the input of community groups and members to help regulators and banks identify community needs. And CRC implementation encourages banks to develop partnerships with community groups that understand and can help banks meet these community needs. CRA has generated trillion of dollars in safe and sound lending and investment in LMI communities and communities of color as a result of public input and community/bank partnerships. Bank CRA commitments and the ability of the public to comment on bank performance are important and effective ways to identify which institutions are helping

¹⁵ See CRC statement on the OCC approval of the CIT CRA Plan, a final condition of merger approval, available at: <http://calreinvest.org/press-release/california-reinvestment-coalition-denounces-occs-approval-of-cit-groups-new-cra-plan/>

¹⁶ FOIA request submitted by CRC and ICP, as well as OCC responses, are available at: <http://calreinvest.org/wp-content/uploads/2018/10/CRC-FOIA-Request.pdf>

¹⁷ Press releases from CRC and Democracy Forward, with links to the FOIA request, are available here: <http://calreinvest.org/press-release/coalition-of-community-orgs-seeks-records-on-trump-administrations-attempt-to-silence-opposition-to-gutting-anti-redlining-rules/>, and <https://democracyforward.org/press/coalition-of-community-orgs-seeks-records-on-trump-administrations-attempt-to-silence-opposition-to-gutting-anti-redlining-rules/>

communities and which are hurting communities.

When regulators rely on fabricated comments, the public loses. Fabricated comments provide misinformation to regulators, and may distract them from true areas of concern. This is dangerous. In years past, housing counseling agencies and legal service offices informed regulators about the growing problem of subprime and option adjustable-rate mortgage loans infiltrating underserved communities. Today, CRC and our members are raising alarms about banks that finance the displacement of low-income communities meant to benefit from the CRA. Regulators must guard against disinformation campaigns that risk drowning out these concerns.

Additionally, astroturfing and fabricated comment campaigns breed distrust in the system and may make it less likely that the public would comment in the future. As a result, regulators may have less access to information from impacted communities about what is happening on the ground far from regulatory offices. Regulators would be left with the one-sided picture provided by financial institutions. Further, such efforts corrupt the democratic process. Our system of government functions by allowing public input into decisions made by public officials. Congress and regulators have recognized the importance of this function by promulgating laws and rules designed to ensure that public comment is considered and that the process for doing so is fair. In the OneWest merger, the process was unfairly manipulated by private interests to create an outcome without regard to the public interest or the merits of the important issues at hand.

Finally, we are particularly concerned about the OCC's approach to the public comment process as it is currently seeking comment on a Proposed Rule that if finalized would significantly harm communities and threaten a return to redlining practices. The Comptroller's comments demonstrate hostility to anyone with whom he disagrees. He recently told the Wall Street Journal that "If you don't like this [proposed change to CRA], you are either economically advantaged by the current structure or you don't understand it,"¹⁸ Presumably he does not believe that the few supporters of the proposal are similarly corrupt or ignorant. CRC feels that everyone's voice should be heard and all views considered on their merits. We believe that the OCC should be less focused on impugning those who disagree with its proposal, and more focused on ensuring a fair process that prevents astroturf campaigns from unfairly manipulating the result. Based on the activity during the OneWest merger comment period, and the apparent lack of accountability or reform that followed, we have little faith in the ability of this OCC to guard against astroturfing or ensure a fair process where all comments are meaningfully considered.

A Renewed Call for an Investigation and a Commitment to a Fair Process

As noted, CRC requested an investigation into the public comment process even before the

¹⁸ "Bank Regulators Propose Overhaul of Lending Rules for Poorer Communities." Andrew Ackerman. The Wall Street Journal. Dec. 12, 2019. <https://www.wsj.com/articles/bank-regulators-propose-overhaul-of-lending-rules-for-poorer-communities-11576177437>

merger of OneWest Bank and CIT was approved by the OCC and the Federal Reserve. Given the subsequent confirmation of the fabricated comment letters from our FOIA request to the OCC, we renew that call. Such an investigation should determine what happened, who was responsible, when the Bank and the OCC were first aware that the integrity of the public comment process had been compromised, what consequences were imposed on those responsible for defrauding the process, and what the OCC has done to ensure that this will not happen again. We further call for the OCC and the Federal Reserve to revise the orders approving the merger to reflect that at least some of the letters of support in favor of the merger were tainted and included “fabricated comment letters.”

Finally, we call on the OCC to clarify its policies and procedures to ensure that comments submitted and considered are from individuals and organizations who actually intended to comment. Further, given dismissive statements by the Comptroller about large swaths of potential and actual commenters on the current proposal to substantially change the CRA regulations, we request clarification from the OCC as to which categories of groups and individuals can expect to have their comments reviewed and genuinely considered by this OCC. If the Comptroller is not able to commit to a fair process that considers all viewpoints, especially that of the large number of groups that oppose his Proposed Rule, then he should recuse himself from this rulemaking.

Conclusion

Mr. Chairman and members of the Subcommittee, thank you again for the opportunity to testify today about how to ensure that community voices are not drowned out by fabricated comments fraudulently submitted in favor of industry. The California Reinvestment Coalition looks forward to working with you to ensure important protections, like the Community Reinvestment Act regulations, are not weakened as part of deregulatory schemes designed to benefit the largest and most powerful corporations, that historically disenfranchised communities do not lose out, and that the voices of all Americans are heard.

Photo: Tom Williams/CQ Roll Call via AP

The Intercept

THE FAKE PUBLIC COMMENTS SUPPORTING A BANK MERGER ARE COMING FROM INSIDE THE HOUSE



[David Dayen](#)

September 29 2018, 4:00 a.m.

COMMENTS SUBMITTED TO a top banking regulator supporting a 2015 merger between OneWest Bank and CIT Bank were attributed to people who never sent them, according to documents obtained under the Freedom of Information Act and reviewed by The Intercept.

The fake comments appear to be tied directly to Joseph Otting, the head of the regulatory agency himself.

The documents reviewed by The Intercept show that the Office of the Comptroller of the Currency, the main bank regulator for nationally chartered banks, knew about the fake comments at the time, before it approved the merger. But the OCC appears to have done no

meaningful investigation of the matter, and even cited public support for the merger when approving it.

Incidences of fake comments delivered to the government to boost support for a particular regulatory position have become epidemic. New York Attorney General Barbara Underwood is [investigating fake comments](#) submitted regarding the Federal Communications Commission's repeal of net neutrality regulation, with [as many as 2 million identities stolen](#). The Wall Street Journal also [found fake comments](#) in the Consumer Financial Protection Bureau's proposed rule on payday lending.

But in this case, OneWest Bank may have played a role in the fabrication. The text of the fake supportive comments is identical to a sample letter placed on the OneWest website in 2015 encouraging customers to support the merger. Otting, then CEO of OneWest, [sent emails](#) to his contacts on Wall Street at the time, pointing to the sample letter on the website and soliciting support.

Otting now heads the OCC, where he has kicked off a project to "[modernize](#)" the Community Reinvestment Act, which assesses banks for lending into low- and moderate-income areas. The CRA really only has one enforcement mechanism: Regulators examine it when banks attempt to merge. Otting has [cited his experience](#) with the OneWest-CIT merger as cementing his views on the CRA. "I went through a very difficult period with some community groups ... who came in at the bottom of the ninth inning, that tried to change the direction of our merger," he told a banking conference in April.

Critics argue that Otting's main goal is to undermine the CRA because of his experience in the OneWest merger. "This bank did a particularly poor job in lending to the community," claimed Kevin Stein of the California Reinvestment Coalition, one of the organizations that fought the merger. "They were upset there was an effort to hold them to account. The response is to try and loosen the rules across the board, and diminish the role the community has in the process."



John Thain, chair and chief executive officer of CIT Group, left, speaks alongside Joseph Otting of OneWest, during a public meeting in Los Angeles, Calif., on Feb. 26, 2015, held by the Federal Reserve Board and the Office of the Comptroller of the Currency to collect information relating to the merger of CIT Bank into OneWest Bank.

Photo: Patrick T. Fallon/Bloomberg via Getty Images

ONEWEST ROSE OUT of the ashes of failed subprime lender IndyMac. A consortium led by current Treasury Secretary Steve

Mnuchin purchased the bank, with a unique backstop agreement in which the Federal Deposit Insurance Corporation covered losses beyond a certain threshold. OneWest faced persistent criticism in its short life for [hasty](#) — and what some have alleged as [illegal](#) — foreclosures.

In 2014, CIT, a business lender run by John Thain, the disgraced leader of Merrill Lynch, who [installed a \\$35,000 golden toilet](#) in his office while the investment bank was failing, [announced a proposed \\$3.4 billion purchase](#) of OneWest. Investors like Mnuchin, who bought IndyMac for just \$1.55 billion, would [more than double](#) their money. Otting, CEO of OneWest since shortly after its launch in 2010, would also stand to gain.

As is customary, federal regulators — both the OCC and the Federal Reserve had jurisdiction — opened a public comment process for the merger. Community activist groups like the California Reinvestment Coalition immediately called for a public hearing, citing OneWest’s dubious foreclosure practices and insufficient commitment to lending in poor communities. “This bank had very low reinvestment; they mostly foreclosed on people,” said Kevin Stein.

This [reportedly angered Otting](#). As a [January 2015 Bloomberg piece](#) explained, the then-CEO emailed his rolodex of contacts with the subject line “Support for OneWest Bank,” [urging recipients](#) “to click on the link below and submit a letter of support” for the merger. The link, now dead, went to a [mini-site at OneWest Bank](#), also promoted to bank customers, which featured a sample letter:

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

“I have never heard anything like this,” said one banking consultant to Bloomberg about Otting’s solicitation of support. “It strikes me as unusual and kind of overkill.”

According to the [Federal Reserve](#), 2,177 individuals and organizations submitted supportive comments, “of which approximately 2,093 commenters submitted substantially identical form letters” — aka OneWest’s sample letter. Opposition groups filed petitions with 21,000 signatures calling on regulators to block the merger.

In an email, OCC spokesperson Bryan Hubbard stated that “identical ‘form letters’ are considered one comment letter as form letters are frequently used.” But the OCC’s order on the merger states: “The OCC received over 2,300 comment letters both in support of and in opposition to the Application. Approximately 1,700 of the letters resulted from an email campaign initiated by CITG and OWB seeking support for the merger.”

Almost immediately, the California Reinvestment Coalition [found irregularities](#) with the support letters. The group heard from a Vallejo, California, resident who was listed as sending an email of support for the merger. “I did not authorize or send this email,” the individual said.

Upon further research, the CRC found that, in a batch of 593 “supporters” of the merger, all of them had Yahoo email addresses, when Yahoo only controlled 3 percent of the email market. Yahoo famously suffered a data breach in 2014 of at least 500 million user accounts, including passwords, which could have facilitated placing emails in user’s names without their knowledge. Plus, a large number of the emails were sent in the middle of the night on Valentine’s Day in 2015, and roughly one-third of the email addresses associated with supporters bounced back, including seemingly fake ones like [“goeypoey69@yahoo.com.”](#)

Reports also indicated that OneWest [donated \\$2.5 million](#) to 14 organizations who provided supportive comments on the merger. In two cases, then-OneWest chair Mnuchin [sat on the boards](#) of supportive organizations, and personally delivered \$66,000 to them

from his family foundation. Community groups [asked at the time for an investigation](#) into OneWest's possible manipulation of public support, but were rebuffed.

Activists did get regulators to commission a public hearing, and in response to criticism, CIT and OneWest put together a \$5 billion low-income lending plan. But regulators [approved the merger](#) on July 21, 2015. The OCC order of approval cited public support. "Commenters in support of the transaction praised the banks for many reasons, including the banks' community outreach efforts," the OCC wrote in its approval order. The astroturf campaign appeared to have worked.

When Otting was nominated to run the OCC in mid-2017, CRC and Inner City Press, a watchdog journalism outlet based in the Bronx, filed an expansive FOIA request, seeking information on OneWest foreclosures, loan modifications, consumer complaints, and regulatory enforcement activities. In addition, the organizations sought "communications, conversations, complaints, interpretations, decisions or actions taken relating to whether emails or other letters or representations of support for the merger of OneWest and CIT Bank were fabricated or manufactured, and whether the purported authors of these emails or letters of support actually supported the merger, or even existed."

