

# Congress of the United States

Washington, DC 20515

August 5, 2022

The Honorable Jerome Powell  
Chair  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551

The Honorable Martin J. Gruenberg  
Acting Chair  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

The Honorable Michael J. Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street, SW  
Washington, DC 20219

Dear Chair Powell, Acting Chair Gruenberg, and Acting Comptroller Hsu,

We are writing regarding the Notice of Proposed Rulemaking (NPRM) to strengthen and modernize regulations implementing the Community Reinvestment Act (CRA), which was issued by your three agencies on May 5, 2022.<sup>1</sup> As described in detail below, we strongly urge all three of your agencies to jointly seize this opportunity to update and strengthen the implementation of the CRA and finally end the discriminatory practice of redlining. Specifically, we recommend that you closely consider comments submitted by consumer, civil rights, and other community groups as well as minority depository institutions (MDIs) and community development financial institutions (CDFIs), and we further recommend that the final CRA rules ensure that: (1) CRA exams consider how bank services, lending, and investments impact communities of color as well as low-and-moderate income communities, (2) banks only get credit for making meaningful investments in communities, and (3) your agencies strengthen CRA exam standards and make grading more rigorous.

## **45 Years after Enactment of CRA, Modern-Day Redlining Persists**

The CRA was originally enacted into law to crack down on the shameful practice of redlining that persists today. Redlining is a practice by which banks discriminate against prospective customers based primarily on where they live, or their racial or ethnic background, instead of their creditworthiness.<sup>2</sup> Research from 2018 found that modern-day redlining persisted in 61 metro areas.<sup>3</sup> The analysis revealed that Black mortgage applicants were turned away at higher rates than Whites in 48 cities, Latinx in 25, Asians in nine and Native Americans in three, even when they shared the same qualifying characteristics as White applicants, including ratio between the applicant's loan amount and income, the amount of money they would borrow, and their income.<sup>4</sup> In another analysis from 2019, mortgage applicants of color were 40 to 80 percent more likely to be denied a mortgage than similarly qualified White applicants.<sup>5</sup>

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<sup>1</sup> FDIC, [Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations \(May 5, 2022\)](#); OCC, [Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations \(May 5, 2022\)](#); Federal Reserve Board, [Agencies issue joint proposal to strengthen and modernize Community Reinvestment Act Regulations \(May 5, 2022\)](#).

<sup>2</sup> See Aaron Glantz and Emmanuel Martinez, [Kept out: How banks block people of color from homeownership \(Feb. 2018\)](#); See also, Emmanuel Martinez and Lauren Kirchner, [How We Investigated Racial Disparities in Federal Mortgage Data \(Aug. 2020\)](#)

<sup>3</sup> See Reveal, [For people of color, banks are shutting the door to homeownership.](#) (Feb 15, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> The Markup, [Dozens of Mortgage Lenders Showed Significant Disparities. Here Are the Worst](#) (Aug. 2021).

The Financial Services Committee has held several hearings examining the CRA, receiving testimony that raised questions about the law’s effectiveness to curb redlining in the modern-day banking system.<sup>6</sup> In his testimony in 2019, journalist Aaron Glantz discussed his investigation into modern-day redlining, which found, “people of color were more likely to be denied a conventional mortgage than their white counterparts, even when they made the same amount of money, tried to borrow the same amount of money, and wanted to buy in the same neighborhood...” and “The law, we found, is full of loopholes that permit banks to evade the purpose of the law.”<sup>7</sup> In July 2022, Catherine Crosby, Board Chairperson of the National Community Reinvestment Coalition, testified that “studies have shown that communities of color identified as risky on redlining maps produced by the Home Owners Loan Corporation (HOLC) remain economically depressed and experience a higher incidence of adverse health outcomes.”<sup>8</sup>

### **Rescinding OCC’s Harmful Rule Paved Path to Interagency Proposal**

Unfortunately, Joseph Otting, the former Comptroller of the Currency appointed by then President Trump, used the need to update CRA rules as a pretext to advance his regressive ideas with a proposed rule to undermine the CRA. In response, every Democratic Member of the Committee and Senate Committee on Banking, Housing and Urban Affairs sent a letter in December 2019 expressing concern about the OCC’s proposed CRA rule (OCC’s proposal) and urging regulators to provide the public, Members of Congress, and all interested parties with adequate time to thoroughly review and offer input on proposed changes to the CRA framework.<sup>9</sup> That same month, a delegation of Committee members attended the FDIC’s Board meeting at which the board members, including then Comptroller Otting, voted to take the initial step of issuing OCC’s proposal without the support of the Federal Reserve, and thereby creating disparate approaches for banks to implement the CRA.<sup>10</sup>

