



July 21, 2015

**CRA Decision 168
August 2015**

Joseph M. Otting
President and CEO
OneWest Bank, National Association
888 East Walnut Street
Pasadena, California 91101

Re: Application to Merge CIT Bank, Salt Lake City, UT with and into OneWest Bank, N.A.,
Pasadena, CA and Request for Waiver of Residency Requirement
OCC Control Numbers: 2014-WE-Combination-139872
2015-WE-DirectorWaiver-141909

Dear Mr. Otting:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge CIT Bank (CITB) with and into OneWest Bank, N.A. (OWB), under the charter of the latter (the Application). The OCC also approves the request for a waiver of the residency requirement of 12 USC 72 so that up to 75 percent of the resulting bank's board of directors will not be required to satisfy the residency requirement. These approvals are granted based on a thorough review of the Application, other materials OWB and its representatives supplied, and additional information available to the OCC, including commitments and representations made in the Application and by OWB's representatives during the application process.

I. Background and the Transaction

OWB is a national bank with its main office in Pasadena, California, and 69 branches throughout Southern California. OWB is wholly owned by IMB Holdco LLC, Pasadena, California (IMB). OWB was formerly OneWest Bank, FSB, which was established as a federal savings bank in March 2009 when it acquired certain assets and liabilities of IndyMac Federal Bank, FSB and its predecessor entities (collectively, IndyMac) from the Federal Deposit Insurance Corporation (FDIC) after IndyMac was placed into receivership with the FDIC. OneWest Bank, FSB also acquired two other failed institutions from the FDIC, one in 2009 and the second in 2010. In February 2014, the OCC approved the conversion of OneWest Bank, FSB to a national bank.

CITB currently operates from its main office in Salt Lake City, Utah, and has no branches. CITB is wholly owned by CIT Group Inc., Livingston, New Jersey (CITG). In late 2008, CITB converted from an industrial loan company to a state bank, at which time CITG became a bank

holding company. In 2009, CITG received \$2.3 billion in Troubled Asset Relief Program (TARP) funds.¹ Later that year, CITG filed a prepackaged voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code. Among the issues that led to this bankruptcy filing were increased credit line draws by borrowers, deteriorating asset quality, and significantly strained liquidity. CITG emerged from bankruptcy on December 10, 2009, with new ownership and new management. Part of CITG's post-bankruptcy strategy included significant growth at CITB.

Prior to the merger of CITB into OWB, IMB will be merged into a newly formed subsidiary of CITG; this new subsidiary, in turn, will merge into CITG. CITG has applied to the Board of Governors of the Federal Reserve System (FRB) to acquire IMB and OWB. The FRB is currently processing the holding company application.

OWB will be the surviving bank, and it will be wholly owned by CITG. After the transaction is completed, OWB will change its official corporate title to CIT Bank, National Association (CITBNA or the resulting bank). CITBNA will retain OWB's main office in Pasadena, California, as the main office of the resulting bank, and will retain OWB's existing branches as branches of CITBNA. CITBNA also intends to retain CITB's main office in Salt Lake City, Utah, as a non-branch office.

CITBNA will retain all of the operating subsidiaries of CITB. Upon review of the activities conducted by CITB's operating subsidiaries, the OCC has determined that such activities are legally permissible for national banks and may be performed by operating subsidiaries of a national bank.

II. Public Comments Received

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. The OCC also received two petitions in opposition to the merger with over 21,500 signatures.²

Several of the comment letters received by the OCC requested that the public comment period be extended and that the OCC conduct public hearings in connection with this Application. After considering these requests, the OCC extended the public comment period, and the OCC and FRB held a public meeting regarding the Application on February 26, 2015, at the Los Angeles Branch of the Federal Reserve Bank of San Francisco (Public Meeting). The panel of OCC and FRB representatives received verbal comments from a variety of community group representatives and individuals, expressing both support for and opposition to the merger.

¹ As a result of the 2008 financial crisis, the U.S. Department of the Treasury provided equity support under TARP to a number of banking organizations, generally in the form of preferred stock of the companies issued to the U.S. Department of the Treasury.

² The petitions came from a blog site and a community group.

The OCC has carefully considered the concerns of commenters opposing the merger as they relate to the statutory and regulatory factors considered by the OCC in acting on the Application, including financial and managerial resources and future prospects, financial stability, performance under the Community Reinvestment Act (CRA), and the probable effects of the transaction on the convenience and needs of the communities to be served. The public comments will be discussed, as applicable, under each of the statutory and regulatory factors throughout this letter.

III. Legal Authority for the Merger

OWB applied to the OCC for approval to merge CITB with and into OWB under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, 12 USC 215a-1, 1831u, which authorizes mergers between insured banks with different home states, and the Bank Merger Act, 12 USC 1828(c).

Mergers conducted pursuant to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal) are subject to the requirements in 12 USC 1831u(a)(5) and 1831u(b). These are: (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal's limits; (ii) compliance with certain state filing requirements, to the extent the filing requirements are permitted in Riegle-Neal; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills. The OCC has considered these requirements and has determined that the merger satisfies all applicable requirements in Riegle-Neal.

IV. Bank Merger Act Considerations

The OCC also reviewed the proposed merger under the criteria of the Bank Merger Act, 12 USC 1828(c) (BMA), and applicable related OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. 12 USC 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 USC 1828(c)(11). Furthermore, the OCC must consider the risk of the transaction to the stability of the U.S. banking or financial system. 12 USC 1828(c)(5). As discussed in more detail below, the OCC has found that approval of the Application is consistent with these factors, subject to the conditions set forth in Section VIII below.³

³ In addition, under the BMA, the OCC may not approve any interstate merger transaction that results in the resulting insured national bank controlling more than 10 percent of the total amount of deposits of insured depository institutions in the United States. *See* 12 USC 1828(c)(13). The OCC has found that approval of the Application is consistent with this factor. In addition, under 12 USC 1852, as implemented by Regulation XX, 12 CFR 251, an insured national bank generally may not merge with or acquire all or substantially all of the assets of another company, if the total consolidated liabilities of the acquiring institution upon consummation of the transaction would exceed 10 percent of the aggregate consolidated liabilities of all financial companies at the end of the preceding calendar year. The OCC has examined the proposed transaction in light of these provisions and determined that the proposed transaction is permissible.

A. Competitive Analysis

The OCC considered the competitive effects of this transaction and found them consistent with approval. On November 19, 2014, the U.S. Department of Justice concluded that the merger would not have a significantly adverse effect on competition.

B. Financial and Managerial Resources and Future Prospects

Based on information gathered from various sources, including quarterly financial reports, information provided in the Application, and supervisory information, both OWB and CITB are in overall satisfactory financial condition. Both banks have capital ratios well above those necessary to be considered well capitalized. In addition, each bank has satisfactory earnings, asset quality, and liquidity.

Neither OWB nor CITB is subject to any enforcement actions by a federal or state banking regulator. OWB was subject to a Consent Order that was issued on April 13, 2011, by the Office of Thrift Supervision (OTS), the provisions of which were reaffirmed by a Consent Order issued by the OCC in 2014 at the time OWB converted its charter from a thrift to a national bank (the OTS order and OCC order are collectively referred to as Consent Order), to address concerns with the bank's residential mortgage servicing and its initiation and handling of foreclosure proceedings.⁴ The OCC has determined that OWB has met the terms and requirements of the Consent Order. As a result, the Consent Order has been terminated.

Future prospects for the resulting bank are positive. CITBNA will be well capitalized at consummation with capital ratios well above the minimum to be considered well capitalized. Financial projections provided as part of the Application appear reasonable, with the resulting bank having satisfactory capital ratios and earnings prospects. The projections reflect a reasonable rate of growth over the next three years, and reflect earnings sufficient to support operations and to maintain adequate capital and reserves.

OWB and CITB have complementary business lines and funding sources such that the resulting bank will have a more diversified and stable funding base, and a more diversified loan portfolio. OWB's retail deposit base is lower cost than the deposit base of CITB, and therefore the resulting bank will benefit from a favorable cost of funds. Similarly, the combination of OWB's legacy residential mortgage portfolio, commercial lending portfolio, and planned growth in small business lending should complement the specialty portfolios at CITB.

The resulting bank will have satisfactory managerial resources drawn from both banks. Due to the diversity of operations between the two banks, most of the existing management teams of OWB and CITB will continue with the resulting bank. The combined management team has extensive experience in the banking and financial services sectors and a record of performance

⁴ The Consent Order is discussed in Section V below.

sufficient to lead the resulting bank. In addition, the management teams of OWB and CITB both have experience successfully completing mergers and other business combinations.

While the OCC finds that approval of the Application is consistent with the financial, managerial, and future prospects factors, the OCC does have some concerns with respect to the integration of two banks with significantly different business lines, cultures, and risk tolerances. In order to monitor the risk associated with the combination of OWB and CITB, the OCC will require CITBNA to submit a business plan annually that will be subject to OCC non-objection (*see* Section VIII below).

In order to ensure strong oversight and controls at CITBNA, the OCC is notifying OWB in a separate letter that the OCC has determined that the resulting bank will be subject to the OCC's Guidelines Establishing Heightened Standards set forth in 12 CFR 30 Appendix D (Heightened Standards). The Heightened Standards establish minimum standards for the design and implementation of a risk governance framework for large national banks and federal savings associations with total consolidated assets of \$50 billion or more, and they permit the OCC to subject a particular institution with less than \$50 billion in assets to the Heightened Standards under the OCC's reservation of authority. The OCC is exercising its reservation of authority to bring CITBNA under the requirements of the Heightened Standards.

Public Comments on the Financial, Managerial, and Future Prospects Factors

The OCC received extensive public comments regarding the financial and managerial resources and future prospects factors.

As mentioned above, OWB acquired three failed depository institutions from the FDIC in 2009 and 2010. As part of the acquisition of these failed institutions, OWB and the FDIC entered into a number of Shared-Loss Agreements (SLAs). Numerous public comments were received regarding SLAs, including: (i) that the agreements be terminated because OWB should no longer receive payment under the SLAs; (ii) that an independent audit of compliance with the SLAs should be required; and (iii) that a decision on the Application should be delayed until the FDIC's next review of compliance with the SLAs is completed. Commenters also indicated a belief that the SLAs provide an incentive for OWB to foreclose on residential properties rather than work with borrowers to modify loans.

The authority to modify, terminate, or determine compliance with SLAs lies solely with the FDIC. In a letter dated November 25, 2014, addressed to a community group, the FDIC indicated that the SLAs will continue after the proposed merger, in accordance with the terms of the agreements.

In its letter, the FDIC stated that seven compliance reviews have been conducted to assess OWB's compliance with the SLA requirements. The FDIC indicated that it uses Compliance Monitoring Contractors (CMCs) to assist in monitoring compliance with the SLAs. The FDIC stated that CMCs validate the appropriateness of loss share claims, review efforts to maximize recoveries, and ensure consistent application of policies and procedures. CMCs also perform

routine claims sampling to evaluate the accuracy and validity of loss claims. Loan modification-related loss claims are reviewed to confirm that modifications comply with the particular loan modification program the bank has adopted. Based on these reviews, the FDIC concluded that OWB is currently in compliance with the terms of the SLAs, including the loan modification and foreclosure terms. Given the multiple reviews of compliance with the SLAs, the OCC has determined that there is no basis to require an additional review or to delay consideration of the Application until completion of the next review.

With respect to commenter concerns that the SLAs provide OWB with an incentive to foreclose, the OCC notes that under the SLAs, OWB is eligible to be reimbursed for losses under modifications as well as foreclosures. In addition, the FDIC indicated that CMCs routinely review the bank's policies and procedures for compliance, including for asset management and single family loss mitigation. In the event concerns or exceptions are identified, the FDIC requires the bank to take corrective action and/or to lose loss share coverage or repay previously paid amounts under the SLA.

Commenters also questioned the appropriateness of the resulting bank paying dividends and the impact that dividends would have on capital available to adequately lend to low- and moderate-income (LMI) communities. In response, CITG stated that the resulting bank will continue to have strong capital and liquidity positions, and sound earnings and asset quality. As noted above, the OCC reviewed a variety of information and determined that the resulting bank, after taking into account the dividends, will be in satisfactory financial condition.

Commenters stated that CITG should be required to repay the money it received under the TARP and on which it subsequently defaulted. It is noted that the 2009 bankruptcy reorganization of CITG lawfully discharged CITG's TARP obligation. Moreover, as a result of the bankruptcy, CITG's shareholders at the time lost their investment and new ownership and management were installed.

Several commenters expressed concern with proposed director and officer salaries of the resulting bank. CITG has responded that it has worked, including with its regulators, to ensure that its compensation practices do not encourage imprudent or excessive risk-taking and are consistent with the Interagency Guidance on Sound Incentive Compensation Policies (Guidance).⁵ CITG has indicated that, upon consummation, CITG's incentive compensation policies and practices will be applied to the resulting bank. CITG also stated that it is committed to ensuring that its incentive compensation practices remain consistent with supervisory expectations and with the Guidance. The OCC reviews officer compensation as part of its supervisory examinations and will evaluate the compensation practices of the resulting bank using applicable regulatory guidance.

Commenters also questioned the larger amount of tax loss carryforwards that CITG would be able to use as a result of the proposed merger, specifically requesting disallowance of carryforwards and making public the extent to which CITG expects to reduce its tax obligations

⁵ See OCC Bulletin 2010-24.

into the future. The use of carryforwards is a matter of tax law that is beyond the jurisdiction of the OCC.

C. Effectiveness in Combating Money Laundering

The OCC must also consider the effectiveness of any insured depository institution involved in a merger transaction in combating money laundering activities. OWB and CITB maintain satisfactory Bank Secrecy Act and anti-money laundering (BSA/AML) controls. Both banks have established acceptable compliance and monitoring programs. Initially, the existing BSA/AML programs in place at OWB and CITB will continue within the respective banks' business lines at CITBNA. CITBNA will then develop one BSA/AML system covering all business lines, adopting the strongest aspects of each bank's current programs in conjunction with bank-wide systems integration. CITBNA's BSA/AML system will be subject to the Heightened Standards.

D. Risk to the U.S. Banking or Financial System

12 USC 1828(c)(5) requires the OCC to consider, when reviewing transactions under the BMA, the risk to the stability of the U.S. banking or financial system (USFS). The OCC has looked to six criteria when applying this standard: (i) whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining firms; (ii) whether the transaction would result in a reduction in the availability of substitute providers for the services offered by the combining firms; (iii) whether the transaction would materially increase the extent of the interconnectedness of the financial system; (iv) whether the transaction would materially increase the extent to which the combining firms contribute to the complexity of the financial system; (v) whether the transaction would materially increase the extent of cross-border activities of the combining firms; and (vi) the relative degree of difficulty of resolving the combined firm.

Applying these standards, the OCC concludes that the proposed merger does not pose a risk to the stability of the USFS. Key considerations leading to this conclusion are: (i) the resulting bank will have approximately \$44 billion in total assets and be the 43rd largest U.S. bank by asset size, and will hold only 0.3 percent of nationwide deposits, far below the nationwide limit of 10 percent; (ii) neither OWB nor CITB engages in any activities that are critical to the functioning of the USFS, and there are many competitors in the markets served by OWB (branch-based banking to retail and mid-size business customers, with an emphasis on consumer deposits, commercial loans, and jumbo mortgages) and CITB (secured loans to middle market companies, and airplane, rail car, and maritime leases); (iii) neither OWB nor CITB engages, nor will CITBNA engage, in any business activities or participate in markets to a degree that would pose significant risk to other institutions in the event of financial distress of the resulting bank, and the resulting bank will have limited interconnectedness; (iv) both banks offer lending and deposit products to consumers and business customers, the vast majority of assets of CITBNA will be made up of loans, and the resulting bank's revenue will come primarily from net interest income; (v) OWB has no operations outside the United States, and a very limited number of relationships with non-U.S. borrowers and depositors, while CITB has a very small exposure of

approximately \$1 billion in non-U.S. assets, and no foreign deposits or foreign branches; and (vi) although the merger will result in a larger bank, based on the above considerations, resolving CITBNA would not be so difficult or costly that it would increase the risk to the stability of the USFS.

Public Comments Related to Financial Stability

The OCC received a number of comments expressing concern that the merger of OWB and CITB would result in a “too big to fail” institution or a Systemically Important Financial Institution (SIFI),⁶ posing undue risk to taxpayers in the event of a default and creating excessive risks to the USFS.

CITG responded that the transaction will not result in greater or more concentrated risks to the stability of the USFS, but actually will decrease such risks by combining CITB and OWB into an institution that is inherently more diversified with a more stable funding profile, that has enhanced earnings and capital generating capacity, and that will be more resilient to financial stress. CITG also stated that the relevant statutory factor is not whether a transaction creates an institution with over \$50 billion in total consolidated assets but whether the transaction increases risks to the stability of the USFS.⁷

Based on the discussion above, assessing the transaction under the OCC’s financial stability review framework, the OCC has determined that the merger will not pose an undue risk to the stability of the USFS.

As set forth above, the OCC finds that approval of the Application is consistent with each of the factors discussed above required to be considered under the BMA. The convenience and needs factor, as well as CRA considerations, will be discussed in detail below.

