California
Reinvestment
Coalition

August 4, 2022

OCC: https://www.regulations.gov/commenton/OCC-2022-0002-0001
FDIC Federal Deposit Insurance Corporation: comments@fdic.gov
Federal Reserve Board of Governors: regs.comments@federalreserve.gov

Re: California Reinvestment Coalition CRA NPR Comments – OPPOSE UNLESS AMENDED
OCC Docket ID OCC–2022–0002;
FDIC RIN 3064-AF81;
Federal Reserve Docket No. R-1769 and RIN 7100-AG29

To Whom It May Concern:

The California Reinvestment Coalition thanks the agencies for soliciting comments on a unified proposed Community Reinvestment Act (CRA) rule that seeks to retain key components of the CRA, modernize aspects where industry practices have outpaced the rules and strengthen the ability of the CRA to stabilize and revitalize communities. We genuinely appreciate the effort undertaken by the agencies to thoughtfully develop a complex and unified proposal, which is an improvement over the harmful CRA rule adopted and since rescinded by the Office of the Comptroller of the Currency.[1] At the same time, we cannot support or endorse this proposal in its current form.

This comment letter will be organized in the following manner:

I. A description of the California Reinvestment Coalition.
II. Three brief case studies that illustrate the disconnect between CRA goals and CRA implementation.
III. A list of 12 discreet enhancements the agencies can make to the final rule to fix CRA, to align the rules to the statute, and to better serve communities.
IV. A more thorough discussion of some of the many issues raised in the Notice of Proposed Rulemaking (NPR), organized around nine key themes. Where appropriate, we identify the questions raised in the NPR that we attempt to answer. Each discussion of a key theme will conclude with specific recommendations relating to that theme under the header "Fix CRA."
V. A repeat of the 12 key recommendations to highlight the specific steps we urge the regulators to take, at a minimum, to improve on this proposal.
VI. Appendices that expound on significant issues impacting California communities: displacement, broadband and digital equity, and investor property purchases.

[1] https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-61.html#:~:text=On%20December%2014%2C%202021%2C%20the,agencies%20in%201995%2C%20as%20amended.

California Reinvestment Coalition

I. CRC Description

The California Reinvestment Coalition works to build an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring banks and other corporations invest and conduct business in our communities in a just and equitable manner. We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement and have the tools necessary to build household and community wealth. CRC has submitted numerous comments on proposed CRA rules, CRA examinations and bank merger applications. In addition, CRC joined the National Community Reinvestment Coalition in challenging the OCC's ill-informed CRA rule.[2]

The CRA has been hugely impactful in providing credit, investments and financial services to underserved communities in California. In fact, the California Reinvestment Coalition, its members, and allies have negotiated approximately $90 Billion in loans, investments, and financial services for communities of color[3] and low-income communities in California over the last two years as part of Community Benefits Agreements (CBAs).[4] Yet as the below examples illustrate, significant gaps remain in CRA rules and implementation, and the promise of CRA has not yet been realized. While the agencies make several positive suggestions in the proposed rule, we must oppose this proposal unless critical issues are addressed.

II. Three CRA Case Studies

Under the Community Reinvestment Act, banks are required to help meet the credit needs of their entire communities. Yet, we have seen numerous examples of banks that either fail to address community needs or are engaging in positive activities on the one hand while harming communities on the other, and to a greater degree. Neither the CRA evaluation process or the bank merger process have been able to check bank financing of climate harm, displacement, discrimination, branch closures or abuse of the public comment process. In some cases, we believe CRA credit is awarded for the very activities that harm communities.

Fossil fuel investments dwarf green initiatives. Since 2016, MUFG has given more than $21 billion of environmental financing for projects that advance issues such as green affordable housing, solar and wind energy, sustainable agriculture, mass-transit systems and public water infrastructure, ESG bonds and linked loans.[5] But from 2016 through 2020, MUFG Union Bank was listed as the sixth worst financial institution in its funding of fossil fuels, with $147.737

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[2] https://calreinvest.org/press-release/community-reinvestment-groups-sue-trump-administration-for-unlawfully-gutting-anti-redlining-rules/

[3] The use of the terms "BIPOC," "people of color," and "communities of color" is meant to be inclusive of African American/Black, Latine/Hispanic, Asian American/Pacific Islander, and Native American/Indigenous persons and neighborhoods.

[4] https://calreinvest.org/publications/bank-agreements/

[5] See U.S. Bancorp Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company – FR Y-3, p. 63.

billion in support of this destructive industry.[6] In other words, Union Bank's investment in fossil fuels was 7 times as large as its investment in green initiatives. Most likely, communities of color have been disproportionately impacted by these climate harming transactions, and these communities may in the future face redlining concerns as banks view loans and investments in such environmentally degraded and compromised communities to be "risky." Union Bank received an Outstanding rating on its most recent CRA examination, covering the years 2015 through 2018. Under the proposed rule, Union Bank might be awarded CRA credit for engaging in $21 billion worth of green initiatives, but would not be downgraded for any of the $147.737 billion in fossil fuel financing.[7]

Displacement mortgages may garner CRA credit. Over a 10-year period, First Republic Bank originated more than 400 mortgages to landlords in the San Francisco Bay Area that community groups deemed to be problematic or serial evictors.[8] CRC believes that the bank may have submitted some of these loans for CRA credit as community development loans, and that the regulators may have given the bank CRA credit for such loans, even though they may have resulted in the eviction and displacement of many vulnerable tenants. Based on conversations with impacted tenants and their representatives, CRC understood that the majority of those impacted by such consequences were people of color, often living in neighborhoods of color. The Bank has received passing, Satisfactory CRA ratings in recent years. Under the CRA proposed rule as drafted, a bank might not submit nor receive CRA credit for loans underwritten to increasing rents, but neither would it be penalized or suffer a CRA ratings downgrade for any displacement mortgage originations that uprooted families.[9]

High foreclosures, redlining allegations, and abuse of process do not slow a bank down. From 2009 through 2015, OneWest Bank was nine times more likely to foreclose on homeowners in communities of color in California than it was to originate mortgages.[10] OneWest originated a total of two loans to African Americans in its six-county Southern California assessment area in 2014 and 2015, combined.[11] Even after CRC filed a redlining complaint against the bank with HUD,[12] OneWest received a passing, Satisfactory CRA rating with no downgrades. In 2015, regulators approved the merger of OneWest Bank and CIT Bank citing letters of support for the merger that a CRC FOIA request months later showed to be fraudulently submitted.[13] There is nothing in the proposed rule to suggest that OneWest Bank would have

[6] See Rainforest Action Network (RAN), "Banking on Climate Chaos," at: https://www.ran.org/wp-content/uploads/2021/03/Banking-on-Climate-Chaos-2021.pdf
[7] In 2021, U.S. Bank applied to acquire Union Bank. In 2022, CRC, NCRC and U.S. Bank entered into a Community Benefits Agreement addressing CRA and environmental issues of concern.
[8] https://calreinvest.org/wp-content/uploads/2018/07/Disrupting-Displacement-Financing.pdf
[9] In 2015 First Republic Bank committed to cease originating loans to landlords that intended to invoke the Ellis Act to evict tenants. The Bank has since represented that it has enhanced its due diligence to prevent displacement financing.
[10] https://calreinvest.org/press-release/hud-accepts-crcs-redlining-complaint-against-cit-groups-onewest-bank/
[11] https://calreinvest.org/wp-content/uploads/2019/01/CRC-Fact-Sheet-Joseph-Otting-Record-at-OneWest-Bank1.pdf
[12] https://calreinvest.org/press-release/cit-group-accused-of-redlining-and-violating-fair-housing-act/
[13] https://theintercept.com/2018/09/29/joseph-otting-occ-onewest-bank-merger-cit/

failed or been downgraded on its CRA examination or had fabricated letters submitted in favor of its merger been thrown out under the new proposed rules.[14]

III. Top 12 Recommendations to Fix CRA

While there are many challenges with the proposed rule, we cannot support the rule without the following specific enhancements,[15] which are needed to return the CRA to its statutory purpose:

1. Evaluate retail lending, community development finance, retail products and services, branch access and community development services to Black, Indigenous and People of Color (BIPOC) consumers and in BIPOC communities, alongside such evaluations for low and moderate-income (LMI) borrowers and communities.
2. Enhance fair lending exams by making them more rigorous (focusing on all significant disparities in lending or deposit access), transparent (reflected in fuller discussions in CRA Performance Evaluations and clearer reporting on Department of Justice referrals), reliant on all sources of complaints (not only DOJ settlements), and by giving failing CRA ratings to banks that discriminate.
3. Give impact points for activities that demonstrably close racial wealth gaps, such as Special Purpose Credit Programs (SPCPs) targeted to racial, ethnic and other underserved groups, across all tests and bank activities (not just for lending and not just in the retail products and services tests).
4. Lower ratings if there is evidence of harm (such as discrimination, displacement, fee gouging, high-cost lending, lending that results in undue defaults, branch closures, and fossil fuel finance or other forms of climate degradation) as evidenced by court cases, regulatory actions, investigations, consumer or fair housing group complaints or community contacts/comments.
5. Keep CD investment and CD lending tests separate so as to encourage impactful Low-Income Housing Tax Credits (LIHTC), equity investments, New Market Tax Credits (NMTC) and contributions.
6. Discount mortgages to non-owner occupants who are middle to upper income and non-BIPOC and exclude all loan purchases and MBS investments that are not originated by nonprofit, mission-driven lenders.
7. Discourage displacement by extending anti-displacement requirements to all Community Development activities, requiring banks to have anti displacement financing plans and policies in place, and downgrading banks for foreseeable displacement resulting from financing activity.
8. Increase lending and technical assistance to the smallest businesses by defining small businesses as those with gross annual revenue of $1 million or less (**not the $5 million proposed**), evaluating banks on lending and t/a support to businesses with under $100,000 and between $100,000 and $250,000 in gross revenue, and using Section 1071 data when it is available to evaluate the quantity and quality of bank lending to small businesses.

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[14] In 2015, OneWest Bank was purchased by CIT, which entered into a settlement agreement with CRC, at https://calreinvest.org/wp-content/uploads/2019/07/CRC-v-CIT-CONCILIATION-AGREEMENT-07.26.19.pdf. CRC and CIT also subsequently entered into a Community Benefits Agreement, and CRC negotiated a CBA with First Citizens Bank during its recent acquisition of CIT, at https://calreinvest.org/wp-content/uploads/2021/05/First-Citizens-CBA.pdf.

[15] These comments are informed by the input and engagement of CRC members organizations, and those of our allies at the National Community Reinvestment Coalition, the Greenlining Institute, the Association of Housing and Neighborhood Development, and other coalitions and advocates. These comments are our own.

9. Maintain existing asset thresholds for bank size classification, and require banks to serve all communities (**do not allow banks to fail 39% of assessment areas**) to ensure rural areas do not receive LESS investment.
10. Tie CD financing activities, through impact scoring and partial credit, to important LMI and BIPOC community needs such as broadband, Native Land Areas, and climate resiliency, as well as other community needs as evidenced by local plans and CBAs.
11. Encourage and enforce CBAs by requiring compliance with any CBAs as part of (conditional) merger approvals and by reviewing compliance with CBAs as part of ensuing CRA evaluations.
12. Create and require all large banks to reinvest in Deposit Based Assessment Areas where depositors are domiciled, and eliminate all of the various exemptions proposed for banks between $2 billion and $10 billion in assets.

IV. Discussion, Questions, Answers

The CRA must address the following:

1. *Race and CRA*: Honor the CRA's statutory purpose and better incorporate race into CRA evaluations of banks.
2. *Community Development*: Preserve investments, fight displacement, promote digital equity and access for Native American communities, and protect our climate from further harm.
3. *Mortgages*: Prioritize LMI and BIPOC owner occupants and loan originations.
4. *Small business lending*: Focus on lending and technical assistance to the smallest businesses.
5. *Consumer Loans*: Make part of the retail lending test, but a qualitative review is critical.
6. *Branches and the Retail Services and Products Test*: Halt the industry march to close branches in LMI and communities of color.
7. *Accounts and the Retail Services and Products Test*: Further urge banks to develop responsive products.
8. *Assessment areas*: Create Deposit-Based Assessment Areas consistent with the statute.
9. *Community participation*: Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit (and CBAs) that regulators will enforce.

1. **Race and CRA: Honor the CRA's Statutory Purpose and Better Incorporate Race into CRA Evaluations of Banks.** First and foremost, the agencies have failed the most important test for CRA reform – whether it will substantially advance racial equity and close racial wealth gaps. Despite opening the door to hopes that the rules would clearly address the redlining concerns that gave rise to the CRA,[16] the agencies punted.

[16] The Federal Reserve Board's Advanced Notice of Proposed Rulemaking asked, "Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?" at https://www.federalregister.gov/documents/2020/10/19/2020-21227/community-reinvestment-act

a) The redlining and discrimination concerns that gave rise to the passage of the CRA persist, as do their profound impacts on BIPOC residents and communities.

There should be little debate as to whether disparities by race and ethnicity continue to plague the financial markets. A CRC analysis of 2021 Home Mortgage Disclosure Act (HMDA) data for the Top 20 bank lenders in California, for example, found that while African Americans comprised 6.2% of the population in California, they secured only 2.4% of mortgage originations. This is particularly worrisome as Black households have the lowest homeownership rate in the state, at 36%. Additionally, Samoan, Guamanian or Chamorro, and American Indian or Alaska Native homebuyers were twice as likely as the average home loan seeker in California to be denied a loan.

CRA implementation has focused on whether banks create access for LMI borrowers and communities. Perhaps the regulators have believed that such a focus would have the effect of addressing the redlining of communities of color that gave rise to the CRA statute. But a recent report by the Urban Institute[17] challenges such a view. The authors found that lending to LMI borrowers and LMI neighborhoods is not the same as lending to minority borrowers or minority neighborhoods. Moreover, LMI neighborhoods do not highly overlap with minority neighborhoods. The authors relied on publicly available HMDA data for their analysis.

Lenders often point to the limitations of HMDA, hiding behind the lack of transparency relating to key underwriting factors that the industry fights to keep private. Nevertheless, an important FDIC report that analyzed non-public credit score data[18] confirmed what CRC members have long known about persistent disparities. When controlling for key credit factors like credit score, debt-to-income ratio, loan to value ratio, geography, and lender characteristics, the author still finds disproportionate rates of denial on both conventional and FHA home purchase loans for Black and Latinx/e borrowers compared to their white counterparts. While adding these controls explains approximately 70% of observed raw differences in conventional lending, 30% of lending differences may be driven by factors external to the individual borrower. This raises questions regarding discriminatory and unfair practices. On conventional home purchase loans, Black borrowers paid 6.1 basis points more in interest rate than white borrowers; Hispanic borrowers paid 6.4 basis points more. Furthermore, Black and Latinx/e borrowers paid substantially more in closing costs — $1,583 and $1,725 more than their white counterparts, respectively. Black and Hispanic borrowers paid not only more in discount points (an attempt to reduce interest rates), but also paid more in lender credits (an attempt to offset high closing costs with a higher interest rate). Considering that all borrower demographics were controlled for, these findings suggest there may be an unfair and discriminatory reason for the higher costs, interest rates, and denial rates among borrowers of color. Not only are potentially discriminatory and unfair practices at play, but such disparate higher costs for BIPOC borrowers – who often are buying unjustly devalued property[19] – are subjected to higher debt for a lower valued asset. These trends perpetuate racial wealth gaps and inequitable access to homeownership. A race-conscious CRA is needed to remedy such racial economic inequality.

