Texas
APPLESEED

April 8, 2020

Chair Jelena McWilliams
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Delivered electronically

Re: RIN 3064-AF22

Dear Chair McWilliams,

Texas Appleseed is a public interest justice center working to change unjust laws and policies that prevent Texans from realizing their full potential. Working with pro bono partners and collaborators, Texas Appleseed develops and advocates for innovative and practical solutions to complex issues. As part of its work, Texas Appleseed also conducts data-driven research to better understand inequities and identify solutions for concrete, lasting change. Texas Appleseed is part of a non-profit network of 17 justice centers in the United States and Mexico.

Through its Fair Financial Services Project and Fair Housing and Disaster Relief Project, Texas Appleseed is a state leader, advocating in support of fair housing, investment of disaster relief funds to address the needs of low and moderate income families, and fair market practices across many financial services areas, including payday and auto title lending, protections for victims of financial abuse, and in support of fair debt collection practices.

Our organization works with community-based organizations and direct service providers across Texas in support of local community development and financial well-being goals. Though we are not generally direct recipients of funding through Community Reinvestment Act (CRA) dollars, we see first-hand the positive impacts of CRA investments in communities across Texas. Some examples include:

- Supporting thousands of new affordable housing units for low and moderate income Texans;[1]

- Providing capital for an innovative CDFI small dollar loan product that has made $58 million in loans and saved borrowers over $42 million compared to the cost of a payday

[1] See, for example, outcomes for the Texas State Affordable Housing Corporation, which leverages CRA investments in support of affordable housing development: https://www.tsahc.org/donors-investors/cra.

or auto title loan—lending $400-$1,000 at an average APR of 21% instead of 200% to 500% APR, the average cost in the Texas market;[2] and

- Funding local data analyses examining issues of community concern, such as closing the racial wealth divide, strategies to stem harms of gentrification on communities of color and low and moderate income communities, and local strategies for promoting financial inclusion.[3]

CRA investments and services are most effective when they are developed in partnership with local low and moderate income communities and reflect local needs and priorities. The current system has led to meaningful investments in communities that were previously redlined and neglected by banks. However, the need for investment in low and moderate income communities continues to be great, and the legacy of disinvestment still hinders communities across Texas.

There is broad agreement that CRA is due for reform to better meet low and moderate community needs—in response to changes in technology and markets—but the current proposal is substantially lacking. The current proposal prioritizes predictability and streamlining at the expense of maximizing impact and responsiveness to community needs. Instead of seeking out a consensus approach among the three banking regulators, this proposal moves forward without the Federal Reserve, creating discord and undermining the goals of reform in the process.

We are also concerned that the OCC and FDIC proposal lacks transparent data. It puts forth standards for ratings and service areas[4] without providing data to demonstrate true community impacts of the changes.

These fundamental short-comings of the proposal are exacerbated by key components that will dilute the impact of CRA on low and moderate income communities:

1. The proposal provides certainty of CRA credit for a large range of activities without any required documentation of the scope of specific positive impacts or outcomes for low or moderate income communities. This unaccountable standard will dilute CRA investments

[2] See information about the Community Loan Center (CLC) of Texas: https://www.clcamerica.org/who-we-are. The CLC has now reached over 60,000 low-cost small dollar loans and continues to grow.

[3] See, for example, Austin and the State of Low- and Middle- Income Housing and Insights, Aspirations, and Action: Investing in Asset Building for San Antonio Families.

[4] For example, Subpart C—Assessment Area §25.08 (c) establishes a deposit-based assessment for banks that receive 50% or more of retail domestic deposits from areas outside of the facility-based assessment areas, for areas with 5% or more of deposits. There is no discussion of this standard, including how many banks it would cover or how many new assessment areas and the size of those areas based on the standard. There is no data presented to support this as something that would enhance service to low and moderate income communities in support of CRA goals. In addition, it is unclear how the thresholds presented for presumptive rating categories compare with the current CRA assessment categories or specific effects they would have on CRA activities, lending and investment in low and moderate income communities or the community-based impact of such thresholds. As the proposal states, "The agencies included specific empirical benchmarks for each rating category in the proposed rule that they **believe** would help achieve the positive outcomes intended by this rulemaking…" (emphasis by author) *Federal Register*, Vol.85, No.6 (January 9, 2020) at 1218.

and divert much-needed capital to high-dollar projects that have only marginal impacts on low and moderate income communities.

