California Reinvestment Coalition

Testimony of Paulina Gonzalez-Brito (They/Them)

Before the U.S. House Financial calls Committee Subcommittee on Consumer Protection and Financial Institutions

The Future of Banking: How Consolidation, Nonbank Competition, and Technology are Reshaping the Banking System

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Introduction

Good morning, my name is Paulina Gonzalez-Brito. I'm the Executive Director of the California Reinvestment Coalition. I am Purepecha, Chicane, my people come from the original people of Michoacan and Zacatecas, Mexico and I recently came out as non-binary. I go by the pronouns they/them. My grandfather repatriated to the US after being deported from Arizona, even as a US citizen in the 1930s. He was then lucky enough to buy a home in South East Los Angeles, only after my mother and my aunts and uncles were old enough to work and help pay the down payment and mortgage. The neighborhood where he bought the house was designated in the HUD redlining maps as yellow. The legend on the map described this yellow area as "under threat of infiltration by Mexicans." We were the Mexicans they were worried about.

My history is what has brought me to the California Reinvestment Coalition (CRC). CRC builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that 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 or displacement, and have the tools necessary to build household and community wealth.

We have hundreds of nonprofit organizational members of our coalition throughout the state who work in neighborhoods as financial first responders, providing services, stabilizing and building up communities, and working to close the racial wealth gap and to challenge the banking system That has been marked by historic discrimination, exclusion and extraction of Black, Indigenous, and People of Color (BIPOC) communities. CRC's members across the state, all work in low income communities and communities of color, they include CDFIs, Community Development Corporations, affordable housing developers and community land trusts, fair lending agencies, small business technical assistance providers, legal aid and tenant rights organizations, and financial and homebuyer counselors. Together with our members we work to close the racial wealth gap by ensuring that banks and other corporations invest and conduct business in our community in an equitable manner and do no harm.

In my testimony today, I will be focused on the rapid expansion of fintech and bank consolidation. Without proper monitoring, evaluation, and enforcement, both bank consolidation and fintech will contribute to the widening of the racial wealth gap. While financial actors profit and promise increasingly "color-blind" access to credit, in reality, we're seeing less reinvestment in communities, closure of bank branches en masse, sky high loan denials and soaring fees, as well as continued discrimination. The only antidote to these concerning trends is greater attention to BIPOC and consumer voices; There also needs to be greater access to both fairly priced credit and broadband Internet to enable full participation in the digital economy by BIPOC and low income people. But to stop there would be a disservice to these communities. We'll also need greater coordinated regulatory responses to fintech expansion and algorithms; greater enforcement of consumer protection, fair lending, fair housing and reinvestment laws; new models of public banking and community ownership; and corporate reparations for past harm to Black, Indigenous, People of Color communities.

American Banks: From Slavery to Redlining

Banks financed the trade of enslaved people and they also allowed white Southerners to use enslaved people as collateral, thus enriching themselves and slave owners in the process. The Freedman's Bank was created by Congress in 1865, in an attempt to offer banking to newly freed Black Americans. Black Americans deposited millions of dollars into this bank, which they subsequently lost after corruption and mismanagement by its white trustees. The bank not only stole millions from Black workers and families, it also used their deposits to support mortgages and small business loans to mostly white people. The Freedman's Bank, created for the benefit of freed slaves, was being used to advance white economic development.[1]

Centuries of extraction from and exclusion of BIPOC communities has marred the US banking system. Combined, these two practices have subsequently led to a fundamental failure to adequately and fairly service these communities. This failure is not an accident. It is a deliberate structural and systemic design baked in white supremacy and fully backed by the US government. Through housing, lending, and financial product policies[2]— bolstered by practices of exclusion, anti-Black ideology, and extraction from Black people first and foremost and People of Color generally — the US has profited from our labor while denying us wealth.

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[1] https://www.chicagoreporter.com/black-americas-distrust-of-banks-rooted-in-reconstruction/

[2] See for example, Richard Rothstein, "The Color of Law: A Forgotten History of How Our Government Segregate America," Liveright Publishing Corporation, 2017.

Federal law prohibits home lending discrimination. The Fair Housing Act protects people from discrimination when they are renting or buying a home, applying for a mortgage, seeking housing assistance, or engaging in other housing-related activities.[3] The Community Reinvestment Act (CRA), enacted in 1977, encourages financial institutions to help meet the credit needs of the communities in which they do business.[4] Other federal laws, such as the Equal Credit Opportunity Act, as well as certain state laws, are meant to further prevent discrimination in the origination, denial and terms and conditions of loans based on race and ethnicity.

So is discrimination over? Far from it. We now have a financial system that hides discrimination behind denials of credit. It's modern day redlining. A 2021 investigation by The Markup found that lenders in 2019 were more likely to deny home loans to people of color than to white people with similar financial characteristics — even when it controlled for newly available financial factors the mortgage industry for years has said would explain racial disparities in lending.[5] A study conducted by investigative news outlet Reveal showed that Black applicants were turned away for mortgage loans at significantly higher rates than whites in 48 cities, Latines[6] in 25 cities, Asian-Americans in nine and Native Americans in three . The study controlled for all economic and social factors including income and loan amount but did not include credit scores.[7] In both studies, credit scores were not taken into account by the study because they are not publicly available. Banks often use differences in income and credit scores as a rationale to justify disparities. Both studies showed that even when accounting for most of these factors, BIPOC borrowers fared worse. Regardless, wealth and income disparities, which impact credit scores, are not happenstance. Disparities in wealth by race and ethnicity are stark and point to their origins in historical policies and practices.