In early 2020, the Committee held a series of hearings examining the OCC’s proposal, thoroughly exploring the harms it would pose to consumers and communities that continue to experience modern-day redlining.<sup>11</sup> On January 15, 2020, the Committee opened an investigation into potential astroturfing efforts influencing the OCC and FDIC’s CRA rulemaking, demanding the agencies explain efforts to ensure legitimacy of the rulemaking process.<sup>12</sup> In February 2020, those agencies agreed to extend the public comment period on the OCC’s proposal by 30 days.<sup>13</sup>

As the COVID-19 pandemic worsened in the U.S., on April 7 of that year, all Democratic Committee Members sent a letter to then Comptroller Otting and then FDIC Chair McWilliams urging them to suspend efforts to revise the CRA.<sup>14</sup> Ultimately, the FDIC chose not to advance the proposal further; but, then

<sup>6</sup> House Financial Services Committee (FSC), [The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#) (Apr. 9, 2019).

<sup>7</sup> FSC, [Testimony](#) of Aaron Glantz at the Consumer Protection and Financial Institutions Subcommittee hearing entitled “[The Community Reinvestment Act: Assessing the Law’s Impact on Discrimination and Redlining](#)” (Apr. 9, 2019).

<sup>8</sup> FSC, [Testimony](#) of Catherine Crosby at the Consumer Protection and Financial Institutions Subcommittee hearing entitled “[Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act](#)” (Apr. 9, 2019).

<sup>9</sup> FSC, [Waters, Brown, and Meeks Lead House and Senate Committee Democrats in Letter to Regulators on Proposed CRA Changes \(Dec. 2019\)](#).

<sup>10</sup> FSC, [Waters to Lead Trip with Committee Dems to Public FDIC Meeting on Proposed CRA Rule \(Dec. 12, 2019\)](#).

<sup>11</sup> FSC Consumer Protection and Financial Institutions Subcommittee, [The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting’s Proposal](#) (Jan. 14, 2020); FSC, [The Community Reinvestment Act: Is the OCC Undermining the Law’s Purpose and Intent?](#) (Jan. 29, 2020); FSC Oversight and Investigations Subcommittee, [Fake It Till They Make It: How Bad Actors Use Astroturfing to Manipulate Regulators, Disenfranchise Consumers and Subvert the Rulemaking Process](#) (Feb. 6, 2020); FSC Consumer Protection and Financial Institutions Subcommittee, [Modern-Day Redlining: the Burden on Underbanked and Excluded Communities in New York](#) (Mar. 6, 2020).

<sup>12</sup> FSC, [Waters Opens Investigation of Potential Astroturfing Efforts to Influence OCC and FDIC Community Reinvestment Act Rulemaking: Demands Agencies Explain Efforts to Ensure Legitimacy of Proposed CRA Rule \(Jan. 15, 2020\)](#).

<sup>13</sup> FSC, [Waters Wins Extension of Comment Period for CRA Rule](#) (Feb. 24, 2020).

<sup>14</sup> FSC, [Committee Democrats Call on Regulators to Suspend CRA and Other Rulemakings Unrelated to COVID-19](#) (Apr. 8, 2020).

Comptroller Otting moved ahead to unilaterally finalize his harmful proposal.<sup>15</sup> Soon after, House Financial Services Committee Chairwoman Maxine Waters and Rep. Gregory Meeks, then Chair of the Subcommittee on Consumer Protection and Financial Institutions, introduced a Congressional Review Act resolution to reverse the OCC's proposal.<sup>16</sup> In short order, the U.S. House of Representatives passed the resolution.<sup>17</sup> Later that year, the Federal Reserve issued an Advance Notice of Proposed Rulemaking to allow the public to provide feedback on an alternative approach.<sup>18</sup>

Given these developments, we applaud the OCC's decision in 2021 to officially rescind Mr. Otting's final rule that would have severely undermined the CRA.<sup>19</sup> Doing so paved the way to better interagency collaboration, which is critical to successful implementation of the CRA and is embodied by the May 2022 NPRM.

### **A Critical Moment to End Modern-Day Redlining**

We are heartened by your agencies' efforts to put forward a new proposal to modernize the CRA, which represents a once in a generation opportunity for federal bank regulators to end redlining and its present-day manifestations. The CRA became law in 1977 and the last time your agencies came together to reform CRA rules was in 1995, nearly three decades ago.

Significant changes in the financial marketplace have taken place since that time, including the types of loans and products banks offer, and how consumers access banking services. Banks also now account for *fewer* loans, financial services, and consumer assets as non-bank institutions grow in this sector.<sup>20</sup> Meanwhile, the overall number of banks has declined to less than 5,000 nationwide, down from more than 20,000 in 1977.<sup>21</sup> Branchless online banks and fintech lenders are also growing in this sector. In addition, banks' community development efforts have changed in response to growing trends in racial and economic inequality, increasing home prices, and a lack of affordable housing supply. Many of those changes have contributed to less effective CRA rules, which have made it too easy for banks to pass their CRA exams. In 2020, roughly 98% of banks consistently pass their CRA exams on an annual basis, receiving either the highest possible rating, "Outstanding," or the next highest rating, "Satisfactory."<sup>22</sup>

We appreciate that the recently issued interagency NPRM responds to many of those developments, considering a bank's loans and investments both near bank branches and ATMs, as well as those outside those facilities, including online. It also takes important steps to evaluate how meaningful a bank's lending and investments are, including additional data reporting requirements, especially for low-and moderate-income (LMI) communities. Furthermore, it makes strides towards rooting out discrimination by allowing for a downgrade to the bank's overall ratings for violations of consumer financial protection laws and other non-credit discrimination, including the Military Lending Act, Servicemembers Civil Relief Act, and the prohibition against unfair, deceptive, or abusive acts or practices.<sup>23</sup>

### **Recommended Changes to the NPRM**

<sup>15</sup> FSC, [Waters Blasts Otting's Departing Act to Weaken CRA During COVID-19 Pandemic](#) (May 20, 2020).

<sup>16</sup> FSC, [Waters and Meeks Introduce Congressional Review Act Resolution to Reverse Harmful Rule to Weaken the Community Reinvestment Act](#) (Jun. 11, 2020).

<sup>17</sup> FSC, [Waters' and Meeks' Resolution to Reverse the OCC's Harmful Rule Undermining the Community Reinvestment Act Passes the House](#) (Jun. 29, 2020).

<sup>18</sup> Fed, [Community Reinvestment Act - Advance Notice of Proposed Rulemaking](#) (Sep. 21, 2020).

<sup>19</sup> OCC, [Final Rule Community Reinvestment Act Regulations \(Dec. 21, 2021\)](#).

<sup>20</sup> Mark Willis, [Give Credit Where Credit Is Due: An Approach to Revamping CRA](#) (Aug. 2010).

<sup>21</sup> FDIC, [FDIC: Institution Directory \(Accessed May 25, 2022\)](#).

<sup>22</sup> NCRC, [Do CRA Ratings Reflect Differences In Performance: An Examination Using Federal Reserve Data \(May 2020\)](#).

<sup>23</sup> FDIC, [Community Reinvestment Act \(May 5, 2022\)](#).

We applaud your agencies' joint efforts to strengthen CRA rules, but, in order to truly end modern-day redlining, we urge your agencies to closely consider comments provided to you by consumer, civil rights, and other community groups, as well as MDIs and CDFIs, as you finalize the rulemaking.<sup>24</sup> Specifically, we recommend that CRA exams consider how bank services, lending, and investments impact communities of color as well as LMI communities. After all, the CRA's statutory purpose and history is to address both "persistent systemic inequity in the financial system for LMI and minority individuals and communities."<sup>25</sup> However, the NPRM does not explicitly consider race. Your agencies should look to advocates' recommendations and a recent legal analysis for considering race and ethnicity on CRA exams while still meeting the requirements of the Equal Protection Clause of the United States Constitution.<sup>26</sup>

Second, we recommend that rules encourage banks to do more than the bare minimum, and give banks credit for making meaningful investments in communities. Banks should not get credit for only donating money to a community-based organization or investing in a project already receiving a subsidy. Regulators must measure the impact of bank loans and investments, utilizing information from bank records and publicly available sources. Furthermore, regulators should facilitate meaningful public engagement on banks' CRA exams, including engagement on banks' current obligations and future CRA-eligible activities, loans, and investments based on this engagement with affected stakeholders. We also encourage you, as some experts have suggested,<sup>27</sup> to strengthen incentives in the CRA for banks to support equity creation in their communities, such as through the provision of scholarships and grants, so as not to ensure that banks do not rely solely on the lending to consumers who in many cases are already carrying unsustainable levels of debt.