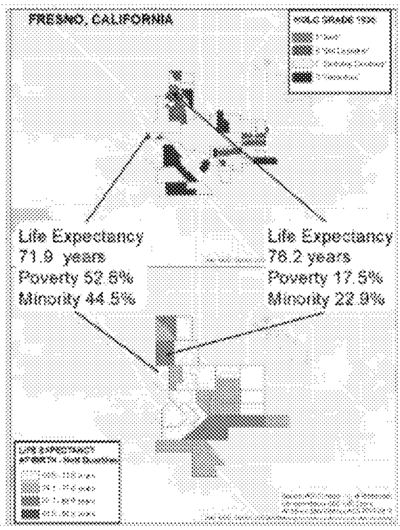
[17] https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf
[18] https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf
[19] https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf

Discrimination in the financial markets is shown in other ways beyond HMDA data. The Urban Institute's national studies of housing discrimination have documented differential treatment of Asian Americans and Pacific Islanders (AAPIs), compared with white Americans, in rental and sales markets through the use of paired testing. The studies found that AAPIs were treated less favorably than white people when searching for housing.[20] Similarly, in 2018, the National Community Reinvestment Coalition conducted paired testing of small business lenders in various cities throughout the nation and found disturbing disparities. For example, better-qualified black and Hispanic testers who shopped for small business loans at Los Angeles area bank branches were treated worse than less qualified white testers.[21] Disparities likewise plagued the COVID relief Paycheck Protection Program where business owners of color faced greater challenges in accessing forgivable loans and where additional NCRC testing found that Black business owners were treated differently when trying to access the PPP.[22] Ongoing discrimination in homeownership and small business ownership exacerbates racial wealth gaps.

The legacy of redlining clearly persists and does continuous harm to communities of color. The National Community Reinvestment Coalition and the University of Richmond have conducted a compelling analysis[23] of the health impacts experienced by once and continuing redlined communities, reviewing, amongst other data points, current life expectancy of those living in census tracts labeled as "hazardous" by early redlining maps by virtue of the fact of the race of their residents.

Below are maps depicting disparities in life expectancy for Fresno and Sacramento communities. In Sacramento, residents of white neighborhoods can expect to live over a decade longer than residents of historically redlined neighborhoods.

[20] https://www.urban.org/urban-wire/more-50-years-after-fair-housing-act-more-action-needed-address-housing-discrimination-against-asian-americans-and-pacific-islanders
[21] https://ncrc.org/disinvestment/
[22] https://www.ncrc.org/lending-discrimination-within-the-paycheck-protection-program/
[23] https://dsl.richmond.edu/socialvulnerability/map/#loc=11/32.737/-117.138&city=san-diego-ca



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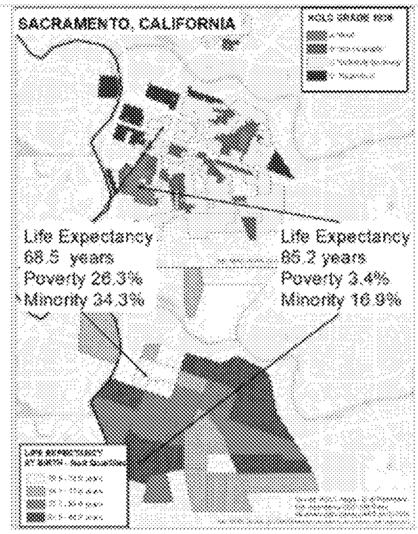

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Discrimination can manifest in ongoing segregation. An analysis by the Brookings Institute found that segregation persists for Black, Latino or Hispanic and Asian American households in nearly all of 53 American cities with more than 1 million people, including a number of cities in California. As the author notes, "These patterns have changed only modestly since the 21st century began. While measurable progress in closing the nation's racial divide has been made on many fronts— including in educational attainment, hiring, and the rise in multiracial marriages—race-ethnic segregation in American neighborhoods represents an area where historical patterns are slow to change. Thus, there is good reason for the current administration to place renewed emphasis on ending housing discrimination and the forces which have allowed it to persist."[24]

While it is important for the banking regulators to root out discriminatory practices, past fair housing and fair lending enforcement has not been enough to close the racial wealth gap. The agencies acknowledge as much in the NPR.[25] The CRA finally needs to more explicitly, thoughtfully and comprehensively evaluate banks as to how well they are meeting the credit needs of their entire communities, including BIPOC communities.

b) The CRA statute, legislative history, regulations, and implementation argue for a greater and more explicit CRA focus on race.

The regulators have acknowledged the connection the CRA has to racial equity. In its 2020 Advanced Notice of Proposed Rulemaking regarding the CRA, the Federal Reserve stated, "The CRA invests the Board, the FDIC, and the OCC with

[24] https://www.brookings.edu/research/neighborhood-segregation-persists-for-black-latino-or-hispanic-and-asian-americans/

[25] "Even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent." NPR at p. 19.

broad authority and responsibility for implementing the statute, which provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI *and minority individuals and communities*. In particular, the statute and its implementing regulations provide the agencies, regulated banks, and community organizations with the necessary framework to facilitate and support a vital financial ecosystem that supports LMI *and minority access to credit and community development*." [26]

As further noted in the NPR itself, the Federal Reserve "Board CRA ANPR discussed this history of redlining and racial discrimination prior to the enactment of these laws and asked for feedback on the following question: 'In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?'[27]... As has been the case since the first regulations were issued by the agencies, the agencies continue to recognize that CRA and fair lending are mutually reinforcing."[28] But there is no meaningful and honest way to reinforce fair lending without explicitly evaluating banks for their performance with borrowers of color and in neighborhoods of color.

The CRA statute itself discusses race and the needs of communities of color. Section §2903 provides that "the appropriate Federal financial supervisory agency shall— (1) assess the institution's record of meeting the credit needs of its *entire community*, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and (2) take such record into account in its evaluation of an application for a deposit facility by such institution."[29] The regulators are authorized to assess banks' relationship to their entire community, which includes communities of color. Additionally, the statute expressly identifies the role played by Minority Depository Institutions and Minority Owned Credit Unions, which banks can receive favorable treatment for supporting. Given the understanding that MDIs and MCUs better represent and better serve minority communities, this provision evidences Congressional intent for the CRA evaluation process to favor financial institutions that support efforts to address credit needs in BIPOC communities.

Further, 12 U.S.C. section 2903(b) provides that, "in assessing and taking into account, under subsection (a), the record of a non-minority-owned and non-women-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with *minority-and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities* in which such institutions and credit unions are chartered."[30]

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[26] Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose" (Jan. 8, 2020), https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm. Italics and emphasis added.
[27] NPR at p. 19 (citing 85 FR at 66413)
[28] NPR at pp 19, 20.
[29] 12 U.S.C. Section 2903. Italics and emphasis added.
[30] Italics and emphasis added.

Additionally, Section 12 U.S.C. section 2907(a) provides that, "In the case of any depository institution which donates, sells on favorable terms (as determined by the appropriate Federal financial supervisory agency), or makes available on a rent-free basis any branch of such institution which is located in *any predominantly minority neighborhood to any minority depository institution* or women's depository institution, the amount of the contribution or the amount of the loss incurred in connection with such activity *may be a factor in determining whether the depository institution is meeting the credit needs of the institution's community* for purposes of this chapter." Ensuing paragraphs define "Minority Deposit Institution" and "Minority."[31]

The legislative history and context of the CRA also support the view that CRA rules must account for race. As the Board noted, "The CRA ... provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI and minority individuals and communities, and that ... the statute and its implementing regulations provide" a "necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development. Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities ... Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods comprised largely of African-American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside of those neighborhoods ... Redlined neighborhoods typically had a high percentage of minority residents, were overwhelmingly poor, and had less desirable housing."[32]

As the agencies also note, the legislative history of the CRA further points to Congressional intent to address barriers facing communities of color. "In addition to referring to HOLC maps, the term redlining has also been used to more broadly describe excluding neighborhoods or areas from provision of credit or other financial services on account of the race or ethnicity of residents in those areas. As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose: 'By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.'"[33]

[31] Italics and emphasis added.
[32] Board of Governors of the Federal Reserve System, "Community Reinvestment Act: Advanced Notice of Proposed Rulemaking," October 19, 2020, at 12 C.F.R. Part 228, p. 66412, citing Federal Reserve Bank analysis of CRA and redlining maps, and the Congressional Record.
[33] NPR at p. 19 (citing 123 Cong. Rec. 17630 (June 6, 1977)).

Likewise, the regulators have taken race into account in promulgating and effectuating CRA rules. CRA assessment areas cannot reflect illegal discrimination.[34] Additionally, the "agencies propose continuing to consider discrimination and certain other illegal practices as inconsistent with a bank's affirmative obligation to meet the credit needs of its entire community and counter to the CRA's core purpose of encouraging banks to help meet the needs of low- and moderate-income communities and addressing inequities in credit access."[35] Finally, the CRA examination itself is accompanied by the fair lending examination where regulators review the extent to which banks are faithfully honoring the Fair Housing Act, the Equal Credit Opportunity Act, and related laws which prohibit discrimination based on race and other characteristics and protected statuses.

Regulators have also more explicitly evaluated bank performance in communities of color in the course of executing their CRA oversight responsibilities. Last year, CRC and 21 other organizations opposed the merger applications of Tri Counties Bank and its holding company to acquire Valley Republic Bank and its holding company. Amongst several concerns, we identified problematic mortgage lending disparities by race. In a Statement accompanying its final Approval Order, the FDIC asserted, "Additionally, the FDIC confirmed that the bank's lending to *minority applicants* and *in majority-minority areas* trailed aggregate performance *and demographics* in some AAs."[36] In its Final Order, the FDIC required that "Tri Counties Bank shall develop a Fair Lending Plan to address home mortgage lending *needs of minority populations and in majority -minority census tracts* to ensure the Bank's performance is consistent with aggregate and demographic data throughout its assessment areas."[37] As another example, in July of 2019, in connection with the application by BB&T to acquire SunTrust, the Federal Reserve Board issued an Additional Information request asking BB&T to "Provide a list of branches in LMI census tracts, distressed or underserved nonmetropolitan middle-income census tracts, *and majority-minority census tracts* that BB&T and SunTrust anticipate would be closed, consolidated, or relocated in connection with the proposed merger. For each branch anticipated to be closed, consolidated, or relocated, provide the branch name, street address, city, state, and zip code, along with the relevant classification of the census tract in which it is located (e.g., low-, moderate-, middle- or upper-income; distressed or underserved nonmetropolitan middle-income; *majority-minority*).[38]

We believe the agencies have the legal authority, and the political directive to more thoughtfully and conspicuously consider whether banks are helping to meet the credit needs of BIPOC communities, consumers, borrowers and small businesses. In further support of this statement and belief we cite for legal authority the important legal analysis done

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[34] https://consumercomplianceoutlook.org/2014/first-quarter/understanding-cras-assessment-area-requirements/#:~:text=Second%2C%20assessment%20areas%20must%20not,the%20federal%20fair%20lending%20laws. (citing 12 C.F.R. section 228.41(e)(2)).
[35] NPR at p. 370, and see 12 C.F.R. section 228.28(c).
[36] Federal Deposit Insurance Corporation. Interagency Bank Merger Act Application By Tri Counties Bank (TCB) Chico, California (Applicant/Resultant Institution) For Approval to Merge With Valley Republic Bank (VRB) Bakersfield, California (Target Institution) STATEMENT, December 13, 2021, p. 2. Italics and emphasis added.
[37] Federal Deposit Insurance Corporation. Order and Basis for Corporation Approval: Tri Counties Bank, December 13, 2021, p. 2. Italics and emphasis added.
[38] https://www.federalreserve.gov/files/request-for-additional-information-20190702.pdf. Italics and emphasis added.

by National Community Reinvestment Coalition and the Relman Dane law firm,[39] and the agencies duty under the Fair Housing Act to Affirmatively Further Fair Housing. Additionally, we believe the agencies must act in the face of the President's Executive Order Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.[40] Yet beyond their legal and political authority, we believe the agencies have the moral obligation to begin to provide redress for historic and ongoing discrimination and redlining perpetrated by the institutions they oversee. The rules, agency oversight and enforcement have touched upon race already, though in a limited manner, and these efforts have proven woefully inadequate to address the magnitude of the crisis of discrimination and redlining and its impacts on BIPOC borrowers and communities. It is time for CRA rules to meaningfully reflect and address the statutory imperative to address redlining and discrimination.

c) The NPR is frustrating in its approach to incorporating race more explicitly into the CRA regime, largely deferring.

Examiners should evaluate bank performance in helping to meet the credit needs of their entire communities, including communities of color, similar to how banks are evaluated on their performance in helping to meet the needs of low and moderate income borrowers and communities. As noted above, LMI communities and communities of color are not the same. Bank records in extending fairly priced credit, financing community development, opening responsive account products and maintaining branches to and in communities of color should factor into a bank's CRA rating. Leading up to this NPR, the Federal Reserve in its ANPR asked for public comment on the question of race. But this proposal not only fails to require evaluation of bank performance in relation to BIPOC, it also offers little as an alternative approach to addressing redlining and discrimination.

The proposal to disclose HMDA mortgage lending data on Performance Evaluations is deeply disappointing **(Question #173)**. Merely requiring disclosure of already publicly available data on a report that the public rarely accesses is not meaningful transparency. The agencies further clarify that any disparities in HMDA data will not impact the CRA rating of a bank. At a minimum, this proposal should be enhanced to specify more clearly what data will be depicted (which actions taken, which loan products, which geographies, etc) and how (charts, maps), and that all of the data should be disaggregated by race and ethnicity. The rule should also require all banks to place these home lending data tables and maps in a prominent place on their own websites. A parallel effort must be undertaken when the Section 1071 small business lending data become publicly available, that data should include not only disaggregated borrower characteristics and actions taken, but pricing data, at a minimum. And all of the data must be evaluated and impact the banks' CRA ratings.

The proposal raises the question as to whether CRA evaluations should consider Special Purpose Credit Programs (SPCPs)**(Question #106)**. But, though SPCPs are meant to serve groups protected by fair lending laws (the relevant

[39] Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal", NCRC

[40] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/

provisions are in the Equal Credit Opportunity Act, and HUD has confirmed that similar analysis applies to the Fair Housing Act), the proposal ponders SPCP evaluation only as to their impact on LMI consumers. The final rule must explicitly recognize the importance of SPCPs as a critical way for banks to help meet the local credit needs of communities of color, and SPCPs should garner CRA credit and positive impact points that enhance a bank's CRA rating, as should all activities that close wealth gaps for racial, ethnic, national origin, Limited English Proficient, LGBTQ and other underserved groups. CRC and several other community, consumer and fair housing groups have prioritized SPCPs as an important vehicle for closing the racial wealth gap. We believe that every financial institution should develop and offer at scale at least one SPCP. CRC is proud to have negotiated commitments from three banks to offer SPCPs. SPCPs also offer a way for the agencies to consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities **(Question #8)**. SPCPs are so important, even if their reach is limited.

One positive aspect of the proposal is the expansion of considerations of discrimination to include transactions beyond credit and lending, such as where discrimination occurs when a consumer tries to open a bank account. We applaud this proposal and urge its inclusion in the final rule. But an expanded definition of discrimination is only as helpful as the agencies' willingness and capacity to diligently look for evidence of discrimination and provide downgrades once it is found. The General Accountability Office recently found that fair lending reviews at the Office of the Comptroller of the Currency were outdated and inconsistent.[41] Agency enforcement of redlining or discrimination cases, as well as CRA ratings downgrades for discrimination, are exceedingly rare. Agency fair lending reviews should be more extensive and rigorous, should solicit and rely on feedback from all relevant federal and state agencies as well as community group stakeholders, and should be reflected more substantively on CRA Performance Evaluations. Findings of discrimination, including for disparate impacts on protected classes relating to displacement financing, fee gouging, branch closures or climate degradation, should always result in automatic CRA ratings downgrades, if not outright failure.[42] How can a bank that discriminates be said to be doing a Satisfactory job serving the community?

