



August 5, 2022

RE: Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations
{Docket ID OCC-2022-0002; Regulation BB; Docket No. R-1769}

To Whom It May Concern,

Texas Appleseed appreciates the opportunity to provide feedback on the joint Notice of Proposed Rulemaking for the Community Reinvestment Act (CRA). Texas Appleseed urges the Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation to specifically address several key initiatives that our organization believes will most effectively achieve the intended purpose to strengthen and modernize the CRA:

- Address disaster recovery initiatives specifically for low-to-moderate income (LMI) communities,
- Prioritize diverse stakeholder engagement in bank performance,
- Incorporate race-conscious data collection practices in CRA exams, and
- Implement abusive and predatory lending safeguards for consumers.

Texas Appleseed is a public interest justice center working to change the unjust laws and policies that prevent Texans from realizing their full potential. Working with a dynamic network of pro bono partners and collaborators, Texas Appleseed promotes social, economic, and racial justice by developing and advocating for innovative and practical solutions to complex systemic issues. As part of its work, Texas Appleseed conducts data-driven research to better understand the inequities in laws and policies to identify solutions for long-lasting change.

Texas Appleseed's Fair Housing and Disaster Recovery Project works with a network of housing advocates, policy experts, and grassroots community groups to ensure that Texas communities are rebuilt to be more resilient in the wake of a natural disaster and that Texas families can live in safe neighborhoods with equal access to educational and economic opportunity. Texas Appleseed's Fair Financial Services Project advocates for fair market practices for Texas consumers and works to address predatory payday and auto title lending, financial abuse and coerced debt, and unjust debt collection practices. Communities hit the hardest by natural disasters and economic injustices are too often LMI communities and communities of color.

Texas Appleseed recognizes the need to remedy these systemic legacies of oppression and discrimination and to pave the way for a more just, safe, and economically-just future for all Texans.

The Community Reinvestment Act took effect in 1977 to combat redlining and address the lack of investment in our country's most vulnerable communities by determining that banking institutions have a continuing and affirmative obligation to meet the credit needs of their communities, specifically in LMI neighborhoods.¹ While Texas Appleseed does not generally receive funding as part of bank CRA obligations, our organization works with community partners across the state to promote community reinvestment and development through the work of our Fair Housing and Disaster Recovery Project and Fair Financial Services Project. Our organization has seen the important value and beneficial economic impacts that the CRA brings to Texas communities through investments to:

- Develop and expand access to affordable housing units;
- Fund financial education-centered nonprofit organizations that service LMI individuals through community service grants;
- Foster capital investments in LMI consumers, small businesses, and farms; and
- Revitalize and stabilize underserved rural neighborhoods and disaster areas.

The positive impact of the CRA in Texas is significant: Texas communities have seen an estimated annual CRA investment of \$5.88 billion, based on data from 2009 to 2015.² Despite this important financial infusion in support of community development, much work needs to be done to address changes in the banking system as well as gaps that the CRA has previously failed to consider. The ongoing effects of the COVID-19 pandemic are still wreaking havoc on the economic wellbeing and recovery of Texas households, and specifically, communities of color that have been disproportionately impacted by economic challenges caused by the pandemic. From August 2020 to October 2021, Black and Latino households experienced significantly more employment income loss, and food insecurity compared to white and Asian households, and were more likely to face difficulty covering household expenses.³

¹ Federal Reserve Board, "[History of CRA.](#)" (2022).

² Emily Ryder Perlmeter, "[The CRA at 40: Law Remains a Cornerstone of Community Development.](#)" Federal Reserve Bank of Dallas, at 6 (December 2017).

³ Texas Fair Lending Alliance, "[COVID-19 Impacts.](#)" (2022).

