

Congress of the United States

Washington, DC 20515

November 15, 2018

The Honorable Joseph M. Otting
Comptroller
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

VIA ELECTRONIC SUBMISSION: regs.comments@occ.treas.gov

**Re: Reforming the Community Reinvestment Act Regulatory Framework;
Docket ID OCC-2018-0008; RIN 1557-AE34**

Dear Comptroller Otting:

The undersigned Members of Congress serve on the House Committee on Financial Services and are part of the New Democrat Coalition, an organization of forward-thinking Democrats who are committed to pro-economic growth and pro-innovation policies supporting Main Street workers and entrepreneurs.

We recognize the Community Reinvestment Act's ("CRA") regulatory framework is due for modernization and we conceptually support the federal banking regulators undertaking a reform effort to update and improve consistency in CRA examination, crediting, and remedial standards. Nonetheless, we encourage the Office of the Comptroller of the Currency ("OCC") to incorporate the principles below to strengthen banks' affirmative obligation to meet the credit needs of their communities in a safe and sound way, including the needs of financial consumers and small business entrepreneurs located in low- and moderate-income ("LMI") communities.

Principles the OCC Should Incorporate

We believe the OCC's CRA modernization effort should: (A) provide clarity on CRA-qualifying activities without stifling innovation or diluting CRA's original LMI focus; (B) ensure CRA lending remains responsive to the credit needs of LMI communities and individuals; (C) make CRA's regulatory framework more inclusive of Internet-only business models while retaining the importance of branching patterns and branch services within CRA's regulatory framework; and (D) be finalized through interagency agreement.

A. Provide Clarity on CRA-Qualifying Activities Without Stifling Innovation

Before enactment in 1977, draft proposals of the Community Reinvestment Act included prescriptive standards for banks. Recognizing the importance of allowing banks enough space to identify new ways of meeting the needs of the communities they served, Congress opted for a more flexible regime. As noted by former Federal Reserve Chairman Ben S. Bernanke, the regulatory flexibility Congress allowed under the CRA "proved valuable in allowing the CRA to remain relevant despite rapid economic and financial change and widely differing economic circumstances among neighborhoods."

While we appreciate the OCC's effort to provide banks regulatory clarity under the CRA, the agency runs the risk of being overly prescriptive in its clarifications contrary to congressional intent. Qualitative factors including banks' responsiveness to their communities' specific needs are hard to determine in an entirely metric-based framework. Since the banking needs of communities can evolve with time, a purely metric-based approach to ratings can quickly become outdated, impeding the CRA's effectiveness. Furthermore, a purely numeric or quantitative framework could create the wrong incentives for banks, encouraging them to shift away from projects with high community impact merely because they would receive insufficient CRA credit. Accordingly, we encourage the clarity the OCC provides be flexible enough to adapt to continuously evolving economic conditions.

In addition to clarifying what lending and investment activities count toward CRA credit, the OCC has expressed its desire to "broaden the range of activities supporting community and economic development that qualify for CRA consideration." Since virtually any loan a bank makes can be argued to support community and economic development, any such broadening might dilute the CRA's LMI intent. This is also true for CRA investments and services.

Qualifying community development loans, investments, and services under CRA's regulations are currently broad and include a wide range of activities such as support for affordable housing projects and investments in organizations that promote economic development by financing small businesses.

Therefore, the OCC's goal in expanding qualified CRA activities beyond what is already broadly permitted should be clarified. We urge the OCC to ensure economic outcomes for LMI individuals and communities, as well as small businesses in those areas, remain at the center of the regulator's effort.

B. Ensure CRA Lending Remains Responsive to the Credit Needs of LMI Communities and Individuals

We conceptually support the OCC's stated objectives to "offer greater transparency regarding ratings" and to "promote a consistent interpretation of the CRA." We have all heard from stakeholders about the need to make the CRA examination process less subjective. Some stakeholders have also called for more real-time guidance on what qualifies for CRA credit. We believe all these concerns should be seriously considered. However, the OCC should also remain mindful of the importance of maintaining a regulatory framework encouraging banks to comply with the spirit of the CRA, and to go beyond what is considered satisfactory performance under the regulations. Other than the CRA's influence during a bank's expansion, the current CRA regulatory framework has little incentive for banks to go above and beyond. There should be some regulatory or financial benefits to encourage outstanding CRA compliance while also preserving the CRA's influence during the bank merger process.

