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To Whom it May Concern:

On behalf of The Leadership Conference on Civil and Human Rights, I write in opposition to the proposed changes to the Community Reinvestment Act (CRA) regulations published on January 9, 2020. As FDIC Board member and former Chairman Martin Gruenberg stated in his dissent to the proposal, the FDIC's and OCC's Notice of Proposed Rulemaking (NPRM) on the Community Reinvestment Act (CRA) "is a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act." The proposed changes would reduce the public accountability of banks to serve low- and moderate-income communities, leading to fewer loans and investments to people who need them the most, and would contravene the purpose of this historic civil rights law.

The Leadership Conference on Civil and Human Rights is a coalition of more than 220 national organizations working to promote and protect the civil and human rights of all persons in the United States. Through advocacy and outreach to targeted constituencies, The Leadership Conference works toward the goal of a more open and just society – an America as good as its ideals. The Leadership Conference is a 501(c)(4) organization that engages in legislative advocacy. It was founded in 1950, and it has coordinated national lobbying efforts on behalf of every major civil rights law since 1957.

The Timing of this NPRM Comment Deadline Could not be Worse

This past Sunday, U.S. Surgeon General Jerome Adams made a dire prediction about what our nation will face this week as the fallout of the COVID-19 pandemic continues to grow, as the death toll nationwide continues to mount, as hospitals face more strain than ever, and as millions of workers remain sidelined: "This is going to be our Pearl Harbor moment, our 9/11 moment, only it's not going to be localized, it's going to be happening all over the country and I want America to understand that."

In a week when more people across the country and around the world are worried about their physical and financial health than they have ever been in their lifetimes, it is stunning that the FDIC and OCC are insisting that the public meet a completely arbitrary deadline for the filing of comments on major regulatory changes to one of the most important civil rights laws our nation has ever enacted. I sincerely hope that this letter finds the leadership and employees of both agencies, and their loved ones, safe from a novel and poorly-understood virus that has shut down our national economy and that the Trump administration just last week predicted could ultimately kill between 100,000 and 240,000 people in the United States alone. Yet the maintenance of this comment period's deadline during this time suggests that the priorities of both agencies are profoundly misplaced.

The Leadership Conference and the organizations we represent believe that at this time, our resources should be directed exclusively to helping the people most affected by the COVID-

19 pandemic. At this unprecedented time in our nation's history, we should all be directing every ounce of our energy to ensuring the safety and well-being of the people who are most vulnerable: the health care workers putting their lives at risk to save the lives of others, essential workers such as grocery store clerks and delivery personnel who are meeting our basic needs while we safely ride out this crisis at home, immigrant agricultural workers who are working to ensure our food supply is sustained, homeless people and low-income people with disabilities who do not have the same ability we have to shelter in place and stream Netflix day in and day out until this virus has been adequately contained. Our concerns as a civil rights organization are even greater in light of findings, released just yesterday and acknowledged by the Surgeon General, that African Americans are several times more likely to get sick and lose their lives to the virus than the rest of the population.

Similarly, I find it hard to believe that FDIC- and OCC-regulated institutions do not also have better things to do right now than drafting comments on a proposed rule that, even among them, has generated little enthusiasm. Banks are currently struggling to keep up with overwhelming demand for mortgage and credit card relief from individual consumers who are facing severe financial setbacks, they are busy trying to process brand new Paycheck Protection Program loan applications to provide a lifeline to at least some businesses and some portion of the nation's workforce, and are trying to get a handle on the long-term impact that this crisis will ultimately have on the nation's banking and housing sector. As you are aware, early last week, the Independent Community Bankers of America (ICBA) pleaded with all financial regulatory agencies to institute a delay on all non-COVID-19 rulemaking activity, noting that the time and resources of ICBA member institutions are "substantially strained at this time" and are, like our nation as a whole, "engaged in this all hands-on-deck reality."

In disregard of this reasonable request, the FDIC and OCC appear bent on diverting the resources of the financial industry and stakeholder organizations, and the public they serve, away from efforts to fight this pandemic in order to respond to unnecessary and harmful prospective changes to the Community Reinvestment Act. As such, with the comment period now set to close today, I submit the following views of The Leadership Conference in opposition to the proposed rule.

The Historical and Modern Importance of the CRA to the Communities we Represent

Before turning to an analysis of the proposed rule and why The Leadership Conference opposes it, I would like to provide some perspective on behalf of an organization that was involved in the enactment of the Community Reinvestment Act and has continued to weigh in on its implementation over the course of the past several decades.

While much has been made of the need to modernize the CRA, to make it more efficient and to get a better handle on what banks are doing to comply with the law, we fear that left out of the debate is what is really at stake here: this is one of the most important civil rights laws we have on our books, one that is not only meant to stop discrimination in the financial services industry but to also deal with effects that have been handed down through communities of color for generations.

Most people have some level of familiarity with the history of Jim Crow laws in the South. But not as many people are familiar with the use of "redlining" practices that were common for decades throughout our entire nation. Such practices have sometimes been referred to as the "Jim Crow of the North" – which is true, but such practices also amounted to the Jim Crow of the East, the West, and the South too. And just like Jim Crow laws, redlining policies were not just something that individuals did to deprive people of their civil rights. This was federal policy.

In the 1930s, the Home Owners' Loan Corporation (HOLC) and the Federal Housing Administration (FHA) started the use of color-coded maps of cities where majority-black neighborhoods were colored in red to signify that they were "hazardous" for purposes of making loans. HOLC created these maps for 239 cities around the country. There was one line in the FHA underwriting manual that said "incompatible racial groups should not be permitted to live in the same communities," and in one instance, the FHA wouldn't support a development in Detroit unless the builders put up a six-foot wall to keep residents of nearby black neighborhoods from even walking through. For decades, much of the industry went along – and when credit was available, it was far more expensive.

As a result, for decades, neighborhoods marked in green or blue saw home prices rise, and people there enjoyed all the benefits that went with it, but redlined neighborhoods became even more segregated and left the people there farther and farther behind. As a multi-issue civil rights organization, we see that legacy show up everywhere – in what kinds of jobs people can get, where they can go to school, the air they breathe, their health care, and how much they can pass on to their children.

The enactment of the Fair Housing Act of 1968 represented an important reversal in terms of federal policy. But it quickly became clear that the damage had already been done. It made it legal for people to live where they wanted to live, but too many families were already priced out of neighborhoods where they might have wanted to live. So in the 1970s, thanks in great part to a group of community activists in Chicago called National People's Action, we saw the enactment of a few more civil rights laws that built on the Fair Housing Act: the Equal Credit Opportunity Act of 1973, the Home Mortgage Disclosure Act of 1974, and finally the Community Reinvestment Act of 1977.

The CRA was championed by Sen. William Proxmire, and in the path to getting it enacted, he offered a few very simple propositions. One was that it would take a lot more than just federal money to revitalize cities. He said that we couldn't do it with a "Marshall plan" (i.e., the foreign aid we sent to Europe to rebuild after WWII) but we had to do it with the people who live there and who do business there. Another was the idea that if banks were enjoying public benefits like FDIC insurance and access to the Fed discount window, then it was only fair to ask them in turn to create public benefits to the people who need them the most. Finally, meeting such a responsibility did not have to involve excessive risk. Bankers just had to get out of the office and go find the opportunities that were there.

Since the enactment of the CRA, the results of the law's new responsibilities have been a net positive, but a lot more needs to be done. Some banks have had to be pushed very hard to rise up to the law – and organizations like the National Community Reinvestment Coalition have led the effort nationwide to get them to do just that. Other institutions have strived hard to take the law's responsibilities more seriously. Either way, a tremendous amount of investments have been made since the law's enactment – an estimated $1.7 trillion – and banks have more or less learned to live with it.

One problem with the law is that enforcement has been so weak that almost all banks get high ratings when they should be doing more. In 2007, a year before the full effects of the national mortgage crisis nearly brought down our economy, The Leadership Conference argued in a Senate Banking Committee hearing that weak CRA and Fair Housing Act enforcement was one of the things that was making it easy for predatory subprime lenders to do the damage they were still doing. After the onset of the crisis, we were stunned to hear some individuals try to blame it all on the CRA, for supposedly forcing banks to make loans to people who couldn't afford them, even though the overwhelming majority of subprime loans were made by non-bank lenders that weren't even subject to the CRA. While most policymakers

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have given up on that false narrative, the misperception about the CRA persists among many members of the public.