Additionally, the proposal envisions that a bank could fail the retail lending test in 39% of its assessment areas and still pass its CRA exam. This appears to be one of a number of provisions that resemble components of the problematic OCC rule that has since been rescinded. Our concern, there as here, is that allowing banks to fail in some places will be a recipe for discrimination and redlining of BIPOC and rural communities. Banks will no doubt focus more attention and strive to conduct more business in wealthier neighborhoods where they perceive greater profit. The CRA is meant to be a check on that dynamic by encouraging banks to look to all of their communities, consistent with safety and soundness. A rule that signals to banks that they can fail to serve a large percentage of their assessment areas runs the risk of

[41] General Accountability Office, "Fair Lending: Opportunities Exist to Enhance OCC's Oversight of Banks' Lending Practices," GAO-22-104717, June 21, 2022 available at: https://www.gao.gov/products/gao-22-104717

[42] Extensive analysis by Calvin Bradford has found that agency findings of discrimination and failing CRA ratings are rare, and that where they exist, they appear to rely mainly on cases pursued only by the Department of Justice, to the apparent exclusion of other enforcement agencies, fair housing organizations, and private parties. See, Bradford, C. July 25, 2022. "The Existing Legal Authority Related to the Affirmative Obligation of the Prudential Regulatory Agencies to Incorporate Race into the CRA Examination Process,". p. 20. Calvin Bradford & Associates, Ltd.

enabling, if not promoting, redlining. If a bank discriminates or fails to adequately serve an assessment area, it should fail its CRA exam **(Question #140)**.

Fix CRA:

- Evaluate retail lending, community development finance, retail products and services, branch access and community development services to BIPOC consumers and in BIPOC communities, alongside such evaluations for LMI borrowers and communities.
- Enhance fair lending exams by making them more rigorous (for any significant disparities in lending or deposit access), transparent (with fuller discussions in CRA Performance Evaluations and clearer reporting on DOJ referrals), and reliant on all sources of complaints (not only DOJ settlements), and by failing banks that discriminate. Consider and value evidence of discrimination derived from court cases, regulatory actions, investigations, fair housing and consumer complaints or community contact/comments.
- Give impact points for activities that demonstrably close racial wealth gaps, such as SPCPs targeted to racial, ethnic and other underserved groups, across all tests and bank activities (not just mortgage lending and not just the retail services and products test).
- Provide detailed instruction on what HMDA analysis will be conducted and disclosed as part of the CRA exam process, require that all such maps and charts be placed conspicuously on bank and regulatory websites, determine that similar transparency will be required when Section 1071 small business data are publicly available, and, importantly, use the data developed to evaluate bank performance.
- Take a broad view of unfair and deceptive practices, as the CFPB is doing, to capture broader evidence of discrimination and harm as a basis for downgrading a CRA rating.
- Expand what constitutes discrimination to include non credit discrimination, as proposed.
- Do not allow banks to fail to adequately lend in or serve any of their assessment areas.

2. **Community Development: Preserve investments, fight displacement, promote digital equity and access for Native American communities, and protect our climate from further harm.**

We appreciate that the proposal focuses on encouraging banks to engage in community development activities, such as investing in Community Development Financial Institutions (CDFIs). Such activities can be amongst the most impactful ways for banks to support community needs. But we are concerned that providing a lengthy list of eligible activities and making it easier to qualify for credit will exacerbate the current dynamic whereby banks engage in the easiest and potentially least impactful of CD activities.

a) *Community development should retain the CRA's focus on LMI (and BIPOC) benefit, local communities, and activities responsive to community needs.*

In general. For the most part, CRA credit should only be provided where the majority of beneficiaries are in fact, LMI or Black, Indigenous or People of Color (BIPOC) regardless of where the activity occurs or with whom **(Question #15)**. For example, banks should not receive CRA credit for supporting financial literacy efforts that benefit middle- and upper-income consumers as they are not the intended beneficiaries of CRA **(Question #27)**. CD activities should be tied to local community needs as identified in Performance Context analysis or community-negotiated Community Benefits Agreements, either as a condition of receiving CRA credit or through the use of enhancing impact scoring. Tribal or local government plans can serve this purpose of credentialing an activity as responsive to local needs, but CRA rules should not require association to government plans as local governments and local plans are uneven **(Question #14)**. To ensure banks are incentivized to support more impactful activities, not necessarily larger ones, the CD Financing Test should focus on loan and investment units, not dollars. Community development activities should garner CRA credit only in Facility Based Assessment Areas, Deposit Based Assessment Areas, and anywhere the bank has a CRA obligation to serve local communities. In general, we oppose any effort to give credit to banks for activities that do not come with a corresponding obligation to serve the local community (for example, by giving CRA credit for a community development project outside of a bank's CRA assessment area where they will not be subject to other CRA tests – **Question #47**). Otherwise, this is just giving banks extra credit without any corresponding obligation. But we do support agency proposals to encourage branching and investment in persistent poverty and high poverty areas as this will aid rural and BIPOC communities **(Question #34)**. The definition of "deposits" against which CD Financing and other activities are measured, should include state and local deposits as banks can lend against these deposits, and in fact a number of jurisdictions have developed public policies designed to promote reinvestment goals by tying municipal deposits to bank performance. The CRA rules should not undermine these local efforts by lowering the reinvestment bar for the very financial institutions local governments are looking to for loans and investments.

List of qualifying activities. We do not object to a list of qualifying activities (Question #33), but urge that this list be updated periodically, that public input be sought periodically, and that the list be refined accordingly. If such a list is to be established, we support calls to include bank support for and usage of ethnic media, as well as provisions that identify specific ways that banks can support digital equity and broadband access.

Asset thresholds and reclassifications. We strongly oppose any raising of current asset thresholds **(Questions #49, #50, and #51)**, since doing so would result in less community development financing and branch consideration in rural areas served by community banks that would be subject to easier examinations and lower reinvestment obligations under the proposal if they are reclassified. This is perhaps one of the most profound changes the agencies propose in an NPR full of significant changes. The National Community Reinvestment Coalition estimates that nearly 1,000 banks - 20% of all banks - will be impacted by this change,[43] which will have the effect of reducing both bank burden AND community reinvestment (potentially $1 Billion in CD Finance). While the former may be a laudable goal in the eyes of the agencies, the latter is contrary to the express purpose of the statute and the agencies goals for this rulemaking. For most or all of these institutions, the proposed rule would allow them to abandon a test/tests (community development or services)

[43] https://www.ncrc.org/map-heres-where-changes-to-cra-asset-thresholds-will-undermine-community-reinvestment/

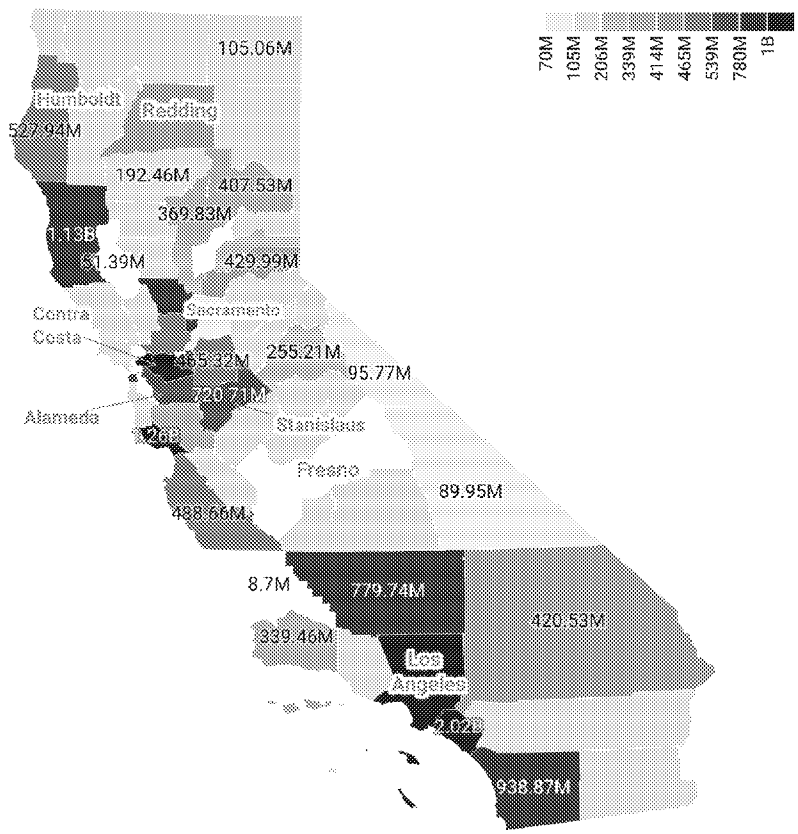
with which they have been already complying. Of course, this change will most impact rural communities. This is not acceptable.

According to NCRC analysis, 32 banks in California would be reclassified under this proposal. Further analysis by CRC finds that these banks hold $24.05 billion deposits in California and operate 152 branches in 36 counties in our state. The potential loss of community development activities and branches as a result of reclassifications and accompanying weaker tests could be devastating for some of our rural communities. Among non-metropolitan, or rural areas, the banks subject to reclassification hold a total of $3.2 billion in deposits. This cumulative deposit amount in rural areas is only third to the Los Angeles Metro Area and the San Francisco Metro Area. More specifically, large banks subject to reclassification into intermediate banks have a cumulative 22 branches and $2.5 billion in non-metropolitan, or rural, areas. These newly reclassified banks would evade the retail services and products test, no longer being graded on their branch service to communities who more often rely on in-person banking.[44] Considering the growing trend of branch closures and pivot to online banking, coupled with rural areas' preexisting deficit of bank branches as well as limited broadband access, it is imperative that banks in these communities preserve their obligation to provide equitable and reliable retail products and services. We urge the regulators to hold the line on asset thresholds for bank size determinations, to preserve existing branch service and community development obligations, and to stay true to the goals of CRA and this rulemaking.

[44] https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf

Counties Impacted by Proposed Asset Threshold Change

Heatmapping represents a total number of deposits ($) per county wherein banks subject to reclassification are present.



Map: Created by California Reinvestment Coalition • Source: Branch and deposit data from FDIC Summary of Deposits, 06/30/2021. Analysis of the impact of proposed asset threshold change impact provided by NCRC. • Created with Datawrapper

Qualitative review for impact. We agree that it is important to conduct a qualitative review of CD activities to reward impact. Likewise, we think the qualitative review should be important to weed out activities that may be harmful to communities. As one example, while the vast majority of CDFIs and MDIs are working to strengthen underserved communities, this is not universally the case. As one example, CRC and allies opposed the bank charter application of Oportun, due to evidence that it was targeting the Latino community for high-cost products that borrowers had difficulty repaying, and then subjecting these borrowers to aggressive debt collection practices.[45] The agencies must consider data on marketing, pricing, terms, defaults, and collections in CRA evaluations and bank charter and merger applications in order to aid examiners and the public in forming determinations as to whether bank practices are helping

[45] https://www.propublica.org/article/a-lender-sued-thousands-of-lower-income-latinos-during-the-pandemic-now-it-wants-to-be-a-national-bank

or exacerbating community credit needs. The CDFI designation was not intended by the CDFI Fund to constitute an endorsement of all of the activities of CDFIs. We do not think the rules should encourage banks to reward such conduct in the name of CRA. Instead, we propose a rebuttable presumption in favor of CDFIs and MDIs, as well as Minority Credit Unions and Community Development Credit Unions which are also mission driven **(Question #25)**. The statute itself qualifies CRA credit for MDI support "provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered."[46] Similarly, Small Business Investment Companies (SBICs), should not automatically garner CRA credit as there is a question as to how well they serve targeted groups.[47] Community contacts and public comments, in addition to complaints, investigations, litigation and news reports, can inform such determinations. Additionally, we think impact scoring should be used to reward activities that support affordable housing in high opportunity areas, that provide patient capital to CDFIs and other nonprofit organizations, and that support permanent affordable housing for extremely low and very low-income households. We do not agree with the proposal provisions suggesting loans held in portfolio could earn CRA credit over multiple years as this will lead to decreased CD financing and there are other ways to encourage long term patient capital.

Fix CRA:

- Subject any list of eligible CD activities to periodic public input and refine the list accordingly.
- Include in any list of eligible CD activities ways in which banks can support ethnic media and digital equity/broadband access.
- Focus the CD Financing Test on units, not dollars, to encourage smaller and more impactful efforts.
- In general, require CD activities to benefit LMI and BIPOC communities (no credit for financial literacy that benefits all income levels), and only provide CRA credit if the activity is located in a community where the bank has an obligation to help meet the community's credit needs.
- Do not require local governmental or tribal plans as a pre-condition to receiving community development credit. Such plans can be helpful in demonstrating community need, but it is not clear that local jurisdictions throughout our state and nation have capacity to develop plans responsive to community concerns as a rule. We support the general idea that banks should be encouraged, though not required, to connect community development activity to such plans.
- Create a rebuttable presumption in favor of CRA credit for financing CDFIs, MDIs, CDCUs and related entities, but do not give credit automatically.
- Refrain from changing the asset size thresholds that determine which banks are deemed large, intermediate and small. This one change will have a huge impact on rural communities in our state.
- Do not provide ongoing, multi-year CRA credit to loans and investments in bank portfolios, but encourage patient capital in other ways, such as through the use of impact scoring.

[46] 12 U.S.C. section 2903(b).

[47] The ANHD comment letter notes that a 2018 SBA study reported that barely a quarter of businesses financed reached underserved businesses, collectively defined as "LMI, women, minority or veteran owned companies or companies led by a woman or minority" https://www.sba.gov/document/support--sbic-program-overview

- Include all deposits in the definition of deposits against which several CRA metrics would be evaluated. State and local responsible banking laws and ordinances should be encouraged as consistent with the CRA, and the deposits covered by those government policies should not be excluded from CRA consideration.

b) *Affordable housing remains a priority need in our state and the rule should preserve a separate investment test to support the existing affordable housing infrastructure.*

Protect LIHTC, EQ2 and grant investments and preserve the investment test. Affordable housing remains a perennial need and priority for our state. Mission-driven and community organizations have developed an impressive capacity to use the scarce resources available to create affordable homes. However, the proposal threatens to damage one of the key tools in this limited affordable housing development infrastructure by doing away with the separate CD lending and CD investment tests. Banks comprise a large percentage of investors in the Low Income Housing Tax Credit program in our state, and we believe that they would not participate at anywhere near the same level if it were not for the CRA's investment test. In contrast, there is a market for CD lending where many banks have developed expertise and products, and that is not reliant on CRA. By combining CD lending and CD investing, we are greatly concerned that banks will retreat from Low Income Housing Tax Credits (LIHTC), which can be more complex, include additional risk, and provide a lower rate of return than CD lending. Any decrease in appetite for LIHTC will likely result in fewer affordable housing deals, as well as higher costs that will translate into decreased affordability for projects that do get built. We strongly urge the regulators to retain separate evaluations for CD lending and CD investing. LIHTC projects should garner CRA credit for participating banks to the extent of LMI and BIPOC tenant benefit (so that only partial credit should be given if not all of the units are affordable for LMI or BIPOC persons). Further, positive impact points should be given for projects that have deeper levels of affordability, longer affordability terms and covenants, or are in higher opportunity areas. Similar arguments and concerns apply to New Markets Tax Credits, EQ2 and other investments in Community Development Financial Institutions (CDFIs), and contributions to nonprofit organizations, all of which can be amongst the most impactful community development activities in which banks can engage.