2. The "one ratio" approach and proposal of a satisfactory rating based on meeting the needs of just 50% of the assessment area combine to effectively expand red lining, allowing substantial credit for low-impact investments and enabling banks to opt out of serving the hardest to reach communities.

3. The proposal doubles credit for certain community development investments without providing any data analysis demonstrating that such a move would bring more money to needed investments. Our concern is that it would lead to a decrease in targeted investments. Instead of investing more, banks could simply make half the investments currently being made and receive the same level of credit.

4. The proposal diminishes the importance of meeting community-based needs identified through local input and comments and also diminishes the importance of maintaining branches in low and moderate income communities, which is well-established, even in the era of online and mobile banking,[5] as an important component of meeting a core goal of CRA, which is to counter the harmful legacy of redlining in communities of color and underserved communities.

Taken together, these fundamental flaws in the proposal risk turning the CRA into a tool that furthers the financial disenfranchisement of underserved communities, rather than meeting its purpose to mitigate years of disinvestment in low-income communities of color. The COVID-19 pandemic has laid bare the harmful impacts of decades of disinvestment on the health and resilience of disinvested communities. Too many people are paying with their lives. We need a CRA reform that increases the reach of investments to benefit those most in need.

In addition to these topline concerns, the data and information below highlight additional concerns with the proposal that, based on Texas Appleseed's work on economic mobility, consumer protection, housing, and disaster relief, are of particular concern.

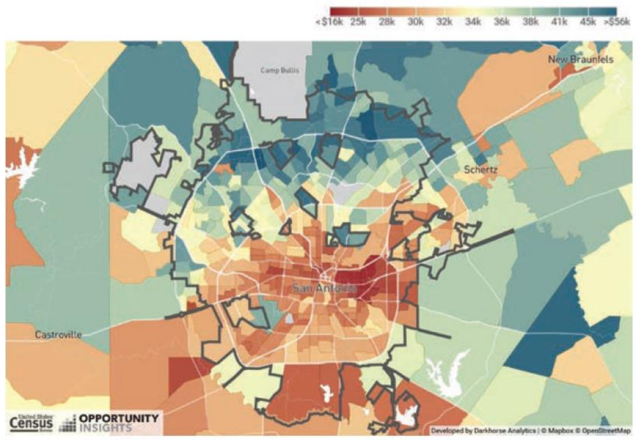
Economic Mobility and High-Cost Lending Data Emphasize Shortcomings in the CRA Reform Proposal

Through our work in Texas communities, we have documented significant local needs that the current proposal would do little to mitigate.

The legacy of red lining is one based in discrimination against Latino and African American families. The effects of redlining from a century ago continue to persist in communities across Texas, through documentation of concentrated poverty and limited economic mobility. For example, in a detailed analysis of asset building in San Antonio, we found that the same areas harmed by redlining continue to have some of the lowest economic mobility.

[5] William J. Bynum, Diana Elliot, and Edward Sivak, *Opening Mobility Pathways by Closing the Financial Services Gap*, US Partnership on Mobility from Poverty (February 2018).

Based on The Opportunity Atlas 2018 map, children born into the lowest income quartile, many in census tracts that were historically redlined, tend to remain low-income into adulthood, with a median annual income of $34,000. Many census tracts have average incomes of $16,000 or less for adults who were born to parents in poverty.[6]



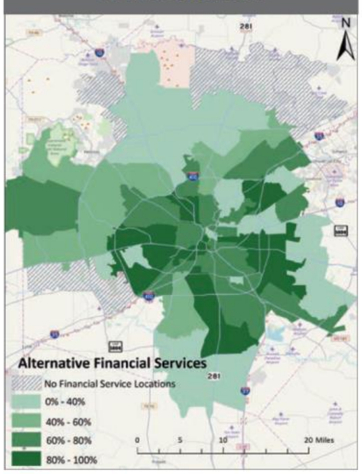
SAN ANTONIO HOUSEHOLD INCOME FOR ADULT CHILDREN OF LOW-INCOME PARENTS BY CENSUS TRACT

Source: Map downloaded from The Opportunity Atlas, 1/22/19. Available at https://www.opportunityatlas.org/.