AFTER A YEARLONG effort to obtain the information, which included ongoing litigation, the OCC made available 15 pages. They contain emails to and from David Finnegan, an OCC senior licensing analyst who was a point of contact for public comment on the merger.

Four individuals contended in emails to Finnegan that they never sent the comment letters supporting the merger. "This is to bring to your attention that I received an email from the office of OCC regarding a subject I am completely unaware of," wrote one individual (the OCC redacted the emailers' identifying information). "I DID NOT send the email below that you responded to. This is a fraudulent use of my email account." The other three sent similar complaints.

The letter of support attributed to these individuals was identical to the letter posted at the OneWest Bank website.

Matthew Lee of Inner City Press expressed outrage at the fake comments. “There’s nothing more offensive of speech rights than artificially presenting someone as saying something you don’t believe,” Lee said. “You have the right to be silent. It’s so beyond the pale.”

Finnegan responded to these emailers, thanking them for letting him know. He also sent two emails to Stephen Salley, an attorney with Sullivan & Cromwell, who was representing OneWest in the merger. “FYI and review. We would appreciate any information you can provide regarding this submission,” Finnegan wrote to Salley on both occasions.

Presumably, Finnegan reached out to OneWest’s lawyer about the fake comments because they featured the same form letter that OneWest had written to encourage public support. But the two emails are the only record that OCC did any investigation of the fake comments. There is no reply from Salley or Sullivan & Cromwell to the OCC, at least not in written form. “By reaching out to the attorneys immediately, it suggests something serious, and yet there’s no follow-up that’s apparent whatsoever,” said Stein of the California Reinvestment Coalition. His organization has asked the OCC for clarification on how it investigated the fake comments, but he has yet to receive any information.

Stein believes that OneWest had to have been behind the fake comments. “Who else would do it?” he said. “Why would anyone else say, ‘I’ve got an idea, let’s hack into a bank website for the purposes of creating fabricated comment regulatory letters?’”

Olivia Weiss, a spokesperson for CIT, forwarded a request for comment to her colleague Gina Proia, who declined to comment. Salley did not respond when asked whether he or his law firm responded to the OCC. The OCC acknowledged receipt of The Intercept’s questions, but did not respond to most of them.

THE MYSTERY OF the fake merger support comments has taken on new relevance since Otting became head of the OCC, and made his announcement to revise the Community Reinvestment Act. The Fed and the FDIC share in the responsibility for the CRA, but [did not join](#) the OCC in issuing an [advance notice of proposed rule-making](#). Critics believe the OCC's hinted-at changes would [eliminate bank commitments](#) to low-income residents and local communities.

The CRA, enacted in 1977, hasn't been updated since the 1990s. Its goal is to prevent redlining and other forms of discrimination, by encouraging lending to lower-income borrowers in the communities that banks serve. Banks are assessed every few years and get a grade on their local lending efforts. Advocates say it has moved trillions of dollars into the hands of those who need credit, and made banks more accountable to their communities.

Compromises and loopholes have made the CRA a less effective tool, however. Since its enactment, 97 percent of all banks examined have received a "satisfactory" or "outstanding" grade, according to a 2015 [Congressional Research Service](#) report. Despite near-universal compliance with low-income lending, poor people still find loans hard to come by, a testament to banks' [persistent and successful efforts to game the system](#), including getting credits for financing payday lenders, as well as landlords that evict low-income families from apartments. Community groups have consistently called for the CRA to be strengthened, not weakened; a bill [released this week](#) by Sen. Elizabeth Warren, D-Mass., would do just that.

No financial penalties are attached to a bad CRA grade; the only real consequence is that scores are taken into account when banks apply for mergers. During the OneWest-CIT merger, groups criticized OneWest for its weak community lending efforts. That's precisely the part of the law that Otting wants to roll back, according to his own comments. A [Wall Street Journal report](#) this week, which likened community groups' use of the CRA to "extortion," suggests that Otting and Mnuchin's experience with OneWest is fundamental to their aims. Otting said earlier this year that community groups

should not be able to “pole vault in and hold [bankers] hostage” during mergers.

That makes Otting’s potential role in inducing fake public comments a critical factor. “You have a bank regulator run by a banker who openly defrauded the bank merger process a few years earlier,” said Matthew Lee of Inner City Press. “What these documents show raise troubling questions about the effort to change the CRA.”

Somewhat ironically, Otting’s agency has initiated a public comment period about the CRA changes. “It is time for a national discussion on how we can make the CRA work better,” Otting said, once again soliciting public comments for a preferred regulatory position.

In his public comment for Inner City Press, Lee [asked for Otting to recuse himself](#) from the new rule-making, highlighting the fake comment controversy. “Public participation is key to CRA, on performance evaluations and crucially on bank merger and expansion applications,” Lee wrote. He [added](#) that it’s unclear whether the OCC has improved its processes to prevent fake comments from being submitted again in the CRA rule-making. The public comment period ends in November.

Otting is scheduled to appear at a [Senate Banking Committee hearing](#) on October 2, where his CRA push could be a topic of discussion.

Top photo: Comptroller of the Currency Joseph Otting prepares to testify during a House Financial Services Committee hearing on June 13, 2018.

BLOOMBERG

OneWest Seeks Wall Street's Help Lobbying Yellen on CIT

Matthew Monks and Elizabeth Dexheimer

January 8, 2015, 2:06 PM PST

A California group that advocates for low-income borrowers is calling on regulators to hold hearings on the biggest U.S. bank sale of 2014. The target of that deal, OneWest Bank, is pushing back in an unusual way.

OneWest Chief Executive Officer Joseph Otting sent an e-mail to his contacts on Wall Street this week asking for help to discourage bank overseers from holding public hearings on its \$3.4 billion takeover by CIT Group Inc.

Otting's e-mail includes a link to a petition addressed to Federal Reserve Chair Janet Yellen and others stating that "there is no need for a public hearing." The contents of the e-mail were described by executives at investment banks who received the message and spoke on the condition that they not be named so as not antagonize a potential client.

"I have never heard anything like this," said Bert Ely, an independent banking consultant. "It strikes me as unusual and kind of overkill, unless possibly there is a problem that hasn't surfaced publicly yet that they are trying to mitigate or minimize."

OneWest is the former IndyMac Bancorp, which failed in 2008 and was acquired by a group of investors including George Soros and John Paulson the next year.

"It's general business practice to solicit comments from key constituencies, including customers, community organizations and trade associations, to highlight the support a proposed merger/transaction has within the community," David Isaacs, a spokesman for OneWest, said in an e-mailed statement. Representatives of CIT and the Fed declined to comment.

Sale Criticism

IndyMac's 2009 sale by the Federal Deposit Insurance Corp. was the target of protests by foreclosed homeowners outside the residence of Steven Mnuchin, its chairman. Mnuchin, a former Goldman Sachs Group Inc. partner, brought together Soros, Paulson and others including Michael Dell to acquire IndyMac for about \$1.5 billion.

Those backers agreed last July to sell Pasadena, California-based OneWest to CIT, the New York business lender run by John Thain, and that's revived the protests.

A copy of Otting's e-mail was forwarded to Bloomberg News by Kevin Stein, associate director of the California Reinvestment Coalition, or CRC, which advocates for low-income borrowers and is a primary opponent of the deal.

His group, which organized a protest at OneWest's headquarters in December, has argued in letters to state and federal regulators that the deal will create another "too-big-to fail" bank. The transaction would enrich OneWest management with little benefit to the community, CRC said.

Yellen Letter

Below a message titled "Show your support for OneWest Bank," visitors to the OneWest website are encouraged to add their name and address to a form letter to Yellen.

"This merger will retain and create new jobs in California," the letter reads. "I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing."

Regulators have made it harder for big banks to merge since taxpayers bailed out the largest U.S. lenders during the financial crisis. M&T Bank Corp.'s \$3.7 billion deal for Hudson City Bancorp. Inc. has been stalled since 2012. The Fed delayed Capital One Financial Corp.'s \$9 billion acquisition of ING Groep NV's online bank for public hearings.

The CIT deal is slated to close in the first half of 2015, pending approval from the Fed and Office of the Comptroller of the Currency.

CIT would have \$67 billion in assets and 73 branches after buying OneWest, according to an investor presentation in July. At that size, CIT would become the 36th largest bank holding company by assets, according to regulatory data.

December 11, 2019

VIA Electronic Delivery

Chief FOIA Officer
Communications Division
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., and the Office of the Comptroller of the Currency (OCC) and the Department of the Treasury regulations at 12 C.F.R. Part 4 and 31 C.F.R. Part 1, respectively, Democracy Forward Foundation and California Reinvestment Coalition make the following request for records.

Records Requested

In an effort to understand and explain to the public how OCC is responding to community groups’ concerns with its effort to revise the Community Reinvestment Act regulations,¹ Democracy Forward Foundation and California Reinvestment Coalition request that the OCC produce the following within twenty (20) business days:

1. All emails related to the revision of the Community Reinvestment Act regulations whose sender and/or recipient fields include one or more email addresses with a top-level domain “.com,” “.org,” or “.edu.” This does not include comments filed in the public rulemaking docket number OCC-2018-0008, “Reforming the Community Reinvestment Act Regulatory Framework.”²
2. All records containing or reflecting communications, conversations, complaints, interpretations, decisions or actions taken relating to whether public comments related to the Advanced Notice of Proposed Rulemaking (ANPR) “Reforming the Community Reinvestment Act Regulatory Framework” were fabricated, manufactured, or otherwise not authored by the putative signatory.
3. All records containing or reflecting communications to or from Comptroller Joseph Otting or Deputy Comptroller for Community Affairs Barry Wides concerning or relating

¹ Advanced Notice of Proposed Rulemaking, Reforming Community Reinvestment Act Regulatory Framework, OCC (Sept. 5, 2018), <https://www.regulations.gov/document?D=OCC-2018-0008-0001>.

² Docket Folder, Reforming Community Reinvestment Act Regulatory Framework, OCC (last accessed Dec. 2, 2019), <https://www.regulations.gov/docket?D=OCC-2018-0008>.

to California Reinvestment Coalition (CRC) or the American Banker articles “BankThink Why is OCC scared of public input?”³ or “Setting the record straight on CRA reform.”⁴

4. All records containing or reflecting communications from Deputy Comptroller for Community Affairs Barry Wides to persons or entities outside the government seeking corrections of or responding to statements, whether inside or outside the ANPR/rulemaking process, by such persons or entities about the OCC effort to revise the Community Reinvestment Act regulations.

The timeline for this search is September 5, 2018 to the date the search is completed.

Scope of Search

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

³ Paulina Gonzalez-Brito, BankThink: Why is OCC scared of public input?, Am. Banker (April 08, 2019), <https://www.americanbanker.com/opinion/why-is-occ-scared-of-public-input>.

⁴ Barry Wides, BankThink: Setting the record straight on CRA reform, Am. Banker (March 25, 2019), <https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform>.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 12 C.F.R. § 4.17, and 31 C.F.R. § 1.7, Democracy Forward Foundation (DFF) and California Reinvestment Coalition (CRC) request a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A); *see also* 12 C.F.R. § 4.17(4), 31 C.F.R. § 1.7(k)(1).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

The OCC has begun the process of taking public comment on revised regulations under the Community Reinvestment Act (CRA). The CRA is a crucial fair lending law designed to combat redlining and encourage financial institutions to meet the credit needs of their communities. In September 2018, the OCC published an Advanced Notice of Proposed Rulemaking to take comment on a new CRA regulatory framework.⁵ The ANPRM received over 1,500 public comments in response. The OCC’s behavior toward commenters, particularly from community groups, has raised significant flags. In January and March 2019 respectively, the OCC Deputy Comptroller for Community Affairs Barry Wides sent a letter to CRC expressing offense at its advocacy around the CRA and published an article that took the unusual step of criticizing commenters that in his view “have not contributed positively to the public discussion” and “opted to distort facts by inaccurately portraying the purpose and content of the ANPR.”⁶ And the following October, Wides again sent a letter to the California Reinvestment Coalition asking CRC to alter its stance on the ANPRM.⁷ This request seeks more information about OCC’s views of community groups like California Reinvestment Coalition, how it decided to take these unusual steps, and whether there are other irregularities in the ANPRM comment process.⁸ The

⁵ Advanced Notice of Proposed Rulemaking, Reforming Community Reinvestment Act Regulatory Framework, OCC (Sept. 5, 2018), <https://www.regulations.gov/document?D=OCC-2018-0008-0001>.

