From: Rob Randhava
To: regs.comments@federalreserve.gov
Subject: Docket R-1723/ RIN 7100-AF94 (comments on Community Reinvestment Act ANPR)
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To Whom it May Concern:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 210 national advocacy groups, I am pleased to submit comments on the Federal Reserve Board's (Fed's) Advance Notice of Proposed Rulemaking (ANPR) on modernization of the Community Reinvestment Act (CRA). As an organization long devoted to supporting policies that undo the lasting damage of our nation's history of racial and ethnic discrimination, we appreciate the open and thoughtful process the Fed has utilized to date in updating the regulations that carry forth the intent of this profoundly important civil rights law, and we look forward to continued engagement.

The Leadership Conference joined as a cosigner of several comment letters submitted today by the National Community Reinvestment Coalition (NCRC), and we fully agree with the views contained therein. I am writing separately, however, to lift up a few key points that we deem particularly important as the Fed moves to its next round of the rulemaking process. We believe the ANPR represents an encouraging starting point for this process (and is certainly an improvement over the rulemaking adopted last year by the Comptroller). And it could not come at a more important time, given the terrible health and financial devastation that the COVID-19 crisis has wrought on formerly-redlined communities, with many questions about how those communities will recover. We would urge the Board to consider the following recommendations:

To decrease the likelihood of grade inflation, the Fed's grading system should encourage more distinctions in performance, not less.

Despite its merits, it remains unclear whether the Fed proposal would sufficiently address the longstanding problem of CRA "grade inflation." The Fed proposes improvements to its performance metrics, including those used on the lending test that compare the percentages of a bank's loans to LMI borrowers & communities to the percentages made by other banks. Yet we are concerned that the thresholds appear likely to reproduce the already high ratings on CRA exams that most banks routinely enjoy. Indeed, the Fed does not describe in sufficient detail how its initial thresholds would affect CRA ratings, and it hints that they would simply replicate the current distribution of CRA grades.

In addition, the ANPR proposes to reduce the number of ratings on a state level and on subtests from five to four. We are concerned that this would lead to fewer distinctions in how banks are living up to their obligations, rather than more, distinctions that are particularly important as communities that have been devastated by the COVID-19 crisis attempt to recover. We would urge the Fed to retain five ratings, and adopt a point scale that will reveal more distinctions in performance in order to supplement the overall ratings.

The Fed should strengthen the proposal's focus on lending to people and communities of color, including by explicitly including data on race in CRA exams.

It is evident from the overall proposal that the Fed recognizes the importance of addressing our nation's history of longstanding racial and ethnic discrimination. But we believe that the proposal could be made stronger by explicitly including race on CRA exams. We understand that regulatory agencies have been hesitant to take this step. But we believe that it is permissible under both the CRA statute and existing constitutional doctrine, and necessary as a matter of policy in order to truly fulfill the purposes of the law. Exams could include performance measures that assess lending, investing, location of branches, and provision of services as they apply to people and communities of color; the inclusion of racial and ethnic data in performance context analysis; and the affirmative inclusion of communities of color in CRA assessment areas. Proposed rules could also look at community development and investments in majority-minority census tract areas outside of assessment areas, in the same way as the proposal would do with respect to Indian Country and other underserved areas.

The CRA was enacted with the intent of helping to reverse many decades of explicit discrimination, redlining, and disinvestment. But using income and other proxies for race, in order to address that past discrimination, has only gone so far in producing results – and the economic fallout of the COVID crisis on communities of color is just the latest evidence of that. We believe the Fed is well-positioned to lead in taking on a bolder approach.

Assessment areas should be defined in ways that highlight local lending, investments, and services.

We are encouraged by the overall intent of the Fed to expand assessment areas for bank activity. These should not only cover areas around branches, but also areas outside of branches with significant amounts of lending or taking of deposits. We do not support, however, the Fed's inclination to create a national assessment area for internet banks. Instead, we would encourage such banks to be analyzed based on areas where high numbers of retail loans and deposits are made or located, consistent with longstanding principles of the law. Redlining is at its core a local problem, and must be looked at from a local perspective.

We are also encouraged by the proposed elimination of distinctions between full-scope and limited-scope assessment areas. Full-scope assessment areas, which are generally the largest cities, have typically counted more on CRA exams, to the disadvantage of smaller cities and rural areas, including communities of color, Native American people, and other underserved communities who live in those areas. We support eliminating this distinction.

Financial education efforts should carefully target low-income communities of color.

The Fed proposal represents a significant improvement over the Comptroller's proposal with respect to its emphasis on low- and moderate-income communities. However, the Fed has suggested that financial education efforts by banks could be expanded for clients of any income level. We would urge a more targeted approach. It is clear from FDIC data and elsewhere that LMI consumers and people of color are more likely than others to be unbanked or underbanked, and would benefit significantly more from such efforts than the population as a whole. We would urge the Fed to designate groups such as people of color, people with disabilities, older adults, and others who would benefit the most from financial education efforts (and other community development activities) for which banks would receive CRA credit. Similarly, the Fed should refine how it would award CRA credit for the financing of affordable housing that is not subsidized, so that the financing serves LMI people and communities who need it the most.

Improve the collection of community development and deposit data.

We urge the Fed to improve the collection of community development and deposit data by focusing on a census tract level, or at least on a county level, so that exams can better determine whether community development financing is targeting areas most in need.

Again, while we continue to have some concerns, we thank you for advancing this important proposal. We and our many member organizations look forward to further discussion and engagement around how to best fulfill the intent of this historic civil rights law. Please feel free to contact me at randhava@civilrights.org or (202) 466-6058 with any questions.

Sincerely,

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