In the meantime, we were disturbed to learn early last year, from research by the Center for Investigative Reporting, that black and Latino borrowers are still being turned away at higher rates in a lot of areas, despite having good credit. The black homeownership rate is still about what it was when the Fair Housing Act was signed into law. And research from the National Community Reinvestment Coalition shows that about 3 quarters of redlined neighborhoods are still segregated. Other neighborhoods have gentrified, which of course presents its own concerns because of the displacement that tends to go along with it.

While there is indeed a need to modernize the Community Reinvestment Act, any reforms must do justice to the historical need for the law, and to the lasting legacy of discrimination that communities of color continue to face to this day. With that in mind, I turn to an analysis of the current proposed rulemaking.

Our Concerns with the NPRM's Weakening of the Community Reinvestment Act

The current proposed rule would significantly reduce the Community Reinvestment Act's focus on low- and moderate-income communities, contravening the intent of the law to address redlining in and disinvestment from formerly-redlined communities. It would do this in a number of troubling ways.

First, the definition of "affordable housing" would be relaxed to include middle-income housing in high-cost areas. In addition, the rule would treat rental housing as affordable housing if lower-income people could afford to pay the rent, without actually verifying that lower-income people will in fact become tenants.

Second, the rule would allow large infrastructure projects such as bridges to be treated as CRA-eligible activity, which would divert banks' attention from community development projects in communities of color that genuinely go to the spirit of the law. Even the financing of athletic stadiums in Opportunity Zones would be treated as eligible activity under the rule. The rule would also favor businesses and farms that have higher revenues, by lifting the thresholds for CRA-eligible activity from $1 million to $2 million for small businesses, and as high as $10 million for family farms. These changes would drastically dilute the emphasis of the CRA, as established in the 1995 regulatory changes to the law, on revitalizing LMI communities through the expansion of affordable housing, small business development, and community facilities.

Third, while the proposed rule recognizes the many changes in the banking industry that have occurred in recent years, such as the increased use of online banking, the NPRM's reforms to the geographical areas on CRA exams are problematic and would reduce transparency. The agencies propose to establish new areas subject to exams that are outside of branch networks, but where banks collect a significant amount of deposits. This is problematic because deposit data collected now does not include customer geographical locations when customers open accounts via the internet. Thus, neither the agencies nor the public can assess the impacts of this proposal by estimating the numbers of banks with new areas and what parts of the country would have increased attention. Moreover, the public will not have a fair chance to offer feedback on the effectiveness of significant proposed changes when their impacts will be harder to determine.

These changes are likely to divert attention from areas served by branches since the agencies propose to make it easier for banks to engage in CRA-qualified activities outside of areas with branches. Currently, banks can engage in community development activities beyond areas with branches only after satisfactorily serving them. Under the NPRM, there would be no such restriction, allowing banks to find the easier places anywhere in the country to engage in community development without first responding to needs in the communities with branches.

Fourth, the proposed rule would create a new evaluation system that would exacerbate the problem of already-inflated ratings, while decreasing the responsiveness of banks to local needs. Under the current regulations, 98% of banks already pass CRA exams, but the proposed rule would likely push this up to 100%. The proposed rule would establish an overly-simplistic "one ratio" measure that looks at the total dollar amount of CRA activities divided by an institution's deposits. This new standard would likely give banks an incentive to find the largest and easiest deals anywhere in the country, rather than to focusing on local needs, which are often best addressed with smaller-dollar financing for small businesses or homeowners. Since banks could fail in one half of the areas on their exams and still pass their CRA examinations, they will become more likely to seek large and easy deals rather than carefully tailor their activity to local needs.

Fifth, the proposed rule would retain a retail banking test that examines home, small business, and consumer lending activity to LMI borrowers and communities, but this retail test would be only pass-or-fail. This contrasts with a current retail test that now has ratings and which counts for much more of a bank's overall CRA rating. Moreover, the proposal would eliminate the service test that scrutinizes the existence of bank branches and provision of deposit accounts to LMI customers. Replacing this test would mean that branches in LMI areas would count for very little in the overall assessment, giving banks an incentive to close branches in areas that could and should benefit from their existence.

Sixth, the proposed rule would establish numerical targets under the one ratio exam for banks to reach in order to achieve Outstanding or Satisfactory ratings. Yet these targets are based on research that the agencies have not actually disclosed in the NPRM. This lack of disclosure makes it impossible for the public to provide truly informed feedback on whether the numerical targets would result in increased or decreased activity. It violates one of the basic premises of rulemaking, which is that the public should have a meaningful ability to assess the impact of a proposed rule on the communities that stand to be affected the most.

Seventh, the proposed rule would allow banks that receive Outstanding ratings to be subject to exams every five years, instead of the current two to three years. This extended period would signal a retreat from the duty of the FDIC and OCC to ensure that banks are continuing to respond to community needs throughout each assessment period. Instead, banks that become subject to a five-year exam cycle would be able to relax their efforts in the early years of the cycle and ramp them up towards the end, undermining the spirit of the CRA. Such institutions would also face less accountability in maintaining acceptable recent CRA performance when they seek permission to merge with other banks.

Eighth, under the proposed rule, small banks with assets of less than $500 million could opt to be assessed under their existing streamlined exams instead of under the new exams. The new exams would require banks to engage in community development financing, while the existing small bank exams do not. Meanwhile, a significant subset of these banks which are now required to engage in community development finance would not be required to continue to do so. The NPRM acknowledges that small banks may actually perform better on the new exams than their larger counterparts.

Instead of weakening the Community Reinvestment Act, the agencies should institute reforms that would truly increase bank activity in underserved neighborhoods and that carefully target people who have long been underserved. The proposed rule would fail to address persistent racial disparities in lending by strengthening fair lending reviews on CRA exams or by adding an examination of bank activity to communities of color. At the very least, the agencies could add a category on CRA exams of underserved census tracts (as measured by loans per capita), which would be highly likely to include communities of color. The agencies also require banks to collect more data on consumer lending and community development activities, and they should require banks to publicly release this data on a county or census tract level. Finally, the agencies should require the inclusion of bank mortgage company affiliates on exams, as many of them engaged in abusive lending in the runup to the 2008 financial crisis.

As currently written, this deeply flawed proposed rule would result in less activity targeting the communities most in need, and the ones that were the focus when Congress passed the Community Reinvestment Act in 1977. The current proposed changes – which would result in less of a focus on LMI people and communities, create an overly-simplistic single ratio, allow a bank to fail in one half of its areas, and reduce the importance of retail lending and bank branch placement in ratings – would further increase CRA grade inflation while at the same time leading a decrease in lending, investing, and bank services to LMI consumers and LMI communities. Rather than modernizing the CRA, the proposed rule represents a retreat from the law's obligations to ensure that banks are continually serving community needs.

In closing, it is difficult to believe that this proposed rule is only intended to improve and modernize the Community Reinvestment Act when it comes at the same time that other key civil rights laws related to housing and lending – the Fair Housing Act, the Home Mortgage Disclosure Act, and the Equal Credit Opportunity Act – are simultaneously being weakened by other agencies. The Department of Housing and Urban Development is actively considering two proposed rule changes that would significantly undermine the Fair Housing Act. One HUD proposal would make it harder for victims of discrimination to address patterns of discrimination where intent is lacking or cannot be proven, while another proposal would undermine the steps that states and localities have to proactively take to overcome the legacy of past housing discrimination. At the same time, the Consumer Financial Protection Bureau has weakened the Home Mortgage Disclosure Act, reducing the amount of data that would be gathered and disclosed, even though one of the clear lessons of the 2008 financial crisis was that there was a dire need for more information about what kinds of home loans were being made. And the enforcement of the Equal Credit Opportunity Act by the CFPB has fallen as well. In this context, the proposed changes to the Community Reinvestment Act are even more troubling, as they constitute part of a broader retreat from our nation's obligations to remedy its shameful history of racial and ethnic discrimination, the legacy of which continues be felt to this day.

I urge the FDIC and OCC to abandon this proposed rule, and instead work with the Federal Reserve Board to propose an interagency rule that will build on the progress already achieved under the CRA. Thank you for your consideration of our views.

Sincerely,

Rob Randhava
Senior Counsel