It is these practices (e.g. redlining, income suppression, denial of land purchases etc) that results in what the most recent data from the Federal Reserve Consumer Data Survey shows: White families have a median household wealth of $184,000, whereas Black families have $23,000 and Latine families have $38,000. The Federal Reserve recognizes that this disparity for Black families has resulted from historical barriers that include the Homestead Act, the Social Security Act of 1935, the GI Bill of 1944, redlining, and discrimination in the criminal justice system.[8] The Social Security Act, as an example, excluded domestic workers and farmworkers; these jobs were often held by Black men and women. The Social Security Act, like the National Labor Relations Act, still excludes domestic workers and farmworkers, continuing the exclusion of many Black and Latine women and men.

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[3] https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview
[4] https://www.federalreserve.gov/consumerscommunities/cra_about.htm
[5] https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms
[6] "Latine (pronounced la·ˈti·ne) is a gender-neutral form of the word Latino, created by LGBTQIA+, gender non-binary, and feminist communities in Spanish speaking countries. The objective of the term Latine is to remove gender from the Spanish word Latino, by replacing it with the gender-neutral Spanish letter E. This idea is native to the Spanish language and can be seen in many gender-neutral words like "estudiante". https://latv.com/latine-vs-latinx
[7] https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/
[8] https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019

Recommendation: It is this historical harm that requires a response of reparations, community led reinvestment, and strict regulation and enforcement to make sure that financial institutions abide by consumer and fair lending laws.

Bank Consolidation and Disparate Impacts

Due to historical exclusion, blatant extraction and destruction of wealth (e.g Tulsa Massacre, mortgage crisis of 2008) not only is the wealth of Black Americans impacted generally, but when a crisis hits, the Black community and other communities of color are less able to absorb the shock and And are more vulnerable to long-term debilitating economic losses. The COVID pandemic has proven this once again. It has not only disproportionately impacted the health of BIPOC, but the economic impact has been devastating. Approximately 60% of whites and Asian American adults currently say their personal financial situation is in excellent or good shape. Yet 66% of Blacks and 59% of Latines say their finances are in fair or poor shape.[9] In addition, a study by the National Women's Law Center found that "nearly six in ten Latinas and over half of Black, non-Latina women were in a household that has lost employment income since March 2020."[10] They also found that more than one in five Black, non-Latine women and more than one in six Latinas were behind on rent or mortgage payments.[11]

Importantly, the 10 majority-Black counties with the lowest concentration of financial institutions are all located in the South (Alabama, Georgia, Louisiana, Mississippi and Virginia). This is notable given the long lasting generational damage that stems from slavery and Reconstruction; a history that continues to impact BIPOC people and communities today.

The role of Banks in the commodification of Black lives and in the extraction of wealth from Black communities is not merely a historical sin. As part of a COVID stimulus package, the Biden Administration approved debt relief for Black and POC farmers as a way to make amends for a legacy of racism and discrimination. But debt relief has not yet been granted as white farmers sue for "reverse racism" and banks complain that it will eat into their profits by permitting early loan repayment.[12]

The exclusion and extraction of wealth from BIPOC is not limited to large historical events. Today, bank fees often result in customers leaving banking altogether. And, more ominously, branches that charge higher fees may be the only options available in BIPOC communities. A Bankrate survey found that Black and Latine bank customers are paying more than twice the amount of bank fees paid by white Americans. In addition, whites were more likely to have a no-fee bank account than Blacks or Latines.[13]

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[9] https://www.pewresearch.org/social-trends/2021/03/05/a-year-into-the-pandemic-long-term-financial-impact-weighs-heavily-on-many-americans/
[10] https://nwlc.org/wp-content/uploads/2021/04/PulseWeek26FS.pdf
[11] https://nwlc.org/wp-content/uploads/2021/04/PulseWeek26FS.pdf
[12] https://www.nytimes.com/2021/05/19/us/politics/black-farmers-debt-relief.html?
[13] https://www.cnbc.com/2021/01/13/black-and-hispanics-paying-twice-amount-banking-fees-than-whites-survey.html

At California Reinvestment Coalition, we see and hear about these experiences of exclusion and extraction of BIPOC consumers by banks in our Economic Wellness Promotora Program. In 2020, we launched the Promotora Program to support the financial well-being of low-income BIPOC families. The Program is patterned after the community health worker model, which delivers basic health care information to historically disenfranchised communities by training members from the community to provide outreach and education. In the same way, Economic Wellness Promotoras provide outreach and education by building trust with people who face multiple barriers to achieving financial security. Over the past year, CRC's Promotoras provided online workshops and training, and connected micro-entrepreneurs with safe and affordable financial resources to survive the economic downturn, which has disproportionately impacted BIPOC communities. The Program also engages CRC in a dialog with community members on the barriers they face in accessing safe, affordable financial resources and products. In its first year, 874 community members participated in the program—over 95% of which were BIPOC. From our community participants, we found that systemic barriers keep low-income BIPOC unbanked. Black and Latinx participants report experiencing poor and/or unfriendly service from bank staff. Participants expressed feeling "not good enough," or "wrong" or "unwelcome," when attempting to access banking products and services. In addition, families need access to affordable credit, including low-interest, small-dollar loans. With little or no access to affordable and safe credit products, many low-income families rely on predatory payday loans to make ends meet. Low wages, a lack of full-time employment, a reduction in working hours, a job loss, or an unexpected expense can keep people in this debt trap.