⁶ Letter from Barry Wides, Deputy Comptroller, OCC, to Paulina Gonzalex-Brito, Executive Director, CRC (January 9, 2019), <http://calreinvest.org/wp-content/uploads/2019/03/Wides-Letter-to-CRC.pdf>; Barry Wides, BankThink: Setting the record straight on CRA reform, Am. Banker (March 25, 2019), <https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform>.

⁷ @CalReinvest, Twitter (Oct. 2, 2019), <https://twitter.com/CalReinvest/status/1179491967308185600?s=20>.

⁸ Cf. David Dayen, *The Fake Public Comments Supporting a Bank Merger are Coming from Inside the House*, The Intercept (Sept. 29, 2018), <https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/> (documenting “fake” public comments in a previous OCC notice-and-comment process).

requested records will therefore have a connection that is “direct and clear” to operations or activities of the Federal Government, and because these records will shed new light on this important topic, they also will be “meaningfully informative” about government operations or activities. 31 C.F.R. § 1.7(k)(2).

Democracy Forward Foundation and California Reinvestment Coalition are able to, and regularly do, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, *see id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of the operations of government.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF’s communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.⁹

⁹ See, e.g., Alexander Nazaryan, *Why did right-wing troll Charles C. Johnson meet with Commerce Secretary Wilbur Ross?*, Yahoo News (May 14, 2019), <https://news.yahoo.com/why-did-rightwing-troll-charles-c-johnson-want-to-meet-with-commerce-secretary-wilbur-ross-090000636.html>; Derek Kravitz and Jack Gillum, “Happy to Do It”: *Emails Show Current FAA Chief Coordinated With Ex-Lobbyist Colleagues on Policy*, ProPublica (Mar. 27, 2019), <https://www.propublica.org/article/dan-elwell-current-faa-chief-coordinated-with-ex-lobbyist-colleagues-on-policy>; Hamid Aleaziz, *Emails Show US Border Officials Didn’t Receive “Zero Tolerance” Guidance Until After the Policy Was Enacted*, Buzzfeed News (Feb. 28, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/zero-tolerance-policy-guidance-dhs-family-separation>; Jonathan Cohn and Jeffrey Young, *Emails Show Trump Administration Was Told Obamacare Ad Cuts Could Hurt Enrollment*, Huffpost (Dec. 17, 2018), https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut_us_5c115061e4b084b082ff8dba; Madison Pauly, *When the Biggest Prison Company Complained About a California Sanctuary Law, ICE Listened*, Mother Jones (Dec. 7, 2018), <https://www.motherjones.com/politics/2018/12/geo-memo-private-prison-california-immigration/>; Eliza Rellman,

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list, discussing ongoing legal developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.¹⁰ In

'Just answer the question and kill this story': In internal emails, Heather Nauert criticized Rex Tillerson's refusal to deny reports that he called Trump a 'moron,' Business Insider (Nov. 2, 2018), <https://www.businessinsider.com/heather-nauert-rex-tillerson-trump-moron-2018-11>; Rebecca Klein, *Lawsuit Accuses Betsy DeVos And Her Deputies Of Being Motivated By Sexism*, HuffPost (Oct. 31, 2018), https://m.huffpost.com/us/entry/us_5bd9ff6ee4b01abe6a1ad4a9; Nick Penzenstadler, *A year after Vegas shooting, ATF emails reveal blame, alarm over bump stocks*, USA Today (Oct. 1, 2018), <https://www.usatoday.com/story/news/2018/10/01/year-after-vegas-shooting-atf-emails-reveal-blame-alarm-over-bump-stocks/1432137002/>; Jessica Kwong, *Ivanka Trump was more than complicit in Obama equal pay rollback—she had a hand in it, watchdog alleges*, Newsweek (Aug. 29, 2018), <https://www.newsweek.com/ivanka-trump-equal-pay-complicit-obama-1093833>; Vera Bergengruen, *New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump*, BuzzFeed News (July 25, 2018), <https://www.buzzfeednews.com/article/verabergengruen/these-emails-show-what-happens-when-the-white-house-keeps>; Erin Dooley, *Exclusive: Former for-profit college executive shaped Education Department policy that could benefit former employers: Documents*, ABC News (May 15, 2017), <https://abcnews.go.com/US/exclusive-profit-college-executive-shaped-education-department-policy/story?id=55108981>; Heidi Przybyla, *Notes, emails reveal Trump appointees' war to end HHS teen pregnancy program*, NBC News (Mar. 20, 2018), <https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686>; Dominic Holden, *Documents Show The Trump Administration Approved Bump Stocks Before It Opposed Them*, BuzzFeed News (Mar. 22, 2018), <https://www.buzzfeednews.com/article/dominicholden/trump-administration-bump-stocks>; Bernard Condon, *Trump Advisor Denies He Cheered End of Tunnel Funding Deal*, Associated Press (Feb. 13, 2018), available at <https://www.usnews.com/news/business/articles/2018-02-13/trump-adviser-denies-he-cheered-end-of-tunnel-funding-deal>; Celeste Katz, *Interior Department tapped wildfire preparedness funds for Ryan Zinke helicopter tour*, Newsweek (Dec. 29, 2017), <https://www.newsweek.com/ryan-zinke-interior-department-helicopters-wildfires-757857>.

¹⁰ See, e.g., *BREAKING: At Congressional Hearing, Sec. DeVos Confronted With Records Revealing Trump Administration's Unlawful Decision to Permit Federal Funds to Arm Teachers* (Apr. 10, 2019), <https://democracyforward.org/press/breaking-at-congressional-hearing-sec-devos-confronted-with-records-revealing-trump-administrations-unlawful-decision-to-permit-federal-funds-to-arm-teachers/>; *BREAKING: New Evidence Reinforces Claim Trump's Title IX Policy Was Based on Sexist Stereotypes, Rendering it Unconstitutional* (Nov. 1, 2018), <https://democracyforward.org/press/breaking-new-evidence-reinforces-claim-trumps-title-ix-policy-was-based-on-sexist-stereotypes-rendering-it-unconstitutional/>; *On 1-Year Anniversary of Equal Pay Roll Back, New Documents Reveal Ivanka Trump's Role in Trump Administration Decision to Roll Back Protections for Women and Working Families* (Aug. 29, 2018), <https://democracyforward.org/press/on-1-year-anniversary-of-equal-pay-roll-back-new-documents-reveal-ivanka-trumps-role-in-trump-administration-decision-to-roll-back-protections-for-women-and-working-families/>; *Democracy Forward Demands Ethics Investigation into White House Official's Role in Developing Special Drug Pricing Project With Novartis* (July 11, 2018), <https://democracyforward.org/press/democracy-forward-demands-ethics-investigation-into-white-house-officials-role-in-developing-special-drug-pricing-project-with-novartis/>; *BREAKING: New Records Reveal DeVos Senior Advisor And Former For-Profit College Executive Directed Rollback of Protections Against Predatory Student Loans* (May 15, 2018), <https://democracyforward.org/press/breaking-new-records-reveal-devos-senior-advisor-former-profit-college-executive-directed-rollback-protections-predatory-student-loans/>; *BREAKING: New Records Suggest Trump-Appointed Political Officials Drove HHS Decision To End Program Grants That Have Helped Reduce Teen Pregnancy Rates To All-Time Low* (Mar. 20, 2018), <https://democracyforward.org/press/breaking-new-records-suggest-trump-appointed-political-officials-drove-hhs-decision-end-program-grants-helped-reduce-teen-pregnancy-rates-time-low/>.

addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.¹¹

DFF's website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF's website logged over 187,000 pageviews in 2018 alone.

DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.¹²

Similarly, CRC frequently submits FOIA requests to enhance the public's understanding of the actions of financial regulatory agencies.¹³ It publicizes the government's responses to its requests in its newsletter and on its website. CRC also use this information to further enhance public discourse through comments and communications to various administrative agencies, and through its media work to educate the public, regulatory agencies and policymakers about the plight of vulnerable residents and communities and the need for regulators and legislators to more closely scrutinize financial institution practices.¹⁴

Democracy Forward Foundation and California Reinvestment Coalition are purely noncommercial requesters.

¹¹ See, e.g., the following tweets and tweet threads from @DemocracyFwd: <https://twitter.com/DemocracyFwd/status/910123899035226112> (Sep. 19, 2017); <https://twitter.com/DemocracyFwd/status/976991060680462336> (Mar. 22, 2018); <https://twitter.com/DemocracyFwd/status/996480908877271042> (May 15, 2018); <https://twitter.com/DemocracyFwd/status/998986714105483264> (May 22, 2018); <https://twitter.com/DemocracyFwd/status/1022870550769754112> (July 27, 2018); <https://twitter.com/DemocracyFwd/status/1035144352345903105> (Aug. 30, 2018); <https://twitter.com/DemocracyFwd/status/1053294640382779392> (Oct. 19, 2018); <https://twitter.com/DemocracyFwd/status/1071105652867690496> (Dec. 7, 2018).

¹² See, e.g., Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n. 4; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n. 4.

¹³ See, e.g., *Federal Reverse Mortgage Program Results In Widows Losing Their Homes After Death Of Spouse* (March 12, 2018), <http://calreinvest.org/press-release/federal-reverse-mortgage-program-results-in-widows-losing-their-homes-after-death-of-spouse-2/>; *Fact Sheet: CIT Group's Financial Freedom is Responsible for nearly 40% of HECM Reverse Mortgage Foreclosures*, <http://calreinvest.org/wp-content/uploads/2018/08/CRC20Fact20Sheet20about20Financial20Freedom20Foreclosures20Since20April202009.pdf>; *Fact Sheet: OneWest Bank Expected to Receive Over \$2.4 billion from the FDIC*, <http://calreinvest.org/wp-content/uploads/2018/08/CRC-FDIC-Loss-Share-Fact-Sheet.pdf>.

¹⁴ See, e.g., David Dayen, *The Fake Public Comments Supporting a Bank Merger are Coming from Inside the House*, *The Intercept* (Sept. 29, 2018), <https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/>; David Wharton, *HUD Addresses Concerns About Reverse Mortgage Foreclosures*, *DS News* (March 14, 2018), <https://dsnews.com/daily-dose/03-14-2018/hud-addresses-concerns-reverse-mortgage-foreclosures>; Matthew Goldstein and Alexandra Stevenson, *Trump's Treasury Pick Moves in Secretive Hedge Fund Circles*, *NYT* (Dec. 19, 2016), <https://www.nytimes.com/2016/12/19/business/dealbook/steven-mnuchin-trump-treasury-hedge-funds.html>.

Neither Democracy Forward Foundation nor California Reinvestment Coalition are filing this request to further a commercial interest, and any information disclosed by DFF or CRC as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that “publishes or otherwise disseminates information to the public,” and in particular one that “gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public.” *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except “reasonable standard charges for document duplication” as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.¹⁵

¹⁵ *See, e.g., A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), <https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019), <https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-20190213-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017),

California Reinvestment Coalition is an “other requester.”

CRC is a nonprofit institution advocating for fair and equal access to banking and other financial services for low-income and communities of color. CRC is a 501(c)(3) non-profit corporation and accordingly falls under the “all other requesters” category. 12 C.F.R. § 4.17(b)(2)(iii).

For all the foregoing reasons, Democracy Forward Foundation and California Reinvestment Coalition qualify for a fee waiver.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Democracy Forward as soon as possible at foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

Nitin Shah

Democracy Forward Foundation

Kevin Stein

California Reinvestment Coalition

<https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF’s staff).

Finnegan, David

From: (b)(6)@gmail.com on behalf of (b)(6)
<(b)(6)>
Sent: Friday, January 16, 2015 12:57 PM
To: Finnegan, David
Subject: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)
Categories: Red Category

Mr. David Finnegan
OCC

This is to bring to your attention that **I received an email from the office of OCC regarding a subject I am completely unaware of.** I DID NOT send the email below that you responded to. This is a fraudulent use of my email account. I will be working with my email hosting provider to ensure that this does not happen again.

I will appreciate your reply acknowledging this very important notice. Thank you very much!

Sincerely,

(b)(6)

----- Forwarded message -----

From: WE Licensing <WE.Licensing@occ.treas.gov>
Date: Fri, Jan 16, 2015 at 11:34 AM
Subject: RE: Support for the OneWest and CIT Merger
To: "(b)(6)" <(b)(6)>

Dear Commenter,

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<http://occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf>

We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or

David.finnegan@occ.treas.gov.

Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----

From: (b)(6) [mailto:(b)(6)]
Sent: Friday, January 16, 2015 11:42 AM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

Kind regards,

(b)(6)

Finnegan, David

From: (b)(6)
Sent: Friday, January 16, 2015 7:56 PM
To: Finnegan, David
Subject: OneWest/CIT

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

I am NOT the writer of the communication below – name, address & zip are wrong:

Dear Commenter,

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Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

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From: (b)(6) [mailto:(b)(6)]
Sent: Friday, January 16, 2015 12:13 PM
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(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

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Kind regards,

(b)(6)

Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:02 AM
To: (b)(6)
Subject: RE: OneWest/CIT

Thank you for letting us know.

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6)
Sent: Friday, January 16, 2015 7:56 PM
To: Finnegan, David
Subject: OneWest/CIT

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Please be advised that a representative of OneWest Bank, National Association has been provided a copy of your comment.

-----Original Message-----

From: (b)(6)
Sent: Friday, January 16, 2015 12:13 PM
To: comments.applications@ny.frb.org; WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

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Kind regards,

(b)(6)

Finnegan, David

From: (b)(6)@yahoo.com
Sent: Wednesday, February 18, 2015 9:46 AM
To: WE Licensing
Subject: Re: Support for the OneWest and CIT Merger

I did not write this letter!

Sent from (b)(6)

> On Feb 18, 2015, at 8:18 AM, WE Licensing <WE.Licensing@occ.treas.gov> wrote:

>
> Dear Commenter,
>
> The Office of the Comptroller of the Currency (OCC) acknowledges receipt of your comments regarding the merger of CIT Bank, Salt Lake City, UT with and into OneWest Bank, National Association, Pasadena, CA.

> The OCC has decided it will hold a public meeting regarding the merger. Please refer to the following link for more information. <http://www.occ.gov/news-issuances/news-releases/2015/nr-ia-2015-17.html>

> For more information regarding the OCC's practice on receipt and review of public comments received in connection with pending applications, please see Comptroller's Licensing Manual (Public Notice and Comments) at <http://occ.gov/publications/publications-by-type/licensing-manuals/PublicNCbooklet.pdf>

> Please be advised that comments are published without redaction of personally identifiable information including any business or personal information such as name and address, e-mail addresses, or telephone numbers. A representative of OneWest Bank, National Association has been provided a copy of your comment.

> We appreciate your comments and will consider them during our review of the application. If you have questions, please contact David Finnegan at (720) 475-7650 or David.finnegan@occ.treas.gov.

> -----Original Message-----

> From: (b)(6)@yahoo.com [mailto:(b)(6)@yahoo.com]

> Sent: Saturday, February 14, 2015 4:36 AM

> To: comments.applications@ny.frb.org, WE Licensing

> Subject: Support for the OneWest and CIT Merger

> (b)(6)

> (b)(6)

> E-Mail: (b)(6)@yahoo.com

> Subject: Support for the OneWest and CIT Merger

> Dear Chair Yellen, President Dudley and Comptroller Curry,

> I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to

...
! !
serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

>

> Kind regards,

> (b)(6)

>

>

>

>

Finnegan, David

From: (b)(6)@yahoo.com
Sent: Monday, February 23, 2015 11:24 PM
To: WE Licensing
Subject: Re: Support for the OneWest and CIT Merger

To whom it may concern<
I never send this email. I am not aware of the merge of the companies
Someone got a hold on my email address. Sorry
Thanks,

(b)(6)

On Wednesday, February 18, 2015 8:18 AM, WE Licensing <WE.Licensing@occ.treas.gov> wrote

Dear Commenter,

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-----Original Message-----

From: (b)(6)@yahoo.com [mailto:(b)(6)@yahoo.com]
Sent: Saturday, February 14, 2015 4:35 AM
To: comments.applications@ny.frb.org, WE Licensing
Subject: Support for the OneWest and CIT Merger

(b)(6)

(b)(6)

E-Mail: (b)(6)@yahoo.com

Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:04 AM
To: (b)(6)
Subject: RE: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)

Thank you for letting us know about this situation.

David

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6)@gmail.com [mailto:(b)(6)@gmail.com] **On Behalf Of** (b)(6)
Sent: Friday, January 16, 2015 12:57 PM
To: Finnegan, David
Subject: Fraudulent use of my email account (RE: Support for the OneWest and CIT Merge)

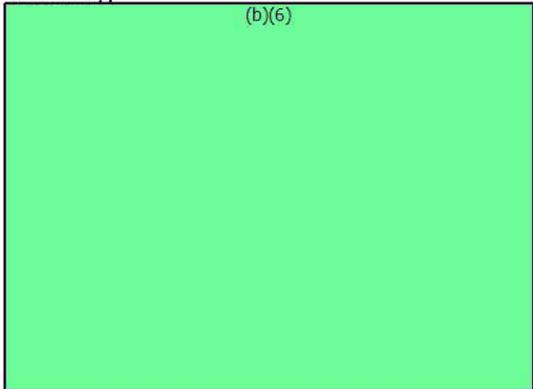
Mr. David Finnegan
OCC

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I will appreciate your reply acknowledging this very important notice. Thank you very much!

Sincerely,

(b)(6)



----- Forwarded message -----
From: WE Licensing <WE.Licensing@occ.treas.gov>
Date: Fri, Jan 16, 2015 at 11:34 AM
Subject: RE: Support for the OneWest and CIT Merger

To: (b)(6) (b)(6)

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From: (b)(6) [mailto:(b)(6)]

Sent: Friday, January 16, 2015 11:42 AM

To: comments.applications@ny.frb.org; WE Licensing

Subject: Support for the OneWest and CIT Merger

(b)(6)

E-Mail: (b)(6)

Subject: Support for the OneWest and CIT Merger

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Kind regards,

(b)(6)

Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:13 AM
To: Salley, Stephen M (Salleys@sullcrom.com)
Subject: FW: OneWest/CIT

FYI and review. We would appreciate any information you can provide regarding this submission.

Thank you,
David

David W. Finnegan
Senior Licensing Analyst/NBE
Western District
720/475-7653

From: (b)(6) [mailto:(b)(6)]
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Finnegan, David

From: Finnegan, David
Sent: Tuesday, January 20, 2015 8:13 AM
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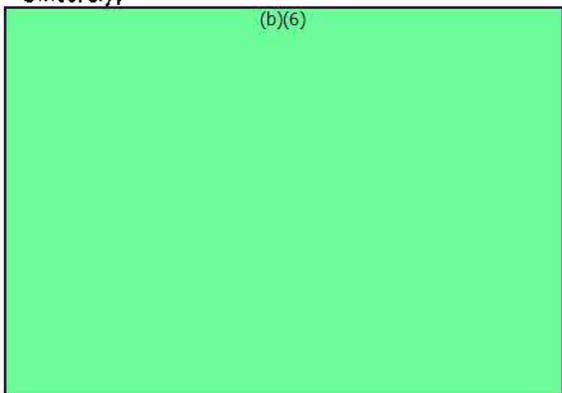
Mr. David Finnegan
OCC

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Kind regards,

(b)(6)



October 15, 2015

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency

Re: CRC and Greenlining Institute urge the OCC to object to the CITBNA revised CRA Plan, Recommendations for an adequate CRA Plan that responds to OCC Order and helps meet community credit needs

Dear Comptroller Curry,

We write to raise final concerns in order to inform the OCC's evaluation of the CITBNA CRA Plan and process. We believe that CITBNA did not adequately respond to the OCC's Conditional Merger Approval Order, and has not developed a CRA Plan that will help meet community credit needs. As such, we urge the OCC to object to the CITBNA Plan, instruct the bank to meet with community groups in a manner consistent with precedent set by prior mergers, and to develop a stronger plan that will help southern California communities and households stabilize and grow.

Who We Are

The California Reinvestment Coalition (CRC), based in San Francisco, is a membership organization of three hundred nonprofit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color through access to financial institutions. CRC promotes increased access to credit for affordable housing and economic development for these communities.

The Greenlining Institute (Greenlining), is policy, research, organizing, and leadership institute working for racial and economic justice. The web of opportunity is dynamic, therefore we work on a variety of issues affecting economic opportunity from the economy to telecommunications and environmental policy. Our mission and advocacy is supported by Greenlining's Coalition, a diverse group of nearly 40 African American, Asian American, and Latino community-based organizations that comprise one of the nation's most effective and longest lasting multi-ethnic coalitions. By combining the grassroots energy of these organizations with the institutional strength of Greenlining, we are able to leverage the unique capabilities of each into an effecting engine of social change.

Our Concerns

We have consistently shared our concerns regarding the non-inclusive outreach process employed by the Bank as it developed its revised CRA Plan. Our September 23, 2015 letter outlined concerns relating to the Bank's: refusal to meet with our organizations and our southern California member organizations; inadequate survey instrument; unwillingness to survey most groups in the Bank's assessment area that opposed the merger; exclusion of most merger opponents to its October 2015 community meeting, including organizations previously invited to its Fall of 2014 community meeting. We are concerned that these non-profits were excluded as a form of retribution after pushing the Bank to improve its plan for reinvesting in LA communities.

Inadequate Community Needs Assessment. We are concerned that the Bank's assessment tool used to measure community need was solely a method to justify the size and scope of its current commitment, rather than to measure the needs of LMI neighborhoods where they do business. At the community meeting, the Bank shared that only 27 groups responded to its survey, billed as a "community needs assessment" designed to help the bank craft its plan. We previously provided our analysis of the survey and why it falls short as an adequate assessment tool, and the low number of replies further exacerbates the problems with using the tool to measure community need. During the community meeting, the Bank clearly communicated that it has no intention to increase the size of its commitment or open new branches in the LMI neighborhoods and communities of color where the Bank has little retail branch presence.

Unwillingness to Share Draft Plan. At the community meeting, we asked if the Bank would share its presentation and provide a copy of its draft CRA Plan. The Bank seemed to indicate that it would check with its new Community Advisory Committee (most or all of whom appear to be connected to organizations that supported the merger, did not oppose, or received grants from the Bank) and follow that body's recommendation. To date, we have not received these items. This of course makes it challenging to provide meaningful comments on the Bank's Plan.

Neglecting OCC Conditional Merger Approval Guidelines. We question whether the Bank has responded to the OCC's Conditional Merger Approval Order. The Order requires the Bank to revise its Plan to "contain a complete description of the actions that are necessary and appropriate to ensure that on a prospective basis the bank is helping to meet the credit needs of its AAs, in particular the needs of the Los Angeles-Long Beach-Glendale MD, including but not limited to affordable multifamily housing lending and investment in LMI geographies and to benefit LMI individuals..."

While we were pleased to hear at the community meeting that the Bank will attempt to focus more on affordable housing, it remains unclear how the Bank will do so. The Bank appears to acknowledge it currently has no or limited capacity to originate community development loans for affordable housing development, and we understand that the Bank will likely not be a big Low Income Housing Tax Credit investor, since it plans to use its Net Operation Losses from CIT Group's 2009 bankruptcy. Yet, these are two of the main ways that Banks help meet the affordable multifamily housing needs of their communities. CITBNA needs to make a substantial, clear, and measurable commitment to meet this most compelling need, and to clearly explain exactly how it will do so.

In fact, the Bank's prior 2012-2015 CRA Strategic Plan (which the bank originally tried to keep out of the public view), called for the Bank to address the severe affordable housing needs in its communities. "As a result of decrease affordability in housing stock and mismatch of jobs, wages, rent, and for-sale price and the shortage of apartments able to accommodate large families, housing is still a pressing issue in Los Angeles-Long Beach-Glendale, CA MD." Yet despite a Plan that called for the Bank to do more to facilitate the development of affordable housing, the Bank significantly trails in this regard. Which raises the question, why will this Plan be any different?

The Order further requires the Bank to "describe a means of assessing and demonstrating the extent to which CITBNA's alternative systems for delivering retail banking services are available to provide, and effective in providing, needed retail banking services in LMI geographies or to LMI individuals."

But the Bank appears ready to ignore this charge, insisting instead that it will not open the new branches that are needed in communities, and offering only alternatives to branch banking, regardless of the effectiveness of these approaches. The Bank's survey and community day meeting asked community members only which alternatives to branch banking they prefer, not whether branch banking is preferred and necessary, and not whether the alternatives to branch banking are adequate and effective in serving community need. Any responses to the survey or community day meeting should in no way be construed as an assessment of the effectiveness of alternatives, or even the support of community organizations and members for these alternatives.