Third, we recommend that your agencies strengthen CRA exam standards and make grading more rigorous. CRA exam standards should be reflective of banks' efforts to make progress towards ending modern-day redlining. Regulators have a responsibility to set high standards by which banks can fulfill their affirmative obligation to meet the credit needs of LMI communities. A passing grade for a bank should be based on high scores received on each component of the exam, with an emphasis on receiving credit for serving LMI communities and communities of color near bank branches, ATMs, and where banks do most of their lending. Your agencies should also ensure that fintech banks are providing services in a responsible manner, that benefits local communities, including low-income communities of color. Regulators should clarify that banks engaging in discrimination, exclusion, or displacement of low-income communities of color will not be tolerated and will result in a downgrade of the bank's CRA rating.

We appreciate your agencies' joint efforts to work together to advance a much-needed update to CRA rules. As you work to finalize the rule, we urge you to consider our recommendations as well as those from civil rights groups, consumer advocates, and other affected stakeholders. We look forward to receiving an update on your progress to respond to these and other recommendations as you work to finalize a strong CRA rule that will end modern-day redlining.

Sincerely,

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<sup>24</sup> NCRC, [Initial Analysis Of The CRA Notice Of Proposed Rulemaking](#) (Jun. 1, 2022); See also, [NCRC, Civil Rights, Fair Lending And Consumer Rights Organizations Urge A More Race-Conscious CRA](#) (Feb. 16, 2021); [Comment from the African American Alliance of CDFI CEOs](#) (Feb. 2021); [Comment from UnidosUS](#) (Feb. 2021); [Comment from Inclusiv](#) (Feb. 2021).

<sup>25</sup> 12 U.S.C. §§ 2903 and 2907.

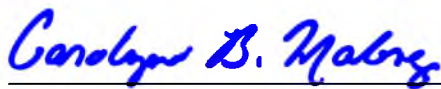
<sup>26</sup> NCRC, [Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal](#) (Sept. 16, 2021).

<sup>27</sup> For example, see Sheila Bair, [Low-income Americans need more wealth — not more debt](#), Yahoo! Finance (Jan. 24, 2020).



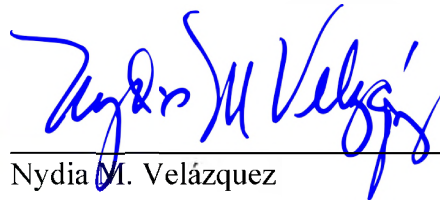
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Maxine Waters  
Chairwoman, Committee on  
Financial Services




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Carolyn B. Maloney  
Member of Congress



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Nydia M. Velázquez  
Member of Congress




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Brad Sherman  
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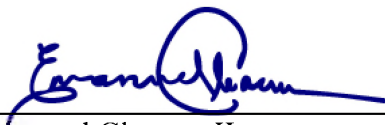
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David Scott  
Member of Congress



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Al Green  
Member of Congress  
Chair, Subcommittee on Oversight  
and Investigations



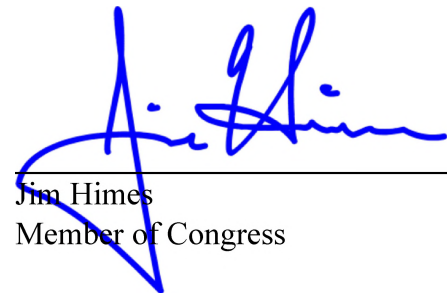
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Emanuel Cleaver, II  
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Jim Himes  
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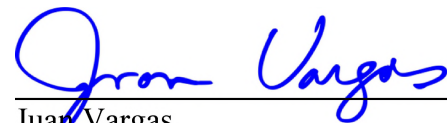
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Bill Foster  
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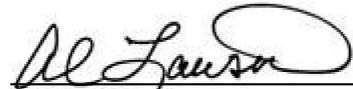
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Vicente Gonzalez  
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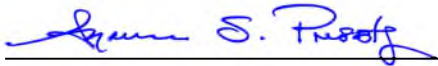
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Ayanna Pressley  
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Ritchie Torres  
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Alma S. Adams, Ph.D.  
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Rashida Tlaib  
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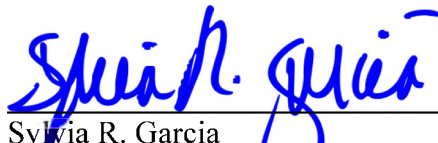
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Madeleine Dean  
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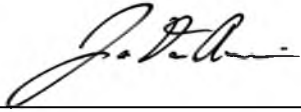
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Sylvia R. Garcia  
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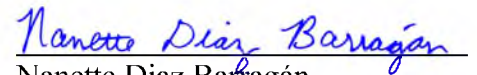
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Nanette Diaz Barragán  
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Karen Bass  
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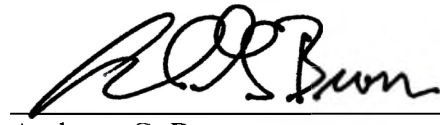
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Tony Cardenas  
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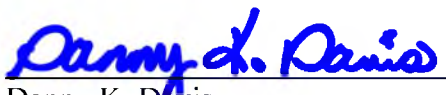
André Carson  
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Troy Carter  
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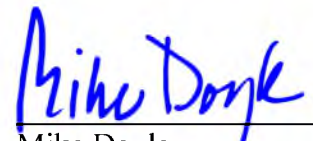
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Danny K. Davis  
Member of Congress



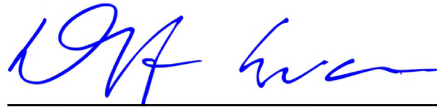
Mark DeSaulnier  
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Mike Doyle  
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Adriano Espaillat  
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Dwight Evans  
Member of Congress



John Garamendi  
Member of Congress



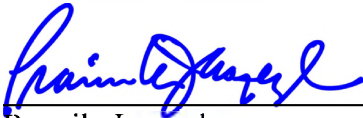
Jesús G. "Chuy" García  
Member of Congress



Raúl M. Grijalva  
Member of Congress



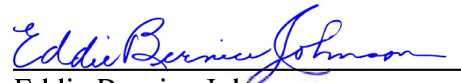
Sheri Jackson Lee  
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Pramila Jayapal  
Member of Congress



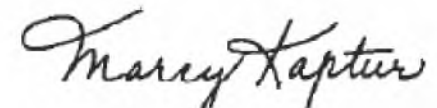
Hakeem Jeffries  
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Eddie Bernice Johnson  
Member of Congress



Henry C. "Hank" Johnson, Jr.  
Member of Congress



Marcy Kaptur  
Member of Congress



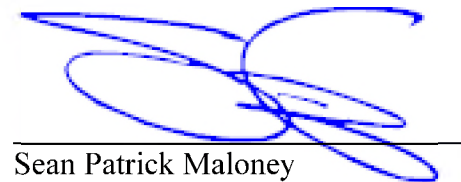
Robin L. Kelly  
Member of Congress



Brenda L. Lawrence  
Member of Congress



Barbara Lee  
Member of Congress

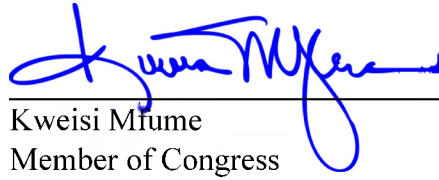


Sean Patrick Maloney  
Member of Congress





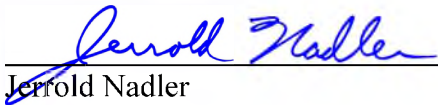
Grace Meng  
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Kweisi Mfume  
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Gwen S. Moore  
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Jerrold Nadler  
Member of Congress



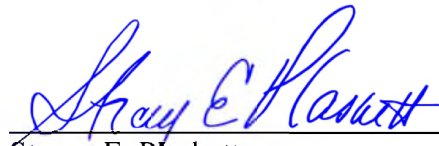
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Stacey E. Plaskett  
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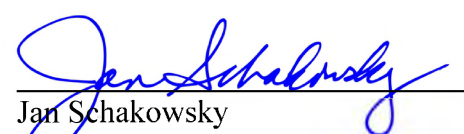
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Jan Schakowsky  
Member of Congress



Adam B. Schiff  
Member of Congress



Robert C. "Bobby" Scott  
Member of Congress



Adam Smith  
Member of Congress



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Dina Titus  
Member of Congress



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Frederica S. Wilson  
Member of Congress



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John Yarmuth  
Member of Congress

Cc: Patrick McHenry, Ranking Member, Committee on Financial Services