

United States Senate
WASHINGTON, DC 20510

July 20, 2020

Mr. Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20551

Dear Acting Comptroller Brooks:

We write regarding recent reporting that senior officials at the Office of the Comptroller of the Currency (OCC) have undermined OCC examiners' efforts to investigate and pursue violations of civil rights laws.¹

The OCC is charged with examining its supervised financial institutions for compliance with the Fair Housing Act and the Equal Credit Opportunity Act (ECOA), which prohibit discrimination based on protected classes in housing and access to credit, respectively. The report describes how over the last three years when OCC examiners found evidence of systemic violations of fair mortgage lending that resulted in Black, Latinx, and female borrowers being charged more or being required to meet higher standards than their white or male counterparts, agency leadership refused to take public action.

In one instance, one of the nation's largest banks reportedly had a potentially discriminatory pattern of denying loans to borrowers of color in Philadelphia, the same city where 2018 reporting on modern-day redlining found that Black borrowers were 2.7 times more likely to be denied a loan than white borrowers.² Yet, when the bank's lawyers intervened, the OCC closed its review before examiners could complete their work. In examinations of at least two other banks, the independent OCC Ombudsman reportedly agreed with OCC examiners that discriminatory mortgage lending patterns were present. But OCC leadership reportedly swept alleged fair lending violations under the rug.³

Following the 2008 financial crisis, the OCC played a vital role in enforcing fair mortgage lending. The OCC identified and worked with the Department of Justice (DOJ) to pursue penalties for systemic racial and ethnic discrimination in mortgage lending at the nation's largest

¹ "Trump Financial Regulator Quietly Shelved Discrimination Probes Into Bank of America and Other Lenders," Patrick Rucker, ProPublica and The Capitol Forum, July 13, 2020, available at https://www.propublica.org/article/trump-financial-regulator-quietly-shelved-discrimination-probes-into-bank-of-america-and-other-lenders?mkt_tok=eyJpIjoiWXpKaU5qSXIZamc0TIRjdyIsInQiOiJrNTFZb0NpTFgrVnJWQXBBbjZvMTZDSHhHMGRMbTY2UFwvQWN5UGxmc3M2cU0reHNkcFpuZ21nalNVN2ttRUMwc2IycUF3Ymtvd1JrcEliR3NpaHI1SVFyTzU4eGxkREJJV1R3Z3d0bmlsXC9SUWdRT3BXMUZJenhaVUIGTUZ5Qm1CIn0%3D.

² "Keep Out: For people of color, banks are shutting the door to homeownership," Aaron Glantz and Emmanuel Martinez, Reveal, February 15, 2018, available at <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>.

³ "Trump Financial Regulator Quietly Shelved Discrimination Probes Into Bank of America and Other Lenders."

lenders.⁴ Today, the OCC’s legal obligations for examination and enforcement remain the same. But reporting indicates that while the OCC’s examiners, statisticians, and Ombudsman continue to identify and pursue discriminatory lending, OCC’s leadership has intervened, making it tougher to root out systemic discrimination. The OCC’s reported decision not to take action in these cases is even more alarming because systemic discrimination is, by nature, difficult or impossible for an individual borrower to identify. Without intervention by the OCC, countless consumers could be subject to discrimination with no way to know or seek redress.

Not aggressively investigating reported patterns of discriminatory lending has and will continue to strip wealth from the same borrowers of color and the same neighborhoods that were denied access to government-backed, affordable homeownership for decades and targeted for predatory mortgages in the run-up to the 2008 crisis. In the years before the 2008 crisis, federal regulators knew that borrowers of color were being targeted for subprime loans⁵ in ways that likely violated the Fair Housing Act – and yet not enough was done to stop systemic lending discrimination.⁶ It was Black and Latinx borrowers who suffered the consequences of inaction. Belated fair lending settlements represented just a small fraction of the harm the foreclosure crisis caused borrowers and neighborhoods of color.