Maps reproduced from: *Insights, Aspirations, and Action: Investing in Asset Building for San Antonio Families*, Asset Funders Network and Texas Appleseed at 9 (2019).

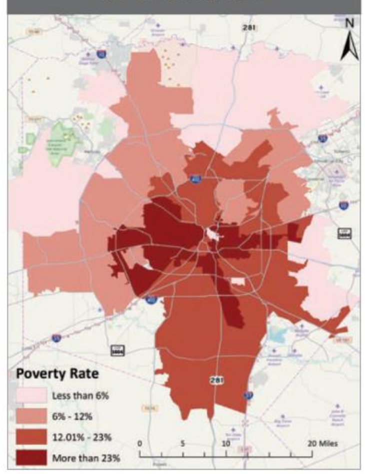
ZIP code-based maps of the show similar patterns for high poverty and for low access to mainstream financial services.

SAN ANTONIO PERCENT ALTERNATIVE FINANCIAL SERVICES BY ZIP CODE: 2018



Source: U.S. Census Bureau 2012-2016 American Community Survey 5-Year Estimates.

SAN ANTONIO FAMILIES BELOW POVERTY RATE BY ZIP CODE: 2016



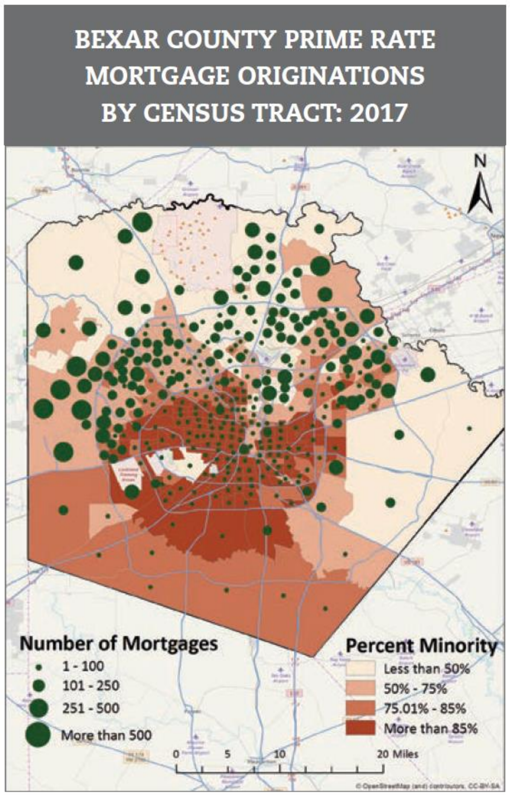
Source: U.S. Census Bureau 2012-2016 American Community Survey 5-Year Estimates.

Maps reproduced from: *Insights, Aspirations, and Action: Investing in Asset Building for San Antonio Families*, Asset Funders Network and Texas Appleseed at 13 (2019).

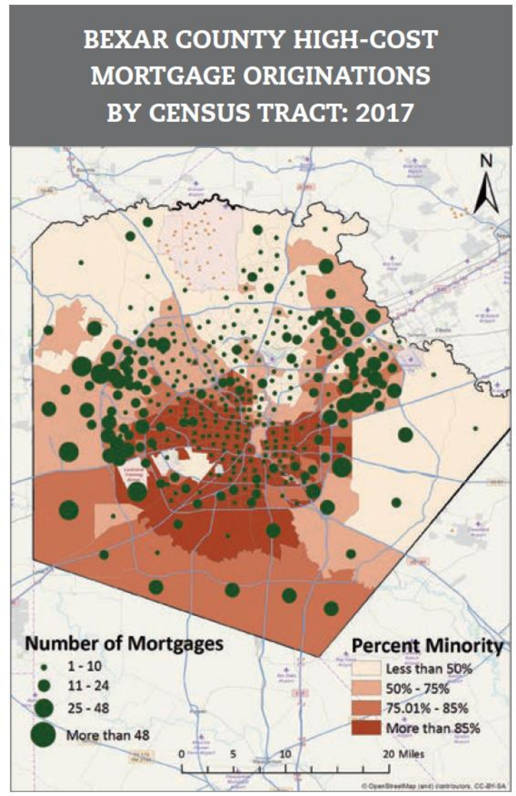
[6] The Opportunity Atlas for San Antonio, Texas, looking at adult household income for children with parents with household incomes in the 25th percentile. Accessed Jan.2, 2019.