V. Community Reinvestment Act and Convenience and Needs of the Community

The CRA requires the OCC to take into account the records of the banks’ performance in helping to meet the credit needs of their communities, including LMI neighborhoods, when evaluating applications under the BMA. Under the regulations implementing the CRA, a bank’s record of performance may be the basis for denying or conditioning approval of an application subject to the BMA. 12 CFR 25.29(d). Accordingly, the OCC considered the CRA performance evaluation (CRA PE) of each bank involved in this transaction.

Under the BMA, the OCC must consider the convenience and needs of the communities to be served by the resulting bank.⁸ The OCC has carefully considered concerns expressed by commenters relating to the probable effects of the business combination on the convenience and needs of these communities.

⁶ A SIFI is a financial institution whose distress or disorderly failure, because of its size, complexity, and systemic interconnectedness, would cause significant disruption to the wider financial system and economy.

⁷ At the holding company level, CITG would have consolidated assets greater than \$50 billion.

⁸ See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

In evaluating the Application, the OCC reviewed: (i) the banks' records; (ii) oral and written public comments; (iii) information provided by OWB to the OCC in response to public comments and an additional information request (AIR) and information provided by CITG in response to several requests for information by the FRB relating to that organization's FRB application (collectively, the AIR Responses);⁹ and (iv) information available to the OCC as a result of its supervisory responsibilities. Based on this review, the OCC has concluded that the banks' records of performance under the CRA and the probable effects of the business combination on the convenience and needs of the community to be served are consistent with approval of the Application, subject to the condition discussed in Section VIII of this letter.

A. OWB's CRA Performance

OWB's most recent CRA PE is dated February 6, 2012, and was completed by the OCC. This was OWB's first CRA evaluation since its inception in 2009.

OWB was assigned an overall "Satisfactory" CRA rating.¹⁰ The major findings that supported this rating include: (i) good community development (CD) lending that addressed several identified CD needs and had a positive impact on OWB's CRA performance; (ii) excellent geographic distribution of loans; (iii) significant use of flexible and innovative loan products, including the U.S. Department of the Treasury's Home Affordable Mortgage Program (HAMP) and several other loan modification programs that had a positive impact on OWB's lending performance; (iv) an adequate level of qualified investments that benefitted the full-scope assessment area (AA);¹¹ and (v) provision of a relatively high level of CD services that incorporated fundraising and financial education for CD organizations.

B. CITB's CRA Performance

In the most recent CITB CRA PE, dated March 18, 2013, and prepared by the FDIC, the bank was assigned an overall "Satisfactory" CRA rating.¹² For purposes of this CRA PE, CITB was

⁹ The term AIR Responses includes the communication from OWB to the OCC in response to its AIR, as well as the responses from CITG to the FRB in responses to FRB AIRs. OWB affirmed all information pertaining to OWB contained in all communications from CITG to the FRB in response to the FRB's AIRs.

¹⁰ The evaluation period for this review was March 19, 2009, through September 30, 2011. A copy of the CRA PE is available at <http://www.occ.gov/static/cra/craeval/apr13/718129.pdf>. Specifically, OWB was evaluated under the large bank CRA examination criteria, and received a High Satisfactory on the lending test, a Low Satisfactory on the investment test, and a High Satisfactory on the service test.

¹¹ OWB's AAs included the following metropolitan statistical areas (MSAs) and metropolitan divisions (MDs) located in Southern California: (i) Los Angeles-Long Beach-Glendale, CA MD; (ii) Oxnard-Thousand Oaks-Ventura, CA MSA; (iii) Riverside-San Bernardino-Ontario, CA MSA; (iv) San Diego-Carlsbad-San Marcos, CA MSA; and (v) Santa Ana-Anaheim-Irvine, CA MD. At the time of review, the majority of OWB's branch deposits (69 percent), loan originations, and branches (67 percent) were located in the bank's Los Angeles-Long Beach-Glendale MD AA, therefore, examiners conducted a full-scope review of that AA.

¹² The evaluation period was from November 15, 2010, through December 31, 2012. A copy of the CRA PE is available at https://www2.fdic.gov/crapes/2013/35575_130318.PDF.

evaluated as a limited purpose institution (LPI) based on its qualified CD activities.¹³ The FDIC found that, overall, CITB's performance reflected a satisfactory record of helping to meet the credit needs of its AA¹⁴ based on the following findings: (i) an adequate level of CD loans, CD services, and qualified investments; (ii) occasional use of innovative or complex qualified investments, CD loans, or CD services; and (iii) adequate responsiveness to the credit and community economic development needs in its AA.

CITB's CRA Activity Since Its Last CRA PE

In response to an FRB AIR, CITB represented that, since its last CRA PE, it implemented a CRA Strategic Plan covering 2013 through 2017, which was approved by the FDIC and developed after the bank received input from a number of "interested parties" within Salt Lake County, including affordable housing providers, non-profit organizations, and CD representatives. According to CITB, it structured its CRA Strategic Plan to address the needs of the Salt Lake County community through its service, grant, investment, and CD lending programs.

With respect to CD lending, CITB stated that it made a total of four loans amounting to \$13,678,725 in 2013, a total of five loans amounting to \$8,760,281 in 2014, and a total of one loan amounting to \$1,000,000 through May 2015.¹⁵

For CD investment activity, CITB represented that it made a mixture of new investments in the Salt Lake County AA, primarily in mortgage-backed securities (MBS), and to a lesser extent, housing bonds, and some investment in mutual funds. CITB stated it made new CRA-qualifying investments totaling \$34.1 million in 2013, \$36.9 million in 2014, and \$15.3 million through May 2015.

Lastly, CITB stated that it made a total of \$372,285 in CRA-qualifying grants benefitting the Salt Lake County AA in 2013, a total of \$770,000 in 2014, and a total of \$372,500 through May 2015.

C. Public Comments Received

As noted above, the OCC received over 2,300 comment letters both in support of and opposition to the Application in addition to comments received at the Public Meeting.

Commenters in support of the transaction praised the banks for many reasons, including the banks' community outreach efforts and economic support of various CD efforts, especially their support of school- and faith-based programs. Commenters in opposition to the transaction

¹³ According to the CRA PE, CITB was approved as a designated LPI effective July 30, 2001, in accordance with the requirements in 12 CFR 345.25(b). The FDIC determined on August 6, 2012, that CITB no longer met the definition of an LPI due to a change in business strategy and loan portfolio composition. However, CITB continued to be eligible for evaluation as an LPI for one year from the date of the FDIC's August 6, 2012 notice. As such, CITB's CRA performance was evaluated under the CD test applicable to an LPI in its CRA PE.

¹⁴ CITB's CRA AA was designated as the entirety of Salt Lake County, Utah.

¹⁵ All amounts stated in this section by CITB and in the next section by OWB for 2015 are as of May 15, 2015.

expressed concerns or criticisms about issues pertaining to various aspects of the banks' activities including, but not limited to: (i) the efficacy of the resulting bank's proposed CRA plans;¹⁶ (ii) each bank's level of community outreach; (iii) each bank's CD investment strategy; (iv) each bank's level of small business lending; (v) OWB's level of CD lending activity; (vi) possible mortgage lending- and foreclosure-related discrimination issues; (vii) OWB's recent branching activity; (viii) each bank's product offerings, in particular availability of products to serve the needs of LMI persons and communities; and (ix) OWB's mortgage servicing of both forward (traditional) and reverse mortgages.¹⁷

Although the banks' CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* (March 2007), consideration of a bank's CRA performance primarily looks to how the bank has performed in the past in the communities served prior to the transaction. A convenience and needs assessment considers how the merged entity will serve the needs of its community on a prospective basis considering the markets that will be served by the resulting bank.

The commenters' concerns regarding convenience and needs are summarized and addressed below. The comments and relevant responses from the banks involved in the proposal are grouped together by subject area. Based on its review, the OCC has concluded that the probable effect of the business combination on the convenience and needs of the communities to be served is consistent with approval of this Application, subject to the condition discussed in Section VIII of this letter.

D. CITBNA's CRA/Community Benefit Plan

OWB and CITB created a draft CRA plan (Draft Plan) for the resulting bank to address how it would comply with its CRA obligations, which the banks made publicly available in October 2014. OWB represented that it developed this Draft Plan with CITB and pursuant to feedback received from community organizations that identified critical needs in the relevant AAs. Among other things, the Draft Plan included the following commitments, which garnered the most comments from the public:

- the establishment of a "community advisory board" to support the bank in "developing and refining its community programs and annual CRA plan";

¹⁶ As discussed more fully in the next section, CITG provided a publicly available draft CRA plan for the resulting bank in October 2014 in addition to a revised plan in February 2015.

¹⁷ Some criticism was directed toward Financial Freedom Acquisition LLC (Financial Freedom), a wholly owned subsidiary of OWB, which was involved in the origination of reverse mortgages until March 2011. Some criticism was also directed toward Ocwen Loan Servicing, LLC, which, according to OWB, bought a substantial part of its mortgage servicing rights in October 2013. For purposes of this letter, criticisms of Financial Freedom's mortgage servicing activities are attributed to OWB, while complaints made specifically against Ocwen were not considered. The OCC also received many comments regarding actions by IndyMac, a predecessor of, and legally distinct entity from, OWB; however, the OCC considered comments pertaining only to OWB and CITB, the parties to this proposed transaction.

- a stated objective of developing and implementing an annual CRA plan that would enable CITBNA to receive an “Outstanding” CRA rating from the OCC;¹⁸
- a \$350 million annual small business lending target;
- a CD lending target in the amount of at least 1 percent of its AA deposits;
- CRA investments equal to at least 1.2 percent of its AA deposits;¹⁹
- a target of at least 8 percent of its Tier 1 capital deployed in CRA qualified investments;
- \$3 million in annual donations to non-profits with experience in providing affordable housing and financial literacy support;
- location of 15 percent of its branches and deposit taking automated teller machines (ATMs) in LMI census tracts;
- reduction of OWB’s affordable checking account²⁰ opening balance requirement from \$100 to \$25;
- inclusion on CITBNA’s board of directors of representatives from the Latino, Asian-American and Pacific Islander, and African-American communities; and
- targeted “vendor spend with women, minority-owned businesses, and service disable[d] veterans.”²¹

In response to requests from community organizations, OWB represented that CITBNA will implement a marketing program with a \$50,000 annual budget, whereby it will select minority-owned publications or media platforms to test for product sales. To the extent this pilot is successful, OWB represented that CITBNA will seek to spend more marketing dollars with minority-owned publications or media platforms. OWB further stated that this amount may be increased based on successful marketing campaigns, but that this budget will not be less than \$50,000 on an annual basis for at least three years after the transaction is consummated. The OCC received comments both supportive and critical of the Draft Plan. Some commenters stated that other banks recently pledged CRA commitments equaling 15 to 20 percent of total deposits, while the CITBNA commitment in the Draft Plan was much less. Another commenter stated that OWB’s level of charitable donations is below the level of its peers, and that OWB has historically directed only a small percentage of its grants to support housing and economic development activities. In response to the criticism regarding its level of donations, OWB stated that it made the following CRA-qualifying grants in its AAs since its last CRA PE:

- a total of \$374,500 in the fourth quarter of 2011;
- a total of \$1,675,500 in 2012;

¹⁸ The plan is not intended to be a CRA strategic plan as provided for in 12 CFR 25.27. The resulting bank will be evaluated under the CRA lending, investment, and service tests applicable to large banks.

¹⁹ This commitment, which appears to overlap with the following bullet, was subsequently removed by the bank in the revised version of its plan.

²⁰ OWB represented that its current product offering will be the resulting bank’s initial product offering.

²¹ OWB stated that the target percentage will be decided by CITBNA after consummation of the merger.

- a total of \$1,127,900 in 2013;
- a total of \$1,054,000 in 2014; and
- a total of \$302,000 as of May 2015.

Commenters also expressed concerns about the efficacy of the Draft Plan, stating that it was inadequate and would not provide any clear public benefit.²² Other commenters stated that the Draft Plan would not promote enhanced CRA activities commensurate with CITBNA's large size, and claimed that OWB significantly underperformed its peers in overall CRA activity as a percentage of its California deposits. Commenters were also critical that the Draft Plan did not demonstrate that the resulting bank intends to engage in any CD activities beyond each bank's current levels. Others stated that the Draft Plan was not based on community input, and that it did not indicate how CITBNA would meet community needs. Still other commenters asserted that the Draft Plan lacked transparency, and urged OWB to develop a publicly available CRA plan with public input.

Commenters were also critical of OWB's lack of spending with "women and minority owned" businesses. One commenter stated that OWB's proposed target of \$50,000 for marketing is "insufficient" given the large number of minority-owned publications and media platforms currently in the State of California.

Several commenters in support of the transaction spoke favorably about the current level of diversity of OWB's employees and management, stating that this is an area of "excellence" for the bank. Commenters further stated that "minorities represent 50 percent of the [bank's] employee makeup and over 35 percent of [its] executive officers." These same commenters also commended OWB's pledge for CITBNA to diversify its board of directors. Other commenters noted that this pledge for board diversity is aspirational and no steps have been taken by the bank to execute this initiative.

In February 2015, OWB made publicly available a revised Draft Plan, entitled the CITBNA Community Benefits Plan (CITBNA Plan), which essentially increased CD lending and grant targets from the targets stated in the bank's Draft Plan. The CITBNA Plan designated an overall target of \$5 billion in total "Community Activities," defined as the aggregate of CRA-reportable lending, investments, grants, and "diversity vendor spend." Specifically, the CITBNA Plan set forth a revised CRA-reportable lending²³ target of \$3.8 billion over four years, and a revised CD-qualified grant target of \$5 million annually. Its CD investment target remained largely the same.

²² The BMA requires the appropriate federal banking agency to consider the convenience and needs of the community in connection with its review of a BMA application, but generally does not require the demonstration of a clear public benefit. As noted previously, the OCC will consider the CRA performance of each bank, and the probable effects of the business combination on the convenience and needs of the communities to be served in accordance with the BMA.

²³ OWB defines CRA-reportable lending as lending within its Southern California AAs that is reported to the Federal Financial Institutions Examination Council (FFIEC), including home mortgage, small businesses, multifamily housing, and CD lending (outstanding balance).

The OCC received comments critical of the CITBNA Plan. Most commenters stressed that, considering the resulting bank's expected asset size, its pledge to target \$5 billion over four years in total Community Activities is still not enough.

Other commenters expressed support for the CITBNA Plan, and especially stated that its pledge to increase grants to community organizations was commendable. Some commenters also stated that commenters in opposition to the transaction were focused on the banks' past practices, and that it is important to instead focus on the future and work with the resulting bank to serve the needs of the community.

In response to criticisms about the CITBNA Plan, in its AIR Responses OWB stated that the bank was formed merely six years ago and has "significantly expanded" its CRA activities over this time. In addition, OWB stated that the CITBNA Plan will allow the resulting bank to better meet the needs of the communities in OWB's current (and CITBNA's proposed) AAs.²⁴ OWB further stated that the CITBNA Plan is appropriately commensurate with its expected size and capabilities.

OWB explained that, in developing the CITBNA Plan, OWB and CITB reviewed: (i) each bank's respective historical CRA performance; (ii) the expected capabilities of the resulting bank within its expected AAs; and (iii) safety and soundness considerations. In addition, OWB stated that it made adjustments to the Draft Plan based on feedback it received from various community organizations.

OWB contended that the proposed CITBNA Plan represents substantial increases in Community Activities when compared to OWB's and CITB's current level of Community Activities. In addition, OWB stated that CITBNA's CD activities will represent increases in nearly every Community Activity compared to OWB and CITB on a combined basis today. In its AIR Responses, OWB highlighted the following increases it projected for the resulting bank in major categories of Community Activities in the relevant AAs:

- total Community Activities to increase by 49 percent from \$837 million in 2014 to \$1.25 billion annually;²⁵

²⁴ OWB represented that OWB's current AAs are the same as CITBNA's expected AAs. Notably, the OCC received public comments critical of the fact that CITB takes Internet deposits nationwide, but focuses its CRA investments in its Salt Lake County, Utah AA. Commenters urged the OCC to closely examine CITBNA's AAs and require the bank to "assign" deposits to the communities where the depositors reside. Another commenter advised that the "regulators and bank" should formally designate CRA AAs in the 20 communities where the bank has a relatively substantial Internet deposit base. However, the CRA regulation specifically requires the designation of AAs to be comprised of the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. 12 CFR 25.41(c)(2). The regulation further states that the OCC will assess CRA performance only within a bank's designated AAs. 12 CFR 25.41(a) and (g).

²⁵ OWB noted that the CITBNA Plan calls for \$5 billion of total Community Activities over four years, and stated that, although annual amounts may differ, \$1.25 billion represents the average of the planned Community Activities on an annual basis.

- CRA-reportable lending to increase by 35 percent from \$705 million in 2014 to \$950 million annually;²⁶
- CRA-qualifying investments to increase by 180 percent from \$122 million in 2014 to \$350 million annually; and
- annual grants to increase by an average of 400 percent from \$1 million in 2014 to \$5 million in each year following consummation of the merger.

OWB represented that, by 2018, CITBNA expects to “nearly double” its level of total Community Activities in its AAs.

E. Community Outreach and Support Activities

The OCC received many comments about the banks’ community outreach and support activities. Many commenters offering support for the merger discussed OWB’s history of supporting community organizations through service and grants, particularly to schools. Commenters also praised CITB’s and, to some extent, OWB’s history of supporting small businesses, including minority-owned businesses, through its lending efforts. Commenters also mentioned OWB’s record of seeking out minority businesses in its procurement processes.