Covid-19 Financial Hardship in Texas by Race and Ethnicity

Survey of Texas Households, August 19-31, 2020 (Week 13) and September 29-October 11, 2021 (Week 39)

	Total		Asian		Black		Latino		White	
	Wk 13	Wk 39	Wk 13	Wk 39	Wk 13	Wk 39	Wk 13	Wk 39	Wk 13	Wk 39
Employment Income Loss	44.4%	17.8%	44.5%	13.4%	55.6%	25.6%	49.2%	21.6%	37.1%	12.7%
Food Insecure	11.5%	11.9%	9.3%	4.8%	22.9%	16.7%	13.9%	15.6%	7.0%	8.5%
Housing Insecure- Struggling to Pay Rent	25.4%	32.5%	34.0%	0.3%	35.3%	45.5%	29.7%	28.9%	18.7%	40.2%
Difficulty Covering Household Expenses	36.2%	34.3%	29.0%	16.2%	48.6%	49.5%	42.5%	36.5%	28.2%	29.7%

Source: *Covid-19 Impacts*, Texas Fair Lending Alliance, (2022).

Strengthening and modernizing the CRA to address the economic needs of underinvested communities more comprehensively has never been as important as it is at this moment.

Federal banking regulators must direct disaster recovery, preparedness, and climate resilience funding to LMI communities that are most vulnerable to climate and disaster harms.

Federal banking regulators must ensure that investments to support disaster recovery are responsive and demonstrate defined benefits to LMI individual and community needs. The proposed CRA rule's incorporation of disaster recovery, preparedness, and climate resiliency activities into community development activities definitions is an appropriate recognition that community development is an important factor in disaster and climate resilience. However, the lack of focus on LMI communities could lead to CRA dollars being funneled to higher-income areas and leave LMI communities struggling to access needed resources and support. We already see these dynamics in the distribution of dollars from the Federal Emergency Management Agency (FEMA), as well as with many municipal disaster-related infrastructure investments. Given the disproportionate vulnerability of LMI communities and communities of color to disasters and climate change, the proposed rule must target disaster recovery, preparedness, and climate resilience activities that clearly benefit historically disinvested LMI communities.⁴

⁴ Rebecca Hersher and Robert Benincasa, "[How Federal Disaster Money Favors the Rich.](#)" (March 5, 2019).

New CRA rules must prioritize the inclusion of diverse community voices and require community engagement as part of the public engagement process.

The current proposal does not do enough to elevate community voices and encourage public engagement in the CRA process. While banks are required to make CRA exam findings public and give community members the opportunity to provide feedback to federal banking regulators, the proposed rule does not emphasize the importance of communication between banks and local communities. Elevating the input of local communities is essential to ensure that bank CRA investments meet the service and credit needs of communities and maximize community benefit.

For example, a media expose in Dallas found that banks were focusing on affordable housing investments in low-income neighborhoods instead of expanding access to housing in various areas of the city.⁵ If community input played a larger role, we might see more affordable housing investments in areas of the city closer to jobs and other economic opportunities.

This recommendation aligns with a major stated objective of the proposed CRA rule, to “promote transparency and public engagement,” but making the CRA file more accessible is not enough. The new CRA rules must prioritize the inclusion of local community input and encourage banks to actively seek stakeholders' voices when discussing community credit needs and opportunities.

The new rule should also require banks to do a better job of engaging community members in the CRA process through outreach and education about CRA and the associated obligations. For example, banks could be encouraged to develop simple and engaging educational materials, infographics, and short videos that are designed to reach a diverse cross-section of the community and provide easy opportunities to offer input. Simply making a public file more public is not enough to ensure community access to the process and engagement. Although the proposed rules mention that federal banking regulators will create a plan for the public to comment on the credit needs of their communities, there are no details about critical aspects of this plan development. Examples of key components that should be included are specifying which organizations will have input in the plan formation and when the plan will be implemented.

There is also a crucial need for more effective public engagement during the regulatory process to approve mergers, including the part of the process related to historical CRA performance. Communities may experience the negative impacts of bank mergers, such as a bank branch closing in an urban or rural community with few banks, leaving that community with fewer

⁵ David Schechter, Jason Trahan, Chance Horner, [“You’re only crippling us’: Banks own many of Dallas’ low-income, high-crime apartments — and they’re rewarded for it.”](#) ABC News 8 Dallas, (February 21, 2021).

benefits in lending, investments, and bank services. These impacts must be included as part of the considerations in approving or denying a merger.

Under the current proposal, regulators have the discretion to ask banks questions about responses to comments from community groups. However, under the standard, banks can pick and choose the comments to which they respond. An increase in opportunities for communication between banks and the communities impacted by merger applications will provide more information regarding banks' CRA and fair lending performance for the agencies, which is likely to improve regulatory decisions on merger applications.