The above maps highlight the connections among low economic mobility, high poverty, areas where the majority of financial services are extremely high-cost, including payday and auto title loan businesses, and where there is limited access to banking services. Those same areas have populations that are majority Latino.[7]

An analysis of prime and subprime home mortgage lending also supports the finding that communities of entrenched poverty and communities of color are being funneled into the highest cost financial services.



Source: 2017 Home Mortgage Disclosure Act Data for Bexar County.



Source: 2017 Home Mortgage Disclosure Act Data for Bexar County.

Maps reproduced from: *Insights, Aspirations, and Action: Investing in Asset Building for San Antonio Families,* Asset Funders Network and Texas Appleseed at 17 (2019).

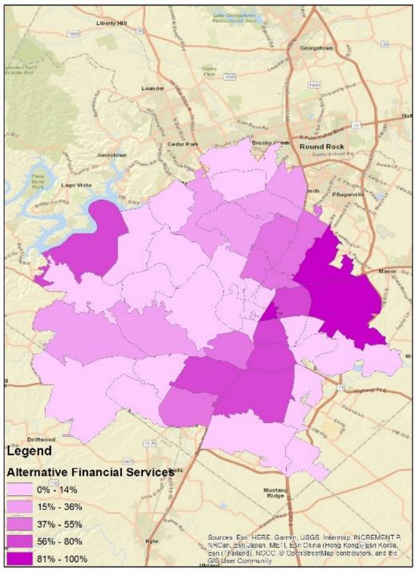
These maps show that prime rate mortgage lending is more concentrated in census tracts with lower proportions of people living in poverty and lower proportions of minority residents. High-cost mortgage lending is concentrated in census tracts with a higher percent minority residents and higher proportion of people living in poverty. Census tracts with 85% or higher minority residents included 31% of the county population, but just 14% of all mortgages originated. In those census tractions with a high proportion of minority residents, 19% of all mortgages were high-cost, compared to 9% in census tracts with minority residents making up less than 85% of

[7] *Insights, Aspirations, and Action: Investing in Asset Building for San Antonio Families,* Asset Funders Network and Texas Appleseed at 7 (2019).

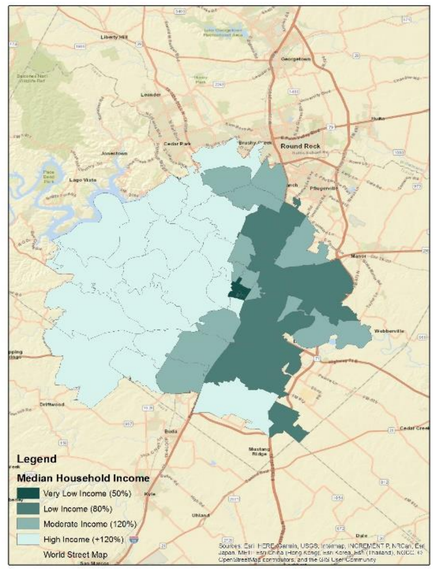
the total population. In census tracts where minority residents made up less than 50% of the population represented just 4% of all mortgages were high-cost mortgages.[8]

Similar patterns play out in other Texas communities. For example, in Austin, neighborhoods with high poverty rates and high rates of African American and Latino populations are also dominated by high-cost financial services and have fewer banking options.