Neglecting Fed Merger Approval Guidelines. The Federal Reserve Board Approval Order noted that "the Board expects the CIT Group to engage in activities that help to meet the credit needs of the communities CIT Group serves at a level commensurate with the expanded size and scope of the combined organization." The CITBNA Plan fails to meet this requirement.

We note again for the record that CITBNA appears poised to commit itself over the next four years to one of the weakest CRA Plans we have seen, and one that is certainly below that of its peers. It has been difficult to ascertain which institutions the Bank considers to be among its peers. But in an early submission to the regulators as part of the merger process, the Bank in a chart entitled "Peer Comparison of Annual CRA Grants," identifies the following as peers: Wells Fargo, Union Bank, City National Bank, BOKF, NA (Oklahoma), Webster Bank, NA (Connecticut), EverBank (Florida), BankUnited (Florida), FirstMerit Bank (Ohio), Old National Bank (Evansville), First National Bank of Pennsylvania, Texas Capital Bank, NA, and Banc of California.

Focusing only on the California institutions, we believe the Bank's Plan is below its peers. Banc of California commits roughly 4x what CITBNA does. City National Bank, a peer of CITBNA in a number of ways, commits roughly 2x what CITBNA does. Even Pacific Western Bank, in the context of a merger that both our organizations opposed, commits to more reinvestment in California than CITBNA.

In its defense, CITBNA appears to be raising a few arguments which seem reasonable on their face. One, is that the Bank is young, being in existence for only six years. The bank might not have the products and infrastructure in place to make a substantial commitment to CRA at this time.

But OneWest did purchase the assets of Indymac Bank, and though the Bank failed, presumably the purchase did come with some lending and banking infrastructure. In contrast, Banc of California is essentially a new bank, having resurrected a defunct financial institution over the last two years. In other words, Banc of California has come from further back, more recently, and is doing substantially more than CITBNA.

CITBNA might also assert that its model does not allow it to commit to CRA at the level of a Banc of California which does significant mortgage lending, sells its loans on the secondary market, and can readily re-lend. Assuming this to be true, CITBNA actually does more mortgage lending than City National Bank, and significantly more than Pacific Western which does not even report HMDA because its mortgage lending is almost non-existent. Yet all of these institutions have made significantly greater commitments to help local credit needs in Southern California than CITBNA, even though each of those institutions has fewer deposits than CITBNA against which to lend.

Further, and importantly, none of the bank's peer institutions, have received the level of public subsidy, or caused the level of harm to Southern California communities, as has CITBNA. As noted previously, CITBNA has foreclosed on over 36,000 California households, including over 2,000 seniors and their families, with more than one in five of those foreclosures happening in the LA area. The Bank has engaged in problematic mortgage servicing, being identified as one of the worst servicers during the financial crisis by California housing counselors, and being identified more recently as a problematic reverse mortgage servicer. Given the history of these two banks, both of which received billions in taxpayer and FDIC subsidies, and given OneWest's thousands of foreclosures in California (and an unknown number throughout the US), CITBNA should not be only keeping pace with its peers relating to reinvestment commitments (though it actually is below its peers), it should be exceeding its peers.

Set a Precedent that CRA Investments are a Priority, Not an Afterthought. If CITBNA is allowed to proceed with such a weak plan with the excuse that it has not developed an appropriate CRA infrastructure during the time it has grown its other business in the last six years, regulators will be sending a clear message that CRA lending, investing and services can be left for last by any bank wishing to expand. The argument that a young bank needs more time to develop a CRA infrastructure than it does its preferred lines of business does not wash. The very purpose of the CRA is to ensure that low income consumers and communities in bank assessment areas should not be afterthoughts.

Which raises the question – what has CITBNA (OneWest) been doing for the last six years that it does not have the products necessary to help meet community credit needs? Even if it were true that the Bank had somehow faced real challenges developing loan products, there should be no similar constraints to increasing investments, expanding philanthropy, opening branches, providing greater protection for servicing clients, offering accessible bank accounts, and engaging in the many services and product offerings that do not require a lending infrastructure. Yet the bank has not offered to do more in these areas. The question becomes, is there really a challenge here, or just a refusal to do more in all of these areas, including lending?

Unsettling Email. As a final note, CRC recently received a disturbing email on September 21, 2015. An individual, apparently under the misunderstanding that CRC supported this merger, expressed dismay that a letter of support for the OneWest CIT Bank merger was sent to the regulators in his name. He decried the “bogus email” support letter, and noted it “is not mine and I did not authorize or send this email, and I did not authorize for you to use my name and address to be used for any support of One West and CIT Merger, I have no affiliation or whatsoever to this companies and would like you to stop using my name, address or email address...” Most disturbingly, the individual indicates that somebody created a yahoo email address using his full name, without his knowledge.

It appears that this same email (from the concerned individual) was also sent to the OCC and the Federal Reserve Board.

This email is shocking and suggests that one or more people may have manipulated the public input process and committed a fraud on the federal regulatory agencies which rely on public input to inform their deliberations. In follow up “spot checks” of about 150 email addresses attributed to the petition organized by OneWest’s CEO, at least 25 of the email addresses appear to be non-existent. However, as was the case with the individual mentioned above, if email addresses were created in the name of real people without their knowledge- for example, if somebody created a Janet.Yellen@yahoo.com account - then it may be difficult to detect the fraud because emails to that account wouldn’t necessarily bounce back as non-existent.

In an attachment of 593 petitions in support of the OneWest’s petition to not hold a public hearing, 100% of the petition signers had Yahoo email accounts- an oddity that adds to our concerns.¹ Moreover, if the “time stamps” on the emails are accurate, there was an extremely large number of people who cared enough about this merger petition to sign onto their computers in the middle of the night- with a large number of emails being sent to the Federal Reserve and OCC around 2am on the night of February 13, 2015. In addition, in a review of 25 of the petitions, twelve of the addresses listed had street addresses that couldn’t be verified by the United State Postal Service as legitimate addresses.

It occurs to us that it is only happenstance that the individual noted above discovered that his name was used improperly and fraudulently, and that it is not to be expected that this information would have ever found its way to us or to the regulators. In other words, if other people had their names used without their authorization, and if unauthorized Yahoo email accounts were created on their behalf, this fraud may have gone undetected.

We accuse no specific person or organization of wrongdoing. But at the same time we are greatly disturbed at the possibility that the OCC’s and the Federal Reserve’s community input process may have been compromised. The CRA is a law that allows for and encourages community participation and in so doing, allows for a community perspective to be considered by regulators as they determine how best to supervise, regulate and oversee financial institutions.

¹ <http://www.occ.gov/topics/licensing/corporate-activities-weekly-bulletin/public-comments-cit-onewest-feb-8-2015.pdf>

We request in the strongest terms that the OCC and the Federal Reserve investigate this matter further. How many letters of support were submitted to the regulators without the knowledge of the purported author? Who is responsible? And what are the regulators going to do about it? Does the Federal Reserve and OCC public comment email system have safeguards to “catch” such oddities? A similar issue occurred in the recent “net neutrality” debate, and the system used to process Congress’ email was able to catch fraudulent emails.

We believe the Plan being submitted by CITBNA is essentially the same Plan that the Bank put forth a year ago. We appreciate the efforts of the OCC in terms of considering all of the evidence put forth during the merger process, agreeing to hold a public meeting on the matter, and imposing important conditions on the merger approval.

Community groups throughout the nation and the public will be looking to see what the results of this process will be. Will banks that caused so much harm to taxpayers and communities be able to get away with doing no more to help meeting community credit needs or demonstrate a public benefit from the merger than they proposed at the start of this process?

Solutions

We attach to this letter a proposed CRA Plan for CITBNA drafted by our organizations which provides a framework for what the CITBNA Plan should look like. This Plan is modeled after the City National Bank Plan, which was ultimately supported by CRC, Greenlining and the National Diversity Coalition. We handed an earlier draft of this document to CITBNA at the community day meeting on October 6. This Plan represents a good place for the Bank to start as it refines its plan to serve communities.

CRC and Greenlining and our members remain willing and ready to meet with the bank, as we have suggested and requested during the course of the merger, including after the Bank was required to revise its CRA Plan based on community input. The OCC’s conditional approval order appears informed by the Valley National Bank process. Yet nothing since the conditional approval order mirrors the positive process followed by Valley National Bank and stakeholders. The OCC should require the Bank to follow a similar path of reaching out to merger opponents (and others) to develop a Plan that reflects comments received by community groups and not just responses to narrow multiple choice questions put forth by the Bank. This would lead to the ultimate goal of having the Bank commit to helping to meet community credit needs and providing a public benefit to its communities.

On behalf of the hundreds of Southern California and California organizations we represent, we thank the OCC for scrutinizing this deal and this proposed Plan, and we urge you to object to the Plan submitted and ensure that CITBNA finally does right by communities. This merger presents a test to the OCC - will it stand strong and ensure a fair process and a CRA Plan commensurate with CITNBA’s size, or will it allow this merger to move forward with an inferior plan and unanswered questions about the public process?

We also note this merger has drawn national attention and opposition from organizations outside of California, many of whom work with homeowners who lost their homes (perhaps unnecessarily) due to

OneWest and Financial Freedom foreclosures, many of whom believe financial institutions must be held accountable for causing community harm, and many of whom believe that banks must clearly demonstrate they are helping to meet community credits needs and that their mergers are providing a clear public benefit.

If you have any questions about this request, please feel free to contact Kevin Stein of California Reinvestment Coalition at (415) 864-3980. Thank you for your consideration of our views.

Very Truly Yours

Paulina Gonzalez
Executive Director, CRC

Orson Aguilar
Executive Director, GLI

Kevin Stein
Associate Director

Enclosures: CRC and Greenlining Institute Recommendations for CITBNA CRA Plan
National sign-on letter
Email from merger "supporter" (redacted to protect personally identifying information)
CRC and Greenlining Institute Letter from September 23, 2015

cc: Janet Yellen, Chair, Federal Reserve Board of Governors



CALIFORNIA
REINVESTMENT
COALITION



October 15, 2015

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency

Dear Comptroller Curry,

We write in regards to the highly problematic merger of CIT and OneWest. A record number of groups opposed this merger, raising serious concerns about:

1. The failure of the banks to help meet community credit needs;
2. Potential violations of fair housing and fair lending laws;
3. Private gains to billionaires from nearly \$5 billion in corporate welfare to these two banks; and
4. Thousands of foreclosures in the bank's assessment area which have displaced families and destabilized communities, and disproportionately impacted seniors and people of color.

We applaud the OCC for holding public hearings on the merger in February, for noting the large litany of concerns in the final approval order, and for imposing conditions on the bank that require it to revise its CRA Plan. The conditional approval created an opportunity for the Bank to reset its approach and to develop a CRA Plan that reflects the needs of its communities and that meaningfully addresses those community needs via a commitment that is commensurate with the bank's Too Big to Fail size.

Unfortunately, the Bank has decided not to take advantage of this opportunity. Instead the new CITBNA:

- **Refused requests to meet with merger opponents.** This is in contrast to Valley National Bank which met several times with all of the groups that opposed its merger, and worked with those groups to develop a Plan that sought to address the concerns of all stakeholders.
- **Excluded groups from its "community" planning process.** The Bank sent out surveys ostensibly designed to assess community needs, but did not send them to several strong Los Angeles groups that opposed the merger (the Bank reported out that only 27 individuals completed a survey). The bank also held a "community meeting" but failed to invite most of the groups that opposed the merger. In fact, CRC spoke with several large, established nonprofits who were invited to the bank's community meeting in 2014, who later opposed this merger, and who were then NOT invited to the "community meeting" that happened on October 6, 2015.
- **Failed to meaningfully revise its CRA Plan.** While VNB developed a stronger and more ambitious Plan to meet community needs after several meetings with merger opponents, CITBNA appears poised to submit to the OCC a CRA Plan at the same level of commitment as its Plan from last year.
- **Clings to a meager CRA commitment that is below that of its peers.** While a much smaller Banc of California has committed to devote 20% of its deposits to CRA activity every year for five years,

CITBNA commits closer to 5% per year for four years. City National Bank, a peer of CITBNA, recently committed \$11 billion over five years for community reinvestment. CITBNA, with more deposits in California, commits only \$5 billion over four years, roughly 50% of what City National agreed to do.