Recommendation: BIPOC and low-income customers are who bank regulators need to hear from in conducting bank examinations and considering merger applications in order to measure the public benefit of a proposed merger. Regulators need to extend comment periods to allow for this.

Consolidation: Branch Closures Harm Communities

The rate of bank consolidation continues to increase. A report by the National Community Reinvestment Coalition found that between 2008 and 2020, 14% of all bank branches closed. Between 2008 and 2016, 86 new "banking deserts" were created in rural areas, meaning there wasn't a bank branch within 10 miles of populated areas. BIPOC are disproportionately impacted by bank branch closures in rural areas, with 25% of all rural closures taking place in majority BIPOC census tracts.[14]

It is BIPOC communities that are disproportionately impacted by bank consolidation, since we are already disadvantaged in terms of the number of bank branches in our neighborhoods. It has been well-documented that bank branches are scarce in BIPOC communities and are largely concentrated in majority white neighborhoods. In fact, a study found that the "darker" the

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[14]https://www.npr.org/2021/03/26/979284513/what-are-we-going-to-do-towns-reel-as-banks-close-branches-at-record-pace

county, the fewer banks it had, and the whiter the county, the more banks it had.[15] The same study found that in counties that are over 50% Black and Brown, there are 27.1 financial institutions for every 100,000 people. In contrast, in counties that are over 50% white, there are 40.6 banks for every 100,000 people. And the study found that "predominantly Black communities have 32 branches per 100,000 people, while majority Latine areas have 22.51 branches. Meanwhile, Native Americans suffer from the lowest bank penetration at only 20.53 per 100,000." The closure of the already low numbers of branches in communities of color means that any further closures could result in the creation of 'bank deserts', with the closure of the last bank branch in town.[16] Bank consolidation drives branch closures, an FDIC market share report shows that twenty years ago there were 369 banks in California and now there are only 192.[17]

Disturbingly, the fact that communities of color have fewer bank branches translates into their small businesses struggling to access capital. The COVID19 pandemic and the resulting relief resources, like PPP loans, were not equitably accessed by small businesses owned by BIPOC, largely due to the failure of banks to develop and maintain relationships with BIPOC-owned businesses. A study by a senior economist at the Federal Reserve found that half of bank PPP loans came from banks with branches within two miles of the borrower, and that borrowers using a closeby bank received credit sooner, a critical difference as cities and states locked down and small businesses shuttered.[18]

The lack of community banks in neighborhoods of color impacts the economic development of the area and the ability of BIPOC households to build intergenerational wealth. Having fewer opportunities to access safe and reliable banking places BIPOC at a disadvantage early on. Additionally, loan denials are higher for these communities. 2017 data from the Federal Reserve Board revealed that banks denied credit to more than half of Black small business owners and nearly 40% of Latine small business owners.[19] Small businesses located in neighborhoods of color have a harder time accessing capital than small businesses in white neighborhoods, leading to the widening of the racial wealth gap.[20]

According to the Boston Federal Reserve, only 61% of Black-owned small businesses applied for a PPP loan, and 1 in 5 had never heard of the program.[21] Mystery shopping of bank small business lending conducted by the National Community Reinvestment Coalition found disparities in how banks treated loan seekers, including that white mystery shoppers were given significantly better information about business loan products, particularly information regarding loan fees. Additionally, white mystery shoppers were told what to expect 44% more frequently

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[15] https://atlantablackstar.com/2016/02/20/bank-deserts-study-finds-banks-concentrated-majority-white-communities-scarce-black-neighborhoods/
[16] https://ncrc.org/research-brief-bank-branch-closure-update-2017-2020/
[17] https://www7.fdic.gov/sod/sodMarketRpt.asp?barItem=2.
[18] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3839671
[19] https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf
[20] https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf
[21] https://www.bostonfed.org/news-and-events/news/2021/07/snapshot-of-black-small-business-owners-shows-worry-about-access-to-credit-during-pandemic.aspx

than Hispanic mystery shoppers and 35% more frequently than Black mystery shoppers.[22] Studies in mortgage lending also find similar disparities for Black borrowers and other borrowers of color. A 2016 study found that mortgage loan originators offer more details about loans and are more likely to send follow-up correspondence to white borrowers. The effect of this preferential treatment, or better said, discriminatory behavior by lenders toward Black borrowers is equivalent to the effect of having a credit score that is 71 points lower.[23]

As bank consolidation continues, and as branch closures and access to fairly priced credit for BIPOC homebuyers and small business owners shrinks, the problem is only worsening.

Recommendation: Regulations should ensure CRA obligations continue for communities that lose branches. In addition, banks that close branches should have their mergers and acquisitions applications more closely evaluated to ensure that public benefit outweighs any harm.

The Magic Wand that Wasn't: Technology

Innovation in the financial services industry has been heralded as creating the potential for increased access to banking, especially as branch closures and efficiencies increase. While technology allows for financial institutions to lower overhead costs by not paying for brick and mortar branches, the benefit to BIPOC is less clear. Worse, with opaque algorithms and machine learning, technology can perpetuate discriminatory practices.

