Grovetta N. Gardineer

Senior Deputy Comptroller for Bank Supervision Policy

Keynote Remarks to the

2022 CRA & Fair Lending Colloquium

on Behalf of Acting Comptroller of the Currency Michel J. Hsu

November 14, 2022

Thank you, Tim, for inviting the OCC to give today's keynote address at this year's 2022 CRA and Fair Lending Colloquium, an event that covers important and pressing topics and brings together such a distinguished group. Acting Comptroller Hsu asked me to express his apologies for not being here because he was called to testify on the Hill, making it impossible for him to be here today with you.

I am honored to be here on behalf of Mike to open one of the leading gatherings globally of academics, officials, and practitioners focused on the Community Reinvestment Act (CRA), fair lending, and other important regulatory issues.

Dialogues like this among compliance practitioners, government officials, community organizations, and the private sector offer opportunities for us to come together and share insights and developments to advance our shared commitment to fair lending. That collective commitment to encouraging fair lending across the financial system is particularly critical in times of social and economic challenges like we are experiencing today.

While an eventful few years have passed since we were last able to meet in person, I would like to spend my time with you this morning highlighting several OCC priorities, emphasizing the OCC's ongoing efforts to ensure the financial institutions we regulate provide fair and equitable financial services.

The OCC was established in 1863. Since then, our mission has been consistent – To ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. Over time, the banking industry—and society at large—has evolved, at times rapidly as it is doing today. The OCC has continually adapted and responded to change and, particularly in times of uncertainty, remained focused on the solid foundation of our mission. That remains true today. As we set out in our recently released strategic plan for fiscal years 2023-2027 and in support of this mission, we are also focused on three strategic goals: (1) agility and learning; (2) credibility and trust; and (3) leadership in supervision. I want to focus this morning on these goals and how they offer a lens for the OCC strategically and operationally executing our commitment to fair lending.

We are committed to elevating fairness—to ensuring that the federal banking system provides fair access and treats customers fairly.

First and foremost, enforcement of the Fair Housing Act and Equal Credit Opportunity Act (ECOA) is critical to address discriminatory lending practices that create and exacerbate racial inequity in the financial system.

- When the OCC's fair lending examinations find evidence of a potential pattern or practice of discrimination, the OCC makes referrals to the Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD), as required by law.
- In addition to this referral process, we are focused on taking timely and consistent actions on fair lending violations, including whether to take actions simultaneously with the DOJ, when warranted in individual cases.

We also champion efforts to modernize and update processes and operations. For instance, we are enhancing our risk-based supervisory approach in several ways.

- Recognizing our strategic goal for "agility and learning," especially within today's fluid risk landscape, we routinely review and update our annual risk-based processes for screening bank home mortgage lending activities to ensure our focus is on banks with higher fair lending risk. This will allow us to better deploy resources and identify weaknesses and potential discriminatory practices. For example, after a 2018 internal process assessment, we substantially revised our annual screening approach to improve how we identify banks with high fair lending risk for targeted fair lending examinations. With these improvements to our supervisory process, we are more focused on higher risk activities as opposed to specific numbers of annual examinations.

- The OCC's fairness-focused process also includes conducting fair lending risk assessments during every supervisory cycle for each bank that engages in retail lending. We augment this risk assessment process with the enhanced annual screenings of data for all banks that are Home Mortgage Disclosure Act reporters. Based on what we learn from risk assessments and screenings, the OCC identifies banks and focal points for in-depth fair lending examinations.
- Consistent with our strategic goal for "agility and learning," we also have a framework in place to ensure that banks are following

fair lending rules as they incorporate advanced analytics, such as artificial intelligence or machine learning, into underwriting systems and fair lending risk management programs. OCC examiners conducting fair lending examinations involving bank systems or programs involving these types of advanced analytics are supported by legal and policy subject matter experts as well as economists in connection with the analysis and evaluation of model risk management practices.

- Throughout our modernization initiatives, we remain agile, working to strengthen our fair lending supervisory activities by enhancing the available tools, resources, and training to support compliance with fair lending laws. Recognizing the importance of transparency, the OCC makes many of those tools, resources, and training publicly available, and we know they are used widely by bankers and other stakeholders. For example,
  - the OCC is preparing to publish a comprehensive update to the Fair Lending Booklet of the Comptroller's Handbook

accompanied by training for examiners and the industry on the updates. Specifically, these activities include

    - making structural changes to the format to better align related materials; and
    - providing more instructional guidance for examiners.