- **Fails to address concerns about its negative and disparate impact on communities**, including:
 - 68% of OneWest's 36,382 foreclosures in California occurred in neighborhoods of color;
 - Low home lending to Asian American Pacific Islander and African American borrowers;
 - Sparse bank branch presence in LMI communities and communities of color, including closing branches that served these communities;
 - Disparate foreclosed property maintenance practices in neighborhoods of color; and
 - Foreclosures on widows of reverse mortgage borrowers.

While the Bank has not publicly shared its CRA Plan, based on its Community Day presentation and "Community Needs Assessment" survey, it appears that CITBNA's Plan will be short on dollars, and short on details.

The California Reinvestment Coalition and the Greenlining Institute have put forth suggestions for CITBNA, based on the City National Bank Plan, which calls on the Bank to achieve the following goals:

COMMUNITY PROPOSAL FOR CIT BANK CRA PLAN:

- Achieve a minimum of \$11 billion in cumulative qualified CRA activity over four years in its assessment area, including:
 - \$4.2 billion in small-business loans or leases of \$1 million or less;
 - \$4.4 billion in qualified CRA community development loans;
 - \$1.5 billion in qualified CRA investments;
 - \$700 million in residential mortgage loans funded for borrowers of color;
 - Over \$80 million in minority and woman-owned business supplier diversity expenditures;
 - \$30 million in charitable contributions.
- Develop an annual CRA plan with an objective of receiving an "Outstanding" CRA rating.
- Set certain diversity goals in the areas of employees, board members, and suppliers to ensure the Bank represents the community in which it operates.
- Maintain the goal of consistently increasing its annual qualified CRA-related activity to achieve a level of 15% of its California deposits by year-end 2021.

Small Business Lending:

- Aspire to become a leader in California small-business lending. In particular, CITBNA should focus its marketing and outputs on smaller-dollar loans by committing that 50% or more of its CRA-reportable small-business loans and small ticket leases, by number, are in the amount of \$100,000 or less, and will go to businesses with less than \$1 million in revenue.
 - Refer a minimum of 20% of small-business loan denials to local technical assistance providers, CDFIs and other community lenders in CITBNA's assessment areas, subject as always to the willingness of declined clients to be referred.
 - Actively participate in the California state loan guaranty program and commit to increasing participation in order to help the bank reach underserved businesses.
 - Commit to increasing overall SBA lending to \$140 million a year, 50% of which each year shall be made available to underserved communities and low- and moderate-income

census tracts. A goal of 40% each year shall be made to minority business enterprises. And, \$5 million of SBA lending annually shall be in loan amounts of \$150,000 or less.

Community Development Lending:

- Devote a minimum of \$300 million a year in community development loans for affordable housing. The goal is to develop a one-stop, construction-to-permanent-loan product for multi-family housing and a line-of-credit facility for nonprofit housing developers. CITBNA will explore lending for transit-oriented development and maintain an annual goal of \$5 million annually.

Mortgage Lending:

- Make available affordable mortgage loan products with flexible, yet sustainable, underwriting that enable LMI homeownership.
- Comply with the California Homeowner Bill of Rights, and refrain from arguing preemption as a means to circumvent the protections for homeowners included in the Homeowner Bill of Rights. In addition the Bank will, in good faith, work with the California Chamber of Commerce to remove AB244 (Eggman) from the “jobs killer” list. AB244 clarifies that HBOR protections extend to successors in interest (“widows and orphans”). As chair of the California Chamber of Commerce, OneWest CEO Joseph Otting is well-placed to work with the Chamber on this unfortunate stance which is pitting widowed grandmothers facing foreclosure against the CA Chamber of Commerce.
- Commit to implement HUD Mortgagee Letter 2015-15 in order to help all qualified Non Borrowing Spouses live out their days in their homes, without imposing unnecessary hurdles.

Investments:

- Establish an annual pool of \$14 million to invest in CDFIs, CDCs, transit-oriented development projects and other nonprofit community development funds that benefit small-business, housing and economic development in low-income and/or underserved communities.
- Invest \$10 million annually in CRA-qualified SBIC funding, with 20% targeted for minority enterprises.
- Commit .025% of California deposits, or \$7.5 million, annually to charitable contributions in California over the next four years. In addition, the Bank commits that 50% of annual contributions will be dedicated to CRA-qualified affordable housing and economic development initiatives.
- Support small-business technical assistance provided by nonprofits and faith-based providers that help to improve and enhance access to capital. In addition, CITBNA shall commit to specifically allocate at least \$300,000 annually for small-business pre- and post-loan technical assistance and supplier development and \$200,000 annually for loan-loss reserve funding, with emphasis on SBA micro-lenders doing loans less than or equal to \$50,000. This will be on top of the .025% of deposits annually CITBNA allocates for philanthropy generally.
- Make a \$1 billion commitment to investments in affordable housing over 4 years. Investments should be focused in the low and moderate income communities in Southern California that were hardest hit by the foreclosure crisis.

Services:

- Develop, implement, actively market and service an account that serves the banking needs of the unbanked, underbanked and low- to moderate-income communities within the Bank’s assessment areas within one year from the date of this commitment. This will be done in accordance with CRC’s Safe Money Account or the Model Safe Account guidelines developed by

the FDIC and will include savings, checking and cash-secured credit card features. CITBNA also commits to continue to configure its ATMs so as to waive out-of-network surcharges for California public-assistance recipients who use Electronic Benefits Transfer (EBT) cards.

- Open three (3) branches in neighborhoods that are LMI and neighborhoods of color.
- Provide up to \$250,000 annually to specifically target, sponsor and support financial education and literacy within the Bank's LMI and underserved communities.
- Conduct at least annual community meetings open for participation by all interested community and faith-based organizations. These meetings will provide updates on CITBNA's progress under these commitments and goals, the Bank's most recent related initiatives, and future plans.

Other Community Goals:

- Develop a strong and transparent procurement diversity program to increase Minority and Women Owned Business Enterprises spending in California to 20% annually by 2019, evenly balance spending between MBEs and WBEs, and report the data in accordance with best practices.
- Seek to have representatives from the Latino, Asian American and Pacific Islander, and African American community on its board of directors by year 3 of this agreement.
- Commit to increasing the diversity of management employees by year 4. This includes 30% ethnic diversity of employees classified as Executive or Senior Level Managers AND 40% ethnic diversity of employees classified as First or Mid-level Managers. The Bank will commit to reflecting the ethnic and linguistic diversity of the population where it does business, with a short term goal of reaching 30% ethnic diversity of customer-facing employees within 4 years of this CRA Plan.

In light of the troubling track records of OneWest and CIT, the great credit needs that exist in the Bank's assessment area, the harm caused to area residents and communities as a result of OneWest's lending and foreclosure practices, and the exclusionary and faulty "community" process the Bank employed in responding to the conditional approval order, the OCC should require CITBNA to go back to the drawing board and develop a plan, in collaboration with community groups, that reflects community needs and looks substantially like the proposed Community Plan, above.

Southern California communities deserve a robust, transparent CRA plan. In other words, CITBNA should not be allowed by the regulators to get away with doing less than its peers, excluding the community, and failing to make any meaningful changes to its CRA Plan.

If you have any questions about this letter, please feel free to contact Kevin Stein of California Reinvestment Coalition at (415) 864-3980.

Thank you for your consideration of our views,

California Reinvestment Coalition
The Greenlining Institute
Advocates for Neighbors, Inc.
Allen Temple Baptist Church
Alliance of Californians for Community Empowerment (ACCE)
Asian Economic Development Association
Asian Pacific Islander Small Business Program
Asian Pacific Policy & Planning Council (A3PCON)
Association for Neighborhood and Housing Development, Inc.

Azul Management Systems Institute, Inc.
Baltimore Neighborhoods, Inc.
Bet Tzedek Legal Services
Brooklyn Coop
Building Alabama Reinvestment
California Alliance for Retired Americans (Nan Brasmer, President)
California Capital Financial Development Corporation
California Coalition for Rural Housing
California Resources and Training
CDC Small Business Finance
Center for Urban Economics and Design -San Diego
Center for Sustainable Neighborhoods
Central Baptist Community Development Corporation
Chicana/Latina Foundation
City of Commerce American GI Forum Chapter
Civic Center Barrio Housing
Communities Actively Living INDEPENDENT & Free (CALIF)
Community Action Agency of Butte County
Community and Shelter Assistance Corp
Community Development Corporation of Marlboro County
Community Housing Opportunities Corporation
Community HousingWorks
Community Legal Services in East Palo Alto
Connecticut Fair Housing Center
Consumer Action
Courage Campaign
Delaware Community Reinvestment Action Council, Inc.
Dr. Charlotte Hayes
East Bay Housing Organizations
East Los Angeles Community Corporation
Eastmont Community Center of East Los Angeles
Elder Abuse Prevention Program, Institute on Aging
Empire Justice Center
Fair Housing Council of San Diego
Fair Housing of Marin
Fresno CDFI
G&H Environmental Consulting
Good Neighbor Foundation – Housing Counseling
Grow Brooklyn
Hamilton County Community Reinvestment Group
Henderson and Company
Housing and Economic Rights Advocates
Housing California
Housing Rights Center of Southern California
Inland Empire Latino Coalition
Inland Fair Housing and Mediation Board
Korean Churches for Community Development

Law Foundation of Silicon Valley
Missourians Organizing for Reform and Empowerment
Multicultural Real Estate Alliance for Urban Change
National Committee for Responsive Philanthropy (NCRP)
National Community Reinvestment Coalition
National Housing Law Project
NeighborWorks Orange County
Neighborhood Housing Services of the Inland Empire
Neighborhood Legal Services of Los Angeles
New Economy Project
New Frontier CDC
New Jersey Citizen Action
Northern California Community Loan Fund
Oakland Business Development Corporation
Ohio Fair Lending
Open Communities
Opportunity Fund
Pacific Asian Consortium in Employment (PACE)
Partners in Community Building, Inc.
PathStone Enterprise Center, Inc.
Project Sentinel
Prospera
Public Interest Law Project
Reinvestment Partners
Renaissance Entrepreneurship Center
Sacramento Housing Alliance
San Francisco African American Chamber of Commerce
Sandy Jolley, Reverse Mortgage, Suitability, and Abuse Consultant
Strategic Alliance for a Just Economy (SAJE)
Urika Center for Policy Research
U.S. PIRG
Valley Economic Development Center
Vermont Slauson Economic Development Corp.
Western Center on Law and Poverty
Woodstock Institute



CITBNA's California Community Commitment & Goals: 2016 thru 2019 **(10/15/15)**

SECTION I. INTRODUCTION

In consultation with CITBNA's many community group partners in the California communities we serve, including groups that commented on the recently completed merger of CIT Group and OneWest Bank, we provide the following four-year California community commitments and goals.

This transaction contemplates that CITBNA will be headquartered in Pasadena, California and will focus on delivering personalized, relationship-based banking to its customers. The Bank will have over 70 retail branches located in Southern California, principally in and around Los Angeles, to serve consumers and businesses.

SECTION II. COMMITMENT TO THE COMMUNITY REINVESTMENT ACT

Beginning in 2016 and extending over the next four years, CITBNA shall pledge to increase its overall qualified Community Reinvestment Act (CRA) lending, investments, charitable contributions, and its supplier diversity and related activities, to achieve a minimum of \$11 billion in cumulative qualified CRA activity, as defined below, during this four-year period. The Bank will develop and implement an annual CRA plan to meet the needs of its community with an objective of receiving an "Outstanding" CRA rating from the OCC.

In addition, as stated in the September 2014 CRA Plan, CITBNA recognizes its role in the community may in some cases require commitments or goals exceeding the standards outlined in CRA. To this end, the Bank will set certain diversity goals in the areas of employees, board members, and suppliers to ensure the Bank represents the community in which it operates.

This commitment, as with that of City National Bank, reflects the fact that the CITBNA is not primarily a mortgage lender. Should CITBNA substantially develop its mortgage origination business, CITBNA shall agree to work in good faith with community groups to determine whether the overall cumulative CRA commitment should be increased or adjusted.