Qualified credit for NOAH. Naturally Occurring Affordable Housing (NOAH) can be a resource for LMI residents, or it can be a driver of bank investment in problematic landlords and foster displacement. We support CRA credit to be given for financing of NOAH run by mission-driven nonprofit organizations, and where credit is only provided if a majority or residents are LMI tenants (or the bank can demonstrate rents are affordable to tenants at 30% of 60% of Area Median Income) and the bank can demonstrate that the transaction and the property are compliant with anti-displacement principles, which will be discussed in greater detail below **(Question #3).** We oppose CRA credit for units that are affordable to non-BIPOC middle income tenants **(Question #4)** as the demand for affordable housing for LMI tenants is so great. We also oppose CRA credit for single family rentals **(Question #7)** owned by non-LMI and non-BIPOC borrowers, as this deviates from a key benefit of CRA, the promotion of homeownership opportunities and wealth building for LMI borrowers. The single-family rental market is dominated by large corporations that are depriving families of homeownership and wealth building opportunities and subjecting their tenants to poor conditions and risk of displacement.[48]

Fix CRA:

- Maintain separate CD lending and CD investment tests to preserve critically needed LIHTC investments, as well as other impactful investments and contributions;
- Provide CRA credit for financing NOAH only if the property is owned by mission driven nonprofits, is majority occupied by LMI residents, and is compliant with anti-displacement principles;
- Do not provide CRA credit for single family rental housing. The CRA should encourage homeownership (owner occupancy), deed restricted affordable housing and community stability.

c) The rule should go farther in 1) ensuring no CRA credit is provided to activities that displace households meant to benefit from CRA, and 2) downgrading banks for engaging in displacement financing.

Displacement and NOAH. We appreciate the proposal's attempt to address displacement concerns by requiring that rents will likely remain affordable in order to qualify for CRA credit. However, the agencies need to go further to discourage banks from financing displacement. We urge the regulators to consider incorporating a displacement financing analysis here, perhaps looking to whether loans were made that were underwritten, designed, or reasonably likely to lead to the displacement of LMI individuals or people of color in violation of federal, state or local tenant protection laws, fair housing, debt collection and consumer protection laws. Regulations should not allow community development credit unless banks can demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, UDAAP and other laws. Banks should adopt procedures such as CRC's Anti Displacement Code of Conduct[49] and engage in due diligence on the Beneficial Owners of LLC property owners - data they already collect - to determine if there are any concerns relating to eviction, harassment, complaints, rent increases or habitability of potential bank borrowers **(Questions #5 and #6)**. The mere fact that a property is in an LMI area is not sufficient to grant CRA credit as landlords in LMI areas in California appear highly motivated to displace and evict tenants in order to bring in upper income tenants. It is not enough to cease offering CRA credit for harmful products. Banks must be penalized for harm. Bank regulators should conduct extensive outreach to community groups and engage in community contacts to investigate whether landlord borrowers are exacerbating displacement pressures or harming tenants. CRC has submitted several comments during CRA examinations and bank merger applications documenting bank loans to problematic landlords that banks may submit for CRA credit, even under the proposed rule. A few months ago, an article identified three banks that had financed a problematic landlord in Los Angeles.[50] Because displacement often has a disparate impact on BIPOC and protected classes, examiners should consider disparate displacement financing to be discrimination, either under the expanded discrimination definition or as an unfair and deceptive practice, that should trigger CRA ratings downgrades and subject banks to potential enforcement action.

[48] See Appendix II for CRC's Fact Sheet on Corporate Landlords.
[49] See Appendix I for CRC's Anti-Displacement Code of Conduct.
[50] https://capitalandmain.com/while-an-industry-feeds-on-the-destruction-of-rent-control-help-is-on-the-way

Anti-displacement and CD. We also appreciate that the proposal appears to refuse CRA credit for certain CD activities if they result in displacement or exclusion of LMI residents. Importantly, this requirement must be extended to all community development activity, especially affordable and NOAH housing finance.

Impact scoring for anti-displacement efforts. Positive impact points should be given for particularly responsive CD activities that fight displacement, such as support for property purchases by Community Land Trusts (CLTs), limited equity co-ops and other bona fide, mission-driven nonprofit organizations of housing that can be taken off of the speculative market, leveraged by policies such as Tenant Opportunity to Purchase Acts (TOPA), Community Opportunity to Purchase Acts (COPA), and other initiatives such as our state law that provides CLTs, nonprofits and prospective owner occupants the right to match an investor's high bid at foreclosure auction to secure a property for the common good, not personal profit **(Question #10).** CLTs, limited equity coops and other innovative models can also serve as a way for the agencies to consider activities that support affordable low- or moderate-income homeownership in order to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities **(Question #8)**. Note, however, that in this context and others, we see problematic actors trying to take advantage of preferences for nonprofits by creating faux nonprofits or partnering with front nonprofits in a manner that undermines the public policies at issue. This is why it is important for the banks and the agencies to conduct due diligence to ensure that partners and projects that sound beneficial are in fact helpful to the communities the CRA was meant to support.

Downgrades more broadly. Beyond displacement, the agencies should downgrade CRA ratings where banks engage in discrimination, displacement financing, predatory lending, climate degradation, fee gouging, branch closures, or other consumer and community harm. Banks should suffer downgrades and potentially fail their CRA exams if they engage in such activities. CRA has generally been good about giving credit for positive performance by banks in helping to meet community credit needs. But in discriminating, displacing, gouging and abusing customers, banks can exacerbate the credit needs of communities through higher costs and lost equity, foreclosure, eviction, impaired credit scores, garnishments, job loss, and deferred or denied ability to build wealth through homeownership or business ownership. And yet, CRA does not well account for such harm, often handing out "passing" or even Outstanding CRA ratings to banks that do well in certain areas, while putting on blinders when it comes to how those same institutions also do much harm. We believe that downgrades are not only permitted, but required as the statute directs, "It is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions."[51] The agencies can best encourage banks to help meet community credit needs by downgrading for harm and thereby moving financial institutions towards more beneficial activities. This could take the form of examiners using their judgment to rebut a presumption of a Satisfactory ratings or to lower a recommended ratings conclusion for lending that comes with high costs, abusive terms,

[51] 12. U.S.C. section 2901c.

high defaults, numerous and predatory debt collection, and other harmful features or lending that is underwritten to higher than current rents in a census tract subject to displacement pressures.

Fix CRA:

- Require banks to adopt anti-displacement policies and demonstrate landlord compliance with all key laws in order to receive CRA credit for financing NOAH.
- Lower CRA ratings if there is evidence of harm (such as discrimination, displacement, fee gouging, high cost lending or lending that results in undue defaults, branch closures, fossil fuel finance or other forms of climate degradation) as evidenced by court cases, regulatory actions, investigations, consumer complaints or community contact/comments.
- Provide positive impact scoring for financing of Community Land Trusts and other mission driven organizations to help them acquire properties and take them off of the speculative market.

d) Broadband, Native Land Areas, and climate are community development areas of particular concerns which should be further encouraged by the rules.

Broadband. First, we want to thank all three agencies for partnering with CRC to organize a very successful convening of financial institutions to discuss community needs and opportunities relating to broadband and digital equity in California, particularly in rural communities.[52] Approximately 30 financial institutions participated alongside several community organizations and state officials in a productive and timely discussion. We look forward to further exploring how CRA can bring together key stakeholders to address the critical and growing need for broadband access and digital equity in our state.

In the US, 6% of Americans, or more than 20 million people, do not have access to high-speed Wi-Fi. Many of them live in rural areas. The World Economic Forum reported that this number is likely understated and that 19 million unconnected households are in rural areas.[53]

The Federal Reserve Bank of Kansas found that there are two reasons for the lack of adoption of financial services – financial exclusion and digital exclusion.[54] Without widespread access and connection to high-speed Internet, technology will never be the great equalizer. Instead, it will continue to widen the divide and underscore the systemic racial barriers that permeate multiple overlapping systems.

While a record percentage of California households are connected to the Internet, 15% of households in the state, nearly 2 million people, are digitally disadvantaged. Approximately 1.25 million, or roughly 9.6%, are unconnected, and

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52 https://custom.cvent.com/A2838D7AE1064BC893F387FEF06BB3A2/files/event/2ad4c8d23a80488b9e9e570802e2ebba/c97fcaeef122407aaa1356cbd752e90f.pdf

53 https://www.weforum.org/agenda/2020/04/coronavirus-covid-19-pandemic-digital-divide-internet-databroadband-mobbile/

54 https://forbes.com/advisor/banking/digital-divide-and-its-impact-on-banking/

approximately 730,000, or roughly 5.6%, are under-connected. The digital divide remains especially challenging for a sizable number of low-income and Latine households, seniors, and people with disabilities. With so many activities having gone digital during the pandemic, such as online banking, the disadvantage only has grown more acute. Affordability is the main reason that keeps households from connecting to the Internet, with digital literacy and the lack of appropriate computing devices also being relevant factors.[55]

The Biden Administration has proposed closing the digital divide by including a $65 investment to ensure that, "Every American has access to reliable high-speed Internet," and by lowering the cost of Internet for low-income households by requiring providers to offer low cost, affordable plans.[56] This public investment of taxpayer dollars seeks to end "digital redlining" while also growing the customer base for privately owned Internet providers. California Governor Gavin Newsom and the California Legislature have also committed significant resources to addressing digital equity issues.[57]

We believe that banks and other financial institutions should become part of the digital equity solution. Specifically, banks must support efforts to increase infrastructure access to high-speed broadband, increase access to devices and increase access to digital literacy training on a wide scale.

A series of CRC surveys of financial institutions, CRC member organizations, and participants in CRC's Economic Health Promotora program found that:

- Banks are funding a variety of broadband initiatives and are motivated to garner CRA credit for such activities, but often want to better understand local broadband needs, opportunities, and capacities.
- Banks requested the following information:
    - Examples of other banks' successful broadband delivery programs
    - Connection to key players/stakeholders for partnership or collaboration
    - Clarity around the various channels of public infrastructure funding, as well as clarity around the role that financial institutions could and should play in the broadband access space
- A majority of CRC and The Greenlining Institute member respondents indicated that broadband access was a significant need in their communities.
- Forty-percent of Economic Equity Promotora workshop participants reported they did not have internet access before the pandemic, while 22% reported they gained access during the pandemic due to policy and program initiatives designed to increase access and to schools and social service organizations that helped families navigate the process and enroll in cost reduction programs. However 18% still do not have home broadband access.[58]

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[55] https://www.cetfund.org/action-and-results/statewide-surveys/2021-2/

[56] https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisaninfrastructure-deal/

[57] https://www.gov.ca.gov/2021/07/20/governor-newsom-signs-historic-broadband-legislation-to-help-bridgedigital-divide/

[58] For more on CRC broadband surveys, see our Broadband Fact Sheet in Appendix 2, or here: https://calreinvest.org/wp-content/uploads/2022/05/Broadband-Access-Survey-Findings-Fact-Sheet.pdf

CRC has urged financial institutions to make substantial commitments to increasing digital equity and broadband access in our state through one or more of the following activities:

- Providing starting and working capital to Internet Service Providers (ISPs) looking to expand their footprint in underserved markets;
- Providing volunteers to assist businesses involved in digital equity and seeking to expand broadband access with financial planning and marketing;
- Extending grant funding to businesses to get connected to middle-mile fiber lines;
- Supporting job training and workforce development targeted to leveraging federal and state broadband dollars;
- Providing New Markets Tax Credit and loan financing to build out needed infrastructure;
- Extending grant funding to local organizations seeking to expand digital equity and inclusion via computer/device supply, digital literacy training, and other measures;
- Providing in-house digital literacy training coupled with financial literacy training for bank customers, particularly those who may be impacted by mergers and potential bank branch closures.

During the pandemic we saw how the racial wealth gap laid bare inequities in small business loans, in living wages, in healthcare access, and in access to broadband. The digital divide impacted all of the above. We can all recall images of kids doing their homework in front of a McDonald's.

Lack of access to broadband still disproportionately impacts BIPOC families, both in urban and rural areas of the state. The result is limited possibilities for economic development and severely limited access to education, healthcare, public benefits and financial products and services. There are people that are disproportionately affected by the lack of access to broadband, that are on the wrong side of the digital divide. In California, the Central Valley lagged behind other regions and the overall state average. In 2021, their broadband adoption rate was 86% - five percentage points lower than the state average.

Home broadband access has been increasing across most demographic groups, but racial/ethnic gaps persist: 80% of Latinx/e households and 83% of Black households reported having broadband in 2020, compared to 87% of white households. This lack of access impacts things that many take for granted. Throughout 2020 and 2021, a checking account capable of online direct deposit was crucial to receiving stimulus payments and unemployment insurance expediently. Without a checking account with online direct deposit, individuals had to wait for delayed checks in the mail before making the trip to the teller to deposit the funds, inviting further delays in accessing funds while waiting a business day or two for deposited checks to be accessible. Those who have lower rates of internet access[59] and online banking utilization[60] were also those who needed access to income assistance most – LMI, Latinx/e, Indigenous, and Black households.

[59] https://www.cetfund.org/wp-content/uploads/2021/03/Statewide-Survey-on-Broadband-Adoption-CETF-Report.pdf
[60] https://www.fdic.gov/analysis/household-survey/2019report.pdf

We also thank the agencies for highlighting broadband in the NPR. Certain CD activities should be further encouraged by allowing for impact scoring and/or partial credit to the extent of LMI and BIPOC benefit, even if that is less than 50%. Here, we think of broadband activities, which can be a gateway to all CRA activity (banking, housing, jobs, job training, education, health, etc.), and support for Native Land Areas **(Questions #1, #15 and #29)**. In addition to broadband efforts being particularly called out as a qualifying essential community infrastructure activity, we suggest adding broadband to the definitions of, or to any list of qualifying activities related to, 1) revitalization activities undertaken in conjunction with a government plan, program, or initiative and 2) community supportive services. Consideration and positive impact scoring should be given to banks and bank financing to intermediaries that provide or subsidize low cost internet subscription to LMI, Native Land Areas, and majority-minority areas and consumers. Similarly, within the proposed addition of workforce development and job training programs to the "community supportive services" definition, explicit consideration and positive impact scoring should be given to funding of trade schools, workforce development, and job training activities within LMI or BIPOC communities and student bodies which provide the technical skills needed for the broadband/fiber optic buildout construction jobs that will be growing in our state as a result of substantial federal and state funding which can be leveraged.

Native Land Areas. We also support partial CRA credit for lending, investment and services provided to members of the Native American community and (Black Native American) Freedmen, regardless of where they reside **(Question #38)**, even if less than 50% of the beneficiaries are LMI**.** We appreciate the agencies' focus on Native American communities, which are much less likely to have branch presence and investments, and whose members are much less likely to have bank accounts.[61] We support the strong argument of Americans For Financial Reform, the Greenlining Institute and Public Citizen that the agencies should consider that the financing of polluting activities, such as building of gas pipelines, can threaten tribal rights to manage tribal community development when these activities occur on their lands without the free, prior, and informed consent of these communities. Investments that significantly threaten tribal rights should result in lower scores on any relevant tests, such as the community development finance test.