In addition, commenters discussed both banks’ recent, extensive outreach to community organizations, including faith-based organizations, regarding CITBNA’s plan to substantially expand its community partnerships. One commenter stated that OWB “is just one of the very few banks that works directly with faith-based communities” to provide financial literacy education and homebuyer counseling. Another commenter stated that OWB has “outstanding” community outreach, and that he was “impressed” by the bank’s commitment to opening up opportunities “for small businesses to bid” to become bank vendors.

Several commenters specifically discussed OWB CEO Joseph Otting’s personal outreach efforts to, and involvement with, community members and organizations, as well as his pledge to ensure the resulting bank earns an “Outstanding” CRA rating. One commenter stated that “virtually no bank is willing to commit to securing [an] ‘Outstanding’ community investment rating,” and that “it’s important to push and encourage those banks willing to step out on the ledge to make that commitment.” Another commenter echoed this praise and stated that OWB’s “CEO has already begun regular meetings with minority business leaders and has pledged to continue to have regular meetings with minority leaders at [the bank’s] headquarters.” Lastly, several commenters praised OWB’s pledge that CITBNA will establish a community advisory board, which, according to the CITBNA Plan, will support the bank in “developing and refining [its] community programs and annual community benefits plan.”

Commenters in opposition to the merger stated that the banks’ recent outreach efforts were spurred only by the Application. One commenter stated that OWB “had been around for five

²⁶ OWB noted that the CITBNA Plan calls for \$3.8 billion in CRA-reportable lending over four years, and stated that, although annual amounts may differ, \$950 million represents the average of the CRA-reportable lending on an annual basis.

years and yet [it was] only after the merger was announced last year that the bank has any interest in community outreach.” The same commenter stated that OWB’s “ramped-up CRA activity, grant making and vague promises to do more at the time of a merger” was mostly in the face of “unprecedented opposition, [to] garner support at the time of a contentious merger application.”²⁷ Some commenters criticized OWB for pursuing “an aggressive approach to grant making” in lieu of setting forth a strong CRA plan. Other commenters stated that OWB appeared not to make donations to charitable organizations “run by people of color and/or organizations with boards that are majority of color.” The commenter urged the OCC to request a list of the bank’s philanthropic grants and to conduct an analysis of the charities’ executives and board members by race and ethnicity. Conversely, other commenters opposed what would amount to an audit of the bank’s grant-making practices, stating that this would discourage banks from making grants.

The OCC also received comments about possible retaliation by OWB and CITB against persons who offered comments in opposition to the merger. In response to these comments, OWB stated that it has not retaliated, and will not retaliate, against any commenter. OWB stated that it has investigated thoroughly each of the allegations and has determined that any allegations regarding retaliation by OWB against persons who offered comments in opposition to the Application are “inaccurate.”

OWB indicated that, since the announcement of this proposed transaction, OWB and Financial Freedom have not changed their normal processes for servicing mortgage loans with respect to any borrower (or heir, as applicable) and did not treat any borrower (or heir, as applicable) differently based on whether he or she supported the merger. OWB asserted that most of the servicing-related actions referred to by the commenters were set in motion prior to the borrower making public comments opposing the merger. OWB further stated that, due to the personal financial nature of the cases, and in order to comply with applicable privacy laws and regulations, the bank could not provide specific details responding to these “inaccurate accusations” publicly, but provided the OCC with a confidential communication describing the circumstances in each case to demonstrate the non-retaliatory reasons for actions taken by the bank.²⁸ In addition, OWB stated that it has partnered and continues to work with organizations

²⁷ The OCC also received comments alleging OWB engaged in inappropriate grant-making practices in an effort to obtain community support for the merger. The CRA does not address grant-making activity while a merger application is pending; however, the CRA Sunshine regulation, codified at 12 CFR 35, establishes criteria that require a CRA-related agreement between a bank and certain persons to be disclosed (covered agreement). Specifically: (i) the agreement must be in writing; (ii) the parties to the agreement must include an insured depository institution or affiliate of the institution and a nongovernmental entity or person (NGEP); (iii) the value of the agreement must exceed certain dollar thresholds (\$10,000 per year for grants or donations or \$50,000 per year for loans); (iv) the agreement must be made pursuant to or in connection with the fulfillment of the CRA; and (v) the agreement must be with an NGEP that has had a CRA communication with the bank. If a bank enters into a covered agreement with an NGEP, it is required to disclose the agreement to the relevant supervisory agency within 60 days of the end of each calendar quarter by either filing a copy of the covered agreement with the agency or providing a list of covered agreements entered into that calendar quarter. See OCC Bulletin 2001-11. During 2015, OWB has filed disclosures regarding a number of covered agreements with the OCC pursuant to the CRA Sunshine regulation.

²⁸ As with all OWB’s responses to comments on this matter, the OCC has reviewed and assessed the adequacy of the bank’s responses.

on community programs even if the organizations submitted written comments in opposition of the proposed merger.²⁹

F. CD Investments

The OCC received many comments critical of each bank's CD investment strategy. Some commenters stressed that OWB received a "Low Satisfactory" on the investment test in its last CRA PE. One commenter expressed concern that CITB is winding down its Low Income Housing Tax Credit (LIHTC) investment program, even though the publicly-shared Draft Plan identified affordable housing as a critical need in Southern California. Other commenters criticized OWB for its reliance on CRA-targeted MBSs to satisfy the investment test.

In its AIR Responses, OWB represented that it made a total of approximately \$137 million in CRA-qualifying investments since its last CRA PE, with about \$69.2 million in investments in its Los Angeles AA. OWB has not represented that it has made any substantial CRA-qualifying investments in any types of investments other than LIHTCs or CRA-targeted MBSs.

i. LIHTC Investments

Regarding its LIHTC investments, OWB represented that it committed \$88 million to LIHTC investments in 2013, and did not invest in any LIHTC investments in 2012 and 2014. According to OWB, these LIHTC investments support affordable housing initiatives. As for CITB, it stated it did not make any investments in LIHTCs during the years 2012, 2013, or 2014. In addition, OWB indicated that, due to CITBNA's anticipated tax position, tax credit investments will have little, if any, economic value for CITBNA and therefore, will not be appropriate investments for CITBNA. According to OWB, under the CITBNA Plan, the expected reduction in tax credit investments will be offset by other CRA-qualifying investments that will "continue to support" one of CITBNA's CRA goals of promoting affordable housing projects and economic development.

ii. CRA-Targeted MBS Investments

In response to criticisms about its CRA investment strategy, OWB represented that it has not had a "heavy reliance" on CRA-targeted MBSs to achieve its CRA investment objectives, stating that, since its last CRA evaluation, it committed \$88 million to new LIHTC investments compared to the \$49 million it purchased in CRA-targeted MBSs since its last CRA evaluation. In addition, OWB represented that it expected to complete the purchase of an additional \$25 million in CRA-targeted MBSs in June 2015. OWB represented that, in total, the amount of its LIHTC investments will exceed the amount of its CRA-targeted MBS investments for new CRA-qualifying investments since its last CRA exam. Moreover, OWB contended that one of the key objectives of its CRA-qualifying investments is to help address the need for affordable

²⁹ As examples, OWB stated that it has worked with Search to Involve Pilipino Americans to support their Small Business Development Program and West Angeles Community Development Corporation to support a small business microloan fund. OWB stated that it also plans to work with CAMEO (California Association for Micro Enterprise Opportunity) to facilitate microlending to support technical assistance programs.

housing, and that investment in CRA-targeted MBSs, as part of a prudent CRA investment program, supports its objective.

Also in response to these criticisms, OWB stated that CITBNA will evaluate CRA-qualifying investments in affordable housing projects and economic development on a case-by-case basis, including, as a safety and soundness matter, through consideration of associated risks versus expected economic returns. Specifically, the banks set forth in the CITBNA Plan examples of the types of CRA-qualifying investments that CITBNA will consider, which include:

(i) investments in or grants to Community Development Financial Institutions (CDFIs); (ii) deposits in minority- or women-owned financial institutions; (iii) investments in CRA-targeted MBSs; (iv) investments in CRA municipal bonds; and (v) investments in CRA mutual funds.

G. CD Lending

The OCC received many comments critical of the level of OWB's CD lending activity. In response to this criticism, OWB stated that, since its last CRA PE, the bank has engaged in the following CD lending activity in its AAs:

- a total of four loans in the amount of \$4.6 million for the fourth quarter of 2011;
- a total of 50 loans in the amount of \$132.2 million in 2012;
- a total of 17 loans in the amount of \$44.5 million in 2013;
- a total of 21 loans in the amount of \$82.6 million in 2014; and
- a total of two loans in the amount of \$3.8 million in 2015 (as of May).

H. Small Business Lending

As noted previously, the OCC received comments praising CITB's and, to some extent, OWB's history of supporting small businesses, including minority-owned businesses, through its lending efforts. Commenters also mentioned OWB's record of seeking out minority businesses in its procurement processes. However, the OCC also received many comments critical of the banks' small business lending activity, in particular, the lack of microlending or loans to minority communities. Many commenters stressed that small business lending is "crucial" to the community, and identified it as a critical community need. At the Public Meeting, one commenter stated that "credit markets [had] dried up considerably for the very small business, for the microbusiness, [and] particularly [for] those in moderate-income communities and particularly for people of color who own businesses." Another commenter stated that the community needed "financial institutions to be flexible in their underwriting criteria" and "to extend credit to small businesses in desperate need of working capital to grow and hire workers." Commenters also alleged that CITB lacks a strategy to lend to small businesses, evidenced by the fact that most of its small business lending has been to businesses with over \$1 million in revenue. In addition, one commenter stressed that "in 2012 OWB reported 101 small business loan originations, of which only four came in loan sizes under \$100,000, and 21 in loan sizes

between \$100,000 and \$250,000.” Commenters also criticized OWB for not participating in the State of California’s guaranteed loan program, a program that, according to the commenter, “reaches minority and smaller businesses that are not often served by banks.” In addition, commenters stated that the goal in the CITBNA Plan to “achieve [Small Business Administration (SBA)] Preferred Lender status” was essentially meaningless.³⁰

In response, OWB stated that it has continued to increase its lending activity in this area, including and in particular to small businesses with annual revenues of less than \$1 million, and that CITBNA will be committed to SBA lending. OWB explained that it commenced its small business commercial loan originations by launching its SBA 504 product in the third quarter of 2011.³¹ OWB stated that, since that time, it has grown to become the seventh largest SBA 504 lender in California, with a 6 percent market share for the SBA Los Angeles District Office in the SBA 504 program’s 2014 fiscal year. OWB represented that, in 2013, 78 percent of its small business loans were made in census tracts with “50% or more residents of color.” In addition, OWB represented that, of loans made in the Los Angeles-Long Beach-Glendale MD, 21 percent of its small business loans were made in low-income census tracts compared to a peer average of 6 percent, and 40 percent of its small business loans were made in moderate-income census tracts compared to a peer average of 17 percent.³²

In response to comments that OWB’s small business lending consists primarily of loans to businesses with greater than \$1 million in revenues, OWB asserted that, given the nature of the program’s purpose, the SBA 504 product tends to consist of “larger” loan sizes.³³ According to OWB, these loans tend to be made to companies with more than \$1 million in revenue. However, OWB stated that, despite this, 28 percent of its small business loans (by number) in the Los Angeles-Long Beach-Glendale MD in 2013 were to businesses with less than \$1 million in revenue. OWB represented that, in recent years, it has increased the percentage of its CRA-qualifying small business loans to businesses with annual revenues less than or equal to \$1 million. To demonstrate, OWB represented that, between January 1 and September 30, 2014, 42 percent of its small business loans in the Los Angeles-Long Beach-Glendale MD were to small businesses with revenue less than \$1 million (up from 28 percent in 2013).

OWB further stated that, in an effort to further grow its small business lending platform, in late 2014 it launched the SBA 7(a) product and started originating SBA 7(a) loans in 2015. According to OWB, the SBA 7(a) product tends to be “smaller” balance loans.³⁴ OWB stated that it expects to increase smaller-balance lending with the addition of the SBA 7(a) product.

³⁰ The Preferred Lenders Program is an SBA program pursuant to which SBA delegates the final credit decision and most servicing and liquidation authority and responsibility to selected “preferred lenders.”

³¹ The SBA 504 Loan Program provides financing for major fixed assets such as equipment or real estate.

³² These data and peer analysis were provided in CITG’s October 30, 2015 response to the FRB; the bank stated that its peer data were obtained from the FFIEC and CRA Wiz.

³³ OWB stated that, according to information it obtained from the SBA Los Angeles District Office, the average balance for the SBA 504 program in the SBA Los Angeles District Office during its 2014 fiscal year was \$1,274,405.

³⁴ OWB stated that, according to information it obtained from the SBA Los Angeles District Office, the average balance for the SBA 7(a) program in the SBA Los Angeles District office during its 2014 fiscal year was \$544,439.

In addition, OWB stated that CITBNA will build on the existing products currently offered by OWB, and the small ticket leasing³⁵ programs currently offered by CITB.³⁶ In its AIR Responses, OWB discussed that CITB acquired Direct Capital Corporation (Direct Capital) in August 2014, an institution that provides equipment loans and leases to small businesses. According to OWB, as of August 31, 2014, all of Direct Capital's loans and leases were comprised of contracts with \$1 million or less, with more than 90 percent of those contracts at \$150,000 or less. OWB stated that, once the merger is completed, CITBNA will offer a full suite of lending and deposit products to small businesses. OWB also stated that CITBNA will design marketing programs to build awareness of its product suite for small businesses. In addition, OWB represented that it recently launched new mobile and online banking programs for small- and medium-sized businesses to "augment its deposit products."

Lastly, OWB represented that CITBNA expects to develop a small business loan and technical assistance referral program so that businesses unable to qualify for small business loans from CITBNA can be referred to local CDFIs and other nonprofit providers that may be able to make the loan and/or provide technical assistance in order to help those borrowers better prepare to qualify for conventional financing. OWB also offered a listing of the small business programs it currently participates in, and stated that CITBNA will continue to expand its participation in such programs.

I. Home Mortgage Lending

Commenters expressed concern that OWB does not engage substantially in home purchase lending, with one commenter stressing that "OWB has not done enough to offer good mortgage products to low income borrowers and neighborhoods, or [to] borrowers of color and neighborhoods of color." This commenter urged OWB to "design safe portfolio products with flexible underwriting, and develop marketing and outreach plans to offer and originate affordable and sustainable mortgage products to low and moderate income residents and to borrowers living in LMI neighborhoods."

In response to these comments, OWB provided that, although mortgage lending will not be the primary focus of CITBNA, CITBNA will "seek to introduce innovative and flexible lending products to the market and will explore products such as affordable mortgage loan products that are consistent with the safety and soundness of the bank, including with CITBNA's risk appetite."³⁷

³⁵ "Small ticket leasing" is a term generally used to describe a system in which businesses are able to enter into extended rental agreements under which the owner of, most commonly, equipment, allows the user to operate or otherwise make use of the equipment in exchange for periodic lease payments. Small ticket leases usually cover items up to \$100,000 in value, and are favored by small businesses that often have fewer options than large businesses because of limited capital.

³⁶ OWB stated that CITB is a "leader" in small ticket leasing.

³⁷ The OCC notes that the CRA regulations do not require banks to provide specific products or services.

J. Multifamily Housing Lending

Commenters also expressed concern over the lack of the banks' multifamily housing and lending activities, and stated that neither bank has a multifamily housing loan product to support affordable housing development. Commenters identified affordable multifamily housing as a "critical" need in the communities served by OWB.

In response to these criticisms, OWB stated that multifamily lending historically has not been a key part of its loan origination strategy. OWB represented that, while it does not have a formalized multifamily housing loan program, it originated \$89 million in CRA-qualifying multifamily loans in LMI census tracts since its inception.³⁸

OWB explained that, at its inception in March 2009, OWB did not originate multifamily housing or any commercial real estate loans, and that, in December 2009, OWB acquired certain assets and liabilities of First Federal Bank of California, a Federal Savings Bank (First Fed) from the FDIC as receiver. OWB stated that in February 2010, it acquired certain assets and liabilities of La Jolla Bank, FSB (La Jolla) from the FDIC as receiver, and in November 2010, OWB acquired approximately \$1.4 billion of small balance commercial real estate loans (which included multifamily housing loans) from Citibank, N.A. (the Citi Portfolio).

According to OWB, First Fed had a substantial number of small balance multifamily housing loans (2,248 loans totaling approximately \$1.8 billion of unpaid principal balance) and an ongoing small balance multifamily housing loan origination program. OWB further stated that the acquisitions related to La Jolla and the Citi Portfolio also included a significant number of multifamily housing loans, both inside and outside OWB's AAs. OWB represented that, other than the 57 multifamily loans described in the next paragraph, all of the multifamily housing loans reported by the bank were acquired and not originated by OWB in its AAs during the relevant period.

OWB represented that, after acquiring First Fed, it continued to offer the First Fed small balance multifamily housing loan³⁹ product and originated 57 loans amounting to approximately \$113 million.⁴⁰ However, OWB stated that shortly after the First Fed acquisition, the bank determined that the small balance multifamily housing loan market in Southern California was highly competitive, which it was concerned was putting "significant pressure on loan coupons and underwriting standards." OWB stated that, for these reasons, it made the decision to shift its focus to larger, more complex commercial real estate loans (which included multifamily housing loans).