The OCC’s reported failure to pursue evidence suggesting fair lending violations today not only harms borrowers and their communities, but also undermines meaningful bank evaluations under the Community Reinvestment Act (CRA), which take into account a bank’s fair lending record. Disregard for fair lending enforcement could inflate CRA evaluations and further weaken this critical civil rights law and community investment tool. This comes on top of the OCC’s recent decision to ignore the majority of public comments and unilaterally revise the CRA to create what civil rights advocates called “gaping loopholes” that undermine investment in low- and moderate-income communities.⁷

To help us better understand the OCC’s fair lending oversight since 2017 and your personal commitments to enforcing our nation’s civil rights laws during your tenure, please respond to the following questions by July 31, 2020:

1. Please confirm the OCC’s responsibility for identifying systemic violations of fair lending laws, including the Fair Housing Act and the ECOA.

⁴ See “Justice Department Reaches Settlement with Wells Fargo Resulting in More Than \$175 Million in Relief for Homeowners to Resolve Fair Lending Claims,” Department of Justice, July 12, 2012, available at <https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief#:~:text=The%20Department%20of%20Justice%20today,against%20qualified%20African%2DAmerican%20and> ; see also “Justice Department Reaches Fair Lending Settlement with Chevy Chase Bank Resulting in \$2.85 Million in Relief for Homeowners,” Department of Justice, September 30, 2013, available at <https://www.justice.gov/opa/pr/justice-department-reaches-fair-lending-settlement-chevy-chase-bank-resulting-285-million>.

⁵ HUD-Treasury Joint Report, June 20, 2000, available at <https://archives.hud.gov/reports/treasrpt.pdf>.

⁶ Hearing of the Senate Committee on Banking, Housing, and Urban Affairs, “Increasing Minority Homeownership, and Expanding Homeownership to All Who Wish to Attain It,” June 12, 2003, available at <https://www.govinfo.gov/content/pkg/CHRG-108shrg95410/html/CHRG-108shrg95410.htm>.

⁷ “Joint Statement On CRA Rule Changes From OCC,” May 21, 2020, available at <https://nrc.org/joint-statement-on-cra-rule-changes-from-occ/>.

2. How many banks have OCC examiners cited for violations of fair lending laws since January 2017? How many fair lending cases has the OCC referred to DOJ since January 2017? Please indicate the type of lending discrimination alleged in each case. Please also indicate the number of those cases that resulted in a DOJ action or settlement, or that remain pending.
3. How many fair lending cases referred by the OCC has DOJ declined to take action on since January 2017? Of those cases, in how many has the OCC subsequently taken an enforcement action? If the OCC elected not to pursue an enforcement action in any of these cases, please explain why the OCC believed there was sufficient evidence of a pattern or practice of discrimination to refer the matter to DOJ, but not sufficient evidence to pursue administrative enforcement at the OCC.
4. Of the formal fair lending investigations that did not result in public enforcement actions and/or penalties, in how many cases did the OCC decide against staff recommendations to pursue enforcement actions and/or penalties?
5. Since January 2017, how many times have senior OCC officials met with banks that were currently under investigation for fair lending violations? Did the banks' lawyers and officers ask senior OCC officials to intervene in the investigations?
6. As Acting Comptroller of the Currency, will you personally guarantee that examiners can complete their examinations free from interference and that you will prohibit intervention by bank lawyers in examinations and investigations, including fair lending investigations?
7. If OCC examiners, attorneys, individuals in the Risk Analysis Division, and/or the OCC's Ombudsman find a pattern of discrimination and violations of fair lending laws, under what circumstances do you believe it is appropriate for the Comptroller or other senior OCC officials to decline to pursue an administrative enforcement action?

It is your responsibility to ensure that discrimination in housing and access to credit is not occurring at our nation's largest banks. We look forward to your prompt response.

Sincerely,

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Catherine Cortez Masto
Catherine Cortez Masto
United States Senator

/s/ Chris Van Hollen
Chris Van Hollen
United States Senator

/s/ Ron Wyden
Ron Wyden
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Tammy Duckworth
Tammy Duckworth
United States Senator

/s/ Dianne Feinstein
Dianne Feinstein
United States Senator

/s/ Richard J. Durbin
Richard J. Durbin
United States Senator

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Robert Menendez
Robert Menendez
United States Senator

/s/ Bernard Sanders
Bernard Sanders
United States Senator

/s/ Jeffrey A. Merkley
Jeffrey A. Merkley
United States Senator

/s/ Jack Reed
Jack Reed
United States Senator

/s/ Cory A. Booker
Cory A. Booker
United States Senator

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator