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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

December 14, 2018

Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

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

Dear Chairman Powell, Chairman McWilliams, and Comptroller Otting:

I write to better understand the status of the joint guidance on stress testing for banking organizations with total consolidated assets of more than \$10 billion issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the agencies) in May 2012 (2012 Guidance). The 2012 Guidance is applicable to all institutions supervised by the agencies with more than \$10 billion in total consolidated assets and establishes principles a banking organization should follow in conducting its stress testing activities.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was signed into law on May 24, 2018, and exempts financial companies with less than \$100 billion from all stress testing requirements immediately. Some have suggested that the agencies are requiring financial institutions with total assets between \$10 billion and \$100 billion to conduct stress tests because the 2012 Guidance is effective and takes priority over EGRRCPA. While the agencies have general supervisory authority over regulated institutions, EGRRCPA supersedes the 2012 Guidance and was clear in its instructions to the agencies that financial companies with less than \$100 billion are not to be subject to stress testing. I am

concerned with the possibility that some are seeking to undermine clear statutory mandates in EGRRCPA.

In addition, the 2012 Guidance cannot be enforced because it was never submitted to Congress as required under the Congressional Review Act. Under the Congressional Review Act, before a rule can take effect, the agency promulgating such rule must submit the rule to Congress and the Comptroller General in order to give Congress an opportunity to disapprove of the rule under an expedited procedure. The Congressional Review Act defines a "rule" as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." It is difficult to see how the 2012 Guidance is not a "rule" under the Congressional Review Act. For example, the eighteen page 2012 Guidance is "applicable" to all banking organizations supervised by the agencies and says "[a] banking organization should develop and implement an effective stress testing framework as part of its broader risk management and governance processes" before laying out a number of stress testing requirements.

I appreciate your prompt response to these concerns.

Sincerely,

A handwritten signature in blue ink that reads "Mike Crapo". The signature is fluid and cursive, with the first name "Mike" and last name "Crapo" clearly distinguishable.

Mike Crapo
Chairman