³⁸ OWB did not specify whether these loans would qualify as CD loans for CRA purposes. In order to qualify as CD loans, the multifamily housing loans generally must provide affordable housing to LMI individuals, regardless of whether they are located in LMI geographies.

³⁹ According to OWB, the First Fed small balance multifamily housing loan product was a loan with a fixed rate for five years, which converted to a floating rate for the remainder of the 30-year term. First Fed generally targeted a principal amount of \$1 million to \$3 million for these loans.

⁴⁰ OWB did not specify a time period for these loans.

In its AIR Responses, OWB stated that its commercial real estate group currently offers three- to five-year floating rate loans for properties in transition (i.e., that are not fully stabilized properties).⁴¹ According to OWB, transitional loans, in the context of multifamily housing properties, are properties that typically require additional capital expenditures for improvements in order to increase rents and occupancy. Loans vary in size from \$10 million to \$50 million, and the underlying transactions are typically highly structured and negotiated. OWB stated that it originated 15 multifamily housing loans totaling \$244.6 million, of which six multifamily housing loans (\$126.1 million) were originated in its AAs.⁴² According to OWB, of the six multifamily loans in its AAs, two of the loans are CRA-qualifying.

OWB represented that CITBNA will grow CRA-qualifying lending by “exploring” a number of different products, including multifamily housing lending. OWB stated that CITBNA will continue to offer the transitional loans described above to support multifamily properties in LMI communities that, according to OWB, will result in an increase in the number of OWB’s CRA-qualifying loans. In addition, OWB represented that CITBNA will “explore” whether it can tailor a small balance multifamily housing loan product that serves the needs of LMI communities, including through a streamlined and efficient origination process.

K. Fair Lending

The OCC received comments expressing fair lending concerns related to certain communities in the Los Angeles MSA. One commenter noted OWB’s 2012 Home Mortgage Disclosure Act (HMDA) data indicate that OWB did not originate any single family mortgage purchase loans or home improvement loans to African-Americans in the Los Angeles-Long Beach-Glendale MD. Commenters represented that this same HMDA data indicate that OWB underperformed as compared to the industry in serving Asian-American borrowers, stating that 4.6 percent of OWB originations in the state and 5.9 percent of its originations in the Los Angeles MSA were to “Asian” borrowers, while for the industry the figures were 15.9 percent and 15.8 percent, respectively. Some commenters also expressed concern regarding OWB’s branching activities in minority areas.⁴³

In response to these concerns, OWB asserted that the data must be viewed in the context that OWB, particularly in 2012, engaged in only limited new originations (i.e., only 81 single family mortgage purchase originations nationwide in 2012). Further, OWB contended that, even with inherent limitations in HMDA data, which do not account for borrower credit ratings, a review of 2013 HMDA data on single family mortgage loan refinancing in the Los Angeles-Long Beach-Glendale MD demonstrates that, in that period, OWB had an 87.3 percent approval rate for African-American applicants, which exceeded its approval rate for Caucasian applicants (81.5 percent).

⁴¹ According to OWB’s Web site, the bank offers commercial real estate loans for a range of different types of properties, including “multifamily.” See <https://www.onewestbank.com/business-loans/commercial-real-estate-group/>.

⁴² OWB did not specify a time period for these loans.

⁴³ OWB’s branching activities are discussed in the next section.

With regard to the lending concerns raised by commenters, the OCC notes that HMDA data alone are not adequate to provide a basis for concluding that an institution is engaged in lending discrimination or to indicate whether its level of lending is sufficient. Specifically, HMDA data do not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor do they fully reflect the range of an institution's lending activities and efforts.

Pursuant to 12 CFR 25.28(c), the results of the OCC's evaluation of a bank's CRA performance may be adversely affected by evidence of discriminatory or other illegal credit practices. The OCC may lower the overall rating of an institution based on findings of discriminatory or other illegal credit practices in any geography by the bank, or in any AA by any affiliate whose loans are considered part of the bank's lending performance. OWB's CRA PE dated February 6, 2012, noted that the OCC had not identified evidence of discriminatory or other illegal credit practices with respect to OWB during the evaluation period.⁴⁴

Since the most recent CRA PE, the OCC has conducted a number of supervisory activities that include review of OWB's fair lending risk management program, as well as reviewing OWB's publicly available 2012 and 2013 HMDA data during its consideration of this Application. These supervisory activities did not result in findings of lending discrimination and the OCC has not determined that there are fair lending issues inconsistent with the approval of this Application.

L. Branching Activities

The OCC received comments critical of OWB's branching activities. In particular, commenters expressed concern about the lack of branches in LMI geographies. One commenter stated that OWB has only "15 [percent] of its branches in LMI tracts" and "only 2 branches in low-income tracts" while "37.5 [percent] of census tracts in the Los Angeles MSA are low- to moderate-income." Commenters also expressed concern about OWB's indication that it would look to serve LMI geographies with mobile and online banking tools (alternative delivery systems), stating that "many LMI, of color, elderly and other customers rely and depend on [a] retail branch presence and the ability to interact face to face with bank staff." Another commenter stated that "low-income communities of color" rely on bank branching networks and "prefer in-person banking relationships and are far less likely to use only [alternative delivery system] banking services unless complemented by a relationship built through [a bank's] branches." More than one commenter alleged that the branching history of OWB showed very little presence in LMI areas and a pattern of closing branches in LMI communities in recent years. Commenters also expressed concerns that CITBNA will close branches once the merger is consummated, particularly in LMI areas.

⁴⁴ The CRA PE also states that the Consumer Financial Protection Bureau (CFPB), which has exclusive supervisory authority and primary enforcement authority to ensure compliance with the Equal Credit Opportunity Act (ECOA) by banks such as OWB with more than \$10 billion in assets, did not provide the OCC with evidence of discriminatory or other illegal credit practices with respect to the federal consumer financial laws.

OWB's most recent CRA PE states that the bank had 78 retail branches, 10 of which were located in LMI census tracts. Of the 78 retail branches, 75 had ATMs on site, with 10 located in LMI census tracts. The branches without ATMs were located in upper-income census tracts. The CRA PE states that the bank's branch distribution in the AA was good with 13 percent of all branches located in LMI census tracts.⁴⁵ In the Los Angeles-Long Beach-Glendale MD, 11 percent of the bank's branches were located in LMI census tracts. Additionally, 18 middle- and upper-income branches in the AAs had 33 percent or more LMI population. Examiners considered that, overall, 28 branches representing 36 percent of the branch network served the LMI population. The CRA PE noted that, according to the bank's then-effective CRA plan, the percentage of branches located in LMI census tracts fell short of the bank's 15 percent projection; however, OWB was serving a larger portion of the LMI population due to the large percentage of LMI persons residing in the various census tracts.

The CRA PE further stated that, in the Los Angeles-Long Beach-Glendale MD, OWB had one branch in a low-income census tract (2 percent) and five branches in a moderate-income census tract (9 percent), and also noted that ten middle- and upper-income branches in the Los Angeles-Long Beach-Glendale MD had at least 33 percent or more LMI population. Overall, of the 53 OWB branches located in the Los Angeles-Long Beach-Glendale MD, 16 branches representing 30 percent of the branch network in the Los Angeles-Long Beach-Glendale MD network were found to serve the LMI population.

Lastly, the CRA PE noted that OWB inherited the branch footprint of three failed banks, and due to OWB's decision to close several branches in middle- or upper-income census tracts, OWB's percentage of branches in LMI census tracts increased since 2009.

In response to the commenters' concerns, OWB has advised the OCC that no branch closures, as defined in the relevant interagency guidance,⁴⁶ are planned in connection with the merger transaction. OWB further represented that, in the ordinary course of business, OWB will continue to open, close, consolidate, and relocate branches (collectively, Branch Activities) in accordance with its policy on Branch Activities (Branch Policy).⁴⁷ OWB stated that, in accordance with this policy, it evaluates any potential Branch Activities based on financial, strategic, and regulatory considerations. OWB provided that its Branch Policy mandates that any proposal regarding Branch Activities in LMI census tracts must be considered in light of its fair lending obligations, the requirements of its CRA Compliance Policy, and any applicable CRA rules and regulations as directed by its CRA Committee. OWB further provided that its Branch Policy: (i) requires OWB management to recognize the potential impact of any Branch Activities on minorities; (ii) acknowledges the large minority populations that reside within OWB's AAs;

⁴⁵ The analysis of OWB's branch distribution was primarily based on the geographic distribution of branches among LMI geographies in relation to the proportion of the population residing in those geographies. Examiners also considered any branches in middle- and upper-income geographies where the population of LMI persons was 33 percent or higher.

⁴⁶ 12 USC 1831r-1 and the Joint Policy Statement on Branch Closing Notices and Policies (June 1999) describe a branch closing as any closing of a traditional brick-and-mortar branch, or any similar banking facility other than a main office, at which deposits are received or checks paid or money lent.

⁴⁷ OWB provided a confidential copy of its Branch Policy in its April 14, 2015 response to the FRB.

and (iii) emphasizes its commitment to serving all communities within its AAs equitably, without bias or discrimination.

Though OWB noted that its branch footprint is mostly acquired, it asserted that, based on its most recent data, 20 percent of its branches and full-service ATMs are located in LMI tracts. It also contended that many of its branches located in middle- and upper-income census tracts serve areas with at least 33 percent or more LMI populations, and 40 percent of its branches are located in census tracts in which “people of color” represent over 50 percent of the population. OCC branch closure notice records indicate that, since inception, OWB has closed 13 branches; eight of these branches were in upper-income census tracts; three were in moderate-income census tracts; and two were in middle-income census tracts.

OWB stated that it has taken actions to increase its penetration in LMI communities, representing that, since inception, 67 percent of its added branches or full-service ATMs have been in LMI tracts. In addition, OWB stated that it recently increased its penetration into LMI communities through partnering with JONS International Marketplace, a family-owned grocery store chain serving the local ethnic communities of the greater Los Angeles area, to install four full-service, deposit-taking ATMs in LMI neighborhoods. Further, OWB stated that it confirmed plans to partner with Island Pacific Market to add two full-service ATMs in Island Pacific Market locations in July 2015 as part of its efforts to increase banking access points in LMI and minority communities. Moreover, OWB asserted that it has launched a new mobile banking product and enhanced its online banking platform.

Lastly, OWB represented that CITBNA will continue to develop OWB’s existing suite of mobile banking services and will use online banking as a channel to offer an expanded range of deposit products to the resulting bank’s current and future customers. According to OWB, CITBNA intends to track the usage of (i) its mobile banking offering by LMI customers and (ii) the full-service ATMs recently deployed in LMI communities in order to evaluate their effectiveness and whether additional full-service ATMs should be deployed through its existing partnerships.

OWB asserted that, as CITBNA builds relationships with LMI customers, CITBNA will have the opportunity to educate customers on credit products. OWB stated that CITBNA’s primary lending target population will be customers who have a deposit account with the bank, and that CITBNA will market lending products through its retail branches, online banking, and full-service ATMs.

M. Product Offerings and Marketing Activities

The OCC received complaints critical of each bank’s product offerings and related marketing activities. Some commenters asserted that OWB only serves the needs of wealthy customers, as evidenced by its alleged marketing of “high-dollar, high-interest rate deposit accounts” and “jumbo low-interest-rate loans.” At least one commenter stated that OWB has not yet “demonstrated any kind of innovative solutions to serve low-income communities.” On the other hand, one commenter stated that CITB is “one of the most, if not the most innovative creators of

the deposit products on the Internet” and stated that he “hop[ed] that [will carry] over with the combined banks.”

Some commenters stated that OWB does not offer an “affordable” checking account for LMI consumers. However, at least two commenters stated that OWB offers an “affordable” or “low-entry” checking account, but alleged that OWB does not advertise this product.

Commenters also praised the bank for its commitment to “working with ethnic media to reach the minority communities within [its] footprint” and stated that a “campaign has been discussed, which will be finalized once the complementing grass-root projects are finalized.”

In response to these concerns expressed by commenters, in its AIR Responses, OWB represented that CITBNA will adopt OWB’s current suite of retail deposit products as its initial product offering. OWB contended that its Personal Checking account is an affordable, accessible retail deposit product that meets the convenience and needs of the communities OWB serves (and that CITBNA will serve). OWB stated that CITBNA will make the Personal Checking account available through both the retail branch network and its online banking platform. In addition, OWB noted that the CITBNA Plan proposes reducing the minimum opening balance requirement for this account from \$100 to \$25. OWB also offered analyses comparing the affordability of its Personal Checking account favorably with, for example, entry-level checking accounts offered by other banks in OWB’s AAs. Further, OWB noted that its Personal Checking account is free for seniors⁴⁸ and minors, and that monthly maintenance fees for this account are also waived if the customer elects to receive statements electronically, regardless of the customer’s age.

Regarding the marketing of its Personal Checking account, OWB explained that, historically, it has focused primarily on brand marketing rather than marketing of specific products. However, as discussed previously, in response to requests from community organizations, OWB represented that CITBNA will implement a marketing program with a \$50,000 annual budget, whereby it will select minority-owned publications or media platforms to test product sales, including its affordable checking product. OWB represented that if this pilot is successful the resulting bank will seek to spend more marketing dollars with minority-owned publications or media platforms. OWB further stated that this amount may be increased based on successful marketing campaigns, but this budget will not be less than \$50,000 on an annual basis for at least three years following consummation of the merger transaction.

Finally, OWB represented that, other than the anticipated sale of its reverse mortgage servicing business, CITB and OWB do not intend to discontinue any consumer or small business products or services following consummation of the merger transaction.

⁴⁸ At least 55 years of age.

N. Mortgage Servicing

i. General Mortgage Servicing

The OCC received a substantial number of comments that described mortgage servicing complaints against OWB in connection with both traditional (forward) and reverse mortgages.⁴⁹

During the Public Meeting, representatives of legal aid and housing counseling organizations claimed that OWB continued many of the problem practices they had experienced with IndyMac and/or that OWB was one of the worst servicers with which they had dealt. Among other things, these representatives complained that OWB was one of the “worst offenders” for not offering affordable loan modifications, and a “difficult” servicer to work with in trying to help homeowners avoid foreclosure. Other commenters stated that it was “very difficult” to obtain any assistance from OWB. Several commenters criticized OWB’s record management practices, alleging that OWB created numerous obstacles for borrowers applying for modifications (mostly by requiring borrowers to repeatedly provide “lost” or “missing” paperwork). Commenters claimed that the OWB customer service representatives requested “entirely different” information each time they were contacted about a pending modification request, and that OWB customer service representatives could not access information that had already been provided to them by the borrowers. Commenters also stated that OWB failed to provide borrowers with a single point of contact (SPOC) for assistance and, in particular, for borrowers seeking loan modifications, no such SPOC was available. Some commenters also alleged that OWB regularly engaged in “dual tracking,” whereby OWB pursued foreclosures during the loan modification process. In addition, at least one commenter alleged that OWB advised forward mortgage borrowers to default on their loans in order to qualify for a modification, and subsequently foreclosed on such defaulted loans.

In contrast, a representative from one housing counseling agency stated that, in its experience, OWB worked with borrowers to obtain modifications, evidenced by the fact that OWB had arranged modifications for about 60 percent of its clients. The commenter also praised the bank for providing one point of contact to work with, and named a specific point of contact with whom she was able to work on “expedited” issues, and from whom she was also able to obtain a more fulsome understanding of certain loan modification denials. Another commenter stated that, after finding himself in a “tough situation,” he applied for a modification, and although he “suffered the pain” described by other commenters, he received his modification. This commenter then stated that he subsequently helped other persons also work through the process and successfully obtain loan modifications.

Commenters also alleged, however, that OWB accelerated foreclosure proceedings beyond contractual and legal requirements (i.e., pursued foreclosure proceedings faster than it was required to do according to the U.S. Department of Housing and Urban Development (HUD) and investor guidelines, and in lieu of working with borrowers towards modifications or other

⁴⁹ Although many commenters did not specify at what point in time they encountered these servicing problems with OWB or its Financial Freedom subsidiary, some experiences were clearly from several years ago, while there were other commenters who said they encountered problems some time during late 2014 up to the present.

workout solutions). Moreover, commenters alleged a number of servicing-related issues, including, among other concerns, that OWB did not comply with relevant state and federal laws designed to protect borrowers, including the California Homeowner Bill of Rights (CA HBOR).

The OCC also received comments critical of the fact that OWB foreclosed on approximately 35,000 to 40,000 California homeowners, including approximately 2,200 seniors. One commenter claimed that “the main way in which OWB engages in low-income communities is through foreclosure,” and another commenter alleged that OWB disproportionately foreclosed against minorities and in LMI communities. Moreover, commenters expressed concern that OWB failed to properly maintain foreclosed properties in majority-minority neighborhoods, and therefore, contributed to blight in those neighborhoods.

In addition, several commenters expressed concern regarding the volume of consumer complaints related to mortgage servicing that have been filed against CITB and OWB with several entities, including the OCC, the FRB, and the CFPB.