To achieve this cumulative California commitment of \$11 billion over four years, we have identified the following aspirational goals for each key component of the CRA-qualified activity. Over the four-year term of CITBNA's commitment, it shall achieve the following goals:

- \$4.2 billion in small-business loans or leases of \$1 million or less;
- \$4.4 billion in qualified CRA community development loans;
- \$1.5 billion in qualified CRA investments;
- \$700 million in residential mortgage loans funded for minority borrowers;
- Over \$80 million in minority and woman-owned business supplier diversity; and
- \$30 million in charitable contributions.

CITBNA's \$11 billion commitment should correspond with the goal of consistently increasing its annual qualified CRA-related activity to achieve a level of 15% of its California deposits by year-end 2021.

To achieve these extraordinary commitments and goals, CITBNA will build on its past accomplishments and successes to develop and implement even more effective CRA strategies in the years to come. Going forward, CITBNA will continue to actively work with its community group and faith-based partners to provide qualified CRA activities including—lending, investments, charitable contributions, other related activities and supplier diversity—with special emphasis on small-business and community development loans that consist of equity equivalent investments (EQ2) in California Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), nonprofit community development funds, microloan funds, small-business investment companies (SBICs) and other related economic development-focused small-business initiatives.

These commitments and goals shall be achieved with special attention to the following identified strategies developed in collaboration with community group and faith-based partners.

SECTION III. ASSESSMENT AREA

The anticipated assessment areas ("AAs") are as follows:

- Los Angeles-Long Beach-Glendale, CA MD (full-scope)
- Oxnard-Thousand Oaks-Ventura, CA MSA (limited-scope)
- Riverside-San Bernardino-Ontario, CA MSA (limited-scope)
- San Diego-Carlsbad, CA MSA (limited-scope)
- Anaheim-Santa Ana-Irvine, CA MD (limited-scope)

SECTION IV: CRA PLAN AND MEASURABLE GOALS

Lending:

CITBNA will commit to promoting sustainable economic development in California's low-to-moderate income communities. The Bank will also strive to ensure that the distribution of its lending reflects the ethnic diversity of the population that resides within each of its assessment areas. To achieve these commitments and goals, CITBNA will aspire to become a leader in California small-business lending. In

particular, CITNBA will focus its marketing and outputs on smaller-dollar loans by committing that 50% or more of its CRA-reportable small-business loans and small ticket leases, by number, are in the amount of \$100,000 or less, and will go to businesses with less than \$1 million in revenue.

Measurable Lending Targets:

In pursuit of this commitment, CITBNA will:

- Take affirmative steps to work with and support African-American, Latino, Asian and other minority groups, including faith-based organizations, to identify, support, and participate in their affordable housing and economic development sponsored initiatives, consistent with the community commitment and goals.
- Decrease minimum factoring line threshold to ensure that CRA qualified businesses with revenue less than \$1 million can access these loan opportunities.
- Ensure that CITBNA's direct capital lease rates will remain competitive.
- Commit to diversify its reach across all businesses with a particular focus on Minority Business Enterprises (MBE) when implementing special financing initiatives.
- Commit to the following in order to increase access to credit for smaller businesses (for businesses with less than \$1 million in revenue) and to increase lending to diverse businesses in California communities:
 - Take steps to develop a declined-loan referral program through the use of broader-based RFPs with local CDFIs, technical assistance providers and other organizations that improve and enhance access to capital in minority and low-income communities.
 - Refer a minimum of 20% of small-business loan denials to local technical assistance providers, CDFIs and other community lenders in CITBNA's assessment areas, subject as always to the willingness of declined clients to be referred.
 - Actively participate in the California state loan guaranty program and commit to increasing participation in other related programs.
 - Beginning in 2016, commit to increasing overall SBA lending to \$140 million a year during the commitment period and to taking appropriate steps to increase its SBA production throughout its assessment areas. Of the total commitment of \$140 million for SBA lending, 50% each year shall be made available to underserved communities and low- and moderate-income census tracts. A goal of 40% each year shall be made available to minority business enterprises. Finally, \$5 million of SBA lending annually shall be made available in loan amounts of \$150,000 or less.

- Actively develop an “advisory board” structure to explore, refine and improve its strategy for enhancing successful market penetration, notably within African-American, Asian, Latino and faith-based communities, and geographic representation should be proportional to where customers are drawn from in California.
- Aspire to increase its market penetration to equal the availability of businesses in LMI census tracts.
- Devote a minimum of \$300 million a year in community development loans for affordable housing in its LMI communities. The goal is to develop a one-stop, construction-to-permanent-loan product for multi-family housing and a line-of-credit facility for nonprofit housing developers. CITBNA will explore the transit-oriented development market opportunities for lending within its assessment areas and maintain a goal of \$5 million annually.
- Make available affordable mortgage loan products with flexible, yet sustainable, underwriting that enable LMI homeownership with a focus to lend to families at 0-80%, and 80-120% AMI adjusted for family size. CITBNA will actively consider creating an innovative LMI home ownership lending product in addition to exploring active participation in other LMI home lending programs targeted at minority LMI borrowers that are sponsored or developed by U.S. federal agencies, including Treasury, FHFA, Freddie Mac, and other agencies.
- Allow nonprofits, CDFIS and other affordable mortgage loan providers to become brokers through all of its distribution channels.
- For loans originated by CITBNA (including originations by its predecessor OneWest, however excluding loans acquired by OneWest), develop a first-look policy to prefer nonprofits, with a reasonable amount of time to purchase, in the sale of distressed loans and REO properties.
- Understand its responsibility to positively serve California communities, comply with the California Homeowner Bill of Rights, and work with community groups to develop a win-win policy that refrains from employing preemption. In addition the Bank will, in good faith, work with the California Chamber of Commerce to remove AB244 (Eggman) from the Chamber’s “Jobs Killer” list. AB 244 clarifies that HBOR protections extend to successors in interest (“widows and orphans”).
- Commit to implement HUD Mortgagee Letter 2015-15 in order to help all qualified Non Borrowing Spouses live out their days in their homes, without imposing unnecessary costs or hurdles, ensure Non Borrowing Spouses have an impartial referral for sound advice or a Single Point of Contact, and report publicly on CITBNA’s success in offering Mortgage Option Elections to Non Borrowing Spouses and in keeping them in their homes. CITBNA also commits to actively participate in the Keep Your Home CA Reverse Mortgage Assistance Program and to assist all qualified reverse mortgage borrowers and Non Borrowing Spouses in accessing the program, and to report publicly on the Bank’s performance in that regard.

Investments:

CITBNA benchmarks CRA investment activity against its peers, City National Bank and Union Bank, to develop the CRA investment target. In an effort to respond to community development needs, CITBNA will market and focus its investments on affordable housing projects, economic development, and sponsorships for AHP grants on behalf of nonprofits to the Federal Home Loan Bank of San Francisco.

Measurable Investment Targets:

- Establish an annual pool of \$14 million to lend to CDFIs, CDCs, transit-oriented development projects and other nonprofit community development funds that benefit small-business, housing and economic development in low-income and/or underserved communities. Funding methods will include EQ2 financing, initiated through formal broad-based “request for proposal” (RFP) processes. CITBNA commits to no more than \$1 million annually to any one organization.
- Invest \$10 million annually in CRA-qualified SBIC funding, with 20% targeted for minority enterprises.
- Commit .025% of California deposits, or \$7.5 million, annually to charitable contributions in California over the next four years, significantly increasing the Bank’s commitment to its communities. In addition, the Bank commits that 50% of annual contributions will be dedicated exclusively to CRA-qualified affordable housing and economic development projects, initiatives and organizations.
- Commit that CRA-qualified charitable contributions will be “unrestricted”.
- Support small-business technical assistance provided by nonprofits and faith-based providers that help to improve and enhance access to capital. In addition, CITBNA commits to specifically allocate \$300,000 annually for small-business pre- and post-loan technical assistance and supplier development and \$200,000 annually for loan-loss reserve funding, with emphasis on SBA micro-lenders doing loans less than or equal to \$50,000. This will be on top of the .025% of deposits annually CITBNA allocates for philanthropy generally. The Bank will develop a plan for a formalized selection and implementation process for its technical assistance and loan-loss reserve program with community input. The Bank will also actively consider investments in SBA micro lenders.
- Actively consider opportunities for CITBNA to participate and be a leader in the creation of “new models” introduced by community and faith-based groups, including, for example, a multi-bank consortia to fund capacity building grants.

- Make a \$1 billion commitment to investments in affordable housing over 4 years, which can take the form of Low Income Housing Tax Credits, investments in local government housing trust funds and other local government housing initiatives, investments in CDFIs or other mission driven entities that engage in housing activities, etc. Investments should be focused in the low and moderate income communities in Southern California that were hardest hit by the foreclosure crisis, with specific investments to be identified in consultation with community groups.

Services:

CITBNA is committed to providing retail services to low and moderate income people. On a periodic basis, the Bank will reevaluate its suite of banking products, including the personal checking account, to ensure its products and services are favorable to its local community, especially those with lower incomes, and to peer banks. CITBNA will always consider the needs of low and moderate income individuals as it contemplates its approach to marketing products and to product changes.

Measurable Services Targets:

- Develop, implement, actively market and service an account that serves the banking needs of the unbanked, underbanked and low- to moderate-income communities within the Bank's assessment areas within one year from the date of this commitment. This will be done in accordance with CRC's Safe Money Account or the Model Safe Account guidelines developed by the FDIC, and will include savings, checking and cash-secured credit card features. CITBNA also commits to continue to configure its ATMs so as to waive out-of-network surcharges for California public-assistance recipients who use Electronic Benefits Transfer (EBT) cards.
- Open three (3) branches in neighborhoods that are LMI and of color, where 50% or more of the residents are people of color and low or moderate income.
- Provide up to \$250,000 annually to specifically target, sponsor and support financial education and literacy efforts within the Bank's LMI and underserved communities.
- Conduct at least annual community meetings open for participation by all interested community and faith-based organizations. These meetings will provide updates on CITBNA's progress under the commitments and goals and the Bank's most recent related initiatives, and report on CITBNA's future plans. These meetings will provide technical assistance on a wide range of areas, including CITBNA's small business lending, community development lending, investment and charitable contribution program criteria, assistance on how community organizations can qualify and better meet these program criteria, as well as technical assistance and information on how community and faith-based groups can achieve designated non-profit, CDFI, CDC and SBIC status. These meetings will also provide opportunities for CITBNA to gain direct input and insights from community and faith-based groups on progress

under this new commitment and goals, and on opportunities to better meet the needs of CITBNA's communities within the context of these commitment and goals.

- Strive to use innovative strategic alliances, community and faith-based organizations' business referral programs, and interested enterprises to implement effective small business lending outreach efforts, provide small business lending technical assistance, and develop business referral programs to enhance identification and development of banking relationships for CITBNA with credit-worthy MWBE small business borrowers, within CITBNA's assessment areas, with particular emphasis on LMI and underserved communities.

SECTION V: OTHER COMMUNITY GOALS

CITBNA will set diversity goals in the areas of employees, board members, and suppliers to ensure the Bank represents the community in which it operates.

Measurable Targets:

- Commit that, at the start of this CRA agreement, the Bank will develop a strong and transparent procurement diversity program to increase its MWBE spending in California to 20% annually by 2019, and the Bank will evenly balance spending between MBEs and WBEs and report the data in accordance with best practices.
- Seek to have representatives from the Latino, Asian American and Pacific Islander, and African American community on its board of directors by year 3 of this agreement.
- Commit to increasing the diversity of its management employees by year 4 of this CRA Plan. This includes 30% ethnic diversity of employees classified as Executive or Senior Level Managers AND 40% ethnic diversity of employees classified as First or Mid-level Managers. In addition, the Bank will commit to reflecting the ethnic and linguistic diversity of the population where it does business, with a short term goal of reaching 30% ethnic diversity of customer-facing employees within 4 years of this CRA Plan.
- Produce a strategy and timeline, within one year of the date of this CA Commitment agreement, for how it will adopt and successfully further its workforce diversity programming.

SECTION VI: CONCLUSION

CITBNA is committed to continuing to meet the CRA needs of the diverse communities it serves. CITBNA's four-year, \$11 billion commitment represents the culmination of extensive consultation, meetings and discussions with many interested community groups.

This new 2015 commitment is the result of active consultation and dialogue with several California community advocacy organizations and many other interested community groups. Over the term of this new commitment, CITBNA representatives will annually meet with each of the Bank's willing and interested community and faith based partners, or more frequently as needed, to review and discuss the Bank's progress in fulfilling these new commitments and goals, and to gain the benefit of their unique insights on how to effectively enhance CITBNA's ability to meet its goals and fulfill its commitments.

We hope and believe that the fulfillment of these commitments and goals will result in CITBNA being considered an outstanding advocate and supporter of the Bank's communities.

Sean Coffey <scoffey@calreinvest.org>

bogus email support Support for the OneWest and CIT Merger , unauthorized email sent on my behalf

[REDACTED] <[REDACTED]@hotmail.com>

Mon, Sep 21, 2015 at 10:18 AM

To: scoffey@calreinvest.org, comments.applications@ny.frb.org,
"WE.Licensing@occ.treas.gov" <We.licensing@occ.treas.gov>

Sean Coffey

Media and Development Manager California Reinvestment Coalition

phone: (415) 864-3980

fax: (415) 864-3981

scoffey@calreinvest.org www.calreinvest.org

To Sean Coffey,

I am writing your this email regarding this bogus email (cut and pasted below), sent to comments.applications@ny.frb.org and We.licensing@occ.treas.gov by you on my behalf which I came across on the internet today, the email address [REDACTED]@yahoo is not mine and I did not authorize or send this email, and I did not authorize for you to use my name and address to be used for any support of One West and CIT Merger, I have no affiliation or whatsoever to this companies and would like you to stop using my name, address or email address, or I will have to go through legal action and notify proper authorities regarding this matter. I value my privacy and identity and take this matter seriously.

thanks, [REDACTED]

From: [REDACTED]@yahoo.com

To: comments.applications@ny.frb.org;

WE Licensing Subject: Support for the OneWest and CIT Merger

Date: Saturday, February 14, 2015 6:16:34 AM

E-Mail: [REDACTED]@yahoo.com

Subject: Support for the OneWest and CIT Merger

Dear Chair Yellen, President Dudley and Comptroller Curry,

I am writing to offer my support for the pending OneWest and CIT merger. OneWest serves as a strong source of capital and banking services to the Southern California community. This merger will retain and create new jobs in California. I believe the management team and OneWest have demonstrated its commitment to our community and to serving the needs of not only their clients but the community at large and due to this, I do not believe there is a need for a public hearing.

Kind regards, [REDACTED]



September 23, 2015

Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
Constitution Center
400 7th St SW, Suite 3E-218
Washington D.C. 20219

Re: CIT Bank CRA Needs Assessment Survey as flawed attempt to comply with the OCC Conditional Approval Order relating to the Application to Merge CIT Bank, Salt Lake City, UT with and into OneWest Bank, N.A., Pasadena, CA;

OCC Control Numbers: 2014-WE-Combination-139872

2015-WE-DirectorWaiver-141909

Dear Comptroller Curry,

We write to express our strong concerns regarding CIT's flawed efforts to respond to the OCC's conditional approval order.

Specifically, we believe that the Bank is pursuing a non-inclusive and ineffectual process that is not responsive to the OCC's Conditional Approval Order, and is not consistent with the positive precedent set by the OCC with the Valley National Bank CRA plan process, with the end result being that communities in the bank's assessment area will be poorly served by the bank's inadequate commitment to community reinvestment.

The California Reinvestment Coalition (CRC), based in San Francisco, is a nonprofit membership organization of nonprofit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color through access to financial institutions. CRC promotes increased access to credit for affordable housing and economic development for these communities.

Sixty days into the ninety days allotted to the Bank to revise its CRA Plan, the only apparent evidence of the Bank's efforts is CIT's dissemination of a survey that is billed as a "CRA Needs Assessment" and a recently announced "community day event" that is reminiscent of a past community meeting that was more show than substance.

CRC and Greenlining are troubled by the survey for a number of reasons:

1. CIT is implementing an opaque and non inclusive process. An important question needs to be answered, in order to determine if a survey will be effective: Who received the surveys? CRC did not receive one, nor did a number of CRC members and merger opponents we asked. This question of who received a survey is extremely important to ensure that a fair process was undertaken in gathering information, as well as to ensure that in analyzing results that proper weight is given to data collected. For instance, if health and human services receives a majority of responses in a certain category in rating need, it would be good know if a majority of those surveyed or of those who responded were health and human services providers. It would also be important to know if a majority of those who received the survey were merger supporters rather than a fair representation of opponents and supporters.

Additionally, if this survey is part of a larger and more extensive community needs assessment, that process has not been explained to groups, and their participation in this survey has not been explained as part of a larger context in the bank's community needs assessment. For many of the organizations we've spoken with, this survey is the only contact they've had with the bank in terms of its plan or the process of plan development.

2. This "Needs Assessment" is not connected to need. The questions in this document are sparse, leading, and off point. Although the survey appears to be six pages long, the first two pages are questions related to the respondent and not about the community's needs. With so much emphasis on the responding organizations, it reads as if it's an invitation to solicit funding from the bank.

The survey's need questions are extremely limited in scope. The survey immediately and repeatedly asks respondents to rank priority of needs, as if they are not all coexisting, intersecting, urgent, and within the proper scope of a bank's CRA plan. Further, in our experience, organizations dedicated to serving one type of community need would be hard pressed to prioritize a different one as more urgent, if only due to limited knowledge about the scope of and appropriate responses to needs beyond the ones they specialize in. We have seen that when a bank surveys a disproportionate number of education groups, for example, the responses will naturally reflect that education is the most urgent need in the community. Forcing respondents to rank urgency of different needs sends a clear message that the bank's foremost priority is to pick between them to allocate the few resources the bank has budgeted.

A proper needs assessment survey would focus instead on identifying the complexity of existing needs, including their causes, their impact and potential responses. A secondary purpose would assess the resources needed to respond effectively. Then, finally, the bank should use the information to formulate a budget or plan using the tools and capacity that they have, which in this case include the ability to provide loans, investment and services to simultaneously address housing, economic development and financial services needs.

3. The survey suggests that the Bank is probably choosing to ignore the extensive record of thoughtful comments and testimony submitted over the course of many months of debate over whether the Applicant was meeting community credit needs. For example, CDC Small Business Finance cited FFIEC data to illustrate that OneWest made zero small business loans for under \$100k in 2013; our research and testimony from several opponents cited OneWest's sparse branch presence in low income neighborhoods, as well as its failure to finance or invest significantly in the affordable housing needed as a result of OneWest and Financial Freedom foreclosures; and by the bank's own admission, its mortgage lending to Asian Americans is below the industry average.

Will the revised CRA Plan give undue weight to simple surveys completed by respondents in five minutes, as opposed to the deliberative and public process resulting in a large number of comments on the Applicant's shortcomings and how it could do better? Nearly every topic related to "meeting community credit needs" was raised through the 12 month merger process, and yet it appears the bank has chosen to turn a blind eye to the expertise of organizations already embedded in its assessment area.

4. Disturbingly, the survey suggests the Bank is not even considering, nor is it soliciting input as to, whether it should increase its commitment to community reinvestment. The survey notes that, "CIT Bank, N.A. pledged \$3.8 billion in CRA reportable lending over the next 4 years." Respondents are then asked to rank a list of four categories of lending, with an "other" category provided "to help guide us in making these loans" (Survey, p. 3). But there is no box to check if a respondent believes that the \$3.8 billion pledge is itself part of the problem, if the respondent is concerned about CIT investing less than its peers are doing, or that the initial CRA plan is not commensurate with community need.

5. In its discussion of bank services, the Bank appears to obfuscate its deficiencies instead of addressing them directly. The bank asks "of the following alternative banking services, which are the most important," and then goes on to list four alternatives that respondents are to rank in order of importance (Survey, p. 5). The "alternatives" of course, are alternatives to the branch presence that LMI communities need and that CIT Bank lacks. As noted previously, CIT Bank has a mere 15% of its branches in such communities. The industry average in California is twice that, at 30%. Respondents are not invited to discuss the importance of branches in their communities. Yet branch presence is critically important to serving all communities, especially LMI communities that are already suspicious of banks and that may lack easy access to and comfort with technological alternatives. If a bank's "Needs Assessment" doesn't ask respondents to discuss the need for branch branches (or more reinvestment, etc.), how can it be said to assess need? The Bank is dictating and pre-determining the needs based on which "needs" it is willing to meet. This is not a "needs assessment," it's a tool for respondents to reorganize predetermined priorities for the bank.

6. CIT's implementation of the order fails to meet the strong precedent and standard set in the Valley National case. There, as has been noted, the Bank developed an inclusive process, meeting directly and on several occasions with community group commenters/opponents and their chosen representatives and allies. The Bank also documented its conversations, and reflected back those discussions in its public submissions to the regulators. Importantly, the bank ultimately developed a plan that reflected the discussions held, that satisfied all stakeholders, and

that pushed the bank to meet community needs in a manner beyond which it had initially proposed to do so.

At this point, two-thirds of the way into this process, CIT appears to fail on each count. And in asking respondents if the bank can list their name when they publish the CRA plan, the survey reinforces that the Bank may attempt to frame its submission as reflecting greater community support than exists.

7.The Plan CIT appears poised to submit to the OCC is roughly half the size of the Plan City National submitted to the OCC. CIT's deposit base is roughly 20% greater than City National's California deposit base. For CIT to reinvest at a proportional level to City National, it would have to commit to meet City National's goal of \$11 billion, but to do so in four years instead of the five year City National Plan. Instead, CIT commits to only \$5 billion over four years, less than half of City National's commitment. The two banks are peers and are similar in a number of ways. Further, the City National Plan was accepted by most of the California stakeholder groups, including the main proponents and opponents of the OneWest/CIT merger.

No justification has ever been put forth as to why CIT cannot do as much, (or half as much for that matter) as City National to help meet the community credit needs of Southern California customers and communities. As many commenters in the bank's assessment area pointed out, if anything, two banks that received a tremendous amount of subsidy from the FDIC and taxpayers should be willing to make a stronger commitment to its community than its peers who did not seek such assistance. If there is a better "peer" of CIT for comparison purposes, that has never been articulated or suggested. Yet, as stated earlier, CIT is implying in its survey that it will do no more than it has already committed and has not asked respondents if indeed community needs exceed this amount.

CRC is currently analyzing 2014 performance data from California banks from which we have sought information. CIT has not responded to this request for data. But based on our preliminary analysis, CIT's pledge over the next four years would rank it 8 out of 11 institutions analyzed in terms of its commitment to meet community credit needs in its assessment areas, meaning 7 out of 11 institutions, we believe did more in 2014 than CIT will likely do each year through 2019. How is this identifying and meeting community credit needs?

8. Another community meeting, will community members be heard? While CITBNA has refused our request to meet with CRC and its members, it has invited us to a "Annual Community Day Event" scheduled for October 6 in Los Angeles. This is reminiscent of the community meeting the banks held at the beginning of this process, where the vast majority of time allotted consisted of grantee performance and bank presentation. Approximately 15 minutes was allotted for questions and comments, and the bank even then refused to answer our questions. Community groups were not able to give substantive feedback to the plan that was presented, given that this was the first time groups were viewing the plan, and there was no opportunity for meaningful dialogue and engagement. It is hard to imagine how this meeting will be any different, and how the bank will meaningfully take input on how its Plan should be refined and expanded.

This merger triggered one of the largest and most substantive merger protests in recent memory. A large number of concerns were raised about the Applicant's past performance, as well as its ability to meet community credits needs and demonstrate a public benefit from the merger. Many questions were asked of the bank and never answered.

CITBNA's survey raises serious questions about the Bank's intention of reforming or meaningfully meeting community credit needs. This is now a test for the OCC. We hope and believe the OCC will stand by southern California communities, and stand for fairness, by requiring the bank to go back to the drawing board and develop a Plan, in meaningful consultation with all parties, which truly identifies and helps meet community credit needs in a manner that is commensurate with its size.

To further inform the public record, and to suggest a way forward for the Bank to help meet community credit needs, CRC and the Greenlining Institute will be submitting a proposed CITBNA CRA Plan based on the City National Bank commitment, OWB Plan drafts, and needs identified during the merger protest process.

Thank you very much for your consideration of our views. Should you wish to discuss this letter further, please feel free to contact Kevin Stein or Paulina Gonzalez at (415) 864-3980.

Very Truly Yours,

Paulina Gonzalez
Executive Director

Orson Aguilar
Executive Director

CC: Joseph Otting, CEO, CITBNA