As technology and access to mobile banking promised to be the "equalizer," an FDIC survey conducted in 2019 found that 83% of people still visit bank branches.[24] The closure of branches has not only left small businesses with less access to PPP and other small business loans, it has left low-income families without access to bank accounts while awaiting stimulus payments. In addition, individuals who are unbanked, non-tax filers making less than $12,000 a year, and Americans who do not receive social security benefits, were directed by the IRS to fill out an online form to receive their payments on a prepaid card—and there was a hard and fast deadline. What this dispersal system didn't take into account is the disparities in the digital divide. If public recovery efforts are not developed with racial inequities in mind and consciously designed to help close these gaps, there will always be a widening wealth gap. BIPOC lose wealth faster than non-BIPOC yet they do not recover as fast economically, especially during times of crises. Economic recovery efforts should never be race-blind, rather they should be designed with the goal of closing the racial wealth gap.

In the US, 6% of Americans, or more than 20 million people, do not have access to high speed wifi. Many of them live in rural areas. The World Economic Forum reported that this number is

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[22] https://ncrc.org/disinvestment/

[23] Hanson, Andrew & Hawley, Zackary & Martin, Hal & Liu, Bo, 2016. "Discrimination in mortgage lending: Evidence from a correspondence experiment,"

[24] https://www.fdic.gov/analysis/household-survey/index.html

likely understated and that 19 million unconnected households are in rural areas .[25] 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.[26] 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 approximately 730,000, or roughly 5.6%, are under-connected. The digital divide remains especially challenging for a significant number of low-income and Latine households, seniors, and people with disabilities. With so many activities having gone digital, such as online banking, during the pandemic, 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.[27]

The Biden Administration has proposed closing the digital divide by including a $65 dollar 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.[28] This public investment of taxpayer dollars seeks to end “digital redlining” while also growing the customer base for privately owned Internet providers. This public investment should not come without strings attached, some of which include: increased enforcement of fintech and requirements for fintech to reinvest in local communities. Our Governor and Legislature have also committed significant resources to addressing the broadband issue[29] and should ensure all providers and fintech companies play by the rules and support communities.

As with many or all of the challenges outlined here, banks and other financial institutions have been part of the problem. Now, it’s time they become part of the solution. Specifically, banks and other institutions 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. Currently, California is witnessing two large bank mergers involving rural banks that are more likely to have CRA assessment areas including underserved Native American communities and tribal lands, as well as rural communities with insufficient broadband access. We urge Tri Counties Bank and Citizens Business Bank to address these needs in strong CRA

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

26 forbes.com/advisor/banking/digital-divide-and-its-impact-on-banking/

27 https://www.cetfund.org/action-and-results/statewide-surveys/2021-2/

28 https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/fact-sheet-historic-bipartisan-infrastructure-deal/

29 https://www.gov.ca.gov/2021/07/20/governor-newsom-signs-historic-broadband-legislation-to-help-bridge-digital-divide/

Plans, and for regulators to condition any merger approvals on the development of such strong and transparent plans.

Recommendations: (1) Public recovery efforts need to be developed with racial inequities in mind and consciously designed to help close these gaps. Economic recovery efforts should never be race-blind, but instead they should be designed with the goal of closing the racial wealth gap. (2) Regulators should condition merger approvals on the bank having a strong CRA plan that is informed by communities.(3) Banks and other institutions should 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.

Banking the Unbanked

The unbanked are disproportionately people of color, those making under $15/hour, and disabilities. Nearly 14% of Black American households are unbanked and 12.2% of Latine households are unbanked compared to 2.5% of white households.[30] Fintechs promised to fill the gap left by banks by offering banking and financial services to the fingertips of the masses. The Federal Reserve makes an argument for asking the question: “Does financial technology that aims to include more people instead introduce alternative forms of bias, exclusion, or exploitation of marginalized communities, including communities of color?” It is the right question to be asking. The decisions made by financial institutions have always been a black box. By taking human interaction out of the system, fintechs claim to be serving a diverse population. But the black box for fintechs is even more opaque as institutions claim their systems are proprietary.t is unclear if institutions can even explain their decision-making algorithms, and regulators, too, are only just learning about these technologies.

Data are never race neutral. Data is a compilation of recorded past experiences that are input into a machine for the purpose of making credit decisions in the growing technology-focused banking field. This creates a problem for populations that have been systematically discriminated against due to race, ethnicity or gender. The data used are rife with bias, including data that are highly dependent on race or gender, such as evaluating risk based on income, savings, and credit scores. For example, data on income that is entered into an algorithim may not take into account that because of discrimination, women make less than men and can therefore cause a negative outcome by increasing denial rates or higher interest rates. The National Consumer Law Center (NCLC) explains, “Learning algorithms, processing large volumes of information, will likely pick up subtle but statistically significant patterns that correlate with race and other protected characteristics and replicate existing bias. Serious concerns have arisen regarding the accuracy, relevance and predictability of the data sources used in these models and its potential to worsen existing disparities.”[31] It is impossible to ensure that Artificial Intelligence (AI) and Machine Learning (ML) models are free of bias unless we first admit that bias exists.

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[30] https://www.frbsf.org/community-development/files/fintech-racial-equity-inclusive-financial-system.pdf
[31] https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf

The other challenge is the lack of regulatory oversight in this space. We are very much concerned that the growth of fintech lending not subject to sufficient regulatory oversight or transparency has allowed for discrimination to flourish under the guise of complex and secretive black boxes and algorithms. Fintech companies claim to be race-neutral, stating that their lending practices are facially neutral. In fact, practices such as English-only products exclude Limited English Proficiency (LEP) borrowers, and the data used by fintech can also replicate historical discrimination practices. Some might claim that these are unintended consequences, but discriminatory practices, whether intentional or not, have the same disparate and harmful impacts on diverse populations.

As fintech grows, and regulators lag in regulating it due to the rapidly advancing technology or due to delayed regulations, it has become apparent that the innovation space or the "sandbox" can result in disparate impacts if a company doesn't understand the data and model they are using. It is imperative that regulators ensure that a model is not used unless it is thoroughly understood by the financial institution. The National Fair Housing Alliance (NFHA) reported a study that found "65% of respondent companies were not able to explain, with specificity, how AI decisions predict certain outcomes. Moreover, 68% of companies in the study reported they have insufficient mechanisms in place to comply with existing regulations."[32] This should raise serious questions related to governance and compliance for any financial institution and its regulators. It cannot be that an institution is adopting and implementing models and yet cannot explain how the model works and whether it will result in disparate impacts on protected populations.

In July 2021, CRC signed onto a comment letter led by the National Fair Housing Alliance raising concerns and offering recommendations on how to regulate this space. Most importantly, the Agencies should define "model risk" to include the risk of discriminatory or inequitable outcomes for consumers, rather than just the risk of financial loss to a financial institution. We also need for all relevant regulatory agencies to prioritize robust supervision and enforcement to hold institutions accountable to adhere to fair lending and related laws, as well as Compliance Management Systems.[33] We recommend that regulators also pay close attention and conduct testing of AI and MI models created by third parties for lenders. ECOA and Fair Lending laws create the framework by which to regulate the industry and banking regulators as well as the Consumer Financial Protection Bureau (CFPB) should regulate vigorously.

Consumers should not be subjected to predatory, unfair and abusive products. Congress and the federal regulators have not done a good job protecting consumers from such abuse, and this failure is more pronounced as new financial products, services and models are introduced in ways that can discriminate and harm consumers. As such, consumers, communities and advocates have organized to fight for greater protections at the state and local level. But these

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[32] https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

[33] https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

efforts are substantially undermined when fintech companies partner with banks to take advantage of preemption, true lender, valid when made, exportation of home state interest rate caps, or other legal precepts that are invoked in order to override state governments seeking to protect their residents from financial harm. As financial technology and digitalization continue to grow, legislators and regulators need to coordinate oversight, regulations and enforcement to ensure that institutions respect fair lending and consumer protection principles and laws, and that banks and fintech cannot continue to game the system through legal fictions and regulatory arbitrage that results in greater profits, less oversight, and increased harm to BIPOC communities.

Recommendations: (1) A serious look at the governance and compliance for any institution that is adopting and implementing models and can not explain how the model works and whether it will result in disparate impacts on protected populations. (2) Regulators should not allow for the use of a technology until it has been thoroughly tested and understood by the leadership of the company and the regulating agency (3) Regulators should define "model risk" to include the risk of discriminatory or inequitable outcomes for consumers, rather than just the risk of financial loss to a financial institution. (4) All relevant regulatory agencies should prioritize robust supervision and enforcement to hold institutions accountable to adhere to fair lending and related laws, as well as Compliance Management Systems.[34] (5) Regulators should also pay close attention and conduct testing of AI and MI models created by third parties for lenders. ECOA and Fair Lending laws.

Experience from the Frontlines of Mergers and Acquisitions

When US Bank announced its acquisition of California-based Union Bank in the fall of 2021, the California Reinvestment Coalition and its members had already engaged in seven bank mergers impacting the state since late 2020. As communities fight to keep bank branches open, to ensure bank merger consolidation does not lead to less reinvestment, and as they struggle to participate meaningfully in increasing merger and acquisition activity with limited time to comment, it is imperative that regulators not merely rubber stamp applications but also give the applications the scrutiny they deserve. There is support from the White House for revising the current merger oversight system. President Biden recently issued an Executive Order meant to improve regulatory oversight of bank mergers "not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 et seq.) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c)."[35]

We applaud the action taken by the Biden Administration to improve regulatory oversight, encourage a racial equity lens in evaluating the current system, and solutions to challenging

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[34]https://nationalfairhousing.org/wp-content/uploads/2021/07/Federal-Banking-Regulator-RFI-re-AI_Advocate-Letter_FINAL_2021-07-01.pdf

[35] https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/

public engagement processes. BIPOC communities still trying to dig themselves out of generations of financial exclusion and extraction now must also be vigilant and ready to battle the disappearance of branches, all with just 30 days for public comment on a proposed bank merger. Thirty days is just not enough time. And, often,community groups would never know when the 30-day clock begins to run. In addition, regulatory implementation of these processes are opaque and complicated. When Banc of California announced a bank merger earlier this year, we had to check the OCC's website to determine when the bank filed its bank merger application and when the comment period would begin. We only learned later that our searches for "Banc of California," the actual name of the bank, yielded no responses even after the application was submitted because the OCC website filed the entry as "Banc of CA." This regulatory and bureaucratic quagmire must end if communities are going to have a real and meaningful opportunity to engage in bank charter and merger application discussions.

Recommendations: (1) Bank merger and charter applications must be displayed prominently on agency websites, comment periods should be at least 90 days, and public hearings should be held where a significant number of commenters request them. (2) Applications and orders must demonstrate that approval will yield a clear public benefit, that past reinvestment activity has substantially helped to meet, not damage, community credit needs, and that the convenience and needs of impacted communities will be verifiably served. (3) Charter and merger application processes should require Community Benefits Agreements which reflect an assessment of community needs and an institution's efforts to help meet those needs, and regulators should condition approvals on compliance with these CBAs.

Communities can't wait for Change: The proposal for a new "Mega-Bank" and Amazon's Company Store

On Sept. 21, 2021, US Bank announced its proposed acquisition of California-based Union Bank for $8 billion.[36] If this mega merger is approved, the deal would make U.S. Bank the fifth largest bank in the U.S. and in California. Details of the application have not yet been made public, and although the bank has reached out to community groups to discuss the acquisition, both banks did little community engagement before announcing the merger. For example, Union Bank's 2016 Community Service Action Plan (CSAP) did not reflect the input of communities in California and expired last year. Union did not proactively prepare a CSAP to account for the expiration. US Bank does not have a public, forward-looking CRA plan either.

Union Bank focused on the environment in their last CSAP. But the criticisms of the bank related to environmental issues raise questions about the bank's goals and whether they reflect community input. Rainforest Action Network (RAN) called on Mitsubishi UFJ Financial Group (MUFG), the parent company to Union Bank, to stop "bankrolling climate change." In addition, MUFG was a lead funder for the Dakota Access Pipeline, ignoring the protests by indigenous communities, and funds coal power plants.[37] Such activities run sharply counter to Administration, Federal Reserve and public priorities and concerns.

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[36] https://labusinessjournal.com/news/2021/sep/21/us-bancorp-buy-union-bank-8-billion-deal/
[37] https://www.ran.org/the-understory/ran-targets-mufg-union-bank-during-global-climate-action-summit/

This approach of doing good on one end of the bank and harm with the other, calls into question how financial institutions either create a public benefit or instead public harm.

We call on regulators to incorporate a racial equity and climate change audit as part of their regular CRA examinations and as an area of focus for increased scrutiny during mergers and acquisitions. After all, harm to communities must be taken into account when evaluating whether a bank is meeting the credit needs of ALL communities. This is a zero-sum game for communities who have historically been on the losing end of the financial services industry.

The same can be said for looking at a bank's lending practices for resulting harm. US Bank was a lead PPP lender in the relief program designed to help small businesses. Yet, it provided at least 2 PPP loans to notorious real estate developer GH Palmer—the first for $607,257 and the second for over $5 million.[38] Geoffrey Palmer, the owner of GH Palmer, has sued the city of Los Angeles over its eviction moratorium and lost. He has been sued for unlawfully keeping tenants' security deposits.[39] He has also sued the City of Los Angeles for its affordable housing ordinance,[40] and he spent $2 million to defeat California's Proposition 10, a measure backed by 525 community and faith-based organizations that would have created statewide rent control.[41] It is unclear how such a loan helps meet the credit needs of low-income and BIPOC communities.

After the OCC encouraged banks to offer installment loans to their customers in 2018, US Bank joined a small number of institutions that began to offer these loans. The loans are up to $1,000, and carry a hefty APR between 71-88% [42], and the predecessor loans have been debt traps for consumers. Regulators should take a close look at these and other lending programs to ensure they are not predatory.

Meanwhile, the encroachment of fintech into banking brings concerns of hypercharged harm. The fintech Oportun has applied for a national bank charter with the OCC despite targeting Latine borrowers with high-cost, double-digit interest rate loans, many of which prove unsustainable for working-class consumers. We opposed the merger in partnership with our allies at the Center for Responsible Lending, and legal service and community service providers from across the country. Oportun's abusive debt collection practices and its "sue-to-intimidate" model was well-documented by news outlets The Guardian[43] and ProPublica[44]. Oportun's egregious practices not only threaten the economic wellbeing of families, they potentially impact the immigration status of its borrowers. The CFPB is reportedly investigating Oportun's practices

[38] https://www.sba.com/ppp-funded-companies/california/g-h-palmer-inc-6182399
[39] https://la.curbed.com/2019/2/22/18236778/geoff-palmer-lawsuit-security-deposits
[40]http://www.ladowntownnews.com/news/developer-wins-lawsuit-that-could-jeopardize-affordable-housing-plan/article_a8e848a8-7f6f-587c-90b7-6c0655f358ff.html
[41] https://www.housinghumanright.org/is-billionaire-geoffrey-palmer-los-angeles-worst-developer/
[42] https://www.nerdwallet.com/reviews/loans/personal-loans/us-bank-simple-personal-loans
[43]https://www.theguardian.com/us-news/2020/aug/02/oportun-loans-lawsuits-latino-small-claims-california
[44]https://www.propublica.org/article/a-lender-sued-thousands-of-lower-income-latinos-during-the-pandemic-now-it-wants-to-be-a-national-bank

via a Civil Investigative Demand[45]. Of almost secondary concern is Oportun's proposed subprime CRA Plan consisting of online bank accounts and high-cost loans as a means to serve low-income and Latine consumers. A bank charter would only enable Oportun to expand its problematic practices by leveraging the reputation, preemption of state consumer protection laws, and low-cost funding that a national bank charter would provide. No bank application should be approved by a bank regulator if there are any questions as to whether it is clearly able to comply with consumer protection, fair housing, fair lending, and reinvestment laws.

Amazon is another player which has long been in the fintech space and has done so without becoming a bank. Amazon has payment services and credit services through Amazon Pay for merchants, Amazon Payment Organization, Amazon Cash, Amazon's Lending, and Amazon Card services. Amazon Lending provides loans to sellers that use Amazon. In effect, it is a small business loan. On its website, Amazon states that a seller may receive an invitation to apply for a loan. The loans are made by a third party, Chinese lenders and what it calls "Lender Service Providers." The LSP set the terms for the loans and criteria for underwriting. Amazon claims to use three Chinese LSPs, Yunshu, Dowsure, and HSBC.[46] Amazon Lending is reported to not check credit scores, nor does it review tax returns or bank statements. Instead, it makes a type of "Merchant Cash Advance" meaning it sets a monthly repayment plan and deducts the payments from your Amazon Seller Account. Unlike MCAs that vary the payment depending on sales, Amazon deducts a fixed percentage of sales no matter how well or poorly the seller is doing. If the seller has insufficient funds their seller account will be in the negative. Amazon makes loans from $1,000 to $750,000 and the repayment period is capped at 12 months. Finally, the loan cannot be used for things such as payroll or updating equipment. It can only be used for adding inventory and marketing on the e-commerce site.[47] It has also been reported that if a payment is not made after a seller's balance is negative and Amazon attempts to deduct payment from the seller's secondary bank account, Amazon can seize the sellers' inventory and collateral and sell it to pay off the balance.

Amazon Pay is the company's payment service provider. It offers third party businesses the opportunity to receive payments through its system. Amazon Lending, much like Square and other online payment service providers turned lenders, only lends to its sellers. It has access to millions of small businesses through its platform, and thereby also has a captive lending base.[48] The Amazon Pay service has grown to a reported 22% user share.[49] They invite its selleres to apply, making it easy, and offering simple access to a product they may or may not need. The ways in which Amazon conducts its business doesn't allow sellers to keep a dedicated inventory and forces them to use the Amazon fulfillment center and

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[45] https://investor.oportun.com/static-files/964d5453-0d80-48f8-acee-d2963ef78013

[46] https://sellercentral.amazon.com/gp/help/external/help.html?itemID=ZN5DX64LP2QYZ69&ref=efph_ZN5DX64LP2QYZ69_cont_G2

[47] https://www.fundera.com/business-loans/guides/amazon-lending

[48] https://www.marketplacepulse.com/amazon/number-of-sellers

[49] https://seekingalpha.com/article/4456737-understanding-amazons-fintech

thereby limits their access to bank small business loans. Ultimately, the goal of its lending services is to keep sellers indebted to Amazon.

Amazon has effectively created a type of 21st century company store by purposefully creating an indebted population that has no choice but to keep selling products on its platform. It also replicates the power dynamics of the traditional company store. Sellers rely on Amazon's platform to sell their products, and they have a loan from the company, which leaves them vulnerable. Sellers find themselves facing a power dynamic which is one sided and leaves them with very few choices.

Amazon and its ventures into financial services are largely unregulated. It's rapid growth should give regulators pause. Last month, Amazon announced a partnership with installment lender Affirm. Affirms press release reads, "It will be the first buy now-pay later purchasing option for Amazon (AMZN) customers and is seen as helping shoppers with buying larger-ticket items. A flexible payment solution will soon be available to Amazon.com customers at checkout."[50] The product has already rolled out to certain customers.

The fast growing products offered by Amazon, and its connection to the retail side of the business should be evaluated for antitrust violations consistent with the creation of a monopoly. Amazon is not the only tech company venturing into financial services. Venmo, PayPal, Apple, and Google all have payment services and currently also offer credit cards. Google offers personal loans through partnership with third-party lenders and PayPal offers small business loans.

In California, the newly created Department of Financial Protection and Innovation (DFPI) has licenses for Amazon Fund LLC and Amazon Capital. Amazon had $873 million in outstanding loans in 2019. In 2019, Amazon Capital had its license revoked for failing to pay a $400 assessment fee, and yet continued making loans in the state. A consent order was agreed to that allowed Amazon to continue operating as a lender.[51] Amazon continues to grow it's financial services. Before long we may find it applying to be a bank.

In all of these concerning trends, we see that corporations are profiting from regulatory blind spots or blindness, while BIPOC, rural communities and consumers fall further behind. It was reported that in 2021, 18% of Amazon sellers (the highest percentage) lived in California.[52]

Recommendations: Legislative and regulatory bodies need to provide meaningful and coordinated oversight of these newer companies and technologies and to provide vigorous enforcement of consumer protection, fair housing, fair lending and reinvestment laws. To that end, we look forward to working to ensure that:

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[50] https://seekingalpha.com/article/4456737-understanding-amazons-fintech

[51] https://dfpi.ca.gov/wp-content/uploads/sites/337/2020/02/Consent-Order-Amazon-Capital-Services-Inc.pdf

[52] https://www.junglescout.com/blog/amazon-seller-demographics/

- No bank application should be approved by a bank regulator if there are any questions as to whether the applicant is clearly able to comply with consumer protection, fair housing, fair lending, and reinvestment laws.
- New, joint Community Reinvestment Act rules explicitly consider bank access to and impact on Black Indigenous Communities of Color; downgrades for financial harm such as discrimination and the financing of displacement; expanding reinvestment obligations to cover where online lenders seek and earn profits; enhancing community participation through changes to the applications process and examinations processes, as well as promoting Community Benefits Agreements.
- The reach of the Community Reinvestment Act is expanded to require reinvestment and fair lending obligations for non bank fintech and online financial institutions at the federal level or that states require community reinvestment obligations for all fintech companies.
- Section 1071 small business lending data collection will be robust in order to identify discrimination in small business lending, include broad coverage of all lenders including Amazon Lending and other Merchant Cash Advance and Factor lenders, and provide that all data collected will be made publicly available to ensure the purposes of the statute are met.
- All relevant regulatory bodies develop aggressive and coordinated protocols for overseeing new fintech and digital products, services and models so that discrimination is prohibited and that consumers are not harmed.
- All financial institutions conduct racial equity and climate audits to not only ensure that discriminatory policies, practices and products cease, but also that corporations provide sufficient remedy for generations of harm caused.

Creating Alternatives to Traditional Banking: The Role of Public Banking

Banks were created to serve white Americans and have explicitly excluded Black Americans and other People of Color. From underwriting criteria that is based on whiteness, credit discrimination, and the lack of branches in communities of color, white supremacy and structural racism is embedded in the banking system. CRC, our members and our partners have long been working to help banks end these practices and do better. We are committed to continue that work. But it is also time to begin to think about alternatives to the traditional financial system, and create new systems that serve all but are specifically designed to serve the unbanked, underserved, and BIPOC who have long been denied affordable financial services and access to credit.

In California, AB1177 is on the Governor's desk and moves forward with the creation of a first-of-its-kind universal banking option that will be run by the State of California. The banking option will be conducted in partnership with financial institutions, but the state will issue accounts to customers that are free of charge with no overdraft. CalAccount, as it is called, seeks to bank the unbanked, many of whom either distrust the banking system because of past experience or have been outright excluded. Additionally, CalAccount will help those who have been caught in the overdraft debt cycle or blacklisted by the ChexSystem, by providing safer, more reliable options than the high-fee check-cashing services.

We've discussed the dearth of bank branches in rural America and in communities of color. In addition, brick and mortar branch closures only further disparities in these communities. Without a bank nearby, Americans have to rely on expensive check cashers to conduct financial business. We've discussed the challenges of technology and whether it will serve to close or widen the gap, and whether it truly provides more access to BIPOC or exacerbates disparities. It will likely take an ecosystem of banking products and services to meet the needs of our diverse country; therefore, it is imperative that we nurture public banking either through the creation of local public banks that are tied to the federal reserve or the creation of postal banking. As University of California, Irvine law professor and banking law expert Merhsa Baradaran explains, the current banking system has failed to make banking accessible to all, as an "erosion of legal requirements on banks has enabled banks to abandon lower-profit regions and customers under the guise of 'inefficiency' and market competition. The United States has a federally sponsored banking system that is exclusionary. Those who are excluded are the most financially vulnerable individuals and communities who are forced to pay the most for services."[53]

Financial institutions have access to the Federal Reserve's Payment system, and customer deposits are insured by the FDIC. Today, each aspect of banking, including deposits, loans, and simple financial transactions, relies on a robust network of government support. Each time a bank sends or accepts money, they are using the Federal Reserve's payments system, customer deposits are insured by the FDIC and when the FDIC fund goes red (2008) the deposits are backed by the US Treasury.[54] The Banking system relies on government support for its very existence, yet it excludes a wide swath of the population.

Postal Banking is one solution that should be considered to fill this gap. Every American knows where their post office is, therefore it would expand access to savings and checking accounts, and can potentially offer small dollar loans at an affordable rate. Public Banks with access to the Federal Reserve Payment System, is another option for providing public options to the unbanked and underbanked.

Recommendation: Pass the Public Banking Option Act (Ocasio-Cortez/Tlaib). These banks are not only going to create opportunities for the unbanked, but these banks can play an important role in funding infrastructure projects, creating jobs, and more.

Conclusion

We will need to be vigilant to ensure BIPOC communities are not further harmed by the banking system as it continues to rapidly embrace evolving technologies. The last financial crisis brought with it novel products and technologies meant to improve efficiencies and access. Instead, it brought about disproportionate harm against BIPOC households. This time, we must ensure that industry practices and profits do not once again outpace regulatory oversight and consumer

[53] https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-baradaranm-20210721.pdf
[54] https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-baradaranm-20210721.pdf

protection. We urge the development of several important policies. This includes: a strong Community Reinvestment Act that a) enhances the role of community voices and Community Benefits Agreements, b) explicitly considers race, c) downgrades banks for harm caused by their discrimination and displacement financing, d) discourages further branch closures,e) expands reinvestment obligations to where online lenders seek and earn profits, and f) urges banks to address broadband needs so that rural and Native American communities can participate in the digital economy. We also urge all regulators to develop a coordinated and robust regulatory responses to fintech that considers discrimination and inequitable outcomes as a significant risk, requires firms to be able to explain their models, and ensures strong compliance with consumer protection and fair lending laws. We urge the finalization of a strong Section 1071 small business data collection rule to ferret out discrimination by requiring broad coverage of lenders including Merchant Cash Advance and factoring, disclosure of APR pricing and reasons for denial data, and public disclosure of all data collected. And, we urge passage of federal and state laws to authorize and create public banking options for BIPOC and other consumers who are tired of waiting for financial institutions to get it right.

In pursuit of profits, financial institutions will take as many liberties as they are given. It is imperative that federal and state agencies remove regulatory blinders and prevent regulatory arbitrage so that the public can come to expect that discrimination and consumer abuse will not be tolerated due to regulatory failure to act or inability to comprehend new models. In starting to acknowledge the inequities of banking's past, we cannot allow ourselves to lose sight of the need to prevent the foreseeable abuses of the future.