OWB’s Response to Mortgage Servicing Concerns Generally

In response to these concerns, OWB contended in its AIR Responses that many commenters associated OWB with IndyMac, even though OWB did not exist when IndyMac originated the loans that OWB ultimately serviced. OWB stated that, contrary to certain comments, prior to the divestiture of a substantial portion of its servicing business in 2013,⁵⁰ OWB had demonstrated its commitment to responsible servicing through its loss mitigation and loan modification efforts. OWB stated that it was an early adopter of HAMP (including various modifications to the program) and a participant in numerous state “Hardest Hit Funds.”⁵¹ OWB stated that it utilized the “innovative approach to loan modifications created by the FDIC” and ultimately became an early adopter of nearly every available loan modification program that was available.⁵²

OWB acknowledged that, in some instances, it made errors in its servicing of forward and reverse mortgages; however, in response to the Consent Order that OWB entered into with the OTS, which was subsequently superseded by a Consent Order issued by the OCC (as successor to the OTS) upon OWB’s conversion to a national bank, OWB was required to address certain deficiencies and has implemented related policies and procedures to address concerns identified in the Consent Order. OWB stated that, pursuant to the requirements of the Consent Order, it undertook a “significant overhaul” of its mortgage servicing and foreclosure practices, including its loss mitigation and loan modification activities, which specifically addressed many of the

⁵⁰ As noted previously, OWB stated that in October 2013 OWB sold a “substantial part” of its mortgage servicing rights to Ocwen Loan Servicing, LLC.

⁵¹ The Hardest Hit Fund is a program sponsored by the U.S. Department of the Treasury. First announced in February 2010, the Hardest Hit Fund provides \$7.6 billion to the 18 states hardest hit by the financial crisis (including California) to develop locally-tailored programs to assist struggling homeowners in their communities. More information about this program is available at <http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/hhf/Pages/default.aspx>.

⁵² Specifically, OWB stated that, in 2010, OWB became the first servicer to implement HAMP’s principal reduction alternative and, as of October 31, 2013, had forgiven over \$730 million in principal since the program’s inception, with over \$350 million in principal forgiven for borrowers in California.

issues and problems that allegedly affected commenters.⁵³ OWB noted that, since the effective date of the Consent Order, the bank's mortgage servicing practices have been tested extensively internally by the bank, as well as monitored internally and by the OCC in its supervisory capacity.

OWB noted that it is the only servicer that completed the Independent Foreclosure Review (IFR). OWB explained that the IFR, which was conducted by a third-party independent consultant (the IFR Independent Consultant) under the supervision of the OCC, covered the in-scope population of more than 192,000 loans serviced by OWB⁵⁴ and involved the review of servicing practices relating to foreclosure, customer service, and modifications of almost 27,000 loans serviced by OWB.⁵⁵ OWB represented that the IFR results demonstrate that OWB's error rate was very low, even with the IFR's focus on the most difficult period for mortgage loan default servicing industrywide.

OWB stated that, in its view, criticisms of the bank's mortgage servicing practices fall into two general categories: (i) improper foreclosure, and (ii) improper modification processes. OWB stated that the IFR Independent Consultant made the following findings:

- with respect to improper foreclosure, after screening 178,886 loans to determine whether the loan was in default at the time of foreclosure, in approximately 1/100th of 1 percent of the time, a foreclosure had proceeded when the borrower was not in default;
- no instances were identified in which OWB failed to provide legally sufficient notice in 21,654 files reviewed;
- with respect to improper modification processes, after reviewing 26,964 loans to evaluate, among other things, OWB's handling of loan modification requests by borrowers in several respects, such as confirmation of the propriety of denials of assistance, timeliness of rendering borrower decisions, solicitation, and follow-up with borrowers, approximately 0.5 percent of the time consumers were injured from errors that OWB made.

OWB noted that, in cases in which the IFR Independent Consultant found errors that resulted in financial harm, OWB began remediating affected borrowers in March 2014. As of June 30, 2015, OWB borrowers have cashed 21,794 checks totaling \$12,244,975, which is approximately 96 percent of OWB's total expected remediation (\$12,762,890).

⁵³ Discussion of how specific concerns raised by commenters are addressed in the Consent Order is included in the relevant sections below.

⁵⁴ The "in-scope" population included residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by OWB that had been pending at any time from January 1, 2009, to December 31, 2010, as well as residential foreclosure sales that occurred during this time period.

⁵⁵ The entire in-scope population of 192,000 loans was screened using data analysis and, as described in the text, a subset of approximately 27,000 loans was reviewed and tested in more detail with numerous file documents assessed by the IFR Independent Consultant.

In addition to the review of OWB's servicing practices that resulted from its Consent Order, the bank represented that it is subject to servicing compliance audits from a variety of independent third parties. Specifically, OWB stated that, since January 2012, more than 60 servicing compliance audits have been completed by independent third parties. OWB contended that these third-party independent reviews of OWB's historic servicing operations, including the IFR completed by the OCC, provide the most reliable basis upon which to judge the bank's commitment to providing responsible servicing.

OWB also stated that it reviewed complaints made by persons offering public comments during this application process to ensure their issues were being handled appropriately. OWB further stated that, due to the personal financial nature of the cases, and in order to comply with applicable privacy laws and regulations, the bank could not provide specific details responding to individually-identifiable complaints publicly, but provided the OCC with a confidential communication describing the circumstances in each case where the borrower was specifically identified, to demonstrate the bank's actions were in compliance with applicable laws and regulations.⁵⁶

OWB's responses to specific criticisms regarding certain aspects of its mortgage servicing practices are summarized and discussed further below.

Compliance with Relevant State and Federal Laws

As OWB indicated, the Consent Order required the bank to develop a comprehensive action plan addressing its governance and controls to ensure full compliance with all applicable federal and state laws, and the requirements of the Consent Order.

In its AIR Responses, OWB stated that it carefully reviews its practices for conformance with applicable legal requirements, including the mortgage servicing rules,⁵⁷ the Consent Order requirements, and any state law requirements, including the CA HBOR. OWB represented that it has a process in place for the design and review of its policies and procedures, including associated controls, to ensure that it is meeting its legal obligations. According to OWB, its loan review and internal audit departments test these policies and procedures on a periodic basis.

Specifically, with respect to the CA HBOR, OWB stated that it has reviewed its practices and confirmed that its forward and reverse mortgage servicing procedures are consistent with the requirements of the CA HBOR, including the prohibition on "dual tracking" and the requirement to provide its borrowers a SPOC (discussed more fully below). OWB represented that, in the

⁵⁶ As with all OWB's responses to comments on this matter, the OCC has reviewed and assessed the adequacy of the bank's responses.

⁵⁷ The Real Estate Settlement Procedures Act (RESPA) (Regulation X), codified at 12 CFR 1024, and the Truth In Lending Act (TILA) (Regulation Z), codified at 12 CFR 1026.

course of its servicing operations, it does not attempt to “evade” the requirements of the CA HBOR, but rather has in place policies and procedures designed to comply with that law.⁵⁸

OWB stated that its practices are consistent with the CA HBOR because it does not refer a loan to foreclosure counsel in California until it completes certain steps detailed in the CA HBOR (in addition to various other pre-foreclosure initiation processes and requirements).⁵⁹ Moreover, OWB represented that, in accordance with the CA HBOR, its foreclosure trustee(s) attach a declaration to each filed Notice of Default (NOD) stating how and what actions OWB undertook to comply with the law. Also, OWB represented that its trustee(s), within five days of filing the NOD, sends a letter to the borrower that lists all available loss mitigation options, as required by the CA HBOR.

Prohibition Against Dual Tracking

In response to the allegations of dual tracking, OWB represented that it has developed processes that are designed to ensure that it does not “dual track.” In its AIR Responses, OWB stated that, pursuant to the Consent Order requirements, OWB developed and implemented procedures and controls to ensure that when a borrower’s loan has been approved for modification on a trial or permanent basis, no foreclosure or legal action predicate to foreclosure occurs, unless the borrower is deemed to be in default on the terms of a trial or permanent modification.

OWB stated that its practices are compliant with the new mortgage servicing rules, which went into effect in January 2014, and require that a loan modification request reach a decision point before a foreclosure referral is made by the mortgage servicer. In addition, as discussed above, OWB represented that its practices are consistent with the dual tracking restrictions in the mortgage servicing rules and the CA HBOR. Further, OWB stated that it has controls in place to ensure these requirements are followed and deviations are detected and corrected. According to OWB, as part of its control processes, OWB’s servicing procedures require that a “hold” be placed on loans when the loan is undergoing modification efforts. Under OWB’s procedures, a “hold” is defined as a notification that events are occurring on a loan that prohibit either the advancement to foreclosure, or the continuation of a foreclosure action when a suspension is warranted due to, for example, loan modification efforts. OWB represented that it has a review process in place to ensure that any foreclosure avoidance efforts are satisfied prior to both the referral of loans to the foreclosure process as well as prior to a foreclosure sale, and that both its internal audit and loan review departments test for compliance with this requirement.

⁵⁸ OWB stated that it has raised preemption arguments in certain lawsuits as part of a Home Owners’ Loan Act (HOLA) (12 USC 1461) defense, claiming that the HOLA preempts application of the CA HBOR as a legal matter. However, as discussed, OWB represented that as a matter of substance its procedures comply with the requirements of the CA HBOR.

⁵⁹ Specifically, OWB represented that: (i) it sends a California-specific addendum with the “due and payable” notice including the language that specifically conforms with the requirements in the CA HBOR; (ii) for reverse mortgages, after the Maturity Event, it attempts to contact the borrower (or heirs, as applicable) to explain all options available to them; (iii) in circumstances in which it is unable to make contact with the borrower, it employs the due diligence indicated by the CA HBOR of at least three call attempts on different days at different times at least 30 days before making a referral to foreclosure; and (iv) it signs an affidavit attesting that it has met the requirements detailed in the CA HBOR prior to making a referral to foreclosure.

Single Point of Contact

OWB stated that it provides all customers requesting a loan modification with a SPOC.⁶⁰ OWB stated that, pursuant to the Consent Order requirements, OWB: (i) established an easily accessible and reliable SPOC for each borrower so that the borrower has access to an employee of the bank to obtain information throughout the loss mitigation, loan modification, and foreclosure processes; (ii) provides written communications to the borrower identifying such SPOC along with one or more direct means of communication with that contact; and (iii) developed measures to ensure the SPOC has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the loss mitigation, loan modification, and foreclosure activities.

OWB further stated that its SPOC process is employed in both its forward and reverse mortgage servicing areas, as required by the Consent Order, the mortgage servicing rules, and the CA HBOR, and that its SPOC personnel have full and complete access to all information relating to any borrower's loan.

OWB provided the following detailed explanation of its current SPOC process, including a description of how it ensures continuity of contact for customers requesting loan modifications. According to OWB, a SPOC, along with a support team for the SPOC,⁶¹ is assigned to each loan with a borrower experiencing financial hardship,⁶² and contact information for the SPOC is provided to the borrower via written and verbal communications once the SPOC is assigned. A loan remains assigned to its SPOC and its SPOC team for 60 days following a workout solution or liquidation.⁶³

OWB stated that it uses technology to route inbound calls from identified borrowers directly to their assigned SPOC. If the SPOC is assisting other borrowers or is otherwise unavailable, the call then routes to a member of the supporting SPOC team, who has full access to the loan details and is able to provide assistance on resolving any questions regarding the borrower's loan. OWB stated that, although the team is available for support, the borrower can ask to speak to the SPOC or any other member of the SPOC team with whom the borrower has previously worked. Further, OWB represented that its system includes a callback function that allows the borrower to select a callback time frame with the SPOC.

⁶⁰ While the mortgage servicing rules refer to this concept as "continuity of contact," *see* 12 CFR 1024.40, this letter uses the "single point of contact" nomenclature found in the Consent Order and used by commenters and OWB in its AIR Responses.

⁶¹ OWB asserts that a team approach provides the best level of service for a borrower. Accordingly, the SPOC that OWB assigns to each loan is a single individual supported by a small team of associates who work in small shifts over a significant range of working hours (the SPOC team is available 14 hours a day).

⁶² OWB defines "financial hardship" in the traditional (or forward) mortgage business as 37 days delinquent or any stated or written request for assistance from the borrower. OWB represents that, in its reverse mortgage business, a "financial hardship" occurs when a corporate advance is required by the mortgagee (e.g., when the servicer advances funds for taxes or insurance) or a Maturity Event occurs.

⁶³ In cases in which the loan is modified, but is subsequently impacted by financial hardship, OWB represented that it is reassigned to the same SPOC to facilitate clear communication between the borrower and the SPOC.

In the context of loan modifications associated with traditional mortgages, OWB explained that, when the borrower's initial verbal or written application is received by OWB and input in to its proprietary system, it tracks all modification applications, documents received, and decisions rendered. According to OWB, when a document is received by the bank, it is logged and stored within its imaging repository and made available to the SPOC and the support team to provide up-to-date information on the modification review process and address any borrower questions. To support the collection of missing documents, OWB assigns each SPOC a dedicated underwriter who reviews all documents and provides detailed reasons for any missing or rejected documents, and can be utilized by the SPOC or the support team to discuss underwriter status directly with the borrower as needed. In addition, OWB represented that it provides borrowers a "clear status" for each document and examples of acceptable documents, as well as online resources and Frequently Asked Questions through its Web site.

OWB indicated that, once all documents are received by the bank, the borrower is notified and OWB commences the review process, which includes running OWB's modification models to determine the terms of available modifications, if the borrower is approved.⁶⁴ Upon mailing a modification offer to the borrower, OWB stated that the SPOC team will contact the borrower to provide the terms of the offer and provide information on how to accept and return the modification offer. If the modification application is denied or the borrower declines the offer, OWB represented that the SPOC or a member of the support team will discuss with the borrower other workout options that may exist and provide details on how to dispute the results if the borrower disagrees with the decision.

OWB also stated that, if a borrower is unable to qualify for, or unwilling to accept, a workout solution, the SPOC is required to review the borrower's file and confirm that all loss mitigation options were reviewed, the proper solicitation for workouts was conducted, and no active workout reviews are ongoing prior to approving any foreclosure actions. The SPOC is required to prepare, sign-off on, and electronically store a checklist certifying that the above actions have been taken prior to the commencement of any foreclosure actions.

Communications with Borrowers Seeking Help

In response to commenter allegations that OWB advised forward mortgage borrowers to default on their loans in order to qualify for a modification, and subsequently foreclosed on these loans once they were in default, OWB stated that, while it is required to inform customers of available programs and program requirements, it has in place procedures specifically prohibiting advising borrowers to default on their loans.

OWB represented that certain owners of loans, as well as various loan modification programs, including HAMP, require that the borrower be in default or at risk of imminent default in order to be eligible for a loan modification. In addition, OWB stated that, when appropriate, it

⁶⁴ OWB represented that its models are based on the requirements of the U.S. Department of the Treasury's "Making Home Affordable" loan modification program.

followed the HAMP guideline that requires servicers to provide borrowers specific modification denial reasons, such as “the loan is not in default.”

OWB represented that it has developed appropriate processes and communications to inform borrowers of loan modification program requirements, which are provided by OWB to borrowers in several formats including written communication, verbal communication, and referral to additional resources online, such as the HAMP Web site. Moreover, OWB represented that all of its communications and scripts⁶⁵ are designed to inform borrowers of loan modification program requirements and are reviewed by OWB’s compliance department to ensure compliance with applicable laws and regulations. OWB stated that employees are trained to provide clear direction to the borrower that the borrower is responsible for continuing to make the normal monthly mortgage payment. Lastly, OWB represented that it internally monitors its call center communications to ensure compliance with its policies and procedures and applicable laws and regulations.

Record Management Practices

In response to criticisms that OWB failed to keep accurate records and paperwork related to the mortgage loans it services, in particular, in connection with its loan modification and foreclosure processes, OWB stated that pursuant to the Consent Order requirements, it corrected its record management practices. Specifically, the bank stated that it developed and implemented policies and procedures to ensure that: (i) foreclosure, loss mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked; (ii) borrowers generally are not required to resubmit the same documents or information already provided; and (iii) borrowers are notified promptly of the need for additional information.

OWB asserted that the results of the IFR Independent Consultant’s review of loans serviced by OWB pursuant to the Consent Order demonstrates that its record management practices are appropriate because the IFR would not have generated “minimal” error findings if the bank was unable to produce sufficient documentation for each file tested by the IFR Independent Consultant.

OWB represented that it has specific procedures in place that are designed to ensure appropriate document retention, retrieval, and management, including procedures requiring that all loan-specific documentation, including, but not limited to, loan modification⁶⁶ and foreclosure documents, is imaged and indexed into its image repository. According to the bank, once the documents have been imaged, they are loaded into OWB’s proprietary loan modification tracking system and are reviewed to determine whether the borrower has submitted all required documents and met all modification underwriting criteria.

⁶⁵ “Script” is used herein as a general description for the text setting forth bank-approved information to be communicated orally by bank customer service representatives to consumers.

⁶⁶ According to OWB, within 24 hours of receipt, all documentation for loan modification requests is imaged and indexed into the OWB image repository.