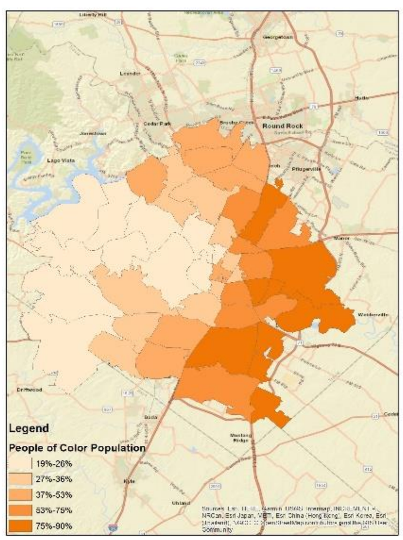
Concentration of High-Cost Financial Services by ZIP Code, Austin, TX 2018



Median Household Income by ZIP Code Austin, TX 2016



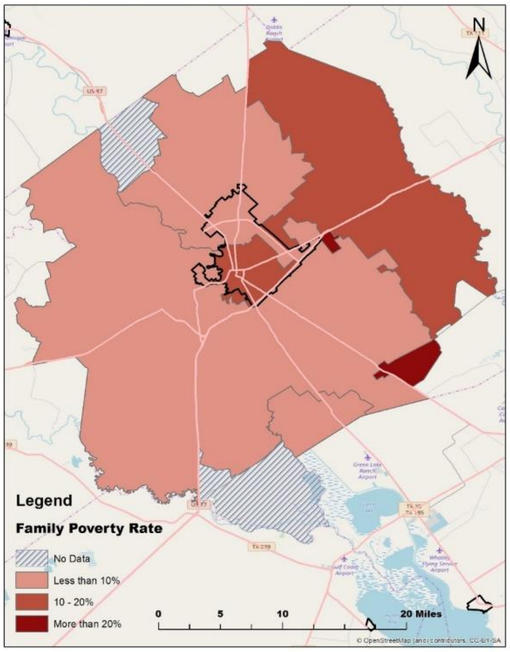
Percent of Population People of Color by ZIP Code Austin, TX 2016



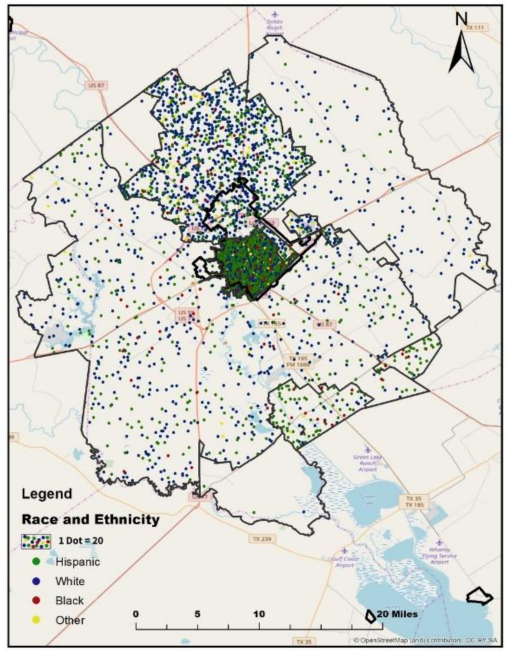
[8] 2017 Home Mortgage Disclosure Act Data, retrieved from https://www.consumerfinance.gov/data-reasearch/hmda/explore.

Similar patterns play out in smaller urban and rural areas. For example, in Victoria County, which includes one small urban area surrounded by rural communities, high-cost financial services are concentrated in the highest poverty ZIP code in the city, which is a ZIP code with the highest uninsured rates and the highest population of Latino individuals.

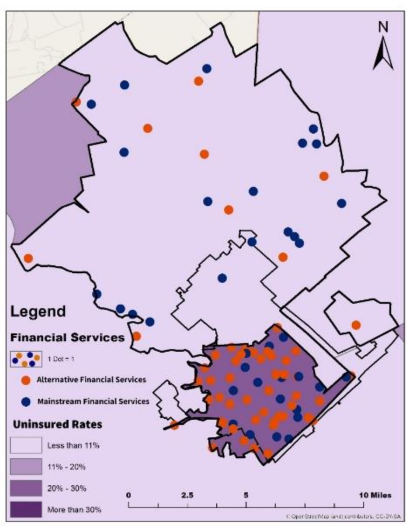
Family Poverty Rate by ZIP Code
Victoria County, 2016



Population Race and Ethnicity by ZIP Code
Victoria County, 2016



2018 Financial Services Locations Overlaid on
2016 Percent Uninsured Data by ZIP Code, Victoria



In the high-poverty, high-uninsured and predominantly Latino ZIP code within the city of Victoria, 72% of all financial services are alternative financial service providers, like payday and auto title lenders, while in the neighboring ZIP codes, with a higher White population and less poverty, the percentages are flipped, with banks and credit unions making up 68% of all financial service providers. Also of note, is that there are virtually no financial service providers in the more rural areas of the county.

This collection of maps demonstrates that areas of persistent poverty continue to face challenges accessing fair credit. The concentration of high-cost lenders and subprime mortgage loans in many of the same ZIP Codes are symptomatic of the drain of capital that takes place in so many struggling communities.

The current CRA reform proposal has potential to exacerbate the problems of access to fair credit in low and moderate income communities through a combination of factors:

- The heavy weight of the one-ratio approach incentivizes few high-dollar projects over multiple smaller initiatives that are responsive to specific community needs;

- The ability to receive a satisfactory rating on a CRA exam by meeting the needs of just 50% of the assessment areas means that the hardest to serve assessment areas will likely be left out;

- The diminished value in a CRA exam of maintaining bank branches in low and moderate income communities reduces incentives to better serve those communities; and

- The elimination of the large bank service test, the reduced importance of the retail lending test and allowing a bank to pass a CRA exam while failing the retail lending test in half of its service areas combine to limit incentives for banks to meet the financial services needs of low and moderate income communities.

A reform of CRA should focus on meeting the credit needs of low and moderate income people in all of a bank's service area in a manner that meets safety and soundness standards, including hard to serve areas. Meeting community needs includes investments that have real and demonstrated positive impacts for low and moderate income people and reach hard to serve areas of entrenched poverty. Reforms should also prioritize standards that incentivize serving the low dollar credit needs in underserved communities, like affordable small loans, including small dollar loans, low dollar home repair loans and low dollar mortgage loans. CRA should incentivize creative solutions, consistent with safety and soundness, to counter the market failures of predatory lending that permeate low and moderate income communities.

Disaster Recovery Experiences in Texas Highlight Concerns that the List of Approved Activities Related to Infrastructure and Housing Will Funnel Dollars Away from Low and Moderate Income Communities, and the COVID-19 Pandemic Demonstrates the Effect of Continued Disinvestment

The following pre-approved investments in the proposal would be particularly harmful, with the potential of diverting much needed capital away from projects that clearly and definitively meet the needs of low and moderate income communities:

In the area of affordable housing, we are particularly concerned about:

- Including "nationally occurring affordable housing" as an affordable housing criterion without regard for whether low and moderate income people actually benefit from the units, or whether those units are safe and habitable;[9]

- Including financial education and homebuyer counseling that benefits all income levels, diluting or eliminating the required focus on benefits to LMI individuals and areas;[10] and

- Including rental housing for middle income individuals in high-cost areas. Such housing is needed, but the affordable housing needs of low and moderate income individuals are even more desperate and harder to fund.[11] This housing is particularly critical for low-income families who have historically been excluded from high-cost areas because of redlining, lending discrimination, discriminatory zoning, and neighborhood opposition to affordable housing based on race, ethnicity, and familial status.[12] There is extensive research demonstrating that neighborhood has a significant impact on children's life outcomes including life expectancy, adult economic mobility, and educational achievement.[13]

With regard to infrastructure, we are particularly concerned about guaranteeing CRA credit for the following investments with no regard to the amount of services they offer to low and moderate income people:

- Including essential community facilities, such as schools and hospitals that benefit or serve LMI individuals, LMI census tracts or other targeted areas without regard for how much benefits is actually going to target communities;[14] and

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[9] *Federal Register,* Vol.85, No.6 (January 9, 2020) at 1211.

[10] *Id.* at 1212.

[11] *Id.* at 1211.