Climate. We are pleased to see the proposal list climate resiliency and disaster preparedness as eligible activities in light of the devastating impacts of climate change on LMI and BIPOC communities meant to benefit from the CRA. The definitions in the proposal are strong and should be retained, perhaps with more detailed examples **(Question #19)**. But the agencies have again failed to provide for downgrades where banks engage in harm, such as fossil fuel financing. We have seen financial institutions tout green initiatives, which presumably could earn CRA credit, even where such positive efforts were completely undermined and overwhelmed by substantially greater investments in fossil fuel industries, many of which result in an overshare of environmental burden in LMI communities and communities of color. It is not enough to define positive activities. Banks must suffer penalties and downgrades for financing problematic industries. This is especially the case here, as climate degradation by banks has created a vicious circle where redlined communities disproportionately suffer climate harm (such as excessive heat, drought and flooding) at the hands of banks which may then deny loans to such neighborhoods on the grounds that they are too risky and pose safety and soundness concerns. This is a civil rights and discrimination issue. The New York Times recently reported that the Department of Justice is

[61] https://www.americanbanker.com/news/regulators-cra-reforms-incentivize-investment-in-a-native-lands

investigating environmental racism in the city of Houston amidst evidence that illegal dumping has been allowed to fester in African American and Latino neighborhoods, which have suffered negative impacts as a result.[62] The regulators should treat the financing of climate harm as discrimination that can subject banks to CRA ratings downgrades and possible CRA exam failure where this harm disproportionately impacts communities of color, as is often the case.

We further support recommendations from The Greenlining Institute that additional eligible activities be listed under this definition, including but not limited to community solar and microgrids, operational support for environmental and climate justice organizations, and electrification and water efficiency measures for residential homes, including multifamily properties. Additionally, we agree that the final rule should outline publicly available data tools, which banks should use to identify climate vulnerable communities, and work towards building relationships and driving investment to those communities. Examples of tools include the Environmental Protection Agency's (EPA) Environmental Justice Screening and Mapping Tool and the White House Council on Environmental Quality's recently released Climate and Economic Justice Screening Tool (CEJST) **(Questions #20, #21, and #22)**.

Fix CRA:

- Encourage CD financing for broadband initiatives and Native Land Area projects by allowing partial CRA credit if less than 50% of the beneficiaries of such activities are LMI or BIPOC;
- Clarify in CD definitions or on the list of qualifying activities that banks are encouraged to subsidize the costs of LMI and BIPOC internet access, as well as support job training and workforce efforts that create jobs for broadband build out that leverage substantial federal and state funding that is in the pipeline;
- Downgrade banks that finance pipelines and other activities that frustrate Native American sovereignty and capacity to dictate community development that meets their needs;
- Provide CRA credit for bank activity that benefits Indigenous community members, including Freedmen, wherever they reside;
- Downgrade banks for financing fossil fuels and other activities that harm the environment.

3. Mortgages: Prioritize LMI and BIPOC owner occupants and loan originations.

The Retail Lending Test. CRA credit should only be given for mortgage loan originations (not loans purchased by banks from other lenders – **Question #64)**) to owner occupants (not to investors), unless the originating lender is a mission-driven nonprofit or the investor purchaser is an LMI or BIPOC buyer or mission-driven nonprofit organization. CRC has long argued against CRA credit for loan purchases, and investments in Mortgage-Backed Securities **(Question #9)** as adding little value to communities and offering little in the way of furthering CRA goals.[63] The NPR notes that CRA loans

[62] https://www.nytimes.com/2022/07/22/us/politics/houston-environmental-racism.html?referringSource=articleShare

[63] "CRA-induced purchases are fueled by delayed loan sales to Government Sponsored Enterprises that provide little benefit to the communities the CRA is meant to help," in Brevoort, Kenneth, Does Giving CRA Credit for Loan Purchases Increase Mortgage Credit in Low-to-Moderate Income Communities? (May 3, 2022). Available at SSRN: https://ssrn.com/abstract=4100514 or http://dx.doi.org/10.2139/ssrn.4100514

are purchased by banks more than 6 times as often as non-CRA loans,[64] suggesting banks are merely gaming the system and not adding any value. We support the proposal to use loan counts and not loan dollars to evaluate bank lending performance. We support the proposal to consider lending to low-income borrowers and communities separately from lending to moderate-income borrowers and communities. We urge the regulators to evaluate lending for each loan purpose (home purchase, refinance, home improvement, HELOC) separately **(Questions #56 and #57))**. We support the use of a major product lines test to determine which bank products to evaluate, but this formula must not allow large banks to evade consideration of a sizable portion of their lending. To address this issue, we recommend that the major products line test be set at 15% of all bank products or 50 loans in an assessment area, whichever is smaller. Banks should be evaluated for all of their major product lines in each retail lending assessment area **(Question #44)**. We support a mortgage lending screening test and appreciate agency analysis that suggests that the new scoring model proposed will result in less inflated CRA ratings than currently, but we urge the threshold be set at 50% and not 30% **(Question #73)**. This would be a major advance. We also urge a ratings system which more effectively distinguishes better from worse performers. The major product line test should focus on the percentage of bank loan units, not loan dollars. We are strongly opposed to any suggestion that a bank could fail to serve nearly 40% of its assessment areas and still pass its CRA exams. This seems a recipe for redlining of LMI and rural communities and communities of color.

Gentrifying mortgages. No or reduced CRA consideration should be given for mortgage lending to non BIPOC, middle- and upper-income borrowers in LMI census tracts, as this fuels displacement, unless a census tract is shown through the use of established models and data to be in an area not subject to gentrification. CRC analysis of 2021 HMDA data for the largest 20 bank lenders in California found that Non-Hispanic white middle- and upper-income borrowers comprised 37% of all originations in LMI and Majority Minority tracts, and 43% of all originations in LMI tracts. CRA examiners should consider the quality of loans and investments to LMI communities and communities of color, and whether certain communities are particularly vulnerable to displacement and gentrification based on existing methodologies. The Urban Displacement Project is one organization that has established a methodology and resources for identifying and addressing displacement pressures. The agencies should develop a methodology to determine when neighborhoods are vulnerable to displacement and impose greater scrutiny of bank lending and investment activity in those communities to ensure CRA is encouraging backs to promote community stability and to mitigate, and not fuel, displacement and gentrification pressures. Perhaps more problematic is CRA credit given to banks for lending to investors in BIPOC and LMI neighborhoods. In recent years, CRC has argued against the explosion of the single-family rental industry as depriving homeownership opportunities to first time homebuyers, creating a new class of problematic absentee landlords, and changing the fabric of neighborhoods by fueling gentrification **(Question #58)**. A recent Urban Institute analysis of nearly 12 million HMDA reported loans found that a whopping 18.2% of all loans made in low-income neighborhoods went to investors (non-owner occupants).[65] This is a perversion of CRA.

Fix CRA:

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[64] NPR at p. 172.

[65] https://www.urban.org/sites/default/files/2022-06/Slides-ModernizingTheCRA.pdf

- Do not provide CRA credit for loan purchases unless the originating lender is a mission-driven nonprofit organization.
- Do not provide CRA credit for investment in Mortgage Backed Securities unless the loans are originated by mission-driven nonprofit organizations.
- Do not provide CRA credit for loans to non owner occupants unless they are LMI or BIPOC borrowers.
- Consider lending to low-income borrowers and neighborhoods separately from lending to moderate-income borrowers and neighborhoods, as proposed.
- Consider each loan purpose separately.
- Retain the focus on loan counts, not dollars.
- Revised the major products line threshold to 15% or 50 loans.
- Adopt a mortgage lending screen, but raise the threshold to 50% of industry performance.
- Discount CRA credit for mortgages to middle and upper income white borrowers in LMI communities of color, especially in neighborhoods vulnerable to gentrification.

4. Small business lending: Focus on the smallest businesses

We applaud the proposed focus on small business lending to smaller businesses. We urge the regulators to require evaluation of both 1) lending to businesses with under $100,000 in gross annual revenue, as well as 2) lending to businesses with between $100,000 and $250,000 in gross annual revenue **(Question #75)**. Impact scores should also be afforded bank efforts to work with these sized businesses as part of the CD Financing Test as well **(Question #36)**. Such an approach would ensure that small businesses are served and would be consistent with the current CRA Small Business Lending reporting regime. Yet we are surprised and disappointed by the proposal to define small businesses as ones with $5 million or less in gross annual revenue. The $5 million threshold under Section 1071 was proposed by the CFPB for a different purpose altogether, namely, to establish reporting obligations under a fair lending rule that has not even been finalized (and which could change). Approximately 95% of small businesses, 97.7 of minority owned businesses and 98.3% of women owned businesses have less than $1 million in annual revenue[66], so to establish the definition at $5 million seems counterproductive. Indeed, Brookings Institute analysis estimates that 96% of Black-owned businesses are sole proprietorships.[67] BIPOC-owned and smaller businesses suffered disproportionately during the COVID pandemic, which merely exacerbated historic disparities. The PPP program itself, the governments primary response to small businesses during the pandemic, reinforced past discrimination by favoring groups with established banking relationships, resulting in approximately 2% of PPP's forgivable loans going to Black business owners, while 83% went to white owners.[68] In the NPR, the agencies note "The CFPB's proposed data collection would represent an improvement over small business lending and small farm lending data currently captured under CRA in two ways,

[66] See https://files.consumerfinance.gov/f/documents/201705_cfpb_Key-Dimensions-Small-Business-Lending-Landscape.pdf

[67] https://www.brookings.edu/blog/the-avenue/2021/04/29/how-black-owned-businesses-can-make-the-most-out-of-the-biden-infrastructure-plan/

[68] https://www.businessofbusiness.com/articles/black-owned-businesses-received-less-than-2-of-ppp-loans-while-whites-received-83/

because the CFPB's small business definition would be based on the revenue size of the business or farm rather than loan size as is the case under the current CRA regulations. First, the CFPB data would capture all lending, including larger loans, to small businesses and small farms meeting the CFPB's proposed definition. Second, the CFPB data would exclude loans made to large businesses and large farms."[69] But these objectives could be achieved with a lower revenue threshold. This is not an argument for a $5 million threshold, it's an argument for a revenue based, not a loan based, threshold. The CRA rules should focus examiner attention on section 1071 data reporting, once public, to ensure equal access to fairly priced credit for women and BIPOC-owned businesses and for businesses with less than $1 million in revenue **(Question #62)**. Larger businesses do not need the CRA's encouragement to banks, yet banks may gravitate to larger businesses and away from small businesses if permitted to do so.

Fix CRA:

- Define small business as a business with gross annual revenue of $1 million (not the $5 million proposed)
- Evaluate bank lending to businesses with less than $100,000 in annual gross revenue, and businesses with between $100,000 and $250,000 in gross annual revenue.
- Utilize the Section 1071 data once available to analyze the quality of loans available to disaggregated racial and ethnic groups and make this part of the CRA evaluation.

5. **Consumer Loans: Make part of the retail lending test, but a qualitative review is critical.**

The agencies propose adding auto loans as a potential major product line to be evaluated as part of the Retail Lending Test. We support this approach in light of the importance auto and consumer lending can play in the financial health of LMI, BIPOC and all households, as well as the desire to capture more bank lending as part of CRA oversight. We suggest extending this analysis to all consumer loans, not just auto loans so that all consumer loans could be major product lines to be evaluated under the Retail Lending Test (or the Retail Services and Products Test)**(Question #67)**. And while auto and consumer loans can provide a lifeline for families, they can also be a weight that drags down a household if the terms, underwriting and related factors are not fair. That is why it is imperative that wherever possible, and certainly with regard to consumer loans such as auto loans and HELOCs, that the agencies provide a qualitative review to ensure that products offered are helping to meet credit needs **(Question #69)**. The California Department of Financial Protection and Innovation requires licensees to report on loan terms, pricing, defaults, fees and related qualitative factors.[70] The subprime crisis taught us that every loan is not necessarily a good loan.

We support the proposal's suggestion to consider the lending of bank subsidiaries. But we would extend the CRA purview to also include all bank affiliates **(Question #52)**, as well as any lending done using the bank's underwriting or charter benefits. It makes no sense to allow banks to include affiliates in their CRA examinations only if they opt to do so. This enables bank's with predatory affiliates merely to choose to exclude the affiliate from consideration. Similarly,

[69] NPR, p. 170.
[70] https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/10/2020-CFL-Aggregated-Annual-Report.pdf

CRC strongly opposes Rent-a-Bank relationships that enable high-cost lenders to evade state laws by buying imported state interest rate ceilings and other preemption related benefits from CRA-covered banks. CRC urges the regulators to outlaw or otherwise bar Rent-a-Bank. In the alternative, the agencies should consider all lending conducted under such partnerships to be the lending of the bank partner, subject to CRA and other scrutiny. CRC recently joined the Center for Responsible Lending in signing on to an amicus brief in support of our Department of Financial Protection and Innovation (DFPI) as it challenges OppFi for originating high-cost loans, with an average interest rate of approximately 153% and overcharging approximately 38,000 Californians since 2020,[71] despite our state's rate cap law. FinWise Bank is enabling these high-cost loans to originate in our state, and should be held responsible for doing so. It is hard to see how FinWise is helping to meet community credit needs by partnering with a non-bank lender for the apparent purpose of evading state consumer protection law. Similarly, CRC is concerned about the partnerships between TAB Bank and EasyPay Finance which operates stores in Fresno, California amongst many other locations. We joined the National Community Reinvestment Coalition in submitting a comment letter which noted that through use of the TAB Bank charter, EasyPay originated loans with interest rates up to 189.99%, resulting in several consumer complaints being filed by borrowers who did not understand the terms of the loan.[72] Where bank partners originate high cost, discriminatory, unsustainable, or otherwise problematic loans, the banks should suffer CRA downgrades.

Fix CRA:
- Consider all consumer loans as possible major product lines.
- Conduct an extensive qualitative analysis of consumer loans, including marketing, pricing, fees, defaults and collections.
- Evaluate the lending of all subsidiaries, affiliates and fintech Rent-a-Bank partners. Move to end Rent-a-Bank partnerships and downgrade banks that facilitate evasion of state consumer protections laws using this model.

6. Branches and the Retail Services and Products Test: Halt the Industry March to Close Branches in LMI and communities of color.

We urge the regulators to retain core consideration of branch access as part of the CRA, and to expand bank branch obligations in a more meaningful way. NCRC analysis shows a tremendous and detrimental march by banks to close branches, especially in low income, BIPOC, and rural communities. Specifically, NCRC found that 7,500 branches closed between 2017 and 2021, that one-third of these branches closed in LMI or BIPOC communities, and that the overall branch closure rate doubled during the pandemic, when consumers and small businesses were most vulnerable.[73] A recent analysis by the Committee for Better Banks, shows that branch openings fail to proportionally locate in these same communities. We know that local branches mean more local jobs, more small business lending in the community and fewer visits to fringe financial providers like check cashers and payday lenders. A report on rural branching by the

[71] https://www.reuters.com/legal/transactional/california-agency-accuses-fintech-oppfi-predatory-lending-2022-04-12/
[72] https://ncrc.org/40-groups-urge-fdic-to-downgrade-tab-bank/
[73] https://ncrc.org/the-great-consolidation-of-banks-and-acceleration-of-branch-closures-across-america/#:~:text=Last%20year%2C%20NCRC%20released%20a,%E2%80%94%20a%2014%25%20loss%20nationally.