In addition, OWB stated that its procedures require that once the borrower submits an application for a loan modification, the borrower is sent a notice confirming the loss mitigation application was received by OWB and: (i) informing the borrower whether his or her application is complete or incomplete within five days of the bank's receipt of the application; (ii) describing the evaluation process and timeline; and (iii) listing the additional documents and information needed from the borrower to complete the loss mitigation application, along with a specific date by which the documentation must be received by the bank. OWB stated that once a borrower has submitted all the required documentation to complete a loss mitigation application, the borrower is sent a "complete package letter," which outlines the evaluation process and timeline.

Illegal Foreclosures Procedures

In its AIR Responses, OWB stated that, contrary to commenter allegations, the bank does not accelerate foreclosure proceedings beyond contractual and legal requirements, and that it put in place policies and procedures designed to ensure compliance with all applicable legal requirements. OWB stated that potentially improper foreclosure was specifically tested by the IFR Independent Consultant, who found OWB's error rate in this category to be minimal (see discussion above). Based on this information, OWB contended that allegations of systemic improper foreclosures are not supported.

Specifically, OWB represented that it developed detailed policies and procedures to ensure compliance with all applicable laws related to foreclosure and with the underlying contractual requirements governing the mortgage. According to OWB, prior to a mortgage's referral to foreclosure, OWB follows all relevant federal and state notification requirements and related waiting or cooling off periods, including any state mandated loan modification notifications, and employs robust pre-foreclosure referral checklists to ensure that each of these requirements is met before referring the loan to foreclosure. In addition, OWB stated that, for forward mortgages, the SPOC area of its forward mortgage servicing business reviews each mortgage loan to confirm that appropriate loss mitigation efforts have been made prior to referral to foreclosure.

During the foreclosure process, OWB indicated that it employs a network of state and local foreclosure attorneys to handle foreclosures and ensure ongoing compliance with the relevant state and local rules and minimum timelines. Moreover, OWB stated that it established a vendor management oversight function with respect to these attorneys, including independent loan level testing of the foreclosure process by OWB's loan review group, which is part of its enterprise risk department reporting to its chief risk officer.

Lastly, with respect to foreclosure sales, OWB represented that it employs a pre-foreclosure sale checklist to ensure that relevant federal and state-based requirements have been met before conducting the foreclosure sale.

Foreclosures in LMI Communities

In response to allegations that OWB pursued foreclosures “disproportionately in neighborhoods of color,”⁶⁷ the bank stated that: (i) OWB did not provide or structure the loans to the borrowers that led to these foreclosures; (ii) the relevant statistics (discussed below) demonstrate that OWB’s foreclosure rate on seriously delinquent loans was virtually the same for less than 20 percent minority census tracts as it was for greater than 80 percent minority census tracts; (iii) OWB has been bound by the prescriptive requirements of the HAMP and other contractual requirements of the ultimate owners of the loans; and (iv) extensive internal and external testing demonstrate that OWB has created and implemented effective policies and procedures to comply with all applicable laws and regulations and there is no evidence in any of the internal or external testing to suggest that OWB has discriminated against minorities in its foreclosure practices. OWB explained that the loan portfolio OWB serviced⁶⁸ had high serious delinquency⁶⁹ rates overall, with over 50 percent of all loans in California seriously delinquent, because the underlying loans were poorly underwritten and structured by the originating lenders. According to OWB, the loans that it serviced in California census tracts with greater than 80 percent minority population had a higher rate of serious delinquencies (61 percent) than loans in California census tracts with less than 20 percent minorities (35 percent).⁷⁰ In other words, OWB represented that serious delinquency rates were nearly 75 percent higher in greater than 80 percent minority census tracts than in less than 20 percent minority census tracts. In addition, OWB represented that the foreclosure rates for seriously delinquent loans serviced by OWB in California in less than 20 percent minority census tracts is 34.5 percent while the foreclosure rate on such loans in greater than 80 percent minority census tracts is 34.2 percent. OWB further indicated that these similar rates of foreclosure for seriously delinquent loans in both groups of census tracts reflect the consistent application of OWB’s foreclosure policies and procedures.

In addition, OWB stated that its mortgage foreclosure practices have been subject to extensive independent evaluations, including the IFR. With respect to the IFR, OWB states that the IFR Independent Consultant tested more than 26,000 loans and found that OWB properly solicited borrowers for loan modifications, properly attempted to collect all required documentation, and properly decisioned loan modification applications more than 99.42 percent of the time. OWB also stated that it was subject to testing by the administrators of the Making Home Affordable (MHA)⁷¹ program, and, during the time when OWB was a large third-party servicer, it was the only servicer to receive the highest MHA rating for eight consecutive quarters. Further, OWB represented that its internal audit department and Fair Lending Department (FLD) perform testing of its loan modification and foreclosure activities. Specifically, OWB stated that its FLD, as part of its ongoing compliance monitoring, tested OWB loan modification practices, and that

⁶⁷ OWB responded to these allegations as described in the text. The OCC reviewed the bank’s policies and procedures governing foreclosure practices in the context of compliance with the Consent Order, and will continue to assess potential discrimination as part of its supervisory process.

⁶⁸ As noted above, OWB has serviced the IndyMac portfolio, along with portfolios obtained from several other sources.

⁶⁹ More than 90 days delinquent.

⁷⁰ OWB noted that these statistics are limited to traditional (forward) mortgages, because reverse mortgages do not have modification options analogous to traditional mortgages.

⁷¹ MHA is the federal government program under which HAMP modifications are offered.

its most recent testing, analyzing data from July 2013 through June 2014, concluded that there was no improper treatment of borrowers based on race/ethnicity or gender.

Appraisal Practices

With respect to allegations that OWB engages in the practice of providing inflated appraisals for properties subject to foreclosure, OWB stated that, with the exception of reverse mortgages, it does not use appraisals generally and it does not use appraisals to prepare credit bids at foreclosure.⁷² Rather, OWB represented that it uses a broker price opinion (BPO) or equivalent valuation. According to OWB, the BPO is obtained for OWB by a national third-party vendor that utilizes local real estate professionals to assess the value of the property based on local market conditions. OWB stated that the BPO is completed without influence from or input by OWB.

OWB further represented that, in certain circumstances, appraisals may also be ordered in addition to BPOs if required by the investor or mortgage insurer, or if its BPO vendor cannot provide an appropriate valuation. According to OWB, if an appraisal is required, the appraisal is also completed by a third party, without influence from or involvement by OWB. OWB indicated that it uses third-party appraisal vendors that are approved by its third-party management department, and each appraiser is HUD approved.

Other Real Estate Owned (REO) Practices

Responding to allegations that OWB does not properly maintain foreclosed properties in LMI communities, OWB represented that it adheres to all laws relating to the management and maintenance of REO properties it acquires through the foreclosure process.⁷³ OWB stated that, upon being notified that a property has become vacant prior to foreclosure, or upon acquisition of a property via a foreclosure sale, OWB secures, registers, and maintains each property. For properties it acquires through the foreclosure process, OWB indicated that it orders initial services, which include property inspections, registrations, and maintenance services for vacant properties. Moreover, OWB stated that, should additional efforts be required to bring a property into local code compliance, it contracts with third parties to complete the necessary repairs to ensure each property meets local code requirements and that property preservation and upkeep activities occur throughout the period of time the property is marketed by the bank for sale.

OWB also represented that, prior to foreclosure, it adheres to its property preservation standards, which provide uniform requirements regarding the management of valuations, inspections, and preservation for properties that are more than 45 days delinquent. Starting on day 45 of the delinquency, OWB begins ordering inspections from third-party property preservation vendors that perform inspections every 30 days during delinquency, unless investor guidelines specify a different frequency or local ordinances require them to be performed more often. OWB stated

⁷² See below for a discussion of the bank's appraisal practices in connection with its reverse mortgage servicing.

⁷³ OWB responded to these allegations as described in the text. The OCC reviewed the bank's REO management policies and procedures in the context of compliance with the Consent Order and will continue to assess potential discrimination as part of its supervisory process.

that it has in place “control reports” to manage vacant properties and the timely completion of property preservation activities.

Consumer Complaints

With respect to its complaint management practices, OWB stated that, pursuant to the Consent Order requirements, OWB developed and implemented policies and procedures to enable borrowers to make complaints regarding: (i) the loss mitigation or loan modification process; (ii) denial of modification requests; and (iii) the foreclosure process, or foreclosure activities which prevent a borrower from pursuing loss mitigation or loan modification options. OWB further represented that it developed processes for: (i) making borrowers aware of the complaint procedures; (ii) the prompt review, escalation, and resolution of borrower complaints; and (iii) communicating the results of the review to the borrower on a timely basis.

In response to allegations of high complaint volumes in connection with its mortgage servicing practices, OWB asserted that receiving complaints from consumers is a natural result of servicing portfolios with high delinquency rates. OWB attributes this high delinquency rate mostly to acquiring portfolios of loans from the FDIC as receiver of three failed banks that had mortgages with high default rates. In addition, OWB stated that, in its experience, “the nature of the loan modification process, which is very prescriptive under HAMP, or the foreclosure process in which the loss of a home is the potential outcome, gives rise to many customer inquiries or complaints throughout the process.” Notwithstanding this explanation, OWB contended that OWB’s complaint volumes are low relative to the distressed nature of its portfolio.⁷⁴

OWB stated that it tracks customer complaints through its proprietary complaint handling system. According to the bank, complaints and other inquiries that cannot be resolved in an initial phone call or that are received in writing are logged and categorized on different dimensions, including the “nature” of the complaint. In addition to this complaint tracking process, OWB stated that its complaint trends are reported monthly to its executive customer complaint committee, which provides oversight and direction for further review and analysis to OWB’s fair and responsible lending department and relevant business units. OWB further stated that, in particular, complaint response and resolution times are actively monitored and tracked by its management and reported to its executive customer complaint committee.

Litigation

In response to allegations made by commenters in connection with its mortgage servicing activities, OWB produced information regarding pending litigation.⁷⁵ In response to criticisms about its involvement in litigation pertaining to its mortgage servicing activities, OWB responded that, like all mortgage loan servicers, it is a party to litigation related to properties for which it has pursued the foreclosure process. OWB stated that, in many states, the foreclosure

⁷⁴ In its AIR Responses, OWB provided relevant complaint data from the period October 2013 to February 2015.

⁷⁵ See the response submitted by CITG to the FRB dated April 14, 2015.

process requires the mortgage servicer to file a lawsuit for foreclosure, in which case, the borrower routinely asserts counterclaims against the foreclosing party. OWB further represented that, even in states where foreclosures are not initiated via court processes, borrowers frequently file lawsuits against the foreclosing lenders or servicers. Since 2009 when OWB acquired its servicing portfolio from the FDIC as receiver for IndyMac, OWB represented that borrowers have prevailed extremely rarely in their claims against OWB, and stated that, in its view, these litigation results support its belief that it conducts its mortgage servicing operations in accordance with applicable laws and regulations.⁷⁶

ii. Reverse Mortgage Servicing Practices

Many of the concerns identified by commenters with respect to OWB's mortgage servicing practices were applicable to the bank's servicing of traditional (forward) mortgages; however, the OCC also received many comments critical of OWB's servicing practices with respect to reverse mortgages, specifically home equity conversion mortgages (HECMs). In particular, many commenters expressed concerns pertaining to issues surrounding loans involving non-borrowing spouses.⁷⁷ At the Public Meeting, one commenter stated that OWB "claim[ed] the non-borrowing spouse has fewer rights than other heirs," and further stated that the "problem is caused by HUD and made worse by OWB's practice of accelerating foreclosure" because the relevant HUD guidance virtually excludes all surviving spouses from relief or being able to retain their property. In addition, commenters alleged that, among other things, OWB inappropriately evicted non-borrowing spouses from the property securing the HECM after the death of the borrower spouse, and urged OWB to halt all non-borrowing spouse evictions until HUD can resolve the broader issues communicated by commenters in connection with HECMs generally.

Commenters also expressed concerns that in some cases, non-borrowing spouses were incentivized by the lender originating the reverse mortgage to exclude themselves as borrowers on the loan in order to receive a larger loan payout or line of credit, which left them in a vulnerable position once the HECM became due and payable. Consumers also expressed concern that in many cases borrowers did not understand the terms of reverse mortgage products, particularly the triggers for default, and especially elderly consumers who were in a vulnerable position at the time the loan was made. For example, one commenter shared her story at the Public Meeting, stating that her parents were sold a "reverse mortgage that they did not need" at a time when both were in failing health.⁷⁸

⁷⁶ In addition, OWB claims that it has reexamined each pending case identified by the bank as including one of the identified allegations and believes the allegations are unfounded as a factual or legal matter and that OWB has acted in accordance with all applicable laws and regulations in each case.

⁷⁷ HECM servicing is governed by HUD regulations. HUD defines a "non-borrowing spouse" as the spouse of the HECM mortgagor at the time of loan closing, who is not also a mortgagor. *See* HUD Mortgagee Letters 2014-07 and 2015-03.

⁷⁸ These criticisms generally were not directed at OWB but rather appear to focus on the lender originating the reverse mortgage which, as discussed below, was not OWB for the majority of loans serviced by OWB.

Other commenters alleged that OWB does not comply with a number of aspects of HUD's guidelines on HECMs. Commenters also alleged that OWB uses state laws to violate HUD's regulations to enable it to pursue foreclosure proceedings faster than HUD requires, and, in some cases, evades state laws designed to protect borrowers, like the CA HBOR. In addition, commenters criticized OWB for foreclosing on HECM borrowers for being in arrears in property taxes and/or insurance in amounts as little as \$1,300.

In addition, commenters expressed concerns that borrowers, non-borrowing spouses, or heirs (depending on the circumstances) are not informed of their rights at the time of loan maturity or default trigger. One commenter stated that "the family is grieving when they get a repayment letter that is confusing, contradictory, deceptive... and no consumer could understand." The same commenter stated that, for this reason, the provision of a SPOC was imperative to guide the consumer through the process, but that OWB provided "no single point of contact for consumers at all" and "no customer service at all." Moreover, commenters harshly criticized OWB for starting the foreclosure process as soon as 45 to 60 days after the death of the borrower, giving the heirs insufficient time to grieve.

The OCC also received comments alleging that borrowers' heirs are not provided loan information without a court order. One commenter stated that OWB "refuses to speak to heirs without proof of legal authority." Commenters were also critical of OWB's procedures and timing relating to the completion of probate and the initiation of foreclosure proceedings. Specifically, commenters stated that OWB does not allow the probate process to run its course to allow heirs or other relatives to purchase or sell the property securing the HECM.

Commenters further alleged that OWB does not allow borrowers' heirs the right to repay the full loan balance to prevent foreclosure, and also denies consumers the right to "short sale" the property (i.e., repay 95 percent of the appraised value per the relevant HUD regulations). At the Public Meeting, borrowers' heirs relayed stories of attempts to repay HECM loan balances in an effort to avoid foreclosure, which were met with conflicting payoff values from OWB, in addition to "unauthorized legal fees and other foreclosure-related fees."

Finally, some commenters alleged that OWB was using appraisal practices inconsistent with HUD guidelines, inappropriately denying deeds-in-lieu of foreclosure, and generating inappropriate fees on foreclosure actions. Another commenter claimed that OWB had obtained multiple appraisals of her property during the foreclosure process, with widely divergent valuations, ultimately hurting her by using an allegedly inflated value. In addition, commenters stated that, in the reverse mortgage area, OWB provided inflated appraisals for certain properties that were subject to foreclosure, frustrating non-borrowing spouses or heirs who were making efforts to keep their family homes. Commenters also alleged that OWB requires borrowers' heirs to record trusts, which, the commenter stated, was a "violation of consumer privacy laws, state laws and federal regulations."

OWB's response to the commenters' allegations regarding its reverse mortgage servicing practices is discussed below.

OWB's HECM Servicing Practices Generally

In its AIR Responses, OWB asserted that many commenters who complained about HECM originations associated OWB with IndyMac, even though OWB did not exist when IndyMac originated the loans that OWB ultimately serviced. In fact, OWB contends that it did not originate the overwhelming majority of the delinquent loans it serviced. Specifically, OWB stated that, as of September 30, 2014, of the 110,730 reverse mortgage loans OWB services, only 7.5 percent of the loans were originated by OWB, while the other 92.5 percent of loans were originated by third parties prior to the formation of OWB. Further, OWB noted that it ceased origination of reverse mortgage loans in May 2011 and has been only a servicer of such loans since that time.

OWB explained that 98 percent of the reverse mortgage loans it services are owned by third parties, and that 95 percent of its loans are insured by HUD's Federal Housing Administration (FHA), and for this reason, it is bound by contract and/or HUD regulatory program requirements applicable to HECM mortgage servicers. OWB stated that, "at their core," the public comments critical of its HECM mortgage servicing practices are criticisms of the underlying HUD regulations and related contractual requirements that dictate the servicing of these loans, and that OWB cannot disregard these requirements without "severe penalties," including removal from HUD's HECM program.

With respect to the number of reverse mortgage foreclosures, OWB asserted that an analysis only of the absolute number of foreclosures ignores the relative size and quality of the associated predominantly acquired portfolio and, more importantly, does not provide insight into the quality (from a compliance and borrower perspective) of the bank's servicing operations. OWB represented it services its reverse mortgage portfolio in compliance with all HUD guidelines and will follow any new guidelines developed by HUD.