- the OCC is also enhancing the technical support for its Fair Lending Risk Assessment Tool that examiners use and plans to make additional information about the tool available to OCC-supervised banks.
- we are also conducting a series of redlining webinars for examiners.
- in response to a recommendation included in a June 2022 U.S. Government Accountability Office report on our oversight of fair lending practices, the OCC is also creating a centralized tracking and monitoring system to collect and analyze information related to fair lending examinations.

Other Efforts to Reduce Inequality in Banking

Turning now to the OCC's strategic goal of credibility and trust. The changes to modernize and strengthen the effectiveness of our fair lending program are part of broader efforts to identify and address discriminatory lending practices in order to promote and reinforce fairness in the financial system.

As the Acting Comptroller has emphasized, persistent inequality can erode trust in banking because people who feel stuck or lack access to responsible or affordable financial products and services may conclude that the system is working against them rather than for them. The OCC has prioritized multiple efforts this past year aimed at reducing persistent economic inequality and growing trust in banking.

As you may be aware, the OCC is working jointly with the other federal banking agencies to modernize the CRA rules. We received hundreds of diverse, detailed, and thoughtful comments on the notice of proposed rulemaking. We continue to work closely with our interagency partners to carefully review and consider all the ideas and suggestions in those comments. Our shared goal remains to strengthen and modernize the CRA. We know the CRA has been a critical motivator for bank lending and investment to help meet the credit needs of low- and moderate-income individuals, families, and communities. The proposal seeks to build on and expand that historical effectiveness and integrate changes in the banking industry, including internet and mobile banking.

As part of our commitment to reducing inequality and addressing the racial wealth gap, the OCC has taken an active role on the Interagency Task Force on Property Appraisal and Valuation Equity, or PAVE, an initiative to evaluate the causes, extent, and consequences of appraisal bias. In March of this year, the thirteen member agencies and offices of the PAVE Task Force came together in an extraordinary interagency effort to issue the *Action Plan to Advance Property and Valuation Equity*. The Action Plan sets forth dozens of specific actions to be taken by identified agencies. The efforts of the PAVE Task Force hold the promise to be transformative in rooting out and remedying racial and ethnic bias in home valuations while also helping to restore trust in the federal banking system.

We recognize that discrimination in specific appraisals or discriminatory or biased appraisal practices can result in lending discrimination by banks that violate the Fair Housing Act or ECOA. So, while the OCC doesn’t directly supervise real estate appraisers, we have committed to help enhance federal oversight and effective monitoring for discrimination in appraisals and technology-based valuations of residential property within the scope of our authority. To this end, the OCC has committed to several important actions in the PAVE action plan. These actions include

- issuing frequently asked questions to provide better information and transparency to consumers regarding appraisal practices and requirements.
- issuing guidance regarding customers’ rights to request a reconsideration of value.

- strengthening coordination among supervisory and enforcement agencies to identify both safety and soundness and fair lending concerns that result from bias or discrimination in appraisals and other valuation processes.
- expanding regulatory agency examination procedures of mortgage lenders to include identification of patterns of appraisal bias.

The OCC is also in the process of developing and implementing other internal measures to enhance credibility and trust, including

- improving supervisory methods for identifying potential discrimination in property valuations,
- raising consumers' awareness of their rights regarding appraisals, and
- supporting research that may lead to new ways to address the undervaluation of housing in communities of color caused by decades of discrimination.

Along with our internal efforts directed at credibility and trust, the OCC continues to collaborate with our interagency colleagues.

One example is the joint effort to raise awareness of the availability and benefits of special purpose credit programs. This is a timely example that not everything of importance and value has to be new. These programs are a long-established innovation tool under ECOA and Regulation B and are a means for creditors to expand credit access for economically or socially disadvantaged consumers and commercial enterprises. Special purpose credit programs that are developed and documented in compliance with regulation permit the consideration of an otherwise prohibited basis such as race, national origin, or sex in order to address identified gaps in access to responsible credit under traditional standards.

After the Consumer Financial Protection Bureau and U.S. Department of Housing and Urban Development issued new and useful guidance, the

OCC and seven other federal agencies issued an interagency statement in February 2022 to remind creditors of their ability under ECOA and Regulation B to establish special purpose credit programs to meet the credit needs of specified classes of persons. We have also been providing training and guidance for our examiners, as well as outreach to the participants in several Project REACh (Roundtable for Economic Access and Change) workstreams—more on that later—to spread the understanding that with proper planning, development, and implementation, banks can use special purpose credit programs to help address the critical credit needs of underserved communities. This helps amplify trust in banking.