Federal Reserve noted that: 1) branches continue to be an important banking channel for consumers, especially for deposit and withdrawal transactions and for resolving problems; 2) banking clients in affected communities generally report increased costs and reduced convenience in accessing financial services and that these challenges appear to be exacerbated for certain groups, such as those with lower incomes or less reliable access to transportation, older individuals, and small business owners; and 3) the effect of bank branch closures on communities appears to involve a community-level effect that goes beyond the effects on particular individuals.[74]

No CRA credit should be given for branches that are near LMI or BIPOC neighborhoods **(Question #99)**, as branches located in LMI neighborhoods do not receive less credit for middle and upper income customers there. The CRA rules should clearly penalize branch closures and poor coverage in LMI, BIPOC and rural communities with ratings downgrades, and encourage through impact scoring the opening of branches in such communities. If banks feel they need to reduce branches to offset costs, they should do so in middle and upper income and non-BIPOC communities. The CRA should not countenance the loss of branches in LMI and BIPOC communities which have been so central to the very notion of CRA and which remain the main way many households and communities prefer to conduct their banking business. The chart below shows that of the top 25 metro areas in the country home to most branch losses from March 1, 2020 to October 31,2021, five were in California, with Los Angeles losing 185 branches during a 40-month period, San Francisco seeing a 617% increase in branch loss since the pandemic, and San Diego, Riverside and Sacramento seeing branch losses during the 20-month period of the pandemic of 54, 31 and 30 lost branches, respectively.

[74] https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf

California Reinvestment Coalition

Pandemic Era Branch Closures by Metro

The 25 metros which were home to the most branches lost over the 20 month period from March 1, 2020 through October 31, 2021 compared with their closure rate over the 20 months prior to the Pandemic.

Click on a column header to sort.

		Net Branch Changes		
	Metro	Pandemic	Pre-Pandemic	Increase/Decrease in Closure Rate
1	New York	-419	-273	153%
2	Chicago	-130	-147	88%
3	Los Angeles	-125	-60	208%
4	Washington	-105	-35	300%
5	Detroit	-100	-44	227%
6	Miami	-78	-28	279%
7	Philadelphia	-76	-44	173%
8	San Francisco	-74	-12	[illegible]
9	Portland	-69	-22	314%
10	Atlanta	-59	-16	369%
11	Seattle	-55	-18	306%
12	Boston	-55	4	[illegible]
13	Phoenix	-54	-25	216%
14	San Diego	-54	-15	360%
15	Baltimore	-52	-15	347%
16	St. Louis	-44	-4	[illegible]
17	Cincinnati	-37	-31	119%
18	Cleveland	-37	-30	123%
19	Pittsburgh	-37	-11	336%
20	Grand Rapids	-36	1	[illegible]
21	Tampa	-35	-20	175%
22	Las Vegas	-34	-11	309%

	Metro	Pandemic	Pre-Pandemic	Increase/Decrease in Closure Rate
23	Columbus	~34	~5	[illegible]
24	Riverside	~31	~22	141%
25	Sacramento	~30	~17	176%

The agencies ask, "How should the agencies treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite **(Question #41)**? This question recalls the case of Countrywide Bank, which grew to more than $100 billion in deposits. The Bank argued successfully to the OCC that it had no branch presence in California, even though Countrywide Home Loan offices were rebranded with the Countrywide Bank name, and employees of the Bank would assist customers in sending their deposits to its Alexandria, Virginia headquarters. When we raised the issue, the OCC determined that this activity would not constitute a branch that accepted deposits and triggered CRA responsibility unless Countrywide maintained control over the mail deposit pickup schedule. Countrywide revised its mail pick up procedures and was not required to reinvest in California communities.[75] Perhaps, if Countrywide Bank was deemed to have branches in all of the places from which it took deposits, and been subject to additional oversight for its mortgage lending practices, it would have left a more positive mark on communities and not imploded. No more legal gymnastics. If bank staff help customers deposit funds from a retail facility, that is a branch. If a bank takes significant deposits from a community, that community should be part of its CRA assessment area.

Fix CRA:

- Downgrade banks that close branches in LMI or BIPOC communities.
- Provide credit or impact points to banks that open branches in LMI, BIPOC and rural areas.
- Do not credit branches that are near LMI or BIPOC communities.

7. Accounts and the Retail Services and Products Test: Further Urge Banks to Develop Responsive Products.

The Retail Services and Products Test with its focus on responsive credit and account products, could be a significant advance of CRA if done wisely. But the consideration of responsive credit and deposit products must extend to all banks, and certainly to all large banks **(Questions #111 and #168)**. The proposal's deference to banks with between $2 billion and $10 billion in assets is deeply disappointing, in this context, and in all others. (data collection, auto loans, digital accounts, etc). Additionally, the Retail Services and Products Test should be applied to all bank assessment areas, not merely at the institution level. To do otherwise runs contrary to the CRA's requirement for bank's to serve their local communities. The agencies should encourage banks to develop responsive credit and account products such as: Special Purpose Credit Programs (SPCPs), short term and low rate consumer loans such as an alternative to payday lending,

[75] https://www.americanbanker.com/news/they-sure-seem-like-branches-countrywide

Bank On accounts with no overdraft or NSF charges, language access throughout all aspects of the bank's customer interface, accounts tailored for domestic violence survivors and seniors, loans and investments for Community Land Trusts and similar nonprofit organizations, microloans and small dollar mortgages, patient capital, effective loss mitigation programs, no use of Chexsystems of similar account screening barriers, use of alternative credit scoring models, local hiring, accounts and loan products for Individual Tax Identification (ITIN) customers, waiver of Electronic Benefit Transfer (EBT) fees for public assistance recipients trying to access their funds without a bank account, support for digital equity and broadband access efforts, and participation in public banking product offerings **(Question #97 and Question #104)**. We support and urge proposals to provide both a quantitative and a qualitative review of responsive deposit and retail credit products. CRC has been recommending for years that banks should be evaluated not only for offering, for example, Bank On accounts, but for actually connecting consumers with such accounts. We strongly believe that regulators should review the quality of all bank credit and deposit products, especially in the consumer arena. This includes marketing, language access, terms, rates, fees, defaults, collections, complaints by consumers and community groups, and investigations and enforcement actions by federal and state agencies. The retail services and products test should be used beyond Facilities Based Assessment Areas, to include Retail Lending Assessment Areas. We are very concerned that combining all these critical components of CRA - meaningful access to branches, accounts, and responsive credit products - will give them insufficient consideration in a test representing only 15% of a bank's CRA rating. This test should receive approximately 20% of the weight of the overall exam, perhaps shaving off weight from the CD Services Test.

Fix CRA:

- Require all large banks to develop, offer and track responsive credit and deposit products, and subject these products to a rigorous qualitative analysis.
- Consider increasing the weight given to the Retail Services and Products Test

8. Assessment areas: Create Deposit-Based Assessment Areas consistent with the statute.

We appreciate the proposal to expand CRA coverage beyond branch locations, as we have urged for years. The Retail Lending Assessment Areas are positive, though we suggest the thresholds be lower (50 mortgages or 100 small business loans should trigger CRA responsibility) and that bank obligations to serve these areas extend beyond retail lending to other bank offerings (such as Retail Services and Products and CD Finance) in order to ensure that more rural communities are covered and that they are better served. But, the agencies fail to create deposit-based assessment areas that require banks to reinvest dollars back into the communities from which the deposits derive. This is the whole idea behind CRA. Every large bank knows exactly where its deposits reside, and they should be required to disclose this publicly and to accept CRA assessment areas where significant deposits are domiciled **(Questions #120, #124, #147 and #148)**. This is the only way to keep up with emerging industry and consumer trends, to ensure that deposits through neobanks and other deposit-gathering third parties are assigned to local communities, and to prevent abuses and evasions such as San Francisco-based companies like Square and Schwab establishing out-of-state non-branch banks with no proposed CRA responsibility in California despite, we believe, soliciting a plurality of deposits from California where their non-bank customers and employees have resided. Deposit-Based Assessment Areas might better serve rural communities which suffer a dearth of branches, but also a dearth of lending, so these communities might not benefit as much from a retail lending test as they would under a deposit-based approach. And even if more rural communities became part of Retail Lending Assessment Areas, they would only benefit from the Retail Lending Test. As such, this would essentially be creating a two-tiered CRA system, with rural communities more likely to be subject to the subprime Retail Lending Assessment Area test. The agencies should analyze this dynamic further and consider creating Deposit Based Assessment Areas that would be subject to all (four proposed) Tests, and determine what impact such an approach would have on rural communities. There are a number of points in the proposal where the agencies would impose lesser obligations on banks with between $2 billion and $10 billion in assets compared to banks with over $10 billion in assets. We strongly feel that all large banks should be subject to all the responsibilities outlined for the largest banks. Finally, while we support expanding CRA beyond branches, the CRA should retain a focus on local communities and we urge the agencies to prioritize Facilities (branch) Based and Deposit-Based Assessment Areas, perhaps through greater weighting of bank performance there.

Fix CRA:

- Create Deposit Based Assessment Areas for all large banks.
- Impose additional tests beyond the Retail Lending Test, such as Retail Services and Products and CD Finance, to Retail Based Assessment Areas.

9. Community participation. Enhance community participation so that CRA activity is tied to community needs, CRA ratings reflect community impact, and bank mergers are denied unless they provide a clear public benefit that regulators will enforce.

Though the agencies suggest that community participation is to be expanded, there is little evidence for that in the proposal. Current CRA rules and implementation, as well as this proposal, do a poor job of encouraging and valuing community input. Community comments on exams are not solicited, and when provided, they are seemingly ignored. Community contacts appear a relic of the past, and were not often even bank-specific, instead asking about community needs and how banks generally were doing. Banks and the relevant agencies should post all Performance Evaluations, as well as any questions and community comments on bank performance on their respective websites. Banks should be required to provide a response to questions and comments raised, and these questions, comments and responses should impact a bank evaluation with regard to the Retail Lending Test, and otherwise **(Questions #86 and #174)**. The agencies should actively solicit community stakeholder input on the performance of particular banks during CRA exams and bank mergers. All CRA Public File information should be accessible on bank and agency websites. Ninety days should be provided to the public to comment. Banks and regulators should clearly disclose contact information for relevant staff. Freedom of Information Act responses by the agencies must be quicker and more transparent. Bank mergers should default to hybrid in-person and virtual public hearings when public commenters raise concerns. Regulators should issue an advisory to banks warning against retaliation or any adverse action against groups that submit comments on CRA exams or bank applications or that choose not to support a bank, and banks should be required to provide a public list of all nonprofits they ask to comment or testify in support of a bank application. Regulators must scrutinize bank merger applications to ensure that community credit needs, convenience and needs, and public benefit standards are met. Community Benefits Agreements should be encouraged as evidence that these standards can be met by the bank, and regulators should condition any merger approvals on ongoing compliance with CBAs. Agencies should routinely review all existing consumer complaints, community comments, CFPB and agency investigations during CRA exams and merger reviews. In particular, community groups should be solicited for their views on bank practices relating to climate, displacement, discrimination, and other harms **(Question #174)**. Mergers should not be approved unless consumer protections and community reinvestment will increase as a result. The merger process needs substantial amendments to meaningfully promote community participation **(Question #146)**. CRC was pleased to see the FDIC request information regarding the merger process, and we were pleased to submit comments. Current policies are insufficient. Past CRA ratings should have a limited impact on bank application decisions. This NPR suggests that prior ratings may have been inflated, which we strongly believe. Also, the ratings are dated at the time of any application given the lag between examination and PE publication and the time between exams. The regulators should give more weight to contemporaneous comments and not rely on prior ratings. Regulators should never refuse to consider comments and complaints during the review of applications and instead push that comment or complaint to the CRA exam process, as has been done.

Fix CRA:

- Require banks to respond to community comments and to post these exchanges on their websites;
- Provide 90 days for public comment;
- Provide regulator and bank contacts and public portions of merger applications upon filing;
- Grant public hearings on mergers when the public raises concerns;
- Require banks applying for merger approval to disclose a list of expected branch closures and recent litigation matters;
- Require banks to list the names of organizations they solicit to support merger applications;
- Require mergers to demonstrate a clear public benefit and condition any merger approvals on compliance with strong CBAs.

CRC thanks the agencies for taking their time to issue a unified, detailed and thoughtful proposal. Nevertheless, we retain serious concerns about the proposal and its failure to live up to the promise of CRA.

V. In order to underscore our key, specific recommendations designed to produce a better CRA, we end where we began, by reproducing the top dozen changes we feel are needed:

1. Evaluate retail lending, community development finance, retail products and services, branch access and community development services to BIPOC consumers and in BIPOC communities, alongside such evaluations for LMI borrowers and communities.

2. Enhance fair lending exams by making them more rigorous (focusing on all significant disparities in lending or deposit access), transparent (reflected in fuller discussions in CRA Performance Evaluations and clearer reporting on DOJ referrals), and reliant on all sources of complaints (not only DOJ settlements), and by giving failing CRA ratings to banks that discriminate.
3. Give impact points for activities that demonstrably close racial wealth gaps, such as SPCPs targeted to racial, ethnic and other underserved groups, across all tests and bank activities (not just lending and not just retail products and services tests).
4. Lower ratings if there is evidence of harm (such as discrimination, displacement, fee gouging, high cost lending, lending that results in undue defaults, branch closures, fossil fuel finance or other forms of climate degradation) as evidenced by court cases, regulatory actions, investigations, consumer or fair housing group complaints or community contacts/comments.
5. Keep CD investment and CD lending tests separate so as to encourage impactful LIHTC, equity investments, NMTC and contributions.
6. Discount mortgages to non-owner occupants who are middle to upper income and non-BIPOC and exclude all loan purchases and MBS investments that are not originated by mission-driven lenders.
7. Discourage displacement by extending anti displacement requirements to all Community Development activities, requiring banks to have anti-displacement financing plans and policies, and downgrading banks for foreseeable displacement resulting from financing activity.
8. Increase lending and technical assistance to the smallest businesses by defining small businesses as those with gross annual revenue of $1 million or less (not the $5 million proposed), evaluating banks on lending and t/a support to businesses with under $100,000 and between $100,000 and $250,000 in gross revenue, and using Section 1071 data when it is available to evaluate the quantity and quality of bank lending to small businesses.
9. Maintain existing asset thresholds and require banks to serve all communities (do not allow banks to fail 39% of areas) to ensure rural areas do not receive LESS investment.
10. Tie CD financing activities, through impact scoring and partial credit, to important LMI and BIPOC community needs such as broadband, Native Land Areas, and climate resiliency, as well as other community needs as evidenced by local plans and CBAs.
11. Encourage and enforce CBAs by requiring compliance with any CBAs as part of (conditional) merger approvals and by reviewing compliance with CBAs as part of ensuing CRA evaluations.
12. Require all large banks to reinvest in Deposit-Based Assessment Areas where depositors are domiciled and eliminate all of the various exemptions proposed for banks between $2 billion and $10 billion in assets.

Conclusion

The California Reinvestment Coalition appreciates the opportunity to comment on proposed CRA rules. While there are positive aspects of the proposal, and the agencies are to be commended for working together, we cannot support this proposal in its current form. Significant changes need to be made to the final rule to ensure that borrowers and communities of color are considered under the nation's anti-redlining law, that banks are penalized for harm caused to communities — such as through displacement, climate degradation, fee gouging, branch closures and discrimination —

that community input is valued and elevated, and that complex formulaic evaluation methodologies do not result in banks failing to meet critical community needs relating to affordable housing, homeownership, small business development, broadband, and rural and Indigenous community access.

Should you have any questions about this letter or our position, please contact Kevin Stein at kstein@calreinvest.org. Thank you for considering these comments.

Sincerely,

[redacted] [redacted] [redacted]

Paulina Gonzalez-Brito	Kevin Stein	Jamie Buell
CEO	Chief of Legal and Strategy	Research Analyst

VI. APPENDIX A: CRC's Anti-Displacement Code of Conduct

Anti-Displacement Code of Conduct: How Banks, Private Equity and Wall Street Can Stop Contributing to Displacement

crc

Preamble

The Problem of Displacement. Large parts of California have faced intense gentrification pressures over the last few years, leading to untold evictions of tenants and small businesses, and foreclosures on long-term homeowners and seniors. This has destabilized families, disrupted local institutions, weakened the fabric of neighborhoods, contributed to homelessness, and re-segregated communities.

The Role of Financing in the Displacement Crisis. The displacement crisis has been primarily fueled by speculator greed and displacement financing by banks, private equity, and Wall Street firms. Policy makers struggle to stem displacement, increase the stock of affordable housing, and hold bad actors accountable. Banks and other capital providers can act as co-conspirators with speculators and serial evictor landlords who purchase properties with the goal of evicting tenants, homeowners, and small businesses. Tax incentives for investing in low-income neighborhoods (like the federal "Opportunity Zones" program) also result in displacement. The mass-produced homelessness that results from such financing imposes huge costs on families, communities, and municipalities.

Anti-Displacement Best Practices. This Anti-Displacement Code of Conduct provides a roadmap for the responsible infusion of capital into low-income neighborhoods and creates an expectation and commitments for financing actors to mitigate the impact of displacement occurring in communities. It also outlines policies and practices to be avoided. Loans and investments in low-income neighborhoods have the potential to fund stable tenancies, create paths to homeownership, ensure secure employment opportunities, and enable small businesses to grow. All of this contributes to communities where individuals and families can build wealth and thrive.

Best Practices

Finance stable tenancies and communities, not displacement from multifamily buildings. Banks and private capital should not finance displacement mortgages to building owners whose business model and financing are reliant on eviction of existing residents and businesses.

- *Know Your Borrower*. Do not finance serial evictors.
- *Require Borrower Compliance with Tenant Protections*. Ensure landlord borrowers commit to complying with state and local tenant protections.

- *Assume Existing Rents*. Underwrite to current rents and local rent control laws.
- *Withhold Consent for Unreasonable Termination of Tenancies*. Require assignment of rents and lender consent before the landlord borrower can impair rents by taking rentals off the market.
- *Check in With Tenants*. Seek input from tenants and advocacy groups regarding harassment, illegal evictions, unreasonable rent increases, and habitability concerns on the property.
- *Enforce Borrower Obligations*. Take strong and swift action against serial evictors and other displacing entities to correct issues when landlord borrowers displace residents and businesses in violation of loan documents and this Anti-Displacement Code of Conduct.
- *No CRA for Displacement*. Refrain from seeking Community Reinvestment Act credit for loans and investments that lead to displacement.

Create Good Jobs. Financing and investments of economic development initiatives must incorporate job training and local workforce development components that create living wage jobs and career pathways that benefit low- and moderate-income people, people of color, and their neighborhoods.

Reinvest to develop healthy communities, not gentrify them. Banks and private capital should reinvest in gentrifying neighborhoods only through an anti-displacement lens, targeting loans and investments to local residents and businesses so they can remain in their communities, build wealth, and thrive.

- *Promote Homeownership*. Lend and invest in local homeowners who can build wealth and remain a part of the community.
    - Banks and private capital should not finance investor purchases of single-family homes which crowd out first-time homebuyers or result in displacement of existing tenants.
    - Offer flexible mortgage loan products for first-time homebuyers, borrowers of color, and low- and moderate-income residents to purchase and maintain their homes.
    - Support education, credit repair, and down payment assistance programs.
- *Invest in Affordable Rental Housing*. Preserve and create affordable rental housing that keeps families housed.
    - Develop low-rate loan products to help nonprofit developers, community land trusts and other organizations to purchase mobile home parks and multi-family buildings at risk of flipping or with expiring affordability contracts, single family REOs, and other housing units that can provide affordable housing options.
    - Make significant investments so affordable housing groups can acquire, develop and rehabilitate properties, including through non-traditional models, such as cooperatives.
    - Donate or offer Bank Real Estate Owned properties at a discount to nonprofits or local governments so that units can be maintained as affordable housing.

- Develop and offer low-rate loan products that will enable small, private, local multi-family landlords and/or landlords accepting Section 8 vouchers to fix and maintain their properties, where they have committed not to displace tenants or to raise rents.

- *Finance Small Businesses*. Help small businesses remain in the community to serve their customers and neighborhoods.
  - Offer micro enterprise loans and loan products under $100,000 for small businesses, and offer financing to help them purchase property so they can remain in the community and build assets.
  - Provide philanthropic support so small businesses can negotiate leases to avoid eviction.
  - Provide financing for non-traditional business models, such as worker cooperatives.
  - Provide funding for technical assistance, case management, and other support to businesses at risk of displacement.
- *Engage in Anti-Displacement Philanthropy*. Support an anti-displacement infrastructure to provide assistance to community residents, business, and institutions.
  - Provide philanthropic support for groups fighting displacement, such as legal services, tenant advocates, affordable and fair housing initiatives, and policy organizations.
- *Support Local Government Efforts*. Finance local government efforts to fight displacement, create affordable housing, support local small businesses, and respond to homelessness.

Sign on to Anti-Displacement Code of Conduct. A central component of our efforts has been to change bank lending and investment practices. To that end, a number of CRC members and allies worked to develop this Anti Displacement Code of Conduct, which lays out our view as to what banks and other lenders should do to stop financing displacement, and how they should focus reinvestment activity thru an anti-displacement lens. To date, over 90 groups have signed on.

If your organization wishes to endorse these anti-displacement principles, just click here: https://forms.gle/S1S5oE5PrddddHK79

For more information, please contact:

Kevin Stein
California Reinvestment Coalition
(415) 864-3980
kstein@calreinvest.org

Endorsements

(re)solution lab
A-1 Community Housing Services
Able Works
Access Plus Capital
Anti-Eviction Mapping Project
Asian Pacific Islander Small Business Program
Bend the Arc Jewish Action
CAARMA
California Capital FDC
California Coalition for Rural Housing
California Housing Partnership
California Reinvestment Coalition
California Resources and Training
California Rural Legal Assistance, Inc.
CAMEO
Capital Impact Partners
CCEDA
Central Valley Realtist Board
Centro Legal de la Raza
CHOC
Chrysalis Consulting Group
CJJC
Community Bank of the Bay
Community Legal Services in East Palo Alto
Consumer Action
Consumers for Auto Reliability and Safety
Council of Community Housing Organizations (CCHO)
Courage Campaign
East Bay Community Law Center
East Bay Housing Organizations
Fair Housing Advocates of Northern California
Fair Housing Council of Riverside County, Inc.
Fair Housing Council of the San Fernando Valley
Fair Rents for Redwood City
Faith In Action Bay Area
Figure 8 Investment Strategies
Financial Justice Coalition
First 5 Alameda County
Greenlining Institute
Haven Services, Inc.
Housing and Economic Rights Advocates
Housing for All Burlingame
Housing Rights Committee of SF
Inland Fair Housing and Mediation Board
Insight Center for Community Economic Development
Koreatown Youth + Community Center
Law Foundation of Silicon Valley
Lawyers' Committee for Civil Rights of the San Francisco Bay
Leadership for Urban Renewal Network (LURN)
Leeds University Business School
Legal Aid Foundation of Los Angeles
Legal Services of Northern California
Little Tokyo Service Center
Main Street Alliance
Main Street Launch
Michigan Community Reinvestment Coalition
Mission Economic Development Agency (MEDA)
Mission Neighborhood Centers, Inc.
Mountain View Tenants Coalition
Multicultural Real Estate Alliance
NeighborWorks Sacramento Region
NHSIE
Nor-Cal FDC
Northern California Community Loan Fund
NPHS
Oakland Community Land Trust
Oakland Warehouse Coalition
One San Mateo
Operation HOPE
Opportunity Fund

Pacifica Housing 4 All
PolicyLink
Project Sentinel
Public Advocates
Public Counsel
Public Interest Law Project
Public Law Center
Renaissance Entrepreneurship Center
Richmond Community-owned Development
Enterprise
RNHS
Rural Community Assistance Corporation
Sacred Heart Community Service
San Francisco Berniecrats
San Francisco Community Land Trust
San Francisco Tenants Union
SF Public Bank Coalition
Silicon Valley Community Foundation
St Columba Church
Strategic Actions for a Just Economy
(SAJE)
Tenants Together
Tenderloin Housing Clinic, Inc.
Thai Community Development Center
The Fair Housing Council of San Diego
The National Housing Law Project
The New Oakland Inc.
The Unity Council
Ventura County Community Development
Corp
Vermont Slauson Economic Development
Corporation
Western Center on Law & Poverty
Working Solutions
Youth Finance Institute of America
Youth United for Community Action

What does it mean for Financial Institutions to sign on to the Anti-Displacement Code of Conduct?

Financial institutions that sign on to the Code of Conduct (Code) make a good faith commitment to comply with the Code's Best Practices.

By signing on to the Code, financial intuitions commit to make changes in their practices prospectively, and are not expected to account for prior activity. These prospective changes include reviewing, adopting or improving due diligence policies and procedures geared towards avoiding the origination of displacement loans to problematic borrowers with risk factors that suggest they will move to evict and displace existing residents.

Such changes, for example, would likely include researching and reviewing the past records and histories of prospective borrowers, as well as making good faith efforts to meet with tenant groups and/or local government staff before loan origination, periodically after loan origination, and at the time of any loan renewals.

Relocations of residential and commercial tenants that are designed to preserve affordability, and relocations that are required to rehabilitate properties where LMI residents or small businesses are relocated in accordance with law AND provided a right to return to the premises, do not necessarily run counter to Code of Conduct principles.

Additional prospective changes to financial institution practice would include making amendments and enhancements to loan agreements that are designed to prevent displacement, such as explicitly requiring borrower compliance with state and local tenant protections and having the bank retain consent rights to the impairment of rents.

Oversight of these anti-displacement financing measures may require a financial institution to follow through with consequences if a borrower violates these policies, such as by calling in the loan, non-renewal of the loan, offering a cure period, or assessing a fine.

Finally, the Code of Conduct calls on financial institutions to reinvest in low income communities and communities of color through an anti-displacement lens. The expectation is that banks will strive to align their reinvestment activities with the principles outlined in the Code, enhanced by continuing conversations with community groups, and consistent with their existing business models.

Signing on to the Code additionally means that financial institutions agree both to share data on implementation of and compliance with the Code, and to meet with CRC and its members to discuss compliance with the Code at least once annually.

Community groups recognize that in taking these steps, financial institutions are making an extra commitment of time and resources to better serve their communities. Community groups hope and believe that the public and the bank's customers will appreciate that Code of Conduct signatories are playing their part in addressing one of the biggest challenges facing California communities – how to slow the financing of displacement of low income neighborhoods and neighborhoods of color.

Bank Representative Date

CRC Representative Date

California Reinvestment Coalition

APPENDIX B: CRC Fact Sheet on Broadband and Digital Equity crc

California Communities' Broadband Needs and the Role of Financial Institutions: Findings from California Reinvestment Coalition Surveys

For this report, the California Reinvestment Coalition (CRC) analyzed findings from multiple surveys of our varied constituents.

First, we conducted a survey of 13 large national banks about their investments in broadband access and adoption initiatives.

Second, in partnership with The Greenlining Institute, we conducted an annual survey of our members, who are local organizations engaged in fair housing, affordable housing development and economic empowerment and development. This annual survey examines local bank performance from the perspective of local community members and includes questions about local broadband initiatives from banks.

Third, as part of CRC's Economic Equity Promotoras program – an economic wellness initiative providing outreach and education specifically for historically disenfranchised communities – we conducted a survey of program participants that included questions about broadband access, particularly in light of the pandemic.

Findings from the three surveys are all included here.

Current findings and future work is informing CRC's partnership with the California Emerging Technology Fund (CETF) and collaborative efforts to advance digital equity and inclusion.

KEY TAKEAWAYS

Among Banks

- Large banks are funding an array of broadband initiatives, and there is some appetite to increase support.
- Many banks stated that they needed additional information about the issue and the role banks can play in increasing broadband access, such as:
  - Examples of successful broadband initiatives from other financial institutions.
  - Input from community members about internet access needs and how they can support.
  - How banks can fit into the ecosystem of broadband access in relation to other industries and local governments.
- There is a willingness to increase investment into broadband that will garner CRA credit being received and opportunities in their CRA assessment areas.

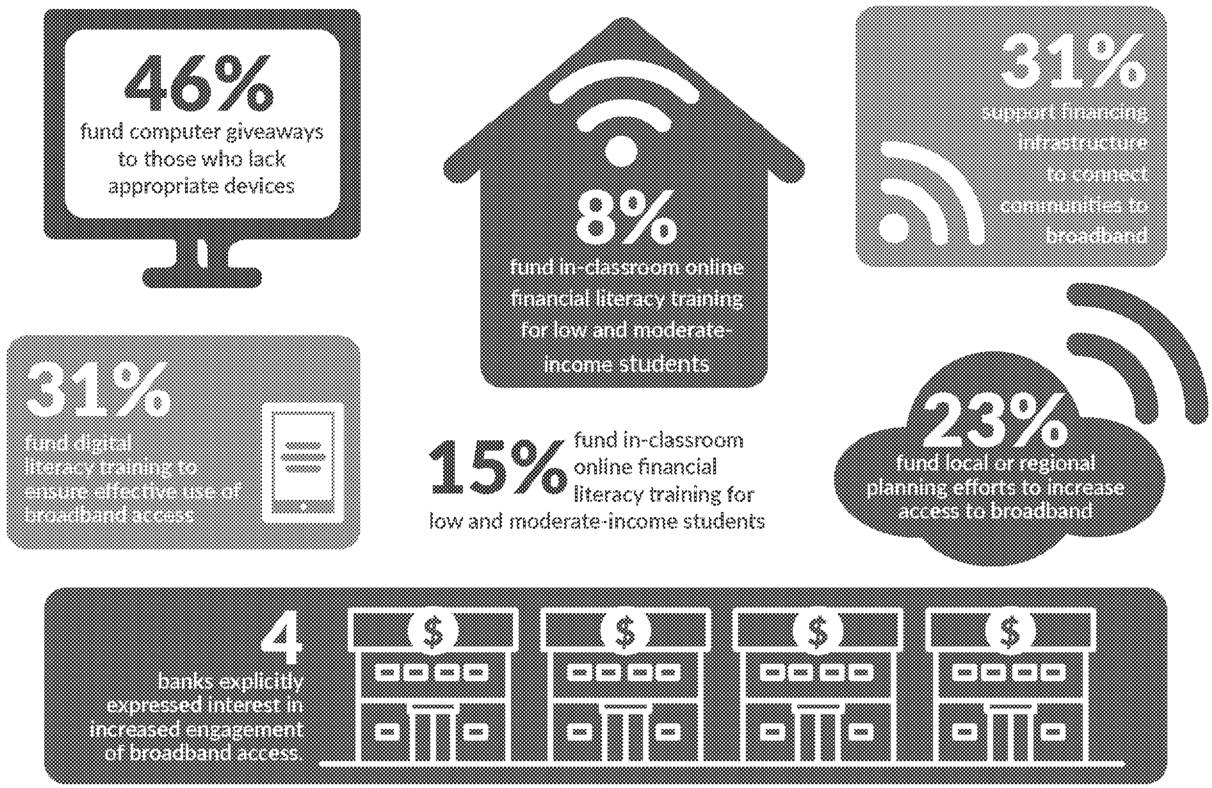
Among Community Members

- Thirteen of 22 member survey respondents identified that expanding broadband access was a need in their communities.
- Many were unaware whether financial institutions were engaged in any broadband initiatives in their communities.
- 40% of Economic Equity Promotoras workshop participants reported they did not have internet access before the pandemic.
- Within the last two years, 22% gained access to broadband. Assistance from local schools or social service organizations was pivotal in providing internet and technology access for Promotoras program participants.