[12] *See, e.g.* Massey, Douglas and Denton, Nancy, *American Apartheid: Segregation and the Making of the Underclass*, Boston: Harvard University Press, 1998; Rothstein, Richard, *The Color of Law.* New York: Liveright Publishing Corporation, 2017; Katznelson, Ira, *When Affirmative Action Was White.* New York: W.W. Norton & Company, 2005; Loewen, James, *Sundown Towns: A Hidden Dimension of American Racism,* New York: Simon &Schuster, 2005; Sharkey, Patrick, *Stuck in Place; Urban Neighborhoods and the End of Progress toward Racial Equality,* Chicago: University of Chicago Press, 2013.

[13] Raj Chetty and Nathaniel Hendren, "The Impacts of Neighborhoods on Intergenerational Mobility", April 2015. Available: http://www.equality-of-opportunity.org/images/nbhds_exec_summary.pdf; Raj Chetty, Nathaniel Hendren, and Lawrence Katz, "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment", Harvard Univerity and NBER, August 2015. Available at: https://opportunityinsights.org/wp-content/uploads/2018/03/mto_paper.pdf *See, also:* Dolores Acevedo-Garcia, Clemens Nolke, and Nancy McArdle. *The Geography of Childhood Opportunity: Why Neighborhoods Matter for Equity, Findings from Child Opportunity Index 2.0,* January 2020. diversitydatakids.org.

[14] *Id.*

- Including infrastructure that benefits or serves LMI individuals, LMI census tracts, or other targeted areas without regard for how much benefit such projects are actually providing.

Permitting CRA credit for community-wide projects with no determined specific benefits for LMI communities dilutes limited CRA funds and diverts them from areas of greatest need for the target individuals and communities.[15]

For example, following Hurricane Dolly in 2008, the Lower Rio Grande Valley Development Council (LRGVDC) proposed a regional drainage project using Community Development Block Grant for Disaster Recovery (CDBG-DR) funds that would allow flood waters to drain more efficiently. However, the project would not have benefitted the lowest-income residents, who lived in colonias. Under this misguided CRA proposal, a bank investment in this proposed drainage project would have qualified as a CRA investment despite not being responsive to actual low-income community needs.

The community had to organize and fight to alter the project to ensure the infrastructure investment benefited LMI areas, illustrating the importance of community engagement and CRA investments that are responsive to direct LMI community needs.

Even though the full effects of the COVID-19 pandemic are not currently knowable, we already see the disproportionate effect on low and moderate income families and neighborhoods. We are seeing how segregation, discrimination, and historical disinvestment have rendered them more vulnerable to the disaster and, in turn, have rendered the entire country more vulnerable. In the United States, race and ethnicity are highly correlated with poverty, but also have an independent effect.[16]

- In neighborhoods most affected by particulate air emissions, which are linked to health conditions like asthma that make people more vulnerable to COVID-19, Americans with incomes below the poverty line had a health burden 35% higher than the overall population and Black Americans had a health burden 54% higher than the overall population.[17]

- The 2008 foreclosure crisis—which has enduring impacts that even today serve to reduce housing stability at a time when people most need to stay at home—had a

[15] *Id.*

[16] The poverty rate is 9% for white Americans, 22% for Black Americans, 19% for Americans of Hispanic/Latinx origin, 11% for AAPI Americans, and 24% for Native Americans. Kaiser Family Foundation estimates based on the Census Bureau's American Community Survey, 2008-2018. Available at: https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[17] Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, Jennifer Richmond-Bryant, "Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status", *American Journal of Public Health* 108, no. 4 (April 1, 2018): pp. 480-485.

disproportionate impact on communities of color.[18] Much of this effect was driven by banks deliberately targeting communities of color for predatory subprime loans, including targeting borrowers of color for subprime loans when they qualified for prime loans.[19]

- There is also a history of disinvestment and ongoing discrimination against Black-owned businesses in mainstream investment systems. Only 1% of Black business owners obtain loans in their founding year, compared to 7% of white business owners.[20] These businesses are less likely to survive the pandemic, and these communities will need targeted investment to ensure that they have access to services and commodities and that residents of the community become business owners.