The OCC should also keep in mind that ensuring CRA consistency can only be achieved on an interagency basis. The wide disparity in ratings among the federal banking regulators is a shortcoming of our current CRA regulatory framework. According to published data between

2014 and 2017, 17.5% of all ratings by the OCC were outstanding compared to only 6.3% at the Federal Deposit Insurance Corporation and 8.3% at the Federal Reserve. When one bank regulator gives out roughly three times the percentage of outstanding ratings as another regulator, this raises questions concerning the consistent interpretation of the CRA by the agencies.

C. Integrate New Business Models in the CRA's Regulatory Framework Without Weakening the Importance of Retail Bank Branching

We agree the financial services industry has transformed in such a way making CRA modernization critical in order to support Congress' intent. The removal of interstate banking restrictions and technological innovation create challenges for regulators looking to fairly determine a bank's community or Assessment Area. This problem is most pronounced when you consider branchless national banks unable to receive full CRA consideration for lending activity outside of areas where they are chartered, despite having a significant footprint elsewhere. In contrast, these branchless banks have limited CRA obligations to serve the credit needs of their larger footprint, even if much of their activity might qualify.

In response to this problem, the OCC should consider a regime where branchless banks may receive credit for LMI activity on a nationwide basis after regulators have determined these banks have adequately met the needs of their assessment areas.

More hybrid institutions with brick and mortar operations as well as significant Internet activity should probably be assessed based on both their physical locations and nationwide activity in a way that preserves the importance of their retail branch activities. Despite technological changes in the financial services industry, retail branching remains a key avenue for access to financial services for many communities, especially LMI communities, making its influence on the CRA's service test critical and important for the OCC to maintain in a meaningful way.

D. Modernize the CRA's Regulatory Framework on an Interagency Basis

We are disappointed the OCC moved forward with its advance notice of proposed rulemaking ("ANPR") without participation from its fellow banking regulatory agencies. Although the banking agencies have overlapping jurisdiction, they also have unique roles making each of their perspectives informative during any regulatory reform effort.

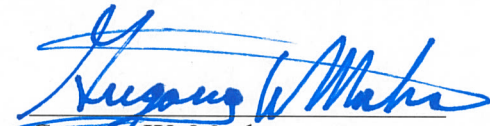
Fragmentation and inconsistency in financial services regulation remains a glaring problem, and the OCC's unilateral action only perpetuates this problem. To the extent one agency's regulations are less burdensome than another, the resultant unlevelled playing field is unfair to banks regulated by other agencies and potentially results in weaker efforts by some institutions to serve the credit needs of their communities. While we acknowledge the OCC indicated the ANPR does not close the door to future interagency rulemaking, we oppose further CRA rulemaking that does not include both the Federal Reserve and the FDIC since both agencies have responsibilities different from the OCC, making consensus even more important.

Final Thoughts

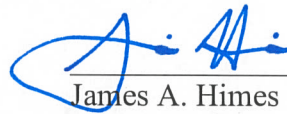
The CRA has had a positive impact on LMI communities as well as small businesses in its more than 40 years of existence, and any improvements to enhance the effectiveness of the CRA are welcome; however, a major overhaul of the CRA would be inappropriate. The OCC's reform effort should modernize and improve the CRA's regulatory framework consistent with the CRA's statutory purpose and the OCC's fair access and fair treatment mandates. We agree with Dr. Eric S. Belsky, the Director of the Federal Reserve's Division of Consumer and Community Affairs, that "the CRA is an important incentive to promoting economic growth through sustainable rental and homeownership opportunities in LMI communities" and we hope the current reform effort continues this critical focus.

We look forward to your response to this letter and our future dialogue with the OCC and its fellow federal banking regulators on the best path forward towards CRA regulatory modernization.

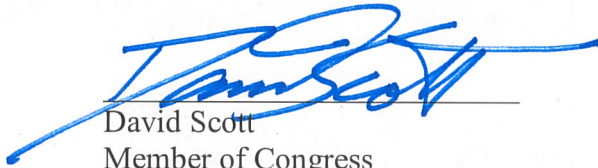
Sincerely,



Gregory W. Meeks
Member of Congress



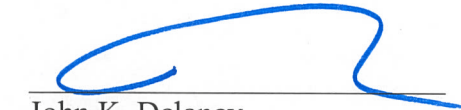
James A. Himes
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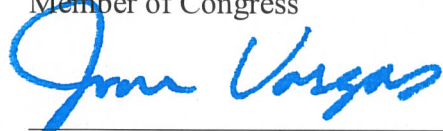
Bill Foster
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Charlie Crist
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Ed Perlmutter
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CC: The Hon. Jerome Powell, Chair of the Board of Governors of the Federal Reserve System
The Hon. Jelena McWilliams, Chair of the Federal Deposit Insurance Corporation