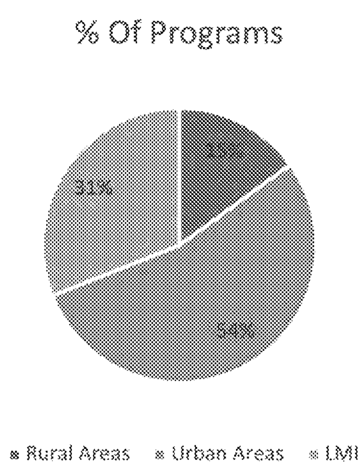
SURVEY FINDINGS

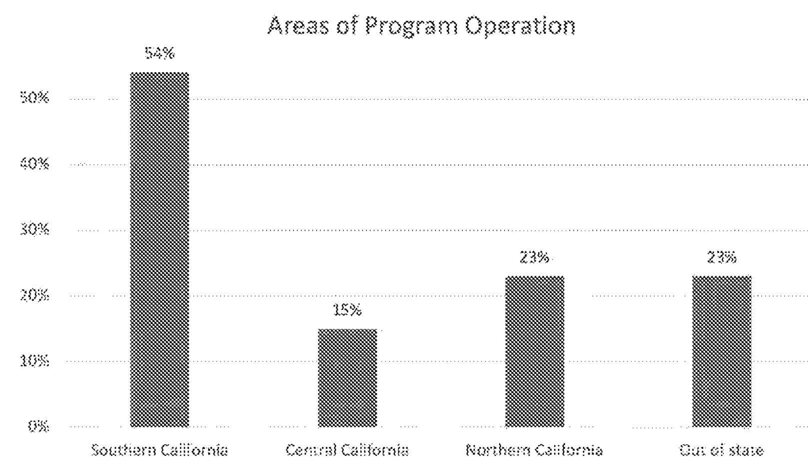
In December 2021, CRC conducted a survey of broadband access and adoption initiatives to 13 banks, with 100-percent respondence. The 13 banks' total asset size amounts to over $8.3 trillion and are operating in 49 of 50 US states.

Here are the initiatives the 13 surveyed banks reported supporting:



Of the 13 surveyed banks, these are the locations they identified their programs serving:





The majority of programs were operating in urban or metropolitan areas and in Southern California.

Banks acknowledged specific information requests, the answers to which would make their increased involvement in broadband access more likely:

- Examples of other banks' successful broadband delivery programs
- Connection to key players/stakeholders for partnership or collaboration
- Clarity around the various channels of infrastructure funding, whether from the Federal Infrastructure bill, the CA Broadband Budget Bill or from local government funding. Banks expressed that if these channels of infrastructure funding were being leveraged by local governments and communities, their institutions would consider their own increased investment and engagement around broadband access.
- General information about the role banks can play in increasing broadband access

Opportunities to leverage and to educate banks about their role in expanding broadband access:

- A majority of surveyed banks (61%) expressed some sentiment that local need for increased investment would need to be identified, and the right opportunity for the banks in these localities **(such as communities in need being within their CRA assessment areas)** would be required for the bank to increase investment in broadband access.
- Three banks were unclear on the role their institution, as compared to others, could and should play in the broadband access space.
  - One reason for uncertainty of the role of financial institutions was a belief that there were other subject matter experts in other industries who would be better positioned to work on broadband access.
  - One bank expressed uncertainty around who or what entities would act as a necessary regulatory body or provide oversight in the space of broadband access. They were not opposed to oversight, just unclear on who would be acting in that necessary role and how banks' broadband initiatives would hypothetically be positioned in relation to that oversight.

From our survey of CRC and Greenlining nonprofit members about bank performance in their communities:

- Out of 22 members who responded to the survey, a majority (59%) identified that lack of broadband access was an issue in their communities.
- Out of 16 responses[1] to the question of if respondents were familiar with any banks' broadband access initiatives in their communities, 87% said they were unsure/not aware of any banks' local broadband access initiatives.

87%

were unsure/not aware of any banks' local broadband access initiatives

1 This follow-up question was not mandatory; not all of the previous 22 respondents answered the subsequent questions.

- When subsequently asked for suggestions as to what banks should be doing to address broadband access, here were some examples:
    - Provide local communities with access to software, hardware and buildings in their footprint that offer free WiFi.
    - Partner with local organizations that are working to address the digital divide. This could include local organizations working on increasing broadband access themselves, such as the Upstate California Connect Consortia, or to an advocacy group working on policy and corporate level to make utility costs less expensive and more accessible, such as The Utility Reform Network. Respondents also called out local government public-private partnership initiatives, such as LA County's "Delete the Divide" Initiative.

Among CRC's Economic Equity Promotoras[2] Participants[3]:

- 40% of participants did not have access to broadband prior to the pandemic.
- Within the last two years, 22% gained access to broadband at home: Schools or social service organizations helped families navigate the process and helped them enroll in cost reduction programs.
- 18% still do not have home broadband.

22%
gained access to broadband at home within the last two years

Significant funding is coming, and communities will need assistance with adoption and implementation.

In addition to the federal Infrastructure Bill, which has allocated nearly $48 billion to broadband investment across the country, the California's "Broadband for All" program will provide $6 billion to expand broadband infrastructure and enhance digital equity and inclusion. Although public agencies may be responsible for the buildout of middle-mile fiber lines, **local companies and organizations will need assistance in expanding broadband accessibility and getting their communities subscribed.**

For financial institutions, being involved could mean:

- Providing starting and working capital to Internet Service Providers (ISPs) looking to expand their footprint in underserved markets.
- Providing volunteers to assist businesses involved in digital equity and seeking to expand broadband access with financial planning and marketing.

2 CRC's Economic Equity Promotoras program is an economic equity and wellness program providing direct outreach, education, and training to historically disenfranchised communities. Workshops and trainings about financial security, budgeting and saving, and resources for micro-entrepreneurs are just some examples of services provided by the Promotoras. The training and outreach is particularly and intentionally focused on Black, Latino, immigrant, low-income communities and women. For more information, see here: https://calreinvest.org/economic-equity-promotoras-program/

3 874 individuals participated in the program. Participants were given both a pre- and post-workshop survey, with 66% completing both surveys. 48% of the participants were youth (11-18) and young adults (18-24).

- Extending grant funding to businesses to get connected to middle-mile fiber lines.
- Extending grant funding to local organizations seeking to expand digital equity and inclusion via computer/device supply, digital literacy training, etc.
- Providing in-house digital literacy training coupled with financial literacy training for bank customers, particularly those who may be impacted by mergers and potential bank branch closures.

Such broadband/digital equity and inclusion initiatives which banks should target towards low-to-moderate income (LMI) communities, who are most impacted by lack of broadband, are efforts that receive CRA credit.

CRC recommends further collaboration between banks, community groups and federal/state agencies tasked with building out broadband infrastructure and increasing broadband adoption. By engaging more closely and educating one another, public, private and nonprofit actors can make significant progress in closing the digital divide in California. Collaboration between various sectors is necessary to understand existing gaps in service and how the different institutions can effectively fill in the gaps in service using their resources and expertise.

California
Reinvestment
Coalition

APPENDIX C: CRC Fact Sheet on Consolidation of Property in the Hands of Investors

BENEFICIAL OWNER TRANSPARENCY

HOW CORPORATE LANDLORDS HIDE THEIR IDENTIFY AND WHY IT MATTERS TO CALIFORNIA'S RENTERS AND HOMEOWNERS

WHO OWNS OUR NEIGHBORHOODS?

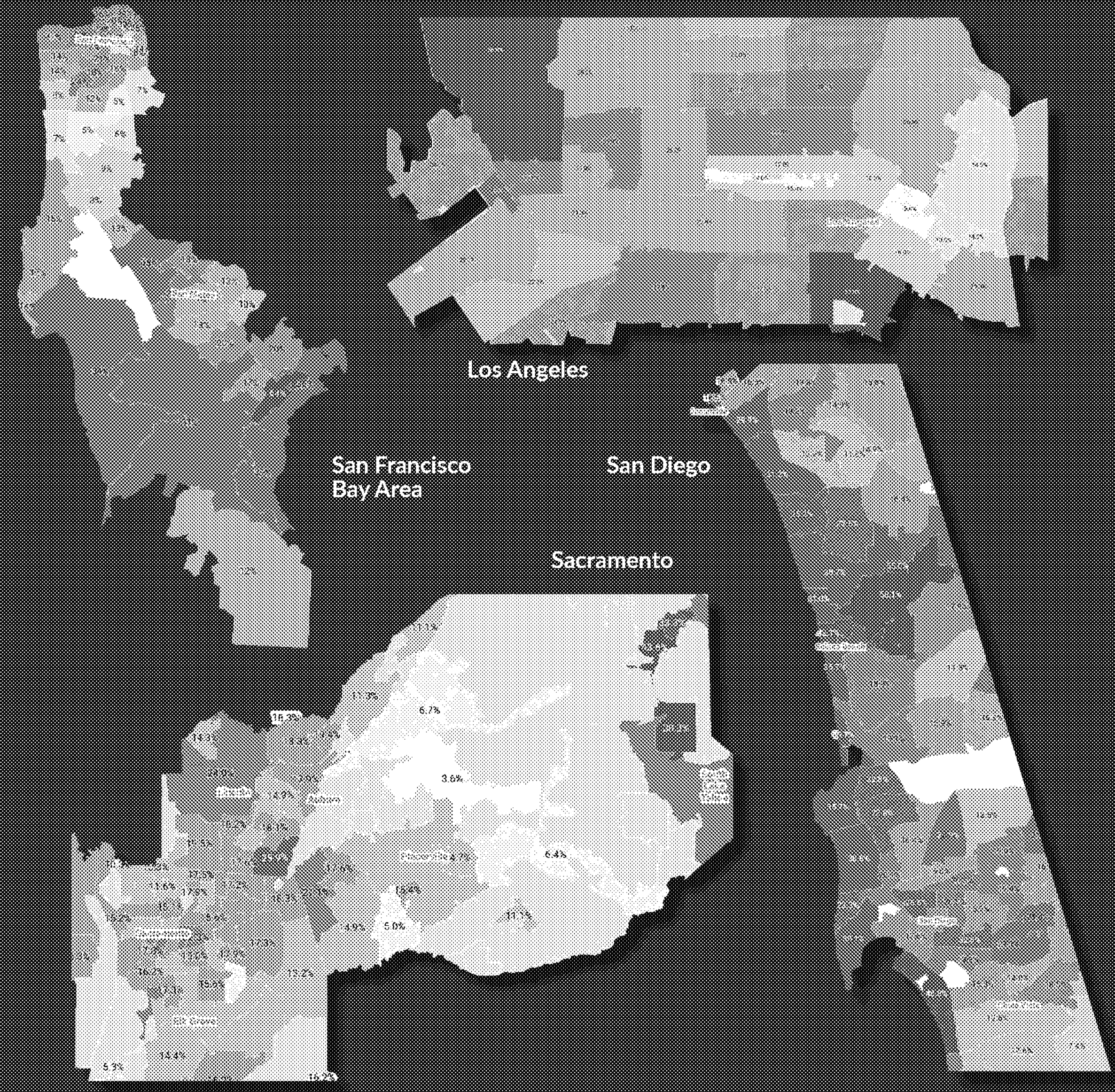
227%

increase from Q1 of 2000 to Q4 of 2021 in the number of properties purchased by investors, 13,952 properties were purchased by investors in just Q4 of 2021.

75%

of homes purchased nationally in Q4 paid **ALL CASH**, outbidding first-time homebuyers and small mom and pop landlords, robbing families of financial stability and wealth-generation opportunities.

Percentages of properties purchased by investors in major California counties



WHAT IT MEANS

Property Ownership Consolidation

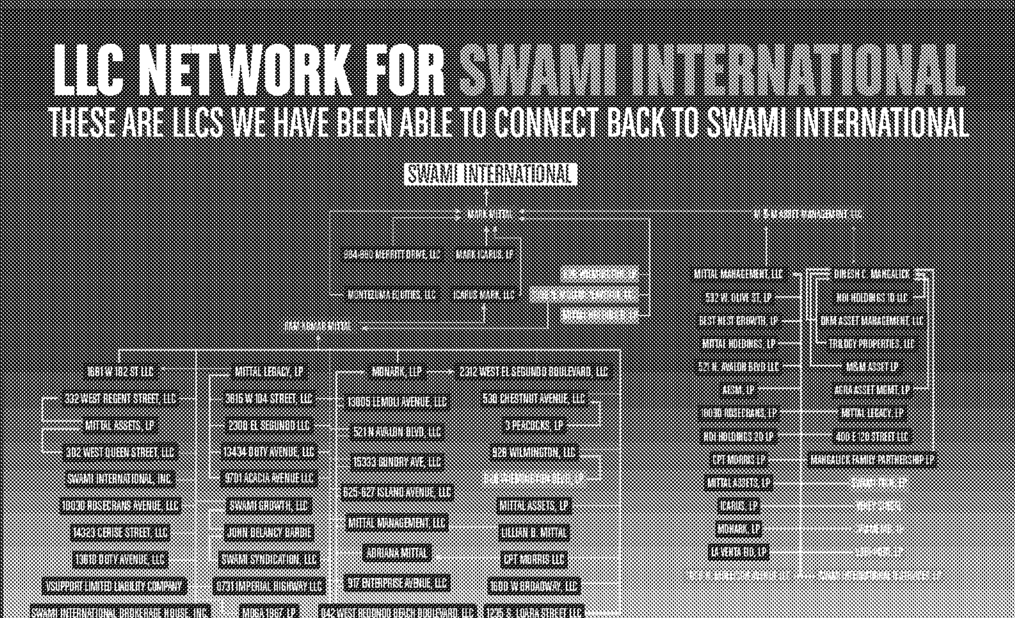
Consolidation of wealth and property ownership in shell companies gives landlords regional monopolies. This creates a lack of competition among housing providers. As a pattern, we see that large corporate landlords tend to be primarily profit-driven. They invest very little in maintenance and necessary repairs, harass tenants in rent-stabilized units, increase rent at a faster pace and charge more fees than the industry standard. Data shows:

- Rents increased up to 30% even during the COVID pandemic.
- Californians are paying higher rent for increasingly low-quality housing.
- Housing stock across the state is falling into disrepair even though profit margins for renting are the highest they have ever been.

Hazards to Public Health and Safety

Greedy landlords create a web of Limited Liability Companies (LLCs) that make it difficult for state and local code enforcement agencies to identify abusive patterns and recognize the extent of the problem. As a result, local code enforcement departments lack information that would connect properties to their beneficial owners. If this information were available, it would shed light on concerns regarding fair housing access, patterns of tenant harassment and mass evictions, poor habitability, and unlawful rent hikes. Without it, landlords continue these problematic behaviors without any recourse as they buy more property.

Frequently we see owners hiding the extent of their real estate operation behind a web of shell LLCs. The graphic explains one actual slumlord's known LLC structure.



WHAT CAN WE DO?

Fight for TRANSPARENCY

Information is Key

Where LLCs were intended to support and protect legitimate businesses, the facility is now used to mask extractive and exploitative practices.

Requiring all property owners to report on the identity of the true owners of properties held in the name of LLCs and Limited Partnerships and other legal structures will end this impunity for bad behavior and illegal practices. The most cost-efficient and intuitive place for States to collect this information is via the Secretary of State as the SOS creates/registers the legal structures and makes the information public.

crc California Reinvestment Coalition