- While self-isolation and social distancing are the most effective ways to stop the spread of COVID-19, millions of workers, often in low-wage positions like grocery store cashiers, caregivers and home health aides for the elderly and people with disabilities, and postal and delivery workers, have been deemed "essential" and cannot stay at home – nor can they afford to.[21]

Additional targeted investments in these low and moderate income communities, from health care infrastructure to homeownership, would have put them in a better position to survive COVID-19 and be more resilient to future disasters. Diluting the CRA will only ensure that the country is even less prepared for the next disaster, whether it's a financial collapse or a hurricane.

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[18] Bocian, Debbie, Gruenstein, Li, Wei, and Ernst, Keith S. (2010) *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*. Durham, NC: Center for Responsible Lending. http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and- ethnicity.pdf

[19] *See, e.g:* Jacob W. Faber (2013) Racial Dynamics of Subprime Mortgage Lending at the Peak, Housing Policy Debate, 23:2, 328-349, DOI: 10.1080/10511482.2013.771788; Justin P. Steil, Len Albright, Jacob S. Rugh, Douglas S. Massey. (2018) The social structure of mortgage discrimination. *Housing Studies* 33:5, pages 759-776; Manthos D. Delis, Panagiotis Papadopoulos. (2019) Mortgage Lending Discrimination Across the U.S.: New Methodology and New Evidence. *Journal of Financial Services Research* 56:3, pages 341-368; *and,*
Bocian, Debbie Gruenstein, Ernst, Keith S., and Li, Wei (2006) *Unfair Lending: The E ect of Race and Ethnicity on the Price of Subprime Mortgages*. Durham, NC: Center for Responsible Lending. http://www.responsiblelending.org/mortgage-lending/research-analysis/ unfair-lending-the-e ect-of-race-and-ethnicity-on-the-price-of-subprime-mortgages.html.

[20] Andre Perry, Jonanthan Rothwell, David Harshbarger, *Five Star Reviews, One Star Profits: The Devaluation of Business in Black Communities,* Brookings Insitute, January 2020, Available at: https://www.brookings.edu/research/five-star-reviews-one-star-profits-the-devaluation-of-businesses-in-black-communities/.

[21] *See, e.g.:* John Leland, "She Had to Choose: Her Epileptic Patient or Her 7-year-old Daughter", *New York Times,* March 22, 2020, Available at: https://www.nytimes.com/2020/03/22/nyregion/coronavirus-caregivers-nyc.htmlCharisse Jones and Josh Peter, "Despite coronavirus, millions of workers can't stay home. Are they safe?" *USA Today*, March 25, 2020, Available at: https://www.usatoday.com/story/money/2020/03/25/coronavirus-puts-retail-other-workers-out-front-but-they-safe/2906358001/; Abagail Hess, "Coronavirus highlights the inequality of who can – and can't – work from home." *CNBC* March 4, 2020. Available at: https://www.cnbc.com/2020/03/04/coronavirus-highlights-who-can-and-cant-work-from-home.html.

Investments to support affordable housing and infrastructure must be responsive to low and moderate income community needs and demonstrate defined benefits to low and moderate income individuals and areas. Full credit should not be attributed to projects that only partially or incidentally benefit low and moderate income communities. Based on our disaster recovery and affordable housing work in Texas, we see time and again efforts to divert infrastructure and housing funds that should be focused on individuals with low incomes to support general need projects. Low and moderate income communities need dollars specifically focused on their needs and diluting CRA will simply mean that these underinvested communities continue to be left behind.

Conclusion

Low and moderate income communities continue to experience underinvestment and have limited access to credit that builds financial well-being and resiliency. Any CRA reforms must continue to be focused on underserved low and moderate income people and communities and meet local credit needs. Reforms should also prioritize meeting the credit needs of reasonable assessment areas as well as areas of persistent poverty. Approaches to assessing performance under the CRA must include standards that ensure real impact and benefit for low and moderate income individuals and communities. The proposal, as it stands, does not meet these basic standards and instead could serve to further entrench the harmful legacy of redlining and disinvestment in low and moderate income communities.

Sincerely,

[redacted]

Ann Baddour
Director, Fair Financial Services Project
abaddour@texasappleseed.net

Madison Sloan
Director, Disaster Recover and Fair Housing Project
msloan@texasappleseed.net