Ensuring more robust and diverse community engagement in the CRA evaluation process and merger applications will make this rule more impactful and support achieving community benefit goals.

There is a crucial need for regulators to address race and ethnicity in CRA exams.

Federal banking regulators must require the CRA to examine lending by race and ethnicity. Currently, most of the communities that were subjected to redlining in the 20th century remain disproportionately lower-income communities of color, and the CRA is perpetuating this discrimination by not addressing race in CRA exams.⁶ The CRA must implement an explicit focus on race in CRA exams to accurately capture banks' lending patterns and identify any shortcomings in lending to Asian, Black, Latino, and Native American borrowers.

Federal banking regulators must mandate the collection of race and ethnicity data as part of the new CRA rule. The current race-neutral approach is not accomplishing the core goal of the CRA legislation, ensuring banks meet the credit needs of all LMI individuals in a bank's service area. Racial discrimination will continue to persist in LMI-specific lending if federal banking regulators use only income categorizations to rate bank performance instead of also including race. Research shows that income is an ineffective proxy that often understates the racial variations in economic status.

Federal banking regulators have the power to address racial disparities in community lending by ensuring that banks are required to collect lending data by race and be accountable for outcomes that demonstrate that they are engaging in equitable lending practices. The new proposal to use Home Mortgage Disclosure Act (HMDA) data to create CRA exam tables that describe lending by race does not address the significant issue that CRA exams do not currently include race and

⁶ Bruce Mitchell and Juan Franco, "[HOLC 'Redlining' Maps: The Persistent Structure Of Segregation And Economic Inequality](#)." National Community Reinvestment Coalition, (March 20, 2018).

ethnicity lending data. As a result, findings related to race-based lending data will not be incorporated into a bank’s CRA exam assessment and will have no influence on bank ratings.⁷

The new CRA proposed rules must prioritize the inclusion of race and ethnicity data collection in CRA exams. For example, federal banking regulators can start measuring fair lending performance by recording the percentage of loans by race and ethnicity in geographic areas with significant lending disparities. By focusing specifically on areas that have already demonstrated a history of discrimination or lending disparities, an Equal Protection Act concern would not be warranted, and the CRA could legally collect race and ethnicity data.⁸ Measurements like these can uncover lending discrimination by banks and more accurately reflect lending patterns across communities.

In Texas, a “Banking Below 30” series by news station WFAA investigated how systemic racism is intertwined with the traditional banking system and results in modern-day redlining practices. One segment of the series found that 20% of the banks with locations in Dallas County—encompassing 31 Texas cities—openly limit loan access in Black and Latino neighborhoods located below Interstate 30 by purposefully excluding parts of southern Dallas from their assessment area maps. These same banks received passing CRA exam grades.⁹

The CRA is meant to encourage banks to meet the credit needs of their local communities and is rooted in the need to rectify the systemic oppression that has historically excluded Asian, Black, Latino, and Native American borrowers, as well as other communities based on race and ethnicity.¹⁰ However, the racial wealth gap in the U.S. not only persists but has worsened since the inception of the CRA.¹¹ In Texas, the disparity in homeownership rates between white and nonwhite households is stark. Black and Latino households have disproportionately lower homeownership rates, which contributes significantly to the rising racial wealth gap.¹² Data from Austin and Houston, shown below, demonstrate persistent inequities based on race.

⁷ Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, “[Notice of Proposed Rulemaking to amend the CRA regulations](#).” p. 420 (May 5, 2022).

⁸ Brad Blower, Glenn Schlactus, Josh Silver, Jason Richardson, and Sacha Markano-Stark, “[Adding Robust Consideration Of Race To Community Reinvestment Act Regulations: An Essential And Constitutional Proposal](#).” National Community Reinvestment Coalition, (September 16, 2021).

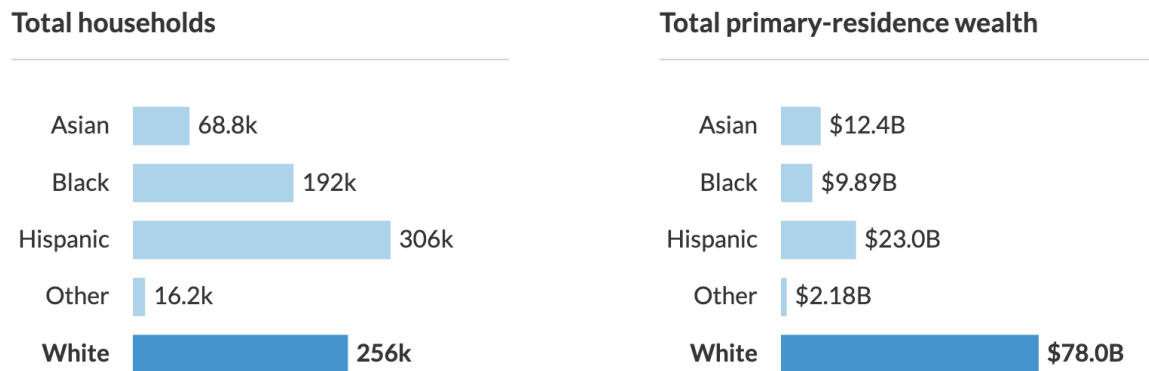
⁹ David Schechter, Jason Trahan, Chance Horner, and T. Nicole Waivers, “[“They underestimate what we can do’: WFAA finds banks exclude Blacks, Hispanics in Southern Dallas from access to loans](#).” ABC News 8 Dallas, (November 22, 2022).

¹⁰ *See*; 12 USC Ch. 30: COMMUNITY REINVESTMENT

¹¹ Bulbul Gupta and Lenwood Long, “[Policy Corner: Ensuring the Community Reinvestment Act addresses the racial wealth gap, as intended](#).” The U.S. Impact Investing Alliance, June 16, 2022.

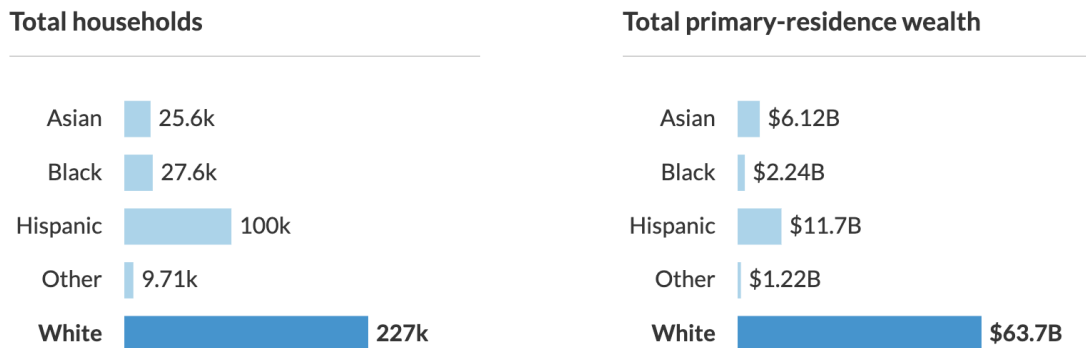
¹² Caitlin Young, “[Is Housing Wealth Equitable in Your City?](#)” Urban Institute, (November 11, 2021).

In Houston, Texas, white households make up 30.5% of the city's total households, but own 62.4% of the housing wealth.



Source: *Tracking Homeownership Wealth Gaps: Is Housing Wealth Equitable in Your City?*, Urban Institute, (2019).

In Austin, Texas, white households make up 58.2% of the city's total households but own 74.9% of the housing wealth.



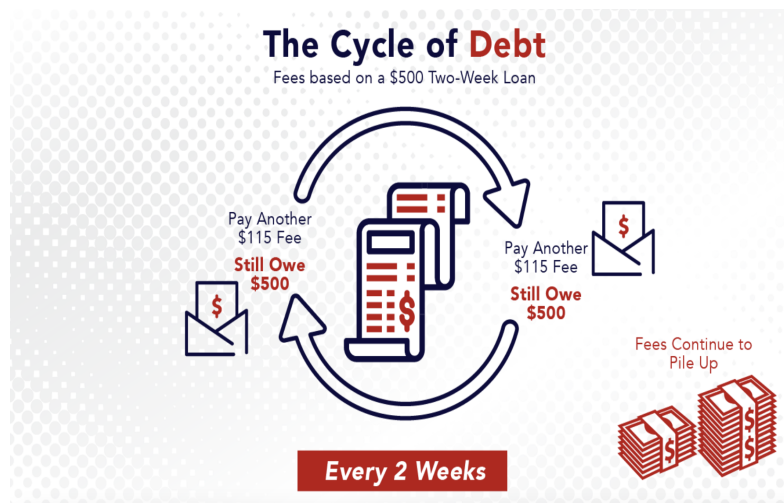
Source: *Tracking Homeownership Wealth Gaps: Is Housing Wealth Equitable in Your City?*, Urban Institute, (2019).

The exclusion of race-based lending data is a major blind spot of the current CRA rules. It is essential to include data collection and ensure accountability to equitable lending practices as part of the new CRA rules.

Federal banking regulators must incorporate predatory lending safeguards to protect consumers from abusive high-cost loans and expand access to affordable, low-cost loan products.

Federal banking regulators must incorporate lending safeguards into the new CRA rules. The robust changes made to the Retail Lending Test now allow banks that make some or all loans online to receive CRA credit. Texas Appleseed applauds this proposed change in the CRA rules to keep up with robust changes in online lending, but federal banking regulators must also incorporate safeguards against abusive and predatory lending as online lending opportunities expand.

The new proposed CRA rules must protect borrowers from predatory lending practices in local communities. The current proposal, which expands oversight of discriminatory practices to include deposit-taking and other banking services, is a good step in the right direction. However, it is not enough to ensure effective consumer protection. Banks should not be able to meet their legal obligation to invest in the credit needs in their local communities if credit products are high-cost and unaffordable due to unchecked predatory lending practices. For example, in Texas, the average interest rate for a payday loan is 500% and for an auto title loan is 200-400%, and for both types, most loan borrowers are unable to pay back the full loan amount in time and are forced to finance the loan, which adds additional fees and prolongs the amount of time a consumer is struggling to pay the debt.¹³ Predatory and abusive lending practices drain wealth from LMI communities and trap borrowers in cycles of debt. They undermine the stability of local economies.



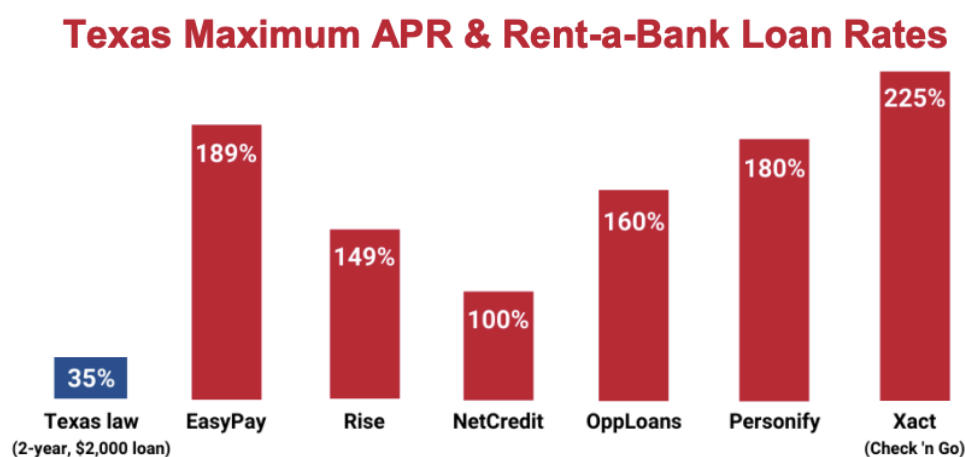
Source: *Cycle of Debt*, Texas Fair Lending Alliance, (2022).

¹³ Texas Fair Lending Alliance, “[The Basics](#).” (2022).

The federal banking regulators have a legal and ethical obligation to ensure that bank loan products are safe and accessible for consumers and that banks are not engaged in or encouraging abusive and predatory lending. Regulators cannot let discriminatory and abusive lending practices go unchecked any longer. This rule proposal offers an important opportunity to ensure, at a minimum, that predatory lending practices are taken into consideration in the CRA exam process.

The “Banking Below 30” series, which was previously cited, also found that, in addition to actively participating in modern-day redlining practices against Black and Latino communities, some Texas banks partner with payday and auto title lenders to offer unaffordable, high-cost loan products that exploit borrowers and further trap Texans in a cycle of debt that is extremely difficult to get out of.¹⁴

Federal banking regulators must also give negative CRA consideration for high-cost and predatory “Rent-a-Bank” lending schemes. A “rent-a-bank” scheme enables non-bank lenders that partner with banking institutions to evade state interest rate caps and offer high-cost loans with exorbitant interests and fees to consumers.¹⁵ In Texas, some state laws limit interest rates to protect state residents from abusive loan products. “Rent-a-bank” lending enables lenders to evade state lending protections by using a bank partner’s charter to bypass interest rate and fee caps.¹⁶ Texas Appleseed is deeply concerned that banks are fueling this type of predatory lending and enabling the extraction of wealth from communities already facing barriers to accessing capital and beneficial investments. This growing and unaccountable practice call to question the validity and effectiveness of current CRA exam standards.



¹⁴ David Schechter, Jason Trahan, Chance Horner, “[“Diabolical and wrong’: Wells Fargo, other banks finance predatory lenders that can charge over 400% interest in minority communities.”](#) (May 23, 2021).

¹⁵ National Consumer Law Center, “[“Predatory Rent-a-Bank Schemes are Evading State Law Across the Country: Congress Must Repeal the OCC’s Fake Lender Rule.”](#) (May 2021).

¹⁶ National Consumer Law Center, “[“Predatory Rent-a-Bank Lending in Texas.”](#) (February 2022).

Source: *Predatory Rent-a-Bank Lending in Texas*, National Consumer Law Center, (2022).

Additionally, the new CRA rules must include requirements to document excessive overdraft and non-sufficient funds fees. These high fees drive up the cost of banking and often force individuals to leave the mainstream banking system and turn to alternative financial services that restrict access to fair credit and asset building.¹⁷

Federal banking regulators must prioritize access to credit-building investments and safe and affordable credit. These are crucial changes needed to start to counteract the history of disinvestment in many communities of color. Access to credit in the United States is unevenly distributed based on race and ethnicity.¹⁸ It is critical that federal banking regulators require banks to expand the reach of equitable credit tools to create true, sustainable change to advance equity for the most oppressed and disinvested communities through access to fair and responsible credit. Credit access and financial products and services that enhance asset building enable individuals to pursue diverse economic opportunities and enhance their financial security.

Conclusion

The proposed rulemaking for the CRA is a good step in the right direction, but regulators must do more to build historically red-lined communities and explicitly enhance access to fair credit for Asian, Black, Latino, Native American, and LMI individuals. Texas Appleseed applauds the federal banking regulators for developing a new CRA proposal that addresses the robust development of financial technology, online banking, and the new reality of banking in the 21st century. This proposed rulemaking considers important provisions to amend the current CRA rule, but it is still a work in progress and must more effectively address:

- Disaster recovery, preparedness, and climate resiliency for LMI communities,
- Rallying diverse stakeholder engagement in CRA bank performance,
- Incorporating race-conscious data collection into CRA exams, and
- Protecting consumers from abusive, predatory lending practices.

Texas Appleseed appreciates the opportunity to provide feedback on the joint Notice of Proposed Rulemaking for the Community Reinvestment Act. Our organization believes that with genuine and reflective considerations we discussed that encompass inclusion, diversity, and consumer protection, the Community Reinvestment Act can return to its original civil rights purpose of

¹⁷ Joe Valenti, “[Overdraft fees can price people out of banking.](#)” Consumer Finance Protection Bureau, (March 30, 2022).

¹⁸ Carmina Lass, Maria Sennett, Melinda Croes, Morgan Spears, Sarah Chenven, Talia Kravis, “[Advancing Equity The Power and Promise of Credit Building.](#)” Asset Funders Network, (June 2022).

investing in the true credit, investment, and asset-building needs in the most considerate, inclusive, and effective way for all communities.

Sincerely,



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