OWB described HUD requirements that are applicable at the Maturity Event,⁷⁹ or when a mortgage otherwise becomes "due and payable," the HUD term for when the debt must be satisfied.⁸⁰ In addition, OWB described a series of related steps required by the HUD rules once the loan is due and payable, including: (i) a notice requirement within 30 days of the Maturity Event; (ii) an appraisal requirement within 30 days of the Maturity Event; (iii) a requirement that the foreclosure process be initiated within six months of the Maturity Event, absent a waiver

⁷⁹ Pursuant to HUD regulations, HECM borrowers are generally allowed to remain in the home until the "Maturity Event," which is generally the earlier of the death or the move out date of the last living/occupying borrower. Upon the Maturity Event, the loan generally becomes "due and payable." See 24 CFR 206.27(c).

⁸⁰ OWB referenced 24 CFR 206.27(c)(2), which, according to the bank, contains circumstances that can trigger the "due and payable" clause prior to the Maturity Event, including: (i) failure by the borrower to pay required "property charges," such as taxes and insurance or Home Owner's Association dues, and subsequent failure to remediate these defaults; (ii) allowing the property to fall into severe disrepair or not completing repairs on the property (such that in its current state without such repairs, the property does not meet minimum FHA property standards); and (iii) a mortgagor's conveyance of all of his or her title in the property and no other mortgagor retains title to the property.

from HUD;⁸¹ and (iv) a requirement that the foreclosure be completed within state-specific timelines, which are published and periodically updated by HUD.⁸²

Issues Affecting Non-Borrowing Spouses

In its AIR Responses, OWB indicated that non-borrowing spouse issues affect a “fairly small” portion of the reverse mortgage portfolio that it services. OWB stated that, because HUD’s Principal Limit Factor tables (which stipulate the maximum cash available for the borrower at the time of loan origination) are based on the age of the youngest borrower, some borrowers deliberately did not include the younger spouse as a borrower on their reverse mortgage in order to increase the initial disbursement amount and/or the related line of credit available under the loan. OWB further explained that, under the terms of a reverse mortgage and HUD’s regulations, the lifetime deferral of loan repayment obligations only applies to the borrower of the reverse mortgage and is not extended to a non-borrowing spouse or any other persons.

OWB stated that, it has at all times complied with HUD guidelines, which have been in flux throughout the time this Application was pending, in particular with regard to the rights afforded to non-borrowing spouses. For example, OWB represented that until June 2014, HUD policy and regulations effectively required reverse mortgage servicers to foreclose on homes occupied by surviving non-borrowing spouses, unless he or she paid off the loan in full or bought the property via HUD’s “short sale” procedure (i.e., pay 95 percent of the appraised value if the loan amount was greater than the value of the home). In June 2014, HUD issued guidance⁸³ stating that reverse mortgagees had an indefinite extension of time to commence foreclosure action against the home occupied by a non-borrowing spouse under certain conditions. The guidance, however, did not clearly define whether the mortgagee had to “recalculate” the loan’s Principal Limit Factor to what it would have been had the non-borrowing spouse been on the original loan. In practice, such recalculation generally requires a surviving non-borrowing spouse who is younger than the original mortgagor to make a substantial principal repayment on the loan in order to qualify for the indefinite extension—a payment that the surviving non-borrowing spouse may not have the means to make.

In January 2015, HUD issued revised guidance,⁸⁴ which provided additional clarification regarding the required handling of surviving non-borrowing spouse cases,⁸⁵ and confirmed that non-borrowing spouses could obtain an indefinite extension, but the mortgagee had to effectively “recalculate” the loan if the mortgage was not otherwise satisfied through a short sale. OWB stated that this requirement continues to frustrate heirs, but that the bank cannot disregard the HUD regulations without risk of significant financial penalties. The January 2015 guidance was

⁸¹ OWB originally stated that HUD servicing guidelines allow for three possible 90-day extensions after a Maturity Event and before foreclosure to allow borrowers or their authorized representatives to repay the debt or sell the property, provided probate is resolved and required documentation evidencing the intended sale of the property or funds required to satisfy the debt are submitted. OWB subsequently stated that, due to amendments to the HUD rules, the servicing guidelines currently allow for only two possible 90-day extensions.

⁸² See generally 24 CFR 206.125.

⁸³ See FHA INFO #14-34 (June 25, 2014).

⁸⁴ Among other things, this guidance changed non-borrowing spouse restrictions for newly originated HECMs.

⁸⁵ See Mortgagee Letter 15-03 (January 29, 2015) (rescinded April 30, 2015).

rescinded by HUD, and revised guidance was issued on June 12, 2015. Among other things, this new guidance states that the Principal Limit Test need not be satisfied, and, so long as the non-borrowing spouse satisfies certain other requirements, the non-borrowing spouse would be allowed to remain in the home.⁸⁶ OWB has represented that it will follow this and other HUD guidance.

Consumer Understanding of HECM Terms and Conditions

In response to allegations that consumers did not understand the terms of the HECMs, particularly the triggers for when the loan is in default (i.e., when the loan becomes “due and payable” under HUD regulations), OWB acknowledged that HECMs are complex, and that consumers may have difficulty understanding all their terms. However, OWB contended that it did not create the reverse mortgage product nor the loan documents that contain the various triggers for default. In addition, OWB explained that, as mentioned above, all FHA-insured HECM borrowers were required to complete counseling by HUD-certified independent counseling agencies prior to loan origination. OWB stated that the purpose of this counseling is to inform the potential reverse mortgage borrower of the benefits and risks associated with the reverse mortgage product, and other alternatives available before the loan is originated.

OWB stated that it is ultimately constrained by applicable HUD servicing requirements because the underlying default triggers are established by the HUD-mandated loan documents and HUD-imposed program requirements. OWB asserted that the commenters’ concerns are largely structural concerns of the HECM program that can only be addressed by HUD.

Treatment of Loans in Tax and/or Insurance Default

OWB stated that it treats a loan as delinquent for taxes and/or insurance (T&I default) at the time that an advance for such items is made on the borrower’s behalf that exceeds the available funds on the loan. OWB stated that as soon as a T&I default occurs, a repayment letter is sent to all known borrowers explaining their obligations and the options available to them to cure the delinquency. OWB represented that it makes frequent phone calls and sends reminder letters to borrowers to encourage payments and to further explain all available options, and if it successfully makes borrower contact, it seeks the borrower’s financial information to assess the borrower’s ability to pay.⁸⁷ According to OWB, if borrowers are unable to demonstrate an ability to pay, they are then given the option of either a deed-in-lieu of foreclosure or a short sale.

With regard to the FHA-insured loans, which, according to OWB, account for 95 percent of the reverse mortgage loans it services, once repayment plan efforts are exhausted, OWB states that it

⁸⁶ See HUD Mortgagee Letter 2015-15 (June 12, 2015). This guidance also contains requirements for mortgagees to proceed with foreclosure activities in circumstances where borrowers have not paid taxes, insurance, or maintenance costs.

⁸⁷ OWB stated that borrowers are referred to credit counseling agencies to get help lowering their monthly expenses and that borrowers in California, Florida, and Michigan are referred to these states’ respective Hardest Hit Fund programs to attempt to obtain funds to cure a delinquency.

periodically reviews accounts that continue in T&I default status for a “due and payable”⁸⁸ submission to HUD for direction in connection with the T&I default. OWB stated that, although HUD has not issued definitive guidance to servicers regarding when servicers should pursue foreclosure based on such T&I defaults, HUD reviews each individual borrower’s situation, based on a “due and payable” submission by OWB, and HUD, not OWB, determines whether foreclosure should proceed. OWB further stated that, in almost all cases, if OWB forecloses on a reverse mortgage borrower for a T&I default, it is because OWB was instructed by HUD to do so.

Compliance with HUD Foreclosure Guidelines

OWB stated that it has “numerous controls” to validate that its practices are compliant with HUD requirements, and that it does not use state law to foreclose faster than HUD requires or otherwise to “violate HUD’s regulations.” OWB represented that, as described above, in some jurisdictions, state requirements require OWB to delay foreclosure, and that, ultimately, the pace of the foreclosure process depends on the state, but that it complies with both HUD requirements and state-specific foreclosure requirements to initiate and complete foreclosures. In addition, OWB stated that HUD publishes state-specific target time frames for the completion of foreclosures⁸⁹ and compels servicers to perform “reasonable due diligence” in completing foreclosures within these timelines by applying financial penalties on servicers if they fail to comply.

OWB represented that if short sales, deeds-in-lieu of foreclosure, or payoffs can be completed in accordance with HUD’s regulations, then OWB will work with borrowers or their heirs to pursue these options instead of pursuing foreclosure.

Informing Consumers of Options at Loan Maturity

OWB represented that it informs borrowers, non-borrowing spouses, and borrowers’ heirs (depending on the circumstances) of available options within the required timelines based on underlying servicing agreements that govern its relationship with the owners of the loans, as well as HUD requirements. OWB stated that, although OWB provides required notice(s) soon after a Maturity Event or default trigger, heirs have longer than 45 to 60 days to resolve the reverse mortgage on their family member’s home. OWB represented that heirs’ options to resolve the reverse mortgage loan last through the entire foreclosure process, which, depending on the state in which the property is located, typically lasts from several months to multiple years.

Moreover, OWB responded that HUD guidelines are very specific with regard to the process of resolving an outstanding mortgage after the Maturity Event, including when the foreclosure process must commence, and asserted that HUD imposes severe financial penalties on servicers

⁸⁸ Under the HUD regulations, the servicer must submit a request to HUD to call the mortgage note “due and payable.” See HUD Mortgagee Letter 2015-10 (April 23, 2015).

⁸⁹ See HUD Mortgagee Letter 2013-38 (October 28, 2013).

for failure to comply with HUD-specified timelines, including the timeline associated with initiating foreclosure.⁹⁰

Allowing Non-Borrowers Access to Loan Information

OWB represented that it does not require a court order to speak to borrowers' heirs for the purpose of discussing general information about a reverse mortgage or the maturity process, required time frames, or deadlines. However, to comply with privacy laws and regulations, OWB stated that it requires evidence that a caller is an authorized third party or heir of the borrower before providing specific account details or any personally identifiable information to anyone other than the borrower. OWB stated that this evidence can include an "authorized third party" designation on file with OWB, a copy of the borrower's will or letters testamentary granting the caller authority to act with respect to the loan or property, or trust documentation identifying the caller as the borrower's successor, executor, or heir.

Lastly, OWB represented that, while it does not require a court order to discuss account information and options, in some circumstances it may require a court order (or similar court action) as part of the probate process, or for an individual to have the necessary authority to execute a deed to transfer or sell the mortgaged property, including to execute a deed-in-lieu of foreclosure or complete a short sale.

Initiation of Foreclosure and Completion of the Probate Process

With respect to comments critical of OWB's procedures and timing relating to the completion of probate and the initiation of foreclosure proceedings, OWB explained that HUD requires servicers to initiate foreclosure within six months from the date of the last surviving borrower's death, plus any additional time approved by the Secretary of HUD.⁹¹ OWB represented that HUD regulations allow a mortgagee to delay the initiation of foreclosure if the commencement of the foreclosure process is prohibited by state law.⁹² OWB stated that each state has its own laws and rules regarding the foreclosure process, and these rules require that certain steps be taken in order to initiate and complete a foreclosure.

OWB stated that, in certain states, for example, if there is equity in the estate, state laws require a probate action to be opened and completed before foreclosure can commence, and HUD considers this an "allowable delay" to the foreclosure process.⁹³ OWB stated that, in these circumstances, it will not proceed with the foreclosure process until such an action has been completed. OWB also stated that, under relevant HUD regulations, if the foreclosure process

⁹⁰ For example, OWB cited 24 CFR 206.125(d)(1), which states that "[t]he mortgagee shall commence foreclosure of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by the Secretary."

⁹¹ 24 CFR 206.125(d)(1).

⁹² 24 CFR 206.125(d)(2).

⁹³ Additionally, OWB represented that, in addition to impacting foreclosure, many states require that heirs initiate and complete the probate process prior to consummating a short sale or conveying the property to the lender via a deed-in-lieu of foreclosure.

cannot be initiated in a state until probate is completed, then the timing requirements for initiating foreclosure are extended; however, if foreclosure can be initiated without completing probate, HUD's regulations require the servicer to proceed or risk incurring significant penalties from HUD.

OWB further explained that each state has its own procedural requirements with regard to foreclosures, which may include notice requirements and waiting periods that must be satisfied prior to initiation of a foreclosure.

In many states, in order for OWB to comply both with the HUD requirement to initiate foreclosure within six months and with state-specific notice and waiting periods, OWB stated that it must send communications to heirs in a compressed time frame, sometimes within 30 days of the loan becoming due and payable because of a Maturity Event such as the death of the borrower.⁹⁴ OWB stated that it performs a legal review of each foreclosure file to determine any state requirements necessary to initiate or complete foreclosure.

OWB also explained that, at any time throughout the relevant notice and waiting periods, either the borrower or the borrower's heirs can provide additional documentation to validate that they are trying to buy or sell the property and obtain up to two⁹⁵ 90-day extensions beyond the initial six-month period, if HUD approves these extension requests. OWB asserted that its staff works with borrowers and heirs throughout the foreclosure process to explain these and other timing issues and assists them in obtaining such extensions, if possible. Further, OWB stated that, even after the foreclosure process has commenced, it allows the borrower or heirs to continue to pursue loan payoffs, short sales, or deeds-in-lieu of foreclosure.

Allowing Repayment of the Loan to Prevent Foreclosure

OWB stated that it does not deny borrowers or borrowers' heirs the right to repay the loan, and that it has "absolutely no incentive" to make such denials. OWB represented that, in accordance with HUD program requirements, it allows heirs to complete a short sale in accordance with applicable HUD guidance. To demonstrate that it works with borrowers to prevent foreclosure, OWB provided summary data on both payoffs and short sales for a 12-month period ending March 31, 2015 as follows: 462 payoffs, 88 short sales, and 116 deeds-in-lieu of foreclosure.⁹⁶

⁹⁴ OWB provided as an example that many states require a Notice of Intent to Foreclose (NOI), which is typically sent 30 days after the initial notice to the borrower that the loan has become due and payable. According to OWB, many of these states also require a waiting period, which can be between 30 to 150 days following the NOI, before foreclosure can be initiated. Also, according to OWB, in such states, in order to both meet the HUD six-month requirement and satisfy state notice requirements, it must send notices very shortly after a loan becomes due and payable.

⁹⁵ OWB noted that HUD's recent Mortgagee Letter 2015-10 reduces the available extensions from three to two 90-day extensions beginning with loans that become due and payable for property-related charges on or after July 1, 2015.

⁹⁶ OWB represented that the number of short sales and deeds-in-lieu of foreclosure includes both "approved" and "closed" transactions.

In response to allegations that OWB denies borrowers' estates and heirs deeds-in-lieu of foreclosure and that it generates inappropriate fees on foreclosure actions, OWB responded that it makes efforts to pursue alternatives to foreclosure, as evidenced by its representation that, in 2014, the bank completed significantly more deeds-in-lieu of foreclosure and short sales (more than 1,300) than foreclosures (508). With regard to the imposition of fees, OWB stated that it has established rigorous controls and oversight over the application of fees, and its testing has validated that it does not generate inappropriate fees on foreclosure actions.

Appraisal Practices in Connection with Foreclosures

OWB represented that its appraisal practices comply with all applicable HUD guidelines.⁹⁷ For example, OWB stated that the HUD guidelines require that a "maturity appraisal" be ordered within 30 days of a Maturity Event. OWB explained that its policy is to obtain an interior appraisal, as prescribed by HUD, if given access to the property, and in circumstances in which it is unable to contact the borrower or heir to obtain access to the home, or if access is denied, it will order an exterior appraisal.

In addition, OWB stated that it orders a short sale appraisal at the time OWB receives a valid offer with all required supporting documentation from appropriate parties wishing to complete such short sale. Further, if there is a dispute as to valuation, for example, in the context of a short sale, OWB will order an additional appraisal.

OWB further stated that it orders a foreclosure appraisal at least 15 days prior to the foreclosure sale. Similar to the "maturity appraisal" described above, OWB represented that it attempts to obtain an interior appraisal as prescribed by HUD if access is permitted; otherwise, it will order an exterior appraisal.

OWB also represented that, when an appraisal is required in accordance with HUD guidelines, it is completed, without influence from OWB, by a third-party appraisal vendor approved by OWB's third-party management department. In addition, OWB stated that each appraiser it uses is HUD-approved.

Recording of Trusts

OWB stated that its servicing practices do not require that trusts be recorded. In addition, OWB provided a summary of the information it represents that it communicates to borrowers in connection with trusts.⁹⁸

⁹⁷ See 24 CFR 206.125(b).

⁹⁸ Specifically, OWB represented that, in order to comply with HUD regulations, it communicates that: (i) all living borrowers obligated on the loan must be beneficiaries, and no new beneficiaries may be added to the trust; (ii) the trust must be valid and enforceable in the state in which it was written; (iii) the trust must ensure that each borrower/beneficiary has the legal right to occupy the property for the remainder or his or her life; (iv) the trustee of the trust must be granted the power to borrow and to encumber real property of the trust for any purpose, including a reverse mortgage; and (v) the trust must provide the lender with reasonable assurance that it will be notified of any subsequent change of occupancy or transfer of beneficial interest.