Addressing Fair Lending in Advanced Analytics.

As we consider opportunities to support efforts to modernize and update processes and operations, the growing use of advanced analytics such as artificial intelligence or machine learning offers both the opportunity to help reduce inequality and to address safety, soundness, and fairness risks. The possible scope of use cases is wide, including for retail loan underwriting and pricing, account management, and collateral valuation, as well as credit card and unsecured personal small business and auto lending. The OCC supports fair, ethical, responsible, and transparent adoption of advanced analytics, including artificial intelligence and machine learning, in the financial sector.

These applications can offer benefits, including opportunities to expand access to banking services that could help to reduce inequality and increase trust in the banking system. At the same time, they bring risks, primarily from failed or inadequate management of model risk. Failure to appropriately manage models' compliance risk can contribute to model biases and create adverse effects for consumers. So, appropriate oversight, expertise, and controls are critical to mitigate the risk of

- discrimination under the Fair Housing Act and Equal Credit Opportunity Act;

- unfair, deceptive, or abusive acts or practices (UDAAP) under the Dodd–Frank Act;
- unfair or deceptive acts or practices (UDAP) under the Federal Trade Commission Act (FTC Act); and
- privacy concerns.

Adding to these risk concerns, even when individual variables are not inherently biased, the complex interactions typical of some advanced analytics can lead to unintended effects or outcomes. Negative unintended outcomes can erode credibility, trust, and transparency. To control for this model risk, it is important for lenders to devote adequate and integrated technical and compliance expertise to develop and implement risk management, which may include

- suitable processes to make complex models understandable,
- change management and model governance that appropriately prioritizes fairness,

- sufficient third-party risk management, and
- independent validation of these processes and controls when warranted.

Reducing Barriers to Financial Inclusion

The OCC's unique initiative known as Project REACh is another way we are championing efforts to reduce inequality in banking. Through Project REACh, the OCC convenes leaders from banking, business, technology, community advocates and national civil rights organizations to reduce specific barriers that prevent full, equal, and fair participation in the nation's economy. Project REACh's work is divided into four national workstreams addressing (1) affordable homeownership, (2) inclusion for credit invisibles, (3) revitalization of minority depository institutions, and (4) access to capital for small and minority-owned businesses. We have made significant progress through Project REACh, and in July we celebrated the program's second anniversary with a national symposium that provided progress reports regarding each workstream. In addition to the success of the Project REACh national initiative, we've launched several local initiatives to focus efforts on individual communities, including Los Angeles, Dallas, Washington, D.C., Detroit, and Milwaukee.

I am further encouraged to see the administration and other agencies focusing on reducing structural barriers to financial inclusion. For example, in July, the White House announced a new coordinated effort to maximize federal dollars flowing into underserved communities, including communities of color, rural, and tribal communities.

Additionally, in 2020, Fannie Mae and Freddie Mac initiated efforts to evaluate new credit score models. For nearly 20 years, the government sponsored enterprises have relied on Classic FICO. Just last month, the Federal Housing Finance Agency announced the validation and approval of both the FICO 10T and the VantageScore 4.0 credit score models for use by Fannie Mae and Freddie Mac. After a multiyear transition period, lenders will be required to deliver loans with both scores when available.

The new models improve accuracy by capturing new payment histories for borrowers when available, such as rent, utilities, and telecom payments.

We are also seeing a focus on the benefits that can be achieved from these types of alternative data in the Project REACh work that OCC is leading on inclusion for credit invisibles. The manner in which these alternative data are used in relation to traditional data also can provide benefits. I am encouraged to see that some firms are exploring the use of certain alternative data for those applicants who would otherwise be denied credit, often called a “second look” program. Used in this fashion, second look programs may improve credit opportunities.

Looking ahead, I want to close by highlighting that the OCC is focused on strengthening our supervision processes and resources devoted to compliance with fair lending laws, while enhancing our ability to remain agile and successfully execute our mission to ensure that national banks and federal savings associations operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations. You can trust that we are laser focused on fair lending. It is simply not acceptable that redlining and other forms of lending discrimination continue in the year 2022 and beyond. As I like to remind everyone, a bank simply cannot truly be safe and sound if you are not treating your customers fairly.

I see Mr. Burniston has been collecting those cards from all of you with questions. I would be happy to answer as many questions as time permits. Tim?