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MEMO

From: Kenneth H. Thomas, Ph.D.

To: Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Fed), and the Federal Deposit Insurance Corporation (FDIC)

Date: July 17, 2025

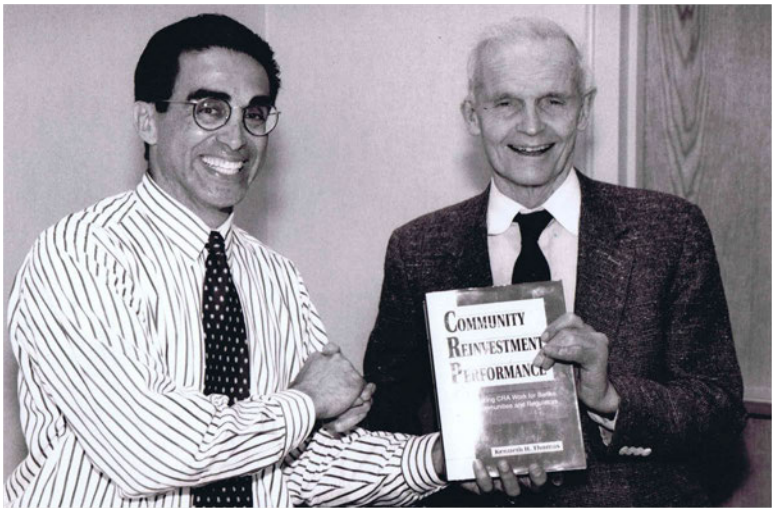
Re: **Comment on July 16, 2025 Notice of Proposed Rulemaking (NPR) on Joint Proposal to Rescind 2023 Community Reinvestment Act (CRA) Final Rule**

This is my formal comment on the July 16, 2025 NPR Joint Proposal by the OCC, Fed, and FDIC to rescind the Community Reinvestment Act (CRA) 2023 Final Rule. Before summarizing my comments, I will first review my relevant CRA reform background.

My comments represent my personal views and not those of any company, university, financial institution, or other organization with which I am or previously have been associated.

My Relevant Background on CRA Reform

My current and past expertise in CRA in general and its reform in particular are relevant to this comment. In short, I have spent the majority of my professional life since 1977 focused on the CRA. I was greatly honored to have known and spent time with former Senator William Proxmire, the "Father of CRA." The following photo was during one of our CRA reform discussions in 1995:



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I am proud of the fact that my first book on CRA, Community Reinvestment Performance (Probus Publishing, Chicago, 1993), received the only endorsement he ever gave to any CRA publication:

> *Dr. Thomas' book, Community Reinvestment Performance, is far and away the best analysis of government regulation that I have seen in any field. He spotlights the regulatory problems that continue in CRA and points out precisely how they are being overcome. CRA will benefit enormously from this superlative examination and report.*

As I have previously stated in numerous comments and published articles, Senator Proxmire closely followed the updating of the CRA regs in the early 1990s and was very familiar with and supported the final 1995 regs.

I have worked closely with numerous banks, community groups, and regulators on CRA since 1977, including training federal bank CRA examiners and doing considerable CRA *pro bono* work. Besides acting as a CRA consultant and being on the boards of various financial institutions, I am a cofounder and founder of two different CRA mutual funds devoted primarily to providing CRA qualified investments to benefit LMI areas and people.

I had the privilege of testifying before Congress and federal bank regulators several times on CRA and related bank regulatory and public policy issues. Many of the recommendations in my books, including various CRA exam procedures and tests, were directly implemented into the current 1995 regs, and more details in this regard are found in The CRA Handbook (McGraw Hill, New York, 1998) at www.CRAHandbook.com.

I was honored to receive the first "Award of Excellence" from the National Community Reinvestment Coalition (NCRC), along with Representative Joseph P. Kennedy and Comptroller Ludwig.

It is very important that we get CRA reform "right," which I define as being what Senator Proxmire intended. We got it right in 1995 when I worked with Comptroller Ludwig and his OCC staff on the last major reform of CRA, which Senator Proxmire supported, and that is my goal with this comment.

This comment contains several findings about the 2023 CRA Final Rule, most of which have been documented in six separate comments I made on August 5, 2022. This comment also summarizes several specific recommendations that the FDIC, Fed, and OCC should adopt to improve the 1995 regs and restore certainty in the CRA regulatory framework. These recommendations could be done with existing rule-making authority.

All of these recommendations have been made previously, except for the one regarding the need for DOGE to investigate how and why CRA became politicized resulting in a huge waste of taxpayer dollars, not to mention industry resources.

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The Politicization of CRA Must End

My American Banker article titled *"Will the CRA political football be kicked to the Supreme Court,"* documents the unfortunate politicization of CRA under both Presidents Trump and Biden.

CRA has long stood as a bipartisan pillar of financial regulation. But, like most everything today, it unfortunately became politicized. Born in 1977 from the vision of Senator Proxmire, CRA was rooted in a simple apolitical idea: banks that take federally-insured deposits from communities should reinvest in those same communities.

I once asked Senator Proxmire why he didn't call it the Anti-Redlining Act or something similar. He responded that the purpose of the law was to encourage banks to reinvest in the communities where they took deposits, hence CRA's middle name of "reinvestment."

In discussing the history of CRA's politicization, I often refer to the previously cited 1995 reform, which Senator Proxmire endorsed, as the "Proxmire CRA." It is simple and with a clear apolitical mission of encouraging responsible lending and investment.

The 1995 Proxmire CRA, in effect today, has worked fine with communities receiving approximately $500 billion annually, community groups obtaining $100 billion agreements with merging banks, and 98% of banks passing CRA exams.

Everything changed with the 2016 election of President Trump, who brought in bankers to run the Treasury Department and its OCC. Instead of addressing BSA, the #1 costliest compliance regulation, they decided to overhaul CRA, far down the list at #6, because their previous bank, One West, had serious community group CRA problems.

They justified their regulatory overreach by using the modernization argument as a Trojan Horse. Everyone agreed CRA should be updated to address the increasing impact of branchless banks, since they were engaging in modern-day redlining or what I called "weblining" of our big cities to the tune of about $40 billion annually.

The "Trump CRA," a 372-page Final Rule in 2020 under Comptroller Joseph Otting was a joint effort with support from the FDIC. However, the Fed, whose CRA efforts were being orchestrated by Vice Chair Lael Brainard, refused to join in the 2020 OCC/FDIC CRA Final Rule, signaling the ending of previous joint CRA regulatory efforts.

The 2020 OCC/FDIC CRA Final Rule was criticized by the increasingly politicized Fed and their community group friends who challenged it in a San Francisco federal district court.

Rather than join the OCC and FDIC in a unified framework, the Fed chose a different path, one that appeared more aligned with the then incoming Biden administration than with any longstanding regulatory norms.

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In September 2020, the Fed, led by Governor Lael Brainard in charge of CRA reform, issued its own unilateral Advance Notice of Proposed Rulemaking (ANPR), a move that splintered the previous regulatory consensus and laid the groundwork for a deeply politicized version of the law, namely the 2023 CRA Final Rule.

The 2020 Fed ANPR contained subjective metrics, vague definitions, and an expansive interpretation of "community" that distorted the law's original intent. My concern was spelled out in my 5/18/22 American Banker article titled "*Beware the Fed's heavy hand in proposed CRA reforms*."

When the Biden administration took office in 2021, the Fed's ANPR became the starting point for a new joint rulemaking process, but this time including the OCC, and FDIC. The result was the October 2023 CRA Final Rule, a sweeping politically based rewrite that went too far with bizarre Assessment Area concepts.

As expected, President Biden rescinded the Trump CRA and replaced it with the "Biden CRA," the 1,494-page 2023 CRA Final Rule. It was clearly the handiwork of Fed Ph.D. economists, the vast majority being registered Democrats. The 2023 CRA Final Rule was based on the September 2020 ANPR reform proposal, primarily developed by Lael Brainard, a Biden-appointed Fed Vice Chair who later headed the White House's National Economic Council under Biden.

In summary, both the Trump CRA and especially the Biden CRA abandoned the clarity and fairness of the 1995 Proxmire CRA, injecting unnecessary complexity and political ideology into what had been a nonpartisan practical compliance framework to prevent redlining.

The Two Previous Politicized CRA Final Rules Should be Investigated by DOGE as an Immense Waste of Government Resources, Not to Mention Costing the Industry Tens of Millions of Dollars

The Department of Government Efficiency (DOGE) should investigate the tens of millions of taxpayer dollars wasted by the three prudential federal regulators in the development, promotion, and legal defense of the politicized 2020 and 2023 CRA Final Rules.

The 2023 Final Rule, the Biden CRA, was the most convoluted and complicated banking regulation in the history of U.S. banking. The 2020 OCC/FDIC CRA Final Rule, the Trump CRA, at least addressed CRA modernization by adopting a variant of my 5% Deposit Reinvestment Rule (see below), but the 2023 CRA Final Rule did nothing to prevent weblining, modern day redlining, by branchless banks.

The 2023 CRA Final Rule imposed massive interpretive burdens on both regulators and financial institutions without advancing the central purpose of the CRA, community reinvestment. By failing to modernize CRA to address branchless banks, the 2023 CRA Final Rule perpetuated weblining.

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The 2023 CRA Final Rule consumed vast taxpayer and institutional resources with no material improvement to CRA compliance or outcomes. Worse yet, the regulators spent millions of legal dollars defending it in federal court.

Although the 2023 CRA Final Rule was clothed as an "interagency effort," it was primarily a Fed-driven effort engineered by former Vice Chair Lael Brainard beginning with the Fed's September 2020 ANPR as described above. During the Biden Administration, former Fed officials ran both Treasury and the OCC.

We must never forget the Fed's tortured CRA history, which includes its failed efforts to derail the establishment of CRA in 1977 and its repeated efforts to water down the 1993-1995 reform efforts spearheaded by the OCC, all of which is carefully documented in The CRA Handbook.

Just as the Fed under Chair Jay Powell will be remembered for making very serious monetary policy mistakes (e.g., "transitory" inflation), the 2023 CRA Final Rule will likely go down as one of the Fed's biggest regulatory mistakes.

This regulatory mistake, however, was incredibly costly and represented tens of millions of wasted taxpayer dollars that should be formally investigated by DOGE and the Fed's Inspector General (IG), in the same way the Fed IG is currently investigating the $2.5 billion Fed renovation effort.

The 2020 OCC/FDIC CRA Final Rule was likewise a regulatory mistake with substantial legal bills, but at least it had the redeeming quality of proposing a fix for weblining. By contrast, there were no redeeming features whatsoever in the 2023 CRA Final Rule.

The 2023 CRA Final Rule Was So Misguided that it Resulted in a Landmark Legal Case by the Industry Against Their Three Prudential Regulators, a First in American Banking

The 2023 CRA Final Rule was so unbalanced that for the first time in the history of American banking, all the major trade groups unified and instituted formal legal action against their three prudential federal regulators.

The idea that the banking industry would sue its own prudential regulators, as compared to the "lone wolf" CFPB, was revolutionary. This is because there is always the potential for regulatory retaliation by rogue regulators during compliance and safety and soundness exams of individual banks named in the litigation.

In addition to publishing multiple articles on this misguided 2023 CRA Final Rule and being the strongest advocate of the industry pursuing legal action, I filed my own Amicus Brief on 9/25/2024 in support of the industry Plaintiffs-Appellees. I was the only individual to file an Amicus Brief on either side of this case.

Following is the first page of my 33-page Amicus Brief in this case:

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No. 24-10367

United States Court of Appeals

for the

Fifth Circuit

TEXAS BANKERS ASSOCIATION; AMARILLO CHAMBER OF COMMERCE; AMERICAN BANKERS ASSOCATION; CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; LONGVIEW CHAMBER OF COMMERCE; INDEPENDENT COMMUNITY BANKERS OF AMERICA; INDEPENDENT BANKERS ASSOCIATION OF TEXAS,

Plaintiffs-Appellees,

– v. –

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM; JEROME POWELL in his official capacity as Chairman of the Board of Governors of the Federal Reserve System; FEDERAL DEPOSIT INSURANCE CORPORATION; MARTIN GRUENBERG in his official capacity as Chairman of the Federal Deposit Insurance Corporation; OFFICE OF THE COMPTROLLER OF THE CURRENCY; MICHAEL J. HSU in his official capacity as Acting Comptroller of the Currency,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS (AMARILLO)
NO. 2:24-CV-25

BRIEF FOR *AMICUS CURIAE* KENNETH H. THOMAS, PH.D. IN SUPPORT OF PLAINTIFFS-APPELLEES

OLIVIA KELMAN
LANETTE SUÁREZ MARTIN
ARIELLE STEPHENSON
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Washington, DC [redacted]

Attorneys for Amicus Curiae Kenneth H. Thomas, Ph.D.

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My Amicus Brief, identified as Document #100 in Case 24-10367 in the U.S. District Court for the Northern District of Texas, specifically argued:

- The CRA's Usage of the Phrase "Entire" to Modify "Community" Requires Banks to Serve All Income-Level Segments Within the Bank's Delineated Local Community, Not All Geographies in the Nation.

- The Final Rule Is Projected to Deflate Bank CRA Ratings and Implicates Significant Economic Matters Relating to Bank Business and Community Development Efforts.

- A Need to Modernize to Address a Subset of Online Banks Does Not Justify Overhauling the Existing Regulations with Overly Complex Rulemaking.

The level of banking industry opposition to the CRA Final Rule was unprecedented. The case, filed in Texas federal court, resulted in a preliminary injunction. Appealing regulators subsequently rescinded the Final Rule rather than proceed further in what most likely would have been a major defeat for the Fed and its tag-along regulators.

The withdrawing and rescission of the 2023 CRA Final Rule by the three regulators, including the Fed, was an extraordinary reversal, one that underscored how far the politicized agencies had drifted from the law's bipartisan roots.

There Was NEVER any Need for the Trump CRA or Biden CRA: The Current 1995 Regulations Only Needed to be Modernized with My 5% Deposit Reinvestment Rule to Prevent "Weblining" by Branchless Banks

Everyone, including the Treasury's April 2018 report titled "*Community Reinvestment Act Modernization Recommendations*" agreed that CRA needed to be modernized to reflect the growth of digital banking that led to what I have termed "weblining," modern day redlining by branchless banks.

Modernization of the Proxmire CRA simply meant updating or tuning it up to reflect the fact that credit card, fintech, internet and other branchless banks are weblining our big cities by at least $40 billion annually. This is because these banks are vacuuming up deposits around the nation by paying high rates on the World Wide Web without any required reinvestment, a form of digital redlining.

Senator William Proxmire passed the 1977 CRA to prevent redlining. This was the practice of banks harvesting deposits in communities but failing to reinvest in them, especially their low- and moderate-income neighborhoods, often communities of color.

Redlining has been around forever, and was even condoned by the government when it previously published maps circling "hazardous" neighborhoods that banks should avoid, including the inner city Detroit neighborhood where I was born.

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My research has determined that the explosion of branchless banks like credit card, fintech, and other internet institutions that pay above-market deposit rates on the web has resulted in more than $2 trillion of deposits, at least 10% of all bank deposits, coming mainly from our big cities.

Everyone, including Treasury, agreed that CRA must be modernized to account for digital banking. The best solution is my 5% Deposit Reinvestment Rule ("5% Rule"). It requires any bank taking 5% or more of its deposits from a market to proportionately reinvest the CRA benefits back into its *low- and moderate communities*.

Many large branch-based banks with outstanding CRA programs annually reinvest about 2% of their deposits in the form of community development loans, investments, and services in their sourced communities.

Branchless banks with traditional Facility-Based Assessment Areas for their home office, usually in an office building, however, have no such requirement regarding reinvesting in communities sourcing their deposits. Their CRA benefits mainly go to the three bank-friendly or "sanctuary" states of Delaware, South Dakota, and Utah and their largest cities, namely Wilmington, Sioux Falls, and Salt Lake City, respectively, where they have their legal headquarters.

This means branchless banks are weblining at least $40 billion of annual CRA benefits that should be reinvested in our big cities. Our largest New York market, which likely generates about 10% of all web-based deposits, receives virtually none of its deserved $4 billion in annual CRA benefits.

Can you think of another big city that needs this money more than NYC? Under the 5% Rule, similar to a "Robin Hood Rule," that $4 billion of annual CRA benefits would benefit New York's most distressed communities, although the internet deposits come from its richest ones.

Another 10% probably comes from the Houston and Dallas markets. Besides fairly benefiting the cities that sourced the deposits, this rule is consistent with the letter, intent (and middle name) of the Community Reinvestment Act.

During the drafting of the 2020 OCC/FDIC CRA Final Rule under the Trump administration, I was invited to meet with Comptroller Joseph Otting several times where I explained my 5% Rule. He agreed with the concept and adopted a variant of my 5% Rule in the 2020 OCC/FDIC CRA Final Rule by using Deposit-Based Assessment Areas. However, as previously noted, that Trump CRA was short lived, as it was replaced with the Biden CRA, the 2023 CRA Final Rule.

The 5% Rule was vigorously opposed by the politically powerful credit card, fintech and other branchless banks that disingenuously argued that they would be burdened by having to identify the source of their deposits. However, every banker knows the source of their deposits, often down to the Zip Code level. If not, they shouldn't be in banking.

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The well-financed opposition to the 5% Rule, including big branchless banks in Biden's home state of Delaware, convinced his administration to oppose it. Friendly Fed officials, including Biden appointees running Treasury and OCC, rescinded the Trump CRA with the 5% Rule and replaced it with their reform with perverse Loan-Based Assessment Areas, which did nothing to discourage weblining.

Fixing weblining, a critical structural inequity, should have been the primary objective of CRA reform. Unfortunately, huge credit card, internet, fintech, and other branchless banks have tremendous lobbying clout with Congress and the big bank trade groups. If the Fed was truly acting in the public interest with its 2023 CRA Final Rule, it would have taken on these powerful branchless banks and kept the 5% Rule.

Former OCC Comptroller Joseph Otting should be commended as the only regulator to take a stand on this critical weblining issue by proposing a variant of the 5% Rule with the Deposit-Based Assessment Area concept in his May 2020 OCC/FDIC CRA Final Rule.

Though imperfect, the 2020 OCC/FDIC CRA Final Rule represented an attempt to bring the CRA into the 21st century without abandoning its reinvestment mission. So, while both the Trump and Biden CRAs were regulatory mistakes of different degrees, at least the Trump CRA provided a critically needed fix for weblining.

It is within the current regulatory powers of the FDIC, Fed and OCC to modernize the 1995 regs by adopting the 5% Rule or a variant of it by using the Deposit-Based Assessment Area concept.

It is important to acknowledge, however, that the wealth, political power, and lobbying strength of large branchless banks, including credit card giants, internet, and fintech institutions, will continue to hinder any meaningful CRA modernization with the 5% Rule.

Because these huge politically powerful branchless institutions are often major financial backers of industry trade associations, whose fees are often based on the size of their members, they may dominate future regulatory debates unless carefully checked. The regulators must focus on promoting the interest of the taxpaying public rather than the private interests of the powerful branchless banks.

The current regs would also benefit from many of the best ideas in the rescinded 2020 OCC/FDIC CRA Final Rule such as a list of qualifying Community Development (CD) activities and a regulatory CD prequalification procedure. Also, CRA Public Files should be required to be posted on all bank websites.

The 5% Rule modernization fix with some generally accepted improvements can be called "CRA Reform Lite" as compared to the politicized Trump and Biden CRAs. CRA needs to be simply updated and tuned-up to reflect modern day banking, not totally overhauled as proposed in those previous reform efforts.

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Summary

First, regulators must recognize that CRA modernization as laid out in the 2018 Treasury report and elsewhere is necessary, but it must be rooted in transparency and objectivity. The 1995 "Proxmire CRA" framework, which was crafted with bipartisan input, was not perfect, but it has provided predictable guidance to banks and their served communities for 30 years. By contrast, politicized CRA reforms resulting in the Trump CRA and most especially the Biden CRA, triggered a cascade of division, confusion, and ultimately, failure.

Second, any CRA reform must be depoliticized. Senator Proxmire's anti-redlining law is too important to be sacrificed on the altar of partisan agendas. Regulatory unity, clarity, and respect for community needs rather than ideological overreach must guide any future reform.

Third, regulators know fully well now that any future efforts to politicize CRA will be quickly met with a strong legal challenge in federal court. The best way to avoid future legal challenges by community groups or the industry is simply to stay focused on the reinvestment intent of Senator Proxmire's law.

Fourth, regulators have the authority via formal guidance or a Q&A addressing branchless banks to prevent weblining by adopting the 5% Deposit Rule and Deposit-Based Assessment Area concept. It is a simple, logical and enforceable tool that aligns with CRA's core reinvestment principle: if a bank takes deposits from a community, it should give something back to its LMI neighborhoods. Also, there are some simple but generally accepted CRA reforms like the list of qualifying CD activities, a regulatory CD prequalification procedure, and the posting of the CRA Public File that should be immediately adopted.

Finally, DOGE and especially the Fed Inspector General should investigate the extent of government waste involved with previous CRA reform efforts to determine the total taxpayer cost involved, given the time, money, and litigation they generated without resulting in needed CRA modernization.

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