OWB also stated that another trust-related issue arises when heirs assume control rights of a trust holding a property subject to a HECM prior to the Maturity Event of the loan, and then subsequently attempt to obtain the property via short sale. OWB asserted that the HUD rules effectively do not allow such a short sale⁹⁹ because the HUD rules require such transfers of ownership and title to occur only after the Maturity Event. OWB stated that, in its experience, this restriction may frustrate heirs, as it requires subsequent adjustments to the underlying trust before a short sale can be completed.

iii. OCC Review of OWB's Servicing Practices

As stated previously, the OTS issued a Consent Order to OWB in 2011. The Consent Order states that the OTS had identified certain deficiencies and unsafe and unsound practices in OWB's residential mortgage servicing and in its initiation and handling of foreclosure proceedings.¹⁰⁰ Among other things, the OTS found that OWB had failed to devote adequate oversight, internal controls, policies, compliance risk management, internal audit, third-party management, and training to its foreclosure processes.

The Consent Order required OWB to develop and implement plans to address the examination findings, which findings included some of the same issues identified by commenters. Pursuant to the requirements set forth in the Consent Order, OWB was required to develop and implement:

- governance and controls to ensure full compliance with all applicable federal and state laws governing its foreclosure activities, including the requirements of the Consent Order (collectively, the Legal Requirements);¹⁰¹
- ongoing testing for compliance with applicable Legal Requirements and supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include OWB's internal audit department) who are independent of OWB's business lines;
- establishment of an easily accessible and reliable SPOC for each borrower so that the borrower has access to an employee of the bank to obtain information throughout the loss mitigation, loan modification, and foreclosure processes;

⁹⁹ As both OWB and the commenters note, HUD guidelines have been and are currently in flux.

¹⁰⁰ The OneWest Bank, FSB Consent Order is available at <http://www.occ.gov/static/ots/misc-docs/consent-orders-97665.pdf>. Since the issuance of that Consent Order, OWB converted from a federal savings bank to a national bank, and the OCC issued a new Consent Order, which incorporated all the provisions of the OTS Consent Order and is available at <http://www.occ.gov/static/enforcement-actions/ea2014-029.pdf>. The IMB HoldCo Consent Order with the FRB is available at <http://www.federalreserve.gov/newsevents/press/enforcement/enf20140321a1.pdf>.

¹⁰¹ This requirement included, but was not limited to, the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act (SCRA), rules, regulations, court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises (GSEs) or investors, FHA and the FDIC, and the requirements of the Consent Order.

- a requirement that written communications with the borrower identify each SPOC along with one or more means of communication with the contact;
- measures to ensure that the SPOC has access to current information and personnel sufficient to timely, accurately, and adequately inform the borrower of the current status of the loss mitigation, loan modification, and foreclosure activities;
- procedures and controls to ensure that a final decision regarding a borrower's loan modification request is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the modification, by the SPOC within a reasonable time before any foreclosure sale occurs;
- procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis, that: (i) no foreclosure or legal action predicate to foreclosure occurs, unless the borrower is deemed to be in default on the terms of the trial or permanent modification (i.e., prohibition against "dual tracking"); and (ii) the SPOC remains available to the borrower and continues to be referenced on all written communications with the borrower;
- processes to ensure that OWB has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and loss mitigation, or loan modification functions;
- policies and procedures to ensure that foreclosure, loss mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked, that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information;
- procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;
- policies and procedures for third-party providers of outsourced foreclosure or related functions, including loss mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure;
- processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements; and
- processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and supervisory guidance.

In addition, pursuant to the Consent Order, OWB retained the IFR Independent Consultant to conduct an independent review of certain residential foreclosure actions regarding individual

borrowers with respect to OWB's mortgage servicing portfolio. Although OWB paid for the IFR Independent Consultant work, the scope of review and work completed by the IFR Independent Consultant were at the direction and oversight of the OCC. The OCC made a summary of the initial results of this review public in April 2014.¹⁰² As noted above, the review included residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by OWB that had been pending at any time from January 1, 2009, to December 31, 2010, as well as residential foreclosure sales that occurred during this time period. The IFR Independent Consultant included a statistical sample of reverse mortgages in this review as well as those customers who had submitted a Request for Review. OWB has accurately represented the findings of the IFR Independent Consultant.

After extensive supervisory reviews over a period of 40 months, including evaluation of policies, procedures, files, and other documents, the OCC has found that OWB has satisfied the requirements of the Consent Order and the Consent Order has been terminated.

In its AIR Responses, OWB acknowledged that the new board and management of CITBNA will have a continuing obligation to monitor CITBNA's operations and to ensure that appropriate policies, procedures, and testing are in place to ensure CITBNA continues to comply with all applicable laws and regulations.

The OCC's ongoing supervisory expectation, which it will monitor through its risk-based supervisory process, is that CITBNA will continue to maintain and implement policies, processes and procedures developed and implemented by OWB pursuant to the Consent Order, including:

- governance and controls to ensure full compliance with all applicable laws and regulations;
- policies, procedures, and controls addressing proper administration of loan modifications and other loss mitigation activities, including compliance with regulations pertaining to dual tracking;
- practices to ensure borrowers with servicing concerns are provided a SPOC; and
- policies and procedures to ensure that foreclosure, loss mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked.

O. Summary of CRA and Convenience and Needs Considerations

As discussed above, the CRA requires that the OCC take into account the banks' performance under the CRA in considering the Application. In addition, the BMA requires the OCC to consider the convenience and needs of the community to be served. As noted previously, although the banks' CRA performance and the convenience and needs of the communities to be served are interrelated, consideration of a bank's CRA performance primarily looks to how the

¹⁰² See generally Foreclosure-Related Consent Orders Status Report: Observations, Payments, and Foreclosure Prevention Assistance, available at <http://www.occ.gov/news-issuances/news-releases/2014/nr-occ-2014-65a.pdf>.

bank has performed in the past, while a convenience and needs assessment considers how the merged entity will serve the needs of its community on a prospective basis.

The OCC has fully considered and assessed the issues and concerns raised by individuals and community organizations relating to various aspects of the banks' activities including, but not limited to: (i) the efficacy of the resulting bank's proposed CRA plans; (ii) each bank's level of community outreach; (iii) each bank's CD investment strategy; (iv) each bank's level of small business lending; (v) OWB's level of CD lending activity; (vi) possible mortgage lending and foreclosure-related discrimination issues; (vii) OWB's recent branching activity; (viii) each bank's product offerings, in particular the availability of products to serve the needs of LMI persons and communities; and (ix) OWB's mortgage servicing of both forward (traditional) and reverse mortgages. After review of (i) the banks' records; (ii) oral and written public comments; (iii) the AIR Responses; and (iv) information available to the OCC as a result of its supervisory responsibilities, the OCC has determined that OWB has appropriate systems in place and the record supports approving the Application, subject to the condition set forth in Section VIII below.

OWB's CRA PE identified areas of strength for the bank, such as good CD lending, significant use of loan modification programs, and a relatively high level of CD services. The OCC's review and evaluation of the public comments on the Application, however, also identified areas of concern, including with regard to OWB's provision of products and services to LMI individuals and in LMI geographies. OWB represented that it has undertaken efforts to enhance its CRA performance going forward. OWB stated that it will seek to expand its CRA-qualifying lending, including home mortgage, small business, and affordable multifamily housing lending, and will consider the development of new or modified products that will serve the needs of LMI individuals and in LMI geographies. Nonetheless, OWB's efforts are still in the early stages of implementation and continuing concern exists regarding how CITBNA will serve the credit needs of its community, in particular the credit needs of LMI individuals and geographies and minority individuals and geographies. Therefore, the OCC is imposing the condition set out in Section VIII below.

VI. Request for an Extension of the Comment Period

The initial comment period was open from September 18, 2014, to October 20, 2014. Many commenters requested that the OCC extend the comment period. The standard that the OCC applies to determine whether to extend a public comment period is set forth in 12 CFR 5.10(b)(2), which provides:

The OCC may extend the comment period if: (i) the applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information; (ii) any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC

determines is necessary to consider the application; or (iii) the OCC determines that other extenuating circumstances exist.

After considering all relevant factors, the OCC determined extension of the public comment period was appropriate, and the comment period was extended to February 26, 2015.¹⁰³

VII. Request for Public Hearings

Many commenters requested that the OCC hold public hearings on the Application. The standard that the OCC applies to determine whether to grant or deny a hearing request is set forth in 12 CFR 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

12 CFR 5.11(i) provides:

The OCC may arrange for a public meeting in connection with an application, either upon receipt of a written request for such a meeting which is made within the comment period, or upon the OCC's own initiative.

After careful consideration, the OCC determined to hold a public meeting jointly with the FRB, which was held on February 26, 2015, in Los Angeles, California.

VIII. Conditions of Approval

These approvals are subject to the following conditions:

1. Comprehensive Business Plan

(1) Within 120 days after the merger date, CITBNA shall submit a written Comprehensive Business Plan to the OCC for a prior written determination of no supervisory objection. The Comprehensive Business Plan shall cover at least a three year period and shall establish objectives for CITBNA's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line development, outsourcing, and market segments that the bank intends to promote or develop, together with strategies to achieve those objectives. The Comprehensive Business Plan, at a minimum, shall also include the following:

¹⁰³ In addition, it is the agency's practice to accept public comments after the close of the public comment period to the extent that doing so will not inappropriately delay action on a filing. The OCC received public comments well after the close of the extended public comment period, and considered all comments received, to the extent it was feasible.

- (a) A financial forecast, on a quarterly basis, for major balance sheet and income statement accounts, cash flow statements, specific earnings and profit goals, and desired financial ratios over the period covered by the Comprehensive Business Plan;
- (b) A capital plan that provides for the maintenance of CITBNA's capital;
- (c) A funding plan that establishes policies and limits for CITBNA's expected sources of funding and a contingency funding plan that identifies alternative funding sources and strategies for their implementation;
- (d) The types and volumes of lending activities in which CITBNA plans to engage and reference to credit policies and procedures to address all aspects of credit underwriting, credit administration, and loan portfolio management for such lending activities; and
- (e) An action plan to accomplish identified strategic goals and objectives, including target dates and an identification of processes, personnel, and control systems to monitor implementation of and adherence to the Comprehensive Business Plan.

(2) Once CITBNA receives the prior written determination of no supervisory objection from the OCC required by paragraph (1), CITBNA shall adopt, implement, and thereafter adhere to the Comprehensive Business Plan.

(3) CITBNA shall not make a material change to or significantly deviate from the Comprehensive Business Plan unless CITBNA has first given the OCC at least 60 days prior written notice of its intent to do so, and obtained the OCC's prior written determination of no supervisory objection to such action. CITBNA's request for prior written determination of no supervisory objection to a material change or significant deviation shall include, at a minimum: (a) an assessment of the adequacy of CITBNA's management, staffing levels, organizational structure, financial condition, capital adequacy, funding sources, management information systems, internal controls, and written policies and procedures with respect to the proposed material change or significant deviation and (b) CITBNA's evaluation of its capability to identify, measure, monitor, and control the risks associated with the proposed material change or significant deviation.

(4) Once CITBNA receives prior written determination of no supervisory objection from the OCC for a material change to or significant deviation from the Comprehensive Business Plan, CITBNA shall revise the Comprehensive Business Plan to reflect the deviation or change and CITBNA shall implement and thereafter adhere to the revised Comprehensive Business Plan. If, after receiving prior written determination of no supervisory objection from the OCC for a material change to or significant deviation from its Comprehensive Business Plan, CITBNA decides not to make such change or deviation, CITBNA shall provide the OCC with timely written notice of its decision.

(5) For purposes of this condition, material changes to or significant deviations from the Comprehensive Business Plan include, but are not limited to, any material changes or significant deviations consistent with the description provided in Appendix G (Significant Deviations After Opening) of the “Charters” booklet of the *Comptroller's Licensing Manual* (February 2009).

(6) Within 45 days after the end of each calendar quarter, CITBNA shall notify the OCC of any variance of 10 percent or more in actual quarterly revenues, expenses, profits or loss, or capital ratios compared to the financial projections set out in the most recent Comprehensive Business Plan for which CITBNA has received prior written determination of no supervisory objection from the OCC and indicate what changes, if any, to the Comprehensive Business Plan are contemplated as a result of the variance.

(7) The Board shall ensure that CITBNA has processes, personnel, and control systems to ensure implementation of and adherence to the Comprehensive Business Plan. CITBNA shall not operate or conduct business in a manner inconsistent with the most recent Comprehensive Business Plan that has received prior written determination of supervisory non-objection from the OCC.

(8) The Board shall ensure that CITBNA has senior executive officers and other management with sufficient experience and expertise to implement the Comprehensive Business Plan in a safe and sound manner. CITBNA shall not commence offering a product or service included in the Comprehensive Business Plan until CITBNA has appropriate management, staffing, systems, and risk controls fully in place for the product or service. CITBNA shall not commence offering a new product or service not included in the Comprehensive Business Plan until CITBNA has complied with paragraphs (3) and (4) and CITBNA has appropriate management, staffing, systems, and risk controls fully in place for the new product or service.

(9) The Board shall ensure that performance under the Comprehensive Business Plan is reviewed yearly. For three years following the merger date, CITBNA shall submit to the OCC within 45 days after the end of each calendar quarter, a business plan variance report detailing CITBNA’s compliance with the Comprehensive Business Plan and an explanation of any material variances.

(10) The Board shall ensure that the Comprehensive Business Plan is updated annually, no later than the end of the month of March each year, to cover the next three year period. CITBNA shall submit the updated annual financial projections included in the Comprehensive Business Plan under paragraph (1)(a) above to the OCC within 10 days of completion. If there is no material change to the Comprehensive Business Plan in the annual update other than the updated financial projections, CITBNA shall so certify to the OCC within 10 days of the Board’s review and update. If CITBNA proposes a material change to the Comprehensive Business Plan in the annual update, CITBNA shall submit the amended Comprehensive Business Plan to the OCC for review and supervisory non-objection and shall not implement any proposed material change until it has received prior written determination of no supervisory objection from the OCC.

2. CRA Plan

(1) CITBNA shall revise the CITBNA Plan and submit the revised CRA plan to the OCC for review and written determination of no supervisory objection within 90 days of this letter. CITBNA's revised CRA plan must comply with the following:

- (a) The revised CRA plan must 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:
 - i. Affordable multifamily housing lending and investment in LMI geographies and to benefit LMI individuals; and
 - ii. Small business lending in LMI geographies.¹⁰⁴
- (b) The revised CRA plan must include the creation and implementation of a product development committee that will focus on developing and implementing products that will meet the convenience and needs of the communities it serves, including LMI communities.
- (c) The revised CRA plan must 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.¹⁰⁵
- (d) In developing the revised CRA plan, CITBNA shall informally seek input from members of the public in its AAs impacted by the revised CRA plan.
- (e) The revised CRA plan must contain measurable annual goals and timetables for the achievement of those goals, for helping to meet the credit needs of CITBNA's AAs, including the credit needs of LMI individuals and geographies within the AAs.
- (f) The revised CRA plan shall specify which Board committees are responsible for overseeing the bank's actions toward fully meeting the goals and timetables outlined in the revised CRA plan. In addition, the CRA plan shall specify the frequency of CITBNA's written progress reports to those Board committees, and provide copies of all such reports to the OCC within one month of the relevant Board or committee meeting.

¹⁰⁴ OWB provided descriptions of actions that it would take to enhance its small business lending activities, including lending to small businesses with revenues less than \$1 million, in its AAs in response to public comments, but these descriptions are not included in the current CITBNA Plan.

¹⁰⁵ The OCC encourages all types of delivery systems that help meet the needs of LMI geographies and LMI individuals and will consider any metrics or procedures CITBNA develops and provides to OCC examiners, so long as they serve the purpose of demonstrating the extent to which CITBNA's alternative delivery systems are available to, and effective in serving, LMI geographies or individuals.

CITBNA will also furnish to the OCC copies of the Board or committee minutes describing the consideration and discussion of each report and any additional measures the Board or committee directs to achieve full compliance with its obligations under the revised CRA plan.

- (g) The revised CRA plan shall be effective upon written determination of no supervisory objection by the OCC, and subsequently be made available on CITBNA's public Web site. The revised CRA plan will specify the frequency of progress reports to the OCC indicating the results of the bank's efforts to implement the plan.
- (h) CITBNA shall submit to the OCC, and make available on its public Web site, a CRA plan summary report that demonstrates the measurable results of the revised CRA plan a month prior to the commencement of the CITBNA CRA PE.

The OCC will factor CITBNA's measurable progress implementing the strategies and meeting the goals set forth in the revised CRA plan into CITBNA's CRA PEs and ratings.

These conditions of approval are conditions "imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

IX. Consummation Guidance and Conclusion

OCC Western District Office staff must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. Western District staff will issue a letter certifying consummation of the transaction when it receives:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved the transaction.
2. An executed merger agreement and, if appropriate, the Articles of Association for the resulting bank.
3. A Secretary's Certificate for each institution, certifying that shareholder approvals have been obtained, if required.

If the merger is not consummated within one year from the approval date, the approvals shall automatically terminate, unless the OCC grants an extension of the time period. Consummation must follow receipt of all other required regulatory approvals.

These approvals and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. These approvals

are based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind these approvals if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence and documents concerning this transaction should be directed to Senior Licensing Analyst David Finnegan at (720) 475-7650 or david.finnegan@occ.treas.gov.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing