

REALIZING EQUITY: STRATEGIC UTILIZATION OF THE COMMUNITY REINVESTMENT ACT TO ELEVATE FOOD SECURITY IN HISTORICALLY REDLINED DISTRICTS

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I. FOREWORD

While the editing processes of this Note was underway, a significant development occurred specifically within the scope of the Community Reinvestment Act (CRA). In October 2023, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, regulating agencies in charge of implementing the CRA, unveiled a new rule aimed at strengthening and modernizing the CRA.¹ Scheduled to take effect on April 1, 2024, with staggered compliance dates extending through January 2026 and January 2027, this rule introduces pivotal updates, including new performance tests, asset range categorization for banks, delineation requirements for facility-based assessments, an enhanced data collection mechanism, clearer definitions of community development activities, and a push for increased transparency and public engagement.²

At first glance, this regulatory overhaul might seem to overshadow the critiques and observations laid out in the preceding pages. However, a closer examination reveals that the insights offered in this article not only remain pertinent but are also validated and amplified by these updates. This foreword aims to bridge the gap between the article's original analysis and the newly released CRA rule, illustrating the enduring value and relevance of our discussion.

One of the core arguments of this article is the CRA's historically narrow application—excluding a significant portion of mortgage lenders, particularly those without depository functions. This limitation has implications for the availability of credit in underserved communities, directly affecting initiatives aimed at alleviating food insecurity. The new rule will update the CRA regulation to include the evaluation of retail lending activities occurring outside of the bank's physical branch.³ This rule will expand the CRA to include non-traditional banks such as online and

¹ Benjamin W. McDonough, *Community Reinvestment Act: Interagency Final Rulemaking to Implement the CRA*, OFF. OF THE COMPTROLLER OF THE CURRENCY (Oct. 24, 2023), <https://www.occ.treas.gov/news-issuances/bulletins/2023/bulletin-2023-32.html> [https://perma.cc/9WAA-LYP6].

² *Id.*

³ *Interagency Overview of the Community Reinvestment Act*, FED. DEPOSIT INS. CORP., <https://www.fdic.gov/news/fact-sheets/interagency-overview-cra-final-rule-10-24-23.html> [https://perma.cc/8SC6-RVJX].

mobile banks.⁴ Although the new rule expands its application to the modern banking landscape, it is unclear how the rule will be implemented to include all variations of non-traditional banks such as those without any physical footprint. In a world in which 72% of U.S. bank users rely on online services, the new rule may fall short of addressing the full spectrum of financial institutions now integral to our financial system.⁵ Additionally, there is uncertainty regarding how these new stakeholders under the CRA will react, especially concerning potential legal challenges to its expansion, as highlighted in the article.

The article also delves into how the CRA, through its vague statutory language and lack of specific guidance, inadequately addresses food insecurity issues. The new rule makes an exhilarating leap forward, particularly with its emphasis on clarifying community development activities. By introducing an illustrative list of qualifying community development activities and establishing a process for banks to seek confirmation on the eligibility of their activities, the rule addresses a significant concern I raised in my article regarding specificity. This illustrative list is a monumental stride toward filling the gaps left by previous vague statutory language and the lack of detailed guidance, specifically broadening the scope for food security considerations. It includes critical investments such as the construction of grocery stores in low- to moderate-income opportunity zones and public welfare investments in entities that finance food markets and distribution facilities, directly targeting the heart of food insecurity issues.⁶

However, this excitement is tempered by the need for robust oversight and critical evaluation in several key areas. First, while the list significantly expands the types of activities recognized for their potential to alleviate food insecurity, it is essential to monitor how effectively these activities are implemented and whether they translate into tangible benefits for the communities they aim to serve. Furthermore, the process for banks to request confirmation of an activity's eligibility presents an opportunity for engagement but also raises questions about the efficiency and responsiveness of this mechanism. Will it be agile enough to not deter banks from pursuing innovative community development efforts? Lastly, the

⁴ *Id.*

⁵ Jenn Underwood & Elizabeth Aldrich, *U.S. Consumer Banking Statistics 2024*, FORBES ADVISOR, [https://www.forbes.com/advisor/banking/banking-trends-and-statistics/#:~:text=A%20national%20survey%20conducted%20by,computer%20\(laptop%20or%20desktop\)](https://www.forbes.com/advisor/banking/banking-trends-and-statistics/#:~:text=A%20national%20survey%20conducted%20by,computer%20(laptop%20or%20desktop)) [https://perma.cc/BA49-T6X3].

⁶ OFF. OF THE COMPTROLLER OF THE CURRENCY, CRA ILLUSTRATIVE LIST OF QUALIFYING ACTIVITIES 11, 18 (2020), <https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf> [https://perma.cc/WY5G-ZCPS].

overarching concern remains about how these changes will be enforced. As the regulatory landscape evolves, it is crucial to ensure that these commendable steps do not become mere formalities but drive genuine, impactful change in addressing food insecurity in underserved communities.

In addition, the CRA update introduces notable shift towards increasing transparency and enhancing public participation by encouraging public comments on community needs and opportunities, an assertion I put forth in my article. While this mechanism promises to elevate the voices of community members and stakeholders in the CRA implementation process, it notably lacks specific guidelines on how banks should act on these comments. There's no stipulated requirement for banks to incorporate feedback into their practices or any clear enforcement mechanism to ensure that public comments lead to meaningful change. This omission raises questions about the actual influence of public input on shaping credit lending practices under the CRA, highlighting a potential area for further development to ensure that public engagement translates into tangible improvements in community reinvestment efforts.

The newly updated CRA rules indeed mark progress, aligning with many theories and suggestions I have raised in the Note. However, despite these advancements, uncertainties linger, particularly due to the staggered compliance timeline and persistent gaps. These include the need for a broader inclusion of financial institutions and a more nuanced approach to addressing food insecurity. Additionally, amidst these changes, the question of enforcement remains unanswered. There is a palpable concern that, without rigorous enforcement mechanisms, the majority of banks may continue to engage in community development activities that do not sufficiently address or diversify to include food insecurity issues. This leads to speculation about whether banks will predominantly receive satisfactory or outstanding ratings, regardless of the actual impact of their activities on fostering diverse community development, including efforts to combat food insecurity.

In essence, the recent updates to the CRA validate the urgency and relevance of the issues discussed in this article. As the rule takes effect and the compliance period unfolds, it will be crucial to monitor its impact on community investment and development, especially in areas struggling with food insecurity. This article, therefore, serves not only as a critique of the CRA's past shortcomings but also as a roadmap for assessing the effectiveness of its most recent iteration. The conversation about how best to leverage the CRA for community development, particularly in the fight against food insecurity, is ongoing—and more relevant than ever.

II. INTRODUCTION

It is widely recognized that redlining, a discriminatory practice by the federal government in the 1930s which systematically denied mortgage financing to individuals based on socioeconomic indicators and racial composition of their neighborhoods, has been foundational in sculpting the inequitable distribution of wealth within urban landscapes. Nonetheless, it remains underacknowledged that redlining also significantly contributed to the creation of food deserts—areas where the availability of nutritious food options is critically constrained. Such deficient food environment is not merely an inconvenience, but also a precursor to grave financial and health consequences for the residents.

This Note examines the transformative potential of the Community Reinvestment Act of 1977 (“CRA”), a legislative effort aimed at funneling investments back into historically redlined communities, with a particular focus on mitigating food security challenges within the U.S. Part II of this Note defines redlining and food insecurity while probing their interrelation. Part III ventures into an in-depth analysis of the CRA legislation, identifying its shortcomings and proposing avenues for refinement. Part IV introduces a suite of policy interventions designed to synergize with the CRA to enhance food security in formerly redlined areas. The intent is not to provide an exhaustive list of issues with the CRA or to analyze the CRA as the singular solution to the intricacies of food insecurity. Rather, it situates the CRA within the expansive framework of a complex multi-layered food ecosystem and seeks to catalyze discussion on the pertinent issues.

III. REDLINING AFFECTED MODERN-DAY FOOD INSECURITY LEVELS

A. HISTORY OF REDLINING

The influx of homeowner loans during the Great Depression led to high foreclosure rates in the 1930s.⁷ In response to this phenomenon, in 1935, the Home Owners’ Loan Corporation (“HOLC”)⁸ deployed

⁷ See generally David C. Wheelock, *Changing the Rules: State Mortgage Foreclosure Moratoria During the Great Depression*, FED. RSRV. BANK ST. LOUIS REV. 569 (2008).

⁸ HOLC is a former U.S. government-sponsored corporation, established in 1933 as part of the New Deal to stabilize the real estate market that had depreciated during the Great Depression. It refinanced home mortgages that were in default to prevent foreclosures and expanded home purchasing by offering secure home mortgages. *Home Owners Loan Corporation (HOLC)*,

examiners across the U.S. to classify neighborhoods on a four-point scale based on lending risks.⁹ These examiners consulted with local bank loan officers, city appraisers, and realtors, and assessed neighborhoods based on criteria related to the age and condition of housing in the area, access to transportation, proximity to amenities like parks, proximity to hazards like polluting industries, the economic classes of residents, and their ethnic and racial compositions.¹⁰ Based on this data, the examiners mapped their perceived lending risks onto the coded “residential security map” of 239 cities in the U.S.¹¹

Green indicated the most desirable lending locations, while blue was “Still Desirable,” yellow was “Definitely Declining,” and red was “Hazardous.”¹² Redlined neighborhoods predominantly consisted of minority residents.¹³ For instance, the Watkins Park neighborhood in Nashville, Tennessee, received a Hazardous rating, even though the area was home to two prestigious historically Black colleges occupied by “a very good type of negro population adjacent to these schools.”¹⁴ HOLC appraisers stated:

In this area are located the cheapest type of Negro dwelling as well as the highest type. The location of the colored colleges in this section means that Negroes will concentrate here, and the major spread of the Negro population will therefore be in this area. . . . It adjoins the business section of the city and the expansion here will come more or less from the whites moving to other areas and Negroes taking up their old places.¹⁵

ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/economics/encyclopedias-almanacs-transcripts-and-maps/home-owners-loan-corporation-holc> [https://perma.cc/H2SF-UPKF].

⁹ BRUCE MITCHELL & JUAN FRANCO, HOLC “REDLINING” MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 4, https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [https://perma.cc/7UPE-D7W3].

¹⁰ *Id.*

¹¹ *Id.*; Kara Manke, *Historically Redlined Communities Face Higher Asthma Rates*, UNIV. OF CAL. BERKELEY RSCH. (May 22, 2019), <https://vcresearch.berkeley.edu/news/historically-redlined-communities-face-higher-asthma-rates> [https://perma.cc/2C6W-PD22].

¹² MITCHELL & FRANCO, *supra* note 9, at 5.

¹³ *Id.*

¹⁴ Louis Lee Woods, II, *The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921–1950*, 38 J. URB. HIST. 1036, 1044–45 (2012) (discussing racist HOLC appraisals).

¹⁵ *Id.*

Although African American students and professors occupied the Watkins Park area, HOLC appraisers provided a minimal amount of mortgage funds with the least desirable lending terms. The appraisers added that “[t]he influence of the state prison farm, the manufacturing plants’ as well as the ‘Negro schools and poor type of population is predominant,’ making this area deserving of only a hazardous rating.”¹⁶ Areas characterized by a significant presence of African American residents, along with those exhibiting high racial and ethnic diversity, were similarly subjected to negative appraisals.¹⁷ For instance, in San Francisco, HOLC appraised as Hazardous the central and southeastern neighborhoods, including certain parts of Fillmore, Chinatown, Mission, and Bayview-Hunters Point, neighborhoods that were often associated with racial and ethnic diversity.¹⁸ HOLC described the Fillmore neighborhood as having a “decided concentration of undesirable racial elements. More than half the Negro population of San Francisco are located here, and it is considered a highly hazardous area.”¹⁹ HOLC also appraised as Hazardous the neighborhood next to the Fillmore district, which was described as the melting pot of the West, despite its schools, transportation facilities, and recreational areas.²⁰ HOLC added that “[i]t has a highly congested population consisting of Japanese, Russians, Mexicans, Negroes, etc. having a very low income level. In the north-central part of the area is the largest concentration of Japanese in the City, and Negroes predominate in its northwest section.”²¹ There was “[o]nly one mortgagee institution . . . found who would even consider residential loans in this neighborhood, and they will only consider applications on the basis of land value.”²² Further, HOLC wrote that the Mission District currently had “no racial concentration, but people of Irish extract might be said to

¹⁶ *Id.* at 1045.

¹⁷ *Id.*

¹⁸ Noah Arroyo, *State Report Links Redlining and Pollution Threats*, S.F. PUB. PRESS (Sept. 1, 2021), <https://www.sfpublicpress.org/state-report-links-redlining-and-pollution-threats> [https://perma.cc/5SF9-ENVX].

¹⁹ Laura Choi, *Redlining and Mental Health: Connecting the Dots Across Poverty, Place, and Exclusion*, S.F. FED. (May 29, 2019), <https://medium.com/sffed/redlining-and-mental-health-connecting-the-dots-across-poverty-place-and-exclusion-224714328add> [https://perma.cc/VV3Q-4YCZ].

²⁰ *Mapping Inequality: Redlining in New Deal America*, AM. PANORAMA, <https://dsl.richmond.edu/panorama/redlining/#loc=14/37.779/-122.438&city=san-francisco-ca&area=D1> [https://perma.cc/4C5D-57Y4]. To reach the quoted material, please navigate to the entry for San Francisco Area D3.

²¹ *Id.*

²² *Id.*

predominate.”²³ It added that “[t]here is no immediate threat of undesirable racial infiltration but such an eventually[sic] is distinctly possible.”²⁴

Redlining deprived residents of wealth-generating opportunities and created suboptimal neighborhood living conditions. Redlining is linked to poorer health outcomes in many parts of the contemporary U.S.²⁵ In San Francisco, residents of redlined areas experience nearly twice as high a risk of poor health today than those in non-redlined areas.²⁶ Also, residents of redlined areas suffer from high rates of poverty due to their systematic exclusion from mortgage credit access.²⁷ Poverty exacerbates the already disproportionate burden of premature mortality due to homicides, chronic diseases, and the leading twenty causes of death, underscoring the complex interplay between socio-economic disadvantages and health disparities.²⁸ There is also a high correlation between HOLC risk grade and rates of emergency room visits due to asthma, with redlined neighborhoods having higher emergency room visits.²⁹ Higher asthma rates in historically redlined census tracts may be linked to the construction of highways during the 1940s and 1950s, leading to diesel emission rates that are nearly twice as high as those in neighborhoods not subjected to redlining, such as those categorized under the “green” or “blue” HOLC grades.³⁰ This disparity arises because these redlined communities offered the least resistance to

²³ *Id.*

²⁴ *Id.* To reach the quoted material, please navigate to the entry for San Francisco Area D8.

²⁵ Michael R. Poulson, Kelly M. Kenzik, Sarah Singh, Flaminio Pavesi, Katrina Steiling, Virginia R. Litle & Kei Suzuki, *Redlining, Structural Racism, and Lung Cancer Screening Disparities*, 163 J. THORACIC & CARDIOVASCULAR SURGERY 1920, 1923 (2022) (discussing the correlation between redlining and low levels of lung cancer screening in Boston); Nana Matoba, Suzanne Suprenant, Kristin Rankin, Hailin Yu & James W. Collins, *Mortgage Discrimination and Preterm Birth Among African American Women: An Exploratory Study*, 59 HEALTH & PLACE 1, 5 (2019) (discussing the correlation between redlining and preterm birth among African American women in Chicago).

²⁶ Anthony Nardone, Joan A. Casey, Rachel Morello-Frosch, Mahasin Mujahid, John R. Balmes & Neeta Thakur, *Associations Between Historical Residential Redlining and Current Age-Adjusted Rates of Emergency Department Visits Due to Asthma Across Eight Cities in California: An Ecological Study*, 4 LANCET PLANET HEALTH e24, e28 (2020) [hereinafter *ED Visit and Asthma Study*]; Anthony Nardone, Joey Chiang & Jason Corburn, *Historic Redlining and Urban Health Today in U.S. Cities*, 13 ENV'T JUST. 109, 109 (2020).

²⁷ Marissa A. Boeck, Waverly Wei, Anamaria J. Robles, Adaobi I. Nwabuo, Rebecca E. Plevin, Catherine J. Juillard, Kirsten Bibbins-Domingo, Alan Hubbard & Rochelle A. Dicker, *The Structural Violence Trap: Disparities in Homicide, Chronic Disease Death, and Social Factors Across San Francisco Neighborhoods*, 234 J. AM. COLL. SURGEONS 32, 40–42 (2022); Arroyo, *supra* note 18.

²⁸ Boeck et al., *supra* note 27.

²⁹ *ED Visit and Asthma Study*, *supra* note 26, at e26–e28.

³⁰ *Id.* at e27, e29.

land acquisition for such infrastructure projects.³¹ Furthermore, residents within these communities were subjected to substandard housing conditions, which intensified both environmental and physiological stressors, thereby heightening the susceptibility to health conditions such as asthma.³² The neighborhoods' low socioeconomic status and high psychosocial stressors, including violence, augment poor environmental factors, which may have contributed to the high incidence, prevalence, and severity of asthma.³³ In the U.S., there were statistically significant associations between redlining and pre-existing conditions for heightened risk of COVID-19 morbidities.³⁴

Redlined neighborhoods are still predominantly inhabited by communities of color.³⁵ For example, Asians are the second-largest racial group in San Francisco County, making up 35% of its population, and 32% of Asians in the county live within redlined boundaries.³⁶ In Bayview Hunters Point, Asians make up the highest population with 48.2%, followed by Hispanics who make up 25.3%.³⁷ With redlined communities experiencing worse health outcomes and consisting predominantly of people of color, redlining policies created systemic health disparities that affect communities of color across the U.S. today.

³¹ *Id.* at e29.

³² *Id.* at e26–e28.

³³ *Id.*

³⁴ See generally JASON RICHARDSON, BRUCE C. MITCHELL, HELEN C.S. MEIER, EMILY LYNCH & JAD EDLEBI, REDLINING AND NEIGHBORHOOD HEALTH (2020), https://ncrc.org/wp-content/uploads/dlm_uploads/2020/09/HOLC-and-public-health-affects-FINAL4.pdf [<https://perma.cc/34VT-25ZP>].

³⁵ Andre M. Perry & David Harshbarger, *America's Formerly Redlined Neighborhoods Have Changed, and so Must Solutions to Rectify Them*, BROOKINGS INST. (Oct. 14, 2019), <https://www.brookings.edu/articles/americas-formerly-redlines-areas-changed-so-must-solutions> [<https://perma.cc/T5SC-B7VE>] (showing that approximately 70% of formerly redlined areas are currently inhabited by people of nonwhite race).

³⁶ Sai Odinga, *Redlining in San Francisco*, ARCGIS STORYMAPS (May 7, 2021), <https://storymaps.arcgis.com/stories/34f5b07b28fb4dfeaf4e7ab39e6226af> [<https://perma.cc/LY2X-XZY5>].

³⁷ *Bayview & Hunters Point Puma, CA*, DATA USA, <https://datausa.io/profile/geo/bayview-hunters-point-puma-ca> [<https://perma.cc/7CDH-X4YH>].

B. FOCUSING ON FOOD INSECURITY CAN IMPROVE HEALTH EQUITY AND WELL-BEING

The complex and multifaceted relationship between diet and health outcomes continues to be a major topic of interest in public health.³⁸ Diseases linked to unhealthy diets and lifestyle choices, such as diabetes and cancer, are leading causes of death in the U.S., surpassing tobacco use.³⁹ Poor diet contributes to approximately 678,000 deaths in the U.S. due to nutrition- and diet-related diseases like heart disease, cancer, and type II diabetes.⁴⁰ Subsequently, with smoking rates on a decline,⁴¹ poor diet is the most prevalent modifiable risk factor for chronic disease in the U.S.⁴² Consuming a healthy diet, defined by the 2020–2025 Dietary Guidelines for Americans as consisting of a balance of fruits and vegetables, whole grains, lean and plant-based proteins, and items lower in saturated fat, added sugars, and sodium, could reduce a person’s risk for developing Type II diabetes, hypertension, cardiovascular disease, and certain types of cancers.⁴³

A more troubling consequence of food insecurity is its persistent inequities among certain populations that highlight the barriers to availability, accessibility, and affordability of healthy food options. For instance, socially and economically disadvantaged adults and children, including those with lower income and racial and ethnic minority groups, experience a disproportionately low intake of fruits and vegetables. The lack of optimal fruit and vegetable intake reduces the quality of one’s diet

³⁸ See generally Bailey Houghtaling, Matthew Greene, Kaustubh V. Parab & Chelsea R. Singleton, *Improving Fruit and Vegetable Accessibility, Purchasing, and Consumption to Advance Nutrition Security and Health Equity in the United States*, 19 INT’L J. ENV’T RSCH. & PUB. HEALTH, no. 18, 2022, at 1.

³⁹ The US Burden of Disease Collaborators, *The State of US Health, 1990–2016: Burden of Diseases, Injuries, and Risk Factors Among US States*, 319 JAMA 1444, 1446 (2018).

⁴⁰ *Why Good Nutrition Is Important*, CTR. FOR SCI. IN THE PUB. INT., <https://www.cspinet.org/eating-healthy/why-good-nutrition-important> [https://perma.cc/HWZ2-WBWP].

⁴¹ Press Release, Centers for Disease Control and Prevention, *Cigarette Smoking Among U.S. Adults Hits All-Time Low* (Nov. 14, 2019), <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/media/releases/2019/p1114-smoking-low.html>.

⁴² See generally *United States of America*, DATA COMMONS, https://datacommons.org/place/country/USA?utm_medium=explore&mprop=count&popt=MortalityEvent&hl=en [https://perma.cc/H2AB-47H9]; Matthias B. Schulze, *Food Based Dietary Patterns and Chronic Disease Prevention*, 361 BMJ, no. 8157, 2018, at 1.

⁴³ U.S. DEP’T OF AGRIC. & U.S. DEP’T OF HEALTH AND HUM. SERVS., *DIETARY GUIDELINES FOR AMERICANS, 2020–2025* (2020), https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf [https://perma.cc/H2EK-G7EE]; DATA USA, *supra* note 37.

and deprives one's body of essential nutrients like fiber and vitamins. Furthermore, racial minorities are 1.5 to 2 times more likely than their white counterparts to experience major chronic diseases.⁴⁴ As a result, addressing food insecurity means reducing the prevalence of both short-term and longer-term illnesses in a sustainable manner.

Various multi-dimensional factors cause food insecurity, such as socioeconomic conditions, agricultural policies, and local food accessibility. This Note focuses on local food accessibility, specifically the links between redlining and poor physical access to healthy foods in certain neighborhoods, which contributes to inequities in healthy diets. Formerly redlined neighborhoods overlap with "food deserts," where at least one-third of the area's population lives more than half a mile away from the closest supermarket or grocery store⁴⁵ and thus, has limited access to healthy and affordable food options.

Mid- to large-scale grocery stores are valuable community resources that provide local neighborhoods with healthy, affordable food options often unavailable at smaller corner stores and fast-food outlets. Food availability is correlated with positive dietary outcomes.⁴⁶ Further, a proliferation of healthy food outlets promotes healthy choices by providing people with convenient access.⁴⁷ On a socio-economic level, grocery stores in a neighborhood signal community potential and recognition of the neighborhood's value, attracting external investors who could invest more funds into the community.⁴⁸ Overall, with formerly redlined areas

⁴⁴ James H. Price, Jagdish Khubchandani, Molly McKinney & Robert Braun, *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, 2013 BIOMED RSCH. INT'L, 2013, at 1.

⁴⁵ Stephanie Sierra & Lindsey Feingold, 'Food Deserts': Nearly 900 Neighborhoods Across Bay Area Have Limited Access to Food, ABC7 NEWS (Nov. 20, 2021), <https://abc7news.com/food-desert-bay-area-deserts-pantry-near-me-alameda-bank/11254529> [<https://perma.cc/J7HL-7N4Z>]; Tonya Mukherjee, *Redlining's Legacy: Food Deserts, Insecurity, and Health*, MORNING SIGN OUT AT UCI (Sept. 29, 2020), <https://sites.uci.edu/morningsignout/2020/09/28/redlinings-legacy-food-deserts-insecurity-and-health> [<https://perma.cc/U974-Q9HN>]; Yasamin Shaker, Sara E. Grineski, Timothy W. Collins & Aaron B. Flores, *Redlining, Racism and Food Access in US Urban Cores*, 40 AGRIC. & HUM. VALUES 101, 108 (2022).

⁴⁶ Christina Black, Graham Moon & Janis Baird, *Dietary Inequalities: What Is the Evidence for the Effect of the Neighbourhood Food Environment?*, 27 HEALTH PLACE 229, 238 (2014).

⁴⁷ M. Hobbs, M. A. Green, E. Wilkins, K. E. Lamb, J. McKenna & C. Griffiths, *Associations Between Food Environment Typologies and Body Mass Index: Evidence from Yorkshire, England*, 239 SOC. SCI. & MED., 2019, at 1, 5.

⁴⁸ Elizabeth Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition*, GEOJOURNAL 125 (2001); Heather A. O'Connell, Lester King & Jenifer L. Bratter, *Community Resources in a Diverse City: Supermarket Location and Emerging Racial Hierarchies*, 8 RACE & SOC. PROBS., 281, 282 (2016).

predominantly inhabited by people of color⁴⁹ and diet making up the most prevalent modifiable risk factor for chronic diseases,⁵⁰ tackling food insecurity in redlined areas will produce better health equity across different races and ethnicities.

C. REDLINING CORRELATES WITH FOOD INSECURITY

Redlining's impact on urban neighborhoods extended beyond mere housing discrimination—it catalyzed a self-perpetuating cycle of poverty and community divestment that profoundly affected local food environments. As a result, in metropolitan cities, historically redlined neighborhoods tend to have less access to healthy food options compared to areas that were considered “green” neighborhoods.⁵¹ This discrepancy in food environments is also influenced by factors like racial demographics, the number of vacant houses, and poverty levels.⁵² Such neighborhoods are characterized by limited availability of nutritious food options, which contributes to health disparities among their residents.⁵³ By comparing redlined areas to non-redlined areas, Min Li and Faxi Yuan found three potential pathways linking redlining to unhealthy food environments: (1) segregation's effect on local investment patterns, (2) physical infrastructure, and (3) wealth and social capital accumulation.⁵⁴

Redlining signaled to potential investors, including large-scale grocery stores, that these areas were high-risk, leading to a pronounced withdrawal of investments.⁵⁵ Such divestment was not limited to healthy food retail but extended to essential community infrastructures like schools, parks, and local businesses, which in turn contributed to a significant decline in

⁴⁹ See generally RICHARDSON et al., *supra* note 34.

⁵⁰ Centers for Disease Control and Prevention, *supra* note 41.

⁵¹ Min Li & Faxi Yuan, *Historical Redlining and Food Environments: A Study of 102 Urban Areas in the United States*, 75 HEALTH & PLACE, no. 102775, no. 102782 (2022).

⁵² *Id.* at no. 102775–78.

⁵³ *Id.*

⁵⁴ *Id.* at no. 102783.

⁵⁵ See Igor Vojnovic, Arika Ligmann-Zielinska, Timothy F. LeDoux, *The Dynamics of Food Shopping Behavior: Exploring Travel Patterns in Low-Income Detroit Neighborhoods Experiencing Extreme Disinvestment Using Agent-Based Modeling*, 15 PLOS ONE e0243501, e0243505 (2020) (examining the impact of divestment in low-income Detroit neighborhoods, the study highlights a dramatic decline in property values from \$37 billion to \$9.4 billion over six decades, which not only affected the availability of essential services like grocery stores but also severely eroded the city's economic foundation, exacerbating residents' challenges to accessing nutrition food and intensifying disinvestment).

property values.⁵⁶ This decline further complicated the entry of vendors offering nutritious food options.⁵⁷ The absence of major grocery stores also indicated a shortage of employment opportunities, deterring new business ventures.⁵⁸

Furthermore, redlining impeded the residents' abilities to build wealth and capital, which fostered a retail environment dominated by low-income workers.⁵⁹ This demographic, with limited time and resources to prepare nutritious meals, created conditions conducive to the proliferation of fast-food outlets, overshadowing the presence of grocery stores.⁶⁰ Moreover, the political marginalization of these communities compounded the issue, leaving them without the means to effectively contest undesirable neighborhood developments.⁶¹ Over time, this intricate web of economic, social, and political factors entrenched a cycle of poverty and divestment, reinforcing the lack of grocery stores and poor food environments.⁶²

While redlining contributed to the creation of unequal food environments, it is crucial to recognize that food insecurity encompasses a complex array of factors. The roles of media, advertising, and discriminatory practices like exclusive zoning may have mediated or moderated its effects.⁶³ Thus, while further investigation is needed for a deeper understanding of these multifaceted issues, addressing the legacy of redlining presents a practical first step towards mitigating the disparities in diet and health outcomes.

IV. THE COMMUNITY REINVESTMENT ACT

Congress enacted the Community Reinvestment Act of 1977 ("CRA") with an intent to combat redlining and to motivate banks and savings associations to support the credit requirement of their local areas, especially

⁵⁶ *Id.*; Katherine Schaff, Alexandra Desautels, Rebecca Flournoy, Keith Carson, Teresa Drenick, Darlene Fujii, Anna Lee, Jessica Luginbuhl, Mona Mena, Amy Shrago, Anita Siegel, Robert Stahl, Kimi Watkins-Tartt, Pam Willow, Sandra Witt, Diane Woloshin & Brenda Yamashita, *Addressing the Social Determinants of Health Through the Alameda County, California, Place Matters Policy Initiative*, 128 PUB. HEALTH REPS. 48, 49 (2013).

⁵⁷ Schaff et al., *supra* note 56.

⁵⁸ Li & Yuan, *supra* note 51, at no. 102783.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

those of low- to moderate-income neighborhoods.⁶⁴ The CRA has motivated banks to open new branches, enhance services, and offer varieties of loans and investments aimed at community development.⁶⁵ The CRA defines “community development” as

- (1) Affordable housing . . . ;
- (2) Community services targeted to low- or moderate-income individuals;
- (3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration’s Development Company . . . or have gross annual revenues of \$1 million or less; or
- (4) Activities that revitalize or stabilize–
 - (i) Low- or moderate-income geographies;
 - (ii) Designated disaster areas; or
 - (iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and the OCC, based on–
 - (A) Rates of poverty, unemployment, and population loss; or
 - (B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.⁶⁶

The statutory provision of the CRA is rather vague. It does not define terms like low- to moderate-income, nor does it explicitly delineate food security as a distinct issue.⁶⁷ Nonetheless, given that redlining precipitated diminished levels of food security within certain communities, enhancing

⁶⁴ OFF. OF THE COMPTROLLER OF THE CURRENCY, *Community Reinvestment Act*, at 1 (2014), <https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-fact-sheets/pub-fact-sheet-cra-reinvestment-act-mar-2014.pdf> [<https://perma.cc/24AU-5FTC>].

⁶⁵ *Id.*

⁶⁶ 12 C.F.R. § 25.12(g) (2023).

⁶⁷ *See id.*

food security should be regarded as an integral component of “community development” pursuant to the CRA. This inclusion is justified on the grounds that it likely constitutes an “[a]ctivit[y] that revitalize[s] or stabilize[s] . . . [l]ow- or moderate-income geographies” or “[d]istressed or underserved nonmetropolitan middle-income geographies.”⁶⁸

Since its introduction, community organizations have leveraged the CRA to generate over thirty billion dollars in low- to middle-income lending.⁶⁹ Yet, despite over four decades since its enactment, the residual effects of redlining and the withdrawal of investments from disenfranchised communities persist. This enduring legacy suggests that redlining deprived multiple generations of the chance to accumulate wealth. The CRA has not sufficiently redirected investments into these communities, indicating a significant opportunity for transformative change.

A. LEGISLATIVE HISTORY AND ADMINISTRATIVE ENFORCEMENT

Congress enacted the CRA in response to allegations that banks were redlining certain communities and unfairly denying them credit.⁷⁰ Financial institutions rejected loan applications from certain geographical areas with significant minority populations, resulting in divestment from the communities that deposited capital into these financial institutions.⁷¹ Congress enacted the CRA alongside several other civil rights laws, namely the Equal Credit Opportunity Act, the Fair Housing Act, and the Home Mortgage Disclosure Act.

The Equal Credit Opportunity Act (15 U.S.C. §§ 1691–1691f), enacted in 1974, prohibits creditors from discriminating against credit applications based on race, color, religion, national origin, sexual orientation, marital

⁶⁸ *Id.*

⁶⁹ Craig E. Marcus, *Beyond the Boundaries of the Community Reinvestment Act and the Fair Lending Laws: Developing a Market-Based Framework for Generating Low- and Moderate-Income Lending*, 96 COLUM. L. REV. 710, 711 (1996).

⁷⁰ *Community Credit Needs: Hearings on S. 406 Before the Sen. Comm. on Banking, Hous. & Urb. Affs.*, 95th Cong. 2–3 (1977); 123 Cong. Rec. 17630 (June 6, 1977) (statement of Sen. Proxmire, congressional sponsor of the CRA, addressing redlining at the core of the CRA) (“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 invest them elsewhere, and 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.”).

⁷¹ Jonathan R. Macey & Geoffrey P. Miller, *The Community Reinvestment Act: An Economic Analysis*, 79 VA. L. REV. 291, 298 (1993).

status, and age.⁷² The Fair Housing Act (42 U.S.C. §§ 3601–3619, 3631), enacted in 1968, prohibits housing providers, including landlords, real estate companies, and other entities like banks, from discriminating against customers based on their race, color, religion, sexual orientation, and disability status.⁷³ The Home Mortgage Disclosure Act (12 U.S.C. §§ 2801–2810), enacted in 1975, requires financial institutions to maintain, report, and publicly disclose loan-level information about mortgages.⁷⁴ These laws work alongside the CRA to increase equitable access to credit and housing in underserved communities.

The residual effects of redlining were the central theme in the enactment of the CRA. Congress acknowledged that redlining neighborhoods deprives them not only of mortgage credit, but also other necessary infrastructures like adequate schools, street improvement, garbage pickup, and transportation.⁷⁵ However, Congress did not intend to prohibit discrimination in lending directly, nor for banks to support local charities or otherwise subsidize social causes, which is to say that Congress did not intend to combat food insecurity directly through the CRA.⁷⁶ Rather, the overwhelming focus of the CRA was to have depository institutions invest in their local communities while still making a profit.⁷⁷ The statutory provision of the CRA reflects this intent:

(1) [R]egulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business;

⁷² *The Equal Credit Opportunity Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/equal-credit-opportunity-act-3> [<https://perma.cc/67S8-37TZ>].

⁷³ *The Fair Housing Act*, U.S. DEP'T OF JUST., <https://www.justice.gov/crt/fair-housing-act-1> [<https://perma.cc/RLE3-ZFWS>].

⁷⁴ *Mortgage Data (HMDA)*, CFPB, <https://www.consumerfinance.gov/data-research/hmda> [<https://perma.cc/N9PU-8NQ7>].

⁷⁵ 123 CONG. REC. 17633 (1977) (statement by Sen. Tower) (“The problem with most neighborhoods which have been redlined is that not only has adequate mortgage credit not been available, but a number of other necessary services are also lacking. Adequate schools, street improvement, garbage pickup, transportation, and other services often are not available, or at least are inadequate.”).

⁷⁶ *See, e.g.*, 123 CONG. REC. 17633 (1977) (statement by Sen. Proxmire) (“The bill is very, very careful in making it clear that, in meeting this responsibility, the safe and sound operation of the institution has paramount consideration. There is nothing in the legislation that is going to require any lending institution to make any risks that are inconsistent with or contrary to the safe and sound operation of the institution.”).

⁷⁷ *Id.* at 17634 (statement by Sen. Sarbanes) (“That is what this legislation seeks to accomplish, that they should pay their first obligation to the credit requirements of their service area.”).

- (2) the convenience and needs of communities include the need for credit services as well as deposit services; and
- (3) regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.⁷⁸

The CRA does not extend lending privileges or a private right of action to individual consumers. Instead, it mandates banks to engage in CRA activities and relies on administrative agencies to enforce the law.⁷⁹ In 1977, the Board of Governors of the Federal Reserve System (the “Board”), the Office of the Comptroller of the Currency (“OCC”), and the Federal Deposit Insurance Corporation (“FDIC”) (collectively the “Agencies”) established their first CRA regulation.⁸⁰ The Agencies established an evaluation mechanism to assess a bank’s compliance with the CRA and allowed the Federal Reserve Board to deny various expansion applications, such as branch openings and mergers, based on the bank’s CRA ratings.⁸¹ The Agencies updated these regulations several times, but most significantly in 1995 to “focus on a bank’s performance rather than process,” and in 2005 “to raise the small bank asset-size threshold, add an intermediate small bank category, and to expand the community development definition.”⁸² Additionally, the Agencies periodically publish the Interagency Questions and Answers Regarding Community Reinvestment (“Q&A guidance”) to provide interpretation for the CRA regulations. The most recent version of the Q&A guidance was published in 2016.⁸³

Furthermore, Congress has amended the CRA several times.⁸⁴ The first was the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), which made the CRA’s evaluations of the banks public

⁷⁸ 12 U.S.C. § 2901(a).

⁷⁹ *Id.* at § 2901(b); Willy E. Rice, *Race, Gender, “Redlining,” and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950–1995*, 33 SAN DIEGO L. REV. 583, 605–06 (1996).

⁸⁰ 12 U.S.C. § 2902(1); *see also* 12 C.F.R. § 228.11.

⁸¹ 12 C.F.R. § 228.29.

⁸² *Community Reinvestment Act (CRA): History of the CRA*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_history.htm [<https://perma.cc/6T28-T8JA>]; Joint Press Release, Bd. Of Governors of the Fed. Rsrv. Sys., Fed. Deposit Ins. Corp. & Off. of the Comptroller of the Currency, Banking Agencies Issue Final Community Reinvestment Act Rules (July 19, 2005), <https://www.federalreserve.gov/BoardDocs/Press/bcreg/2005/20050719/default.htm> [<https://perma.cc/L5VX-QXW4>]; *see generally* 12 C.F.R. § 25.

⁸³ *History of the CRA*, *supra* note 82.

⁸⁴ *Id.*

record.⁸⁵ Each bank is required to maintain a copy of the Performance Evaluation in its file and make it available upon request by a customer.⁸⁶ The second was the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”), enacted in response to a series of bank failures related to the collapse of industries like energy and architecture.⁸⁷ The FDICIA incorporated a bank’s CRA examination data into its overall CRA rating, further refining the assessment process.⁸⁸

Third, Congress enacted the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to remove many restrictions on opening bank branches across state lines and ensure that funds be allocated to the immediate community before being distributed to interstate branches.⁸⁹ It required agencies to consider an “out-of-state national bank’s or state bank’s CRA rating when determining whether to allow interstate branches. . . .”⁹⁰ It also required separate state and multistate Metropolitan Statistical Area (“MSA”) ratings and additional requirements for CRA evaluation of banks with interstate branches.⁹¹ Finally, the Gramm-Leach-Bliley Act reduced the number of CRA examinations for smaller banks.⁹² Despite these amendments, the CRA has not kept up with changes in the banking system, ignoring the “FinTech revolution”⁹³ of the past two decades and continuing to leave out marginalized communities in areas without brick-and-mortar bank branches.

Efforts to modernize the CRA are underway both at the regulatory and congressional level. On September 21, 2020, the Agencies issued a joint Notice of Proposed Rulemaking (“NPR”) to strengthen and modernize the

⁸⁵ Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183.

⁸⁶ *Id.*

⁸⁷ Noelle Richards, *Federal Deposit Insurance Corporation Improvement Act of 1991*, FED. RSRV. HIST. (Dec. 19, 1991), <https://www.federalreservehistory.org/essays/fdicia> [<https://perma.cc/9EX7-Z9RA>].

⁸⁸ Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236, § 1005(g)(2).

⁸⁹ Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338, § 112(d).

⁹⁰ *History of the CRA*, *supra* note 82; § 112(d), 108 Stat. at 2338.

⁹¹ Riegle-Neal Interstate Banking and Branching Efficiency Act § 112(e)(2).

⁹² Gramm-Leach-Bliley Act (Financial Services Modernization Act of 1999), Pub. L. No. 106-102, 113 Stat. 1338, § 2908(b)(2)(D).

⁹³ Henri Arslanian, *FinTech’s Impact on the Future of Banking*, PALGRAVE MACMILLAN, <https://www.palgrave.com/gp/palgrave/blogs/business-economics-finance-management/new-perspectives-in-economics-and-finance/author-perspectives/fintechs-impact-on-the-future-of-banking> [<https://perma.cc/25KL-SNA7>] (describing the FinTech revolution as the innovation of technology in the banking sector that changed the design and delivery of financial services such as the incorporation of online banking).

CRA.⁹⁴ The NPR aims to adapt to the changes in the banking industry, clarify the regulations' application, and promote transparency and public engagement.⁹⁵ The Agencies received around 200 comments and 375 form letters during the comment period, many of which expressed desires for improvements in the CRA evaluation process to better reach underserved communities.⁹⁶ Comments varied widely in topic, including incorporating race and ethnicity in CRA evaluations,⁹⁷ elevating the importance of public comments,⁹⁸ assisting veteran-run businesses to qualify as CRA activities,⁹⁹ and covering online-only banks with the CRA.¹⁰⁰ One notable comment advocated for a better data collection process for the community development finance test, mentioning access to healthy foods as one metric that could be used in the CRA evaluations.¹⁰¹

Further, on September 15, 2022, Congresswoman Maxine Waters, Chairwoman of the House Committee on Financial Services, introduced the Making Communities Stronger Through the Community Reinvestment Act

⁹⁴ Press Release, Bd. of Governors of the Fed. Rsr. Sys., Federal Reserve Board Issues Advance Notice of Proposed Rulemaking on an Approach to Modernize Regulations that Implement the Community Reinvestment Act (Sept. 21, 2020) [hereinafter Advance Notice], <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200921a.htm> [<https://perma.cc/CFP9-9R7N>].

⁹⁵ Benjamin W. McDonough, *Community Reinvestment Act: Interagency Notice of Proposed Rulemaking to Implement the CRA*, OFF. OF THE COMPTROLLER OF THE CURRENCY (May 5, 2022), <https://www.occ.treas.gov/news-issuances/bulletins/2022/bulletin-2022-14.html> [<https://perma.cc/4X7Y-HGJN>].

⁹⁶ Regulation BB: *Community Reinvestment Act [R-1769]*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/apps/foia/ViewAllComments.aspx?doc_id=R-1769&doc_ver=1 [<https://perma.cc/NG6W-HS9M>].

⁹⁷ Luis Ortiz, Comment Letter on a Notice of Proposed Rulemaking to Update the Community Reinvestment Act of 1977, https://www.federalreserve.gov/SECRS/2022/July/20220701/R-1769/R-1769_061322_141835_433412613922_1.pdf [<https://perma.cc/Y5YM-CNE7>].

⁹⁸ Lisa Samuels, Comment Letter on a Notice of Proposed Rulemaking to Update the Community Reinvestment Act of 1977 (June 13, 2022), https://www.federalreserve.gov/SECRS/2022/July/20220701/R-1769/R-1769_061322_141839_414852455340_1.pdf [<https://perma.cc/7DYT-R9AK>].

⁹⁹ William Dalton, Comment Letter on a Notice of Proposed Rulemaking to Update the Community Reinvestment Act of 1977 (May 17, 2022), https://www.federalreserve.gov/SECRS/2022/May/20220527/R-1769/R-1769_051722_141826_384639218758_1.pdf [<https://perma.cc/4ADN-G3SG>].

¹⁰⁰ Francesco Vassalli, Comment Letter on a Notice of Proposed Rulemaking to Update the Community Reinvestment Act of 1977, https://www.federalreserve.gov/SECRS/2022/May/20220527/R-1769/R-1769_051022_141819_372644773978_1.pdf [<https://perma.cc/26FS-8S5D>].

¹⁰¹ Kate Dupont Phillips, Comment Letter on a Notice of Proposed Rulemaking to Update the Community Reinvestment Act of 1977, https://www.federalreserve.gov/SECRS/2022/July/20220701/R-1769/R-1769_062922_141836_441052932350_1.pdf [<https://perma.cc/5USL-KCJ3>].

as part of her effort to address systemic discrimination in the modern banking system and to close the racial wealth and homeownership gaps by modernizing the CRA.¹⁰² Key updates on the bill include increasing responsiveness to community needs and strengthening data recording to better identify ongoing discrimination. With increased responsiveness to community needs, CRA could address more issues on food insecurity.

B. CRA'S PERFORMANCE EVALUATION

Each Performance Evaluation report consists of four sections: (1) the bank's CRA rating(s), (2) the description of the bank and its community, (3) the conclusions about the bank's performance, and (4) the discussion of the underlying data.¹⁰³ About every three years, Agencies assign a bank's CRA rating based on five evaluation methods depending on the bank's size or business strategy.¹⁰⁴ Potential CRA ratings include outstanding, satisfactory, needs to improve, and substantial noncompliance.¹⁰⁵ In 2021 in San Francisco, one bank was rated outstanding, two were rated satisfactory, and none were rated in the other two categories.¹⁰⁶ The CRA evaluation methods are subject to updates via the NPR announced in September of 2020, which will be discussed in later sections.¹⁰⁷

The CRA rating process for large banks, banks above a \$1.252 billion asset threshold, involves a lending test, investment test, and service test.¹⁰⁸ The lending test evaluates a "bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community

¹⁰² Making Communities Stronger Through the Community Reinvestment Act, H.R. 8833, 117th Cong. (2022); Press Release, U.S. House Comm. on Fin. Servs., Chairwoman Waters Introduces Legislation to Strengthen the Community Reinvestment Act, End Modern-Day Redlining, (Sept. 15, 2022), <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=409780#:~:text=8833%2C%20the%20%E2%80%9CMaking%20Communities%20Stronger,making%20key%20reforms%20to%20the> [<https://perma.cc/Y8ZY-GS7U>].

¹⁰³ *Community Reinvestment Act (CRA): Evaluating a Bank's CRA Performance*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_peratings.htm [<https://perma.cc/5VD7-276X>] [hereinafter *Evaluating a Bank's CRA Performance*].

¹⁰⁴ *Community Reinvestment Act (CRA): Evaluation Methods*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_exam.htm [<https://perma.cc/WU4R-7QQT>] [hereinafter *Evaluation Methods*].

¹⁰⁵ *Evaluating a Bank's CRA Performance*, *supra* note 103.

¹⁰⁶ *FFIEC Interagency CRA Rating Search*, FFIEC, <https://www.ffiec.gov/craratings> (last modified May 18, 2022, 2:50 PM).

¹⁰⁷ Advance Notice, *supra* note 94.

¹⁰⁸ *Evaluation Methods*, *supra* note 104.

development lending.”¹⁰⁹ Community development is defined under 12 C.F.R. § 228.12 to include factors such as affordable housing for low- or moderate-income individuals, community services, and activities that revitalize or stabilize distressed communities.¹¹⁰ The investment test evaluates the bank’s ability “to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s).”¹¹¹ The service test evaluates a bank’s record of helping to meet a community’s credit needs by analyzing the availability and effectiveness of the bank’s retail services in meeting community development services.¹¹²

Intermediate small banks between a \$330 million to \$1.322 billion asset range are subject to the lending and community development tests.¹¹³ The community development test is evaluated by the quantity of community development loans, qualified investments, “[t]he extent to which the bank provides community development services; and . . . [t]he bank’s responsiveness through such activities to community development lending, investment, and services needs.”¹¹⁴

Small banks below a \$1.322 billion asset threshold are subject to a streamlined lending test.¹¹⁵ Further, with regulatory approval, a bank may opt to be evaluated based on the strategic plan method or a limited version of the community development test.¹¹⁶ The strategic plan method allows banks to tailor their performance goals to the community’s needs by working directly with community-based organizations, specifically by soliciting public comments.¹¹⁷

V. CRA CAN BE STRENGTHENED TO IMPROVE FOOD SECURITY

The CRA has fallen short in mitigating the impacts of redlining. While the CRA did not directly aim to enhance food security, the issue of food insecurity has emerged as a consequence of redlining. It is concerning that the CRA has not substantially improved access to food in areas historically

¹⁰⁹ 12 C.F.R. § 228.22.

¹¹⁰ *Id.* at § 228.12(g).

¹¹¹ *Id.* at § 228.23.

¹¹² *Id.* at § 228.24.

¹¹³ *Evaluation Methods*, *supra* note 104.

¹¹⁴ 12 C.F.R. § 228.26(c).

¹¹⁵ *Evaluation Methods*, *supra* note 104.

¹¹⁶ *Id.*

¹¹⁷ *Community Reinvestment Act (CRA): Strategic Plans*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_strategic.htm [https://perma.cc/XK4U-N78V].

affected by redlining. This shortfall is attributed to two main factors: inherent issues within the CRA and the insufficient attention given to food insecurity within its framework.

A. CRA IS NARROW: CRA EXCLUDES OVER HALF OF MORTGAGE
LENDERS IN THE U.S.

The CRA faces several challenges, including the lack of coordination among the regulatory bodies and weak enforcement measures. The most critical problem, though, is its exclusion of financial entities without deposit-taking services, such as private mortgage lenders. Nonetheless, extending the CRA to private mortgage lenders raises concerns about the legality of such an expansion.

The statute delineates that the CRA applies to all regulated financial institutions, which are defined as “insured depository institution[s].”¹¹⁸ The regulations mirror the statute in that the CRA applies to all banks except “[c]ertain special purpose banks,” which do not perform commercial or retail banking services.¹¹⁹ The CRA’s limited scope is problematic because since 2016, more than half of mortgage lenders in the U.S. market have been non-bank mortgage lenders, and they issued 68.1% of all mortgages that originated in 2020.¹²⁰ Seven of the biggest U.S. mortgage lenders were nonbanks at the end of 2020.¹²¹ Consequently, over half of mortgage lenders in the U.S., many of whom have engaged in redlining practices, continue to operate without social accountability, profiting from business with wealthy individuals and institutions. Further, this coverage gap allows lenders to strategically adapt business models to insulate themselves from CRA’s stipulations, such as not having a depositing service.

The CRA’s definition of financial institutions must expand to include all lenders, including non-depository institutions. An amendment can be introduced either at a legislative or regulatory level. At the legislative level, the Making Communities Stronger Through the Community Reinvestment Act attempts to address this gap: “[a]s part of assessing a financial institution . . . the appropriate Federal financial supervisory agency shall evaluate the financial institution’s performance in originating small farm loans, consumer loans[,] . . . and loans for small businesses . . . in

¹¹⁸ 12 U.S.C. § 2902.

¹¹⁹ 12 C.F.R. § 228.11(c).

¹²⁰ Orla McCaffrey, *Nonbank Lenders Are Dominating the Mortgage Market*, WALL ST. J. (June 22, 2021, 9:11 AM), <https://www.wsj.com/articles/nonbank-lenders-are-dominating-the-mortgage-market-11624367460> [<https://perma.cc/VR6D-LXND>] (discussing research by an industry research firm, Inside Mortgage Finance).

¹²¹ *Id.*

partnership with one or more non-depository lenders.”¹²² However, a mere partnership with non-depository lenders does not account for non-bank lenders acting individually, and thus warrants further amendment to reach all lenders.

Non-bank entities moved to invest in community causes may challenge the expansion of the CRA on the grounds of the Commerce Clause, which gives Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”¹²³ The crucial test is determining whether congressional actions influence interstate commerce.

In *United States v. Lopez*, the Court ruled that Congress may only regulate the channels, instrumentalities, and actions that substantially affect interstate commerce.¹²⁴ Based on *Lopez*, the Court deemed the individual mandate of the Affordable Care Act unconstitutional in *National Federation of Independent Business v. Sebelius*, as requiring the purchase of health insurance was considered an “inactivity.”¹²⁵ Although challenges based on the Commerce Clause are feasible, the proposed expansion of the CRA will likely be constitutional even under the strictest interpretation. This is because nonbank institutions serving as commercial lenders to community organizations is an activity that would have a significant effect on the credit market and subsequently on interstate commerce. This argument is further supported by *Perez v. United States*, in which the Consumer Credit Protection Act, a federal law that regulates loans and collection of debts by banks and other financial institutions, was held constitutional under the Commerce Clause as the lending of money and collection of debt were activities that had substantial effects on interstate commerce.¹²⁶ Similarly, the lending activities of private mortgage lenders would likely have a substantial effect on interstate commerce and thus regulations concerning those activities will likely be deemed constitutional. Overall, expanding the CRA to nonbank institutions seems possible at the federal level.

Expansion of the CRA is also possible at the state level as the Tenth Amendment grants states police power “to regulate matters of ‘legitimate local concern’” in the absence of conflicting federal legislation.¹²⁷ As the federal statute is silent on the inclusion of non-depository institutions into

¹²² Making Communities Stronger Through the Community Reinvestment Act, H.R. 8833, 117th Cong. (2022).

¹²³ U.S. CONST. art. I, § 8, cl. 3.

¹²⁴ *United States v. Lopez*, 514 U.S. 549, 558–59 (1995), *superseded by statute*, 21 U.S.C. § 860, *as recognized in* *United States v. Tucker*, 90 F.3d 1135 (1996).

¹²⁵ *See Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 611 (2012).

¹²⁶ *Perez v. United States*, 402 U.S. 146, 154 (1971).

¹²⁷ *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 36, 48–49 (1980); U.S. CONST. amend. X.

the CRA, states may enact their own versions of the CRA to include non-depository institutions. In fact, Massachusetts, New York, Connecticut, and Illinois have adopted CRA laws to assess state-chartered banks.¹²⁸ Most notably, Massachusetts expanded its CRA laws to apply to credit unions and, in 2017, to mortgage companies after a multi-year advocacy campaign¹²⁹ from several affordable housing and civil rights organizations.¹³⁰ The Massachusetts General Laws delineate that “banks” have a “continuing and affirmative obligation to help meet the credit needs of [their] communities,” and the term “banks” includes individual partnerships or corporations conducting banking business in the Commonwealth.¹³¹

Although no studies have assessed whether the Massachusetts CRA increased food security in marginalized areas, CRA evaluation reports revealed that some private lenders supported organizations improving food security in underserved areas.¹³² However, only a handful of private lenders engaged in community development efforts to increase food security.¹³³ This suggests that states may be able to expand the CRA to non-depository institutions, but merely expanding the law is not adequate to increase food security in formerly redlined areas.

B. FOOD INSECURITY ISSUES ARE NOT ADEQUATELY ADDRESSED BY THE CRA

Two major factors contribute to why the CRA does not adequately address food insecurity: the vagueness of the CRA’s statutory language and the exclusion of community-based stakeholders. Firstly, while the CRA

¹²⁸ *Massachusetts CRA for Mortgage Companies: A Good Starting Point for Federal Policy*, NCRC (July 27, 2021), <https://ncrc.org/massachusetts-cra-for-mortgage-companies-a-good-starting-point-for-federal-policy> [<https://perma.cc/M378-PADQ>].

¹²⁹ Most notably, the Massachusetts Affordable Housing Alliance filed a legislation several times to create a CRA for mortgage companies, which turned into a law after seven years. So far, the legislation has not been judicially challenged.

¹³⁰ Elizabeth Gehrman, *Home Is Where Their Hearts Are*, BOS. GLOBE (Oct. 26, 2008), <https://mahahome.org/sites/MAHA-PR1/files/Globe%20Magazine%20small%20frame-legal.pdf> [<https://perma.cc/V3UN-9LL6>]; *Evaluation Methods*, *supra* note 104.

¹³¹ MASS. GEN. LAWS ch. 167, §§ 1, 14 (2022).

¹³² DIVISION OF BANKS, MORTGAGE LENDER COMMUNITY INVESTMENT PERFORMANCE EVALUATION OF GUARANTEED RATE AFFINITY, LLC 11 (2021) (describing that Guaranteed Rate Affinity provided its facility and support to a non-profit organization providing food baskets in low- and moderate-income communities); DIVISION OF BANKS, MORTGAGE LENDER COMMUNITY INVESTMENT PERFORMANCE EVALUATION OF HOMESTEAD FUNDING CORP. 12 (2017) (describing Homestead Funding Corp.’s donation to a local food bank).

¹³³ *Id.*

directs banks to invest in community “development,” its current statute does not illustrate its real-life application.

A June 2020 CRA provision established a transparent list of qualifying activities, which included financing a “construction of a grocery store in an [low- or moderate-income]” zone.¹³⁴ However, in December 2021, the OCC rescinded the list and directed the evaluators to consider a bank’s CRA activity on a case-by-case basis.¹³⁵ As there was no prior approval, banks were left in the dark regarding which activities qualified for the CRA. Further, the 2016 CRA Q&A guidance provided some illustrations of the rule’s application but did not include a list of qualifying activities.¹³⁶ The only mention of language related to food security was an example of how community development may be applied through “financing a supermarket . . . in a small strip mall . . . if the mall stabilizes the adjacent low-income community by providing needed shopping services. . . .”¹³⁷ No other outstanding guides or lists indicate that investing in community resources will be considered a CRA-qualifying activity.

The lack of application guidance on the CRA incentivizes banks to seek mainstream activities or activities that most banks previously engaged in that are certain to qualify for the CRA test. Since 12 C.F.R. 25.12(g)(1) explicitly mentions affordable housing, banks face less risk of wasted CRA efforts by focusing their activities on housing issues rather than tackling other community needs like food insecurity.¹³⁸ Consequently, many banks’ CRA performance evaluations detail poverty and food stamp usage rates within their assessment areas, yet they do not tackle food insecurity issues at all in their CRA initiatives.

Additionally, the lack of attention to food insecurity issues stemming from the CRA’s vague language is exacerbated by the exclusion of community-based stakeholders. Banks are required to include a description of their assessment areas in their performance evaluations and thus appear to conduct needs assessments. However, the CRA statutes do not include community-based organizations as part of their community development efforts.

¹³⁴ OFF. OF THE COMPTROLLER OF THE CURRENCY, *supra* note 6, at 18; 12 C.F.R. § 25.04.

¹³⁵ Benjamin W. McDonough, *Community Reinvestment Act: Final Rule to Rescind and Replace Community Reinvestment Act Rule Issued in 2020*, OFF. OF THE COMPTROLLER OF THE CURRENCY (Dec. 15, 2021), <https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-61.html> [<https://perma.cc/ZCG9-HNB5>].

¹³⁶ See generally FED. DEPOSIT INS. CORP., FDIC CONSUMER COMPLIANCE EXAMINATION MANUAL (2016).

¹³⁷ *Id.* at XI–12.2.

¹³⁸ 12 C.F.R. § 25.12(g)(1).

Data alone have limited value unless they are studied in conjunction with contexts and nuances, both of which can only be provided by local stakeholders working within the assessment areas. The World Health Organization defines the participation of beneficiaries and local stakeholders as a “key driver of health equity,” as this allows for productive communication on mobilization strategies.¹³⁹ Involving community-based stakeholders in the CRA would allow banks to more effectively set priorities based on the actual needs of the communities. Additionally, involving local stakeholders restores political agency to marginalized communities historically disempowered through redlining. As the CRA currently stands, regulators leave it to the banks to decide for themselves whether to involve their communities in decision-making.

The status quo is clearly problematic because many banks choose to exclude community-based stakeholders. However, the 2022 NPR may attempt to address this issue. The OCC outlined some of the NPR’s key elements, including to “[p]rovide greater clarity, consistency, and transparency” and to “promote community engagement.”¹⁴⁰ Measures addressing clarity, consistency, and transparency would include republishing a comprehensive list of eligible CRA activities. The list would likely be analogous to OCC’s list published in 2016.¹⁴¹ This would encourage banks to lend and invest in a wider range of opportunities, including food security issues, though it may be difficult to mandate that the banks invest in certain causes over others. However, increased public engagement may allow local interest groups to advocate for their causes, including food security issues.

What about enforcement? The penalty for not complying with the CRA requirements includes risking a future denial of applications to expand financial services. However, it was not until 1989, twelve years after the enactment of the CRA, that the government first rejected a bank’s application for expansion on the grounds of poor CRA performance.¹⁴² While recent data on how many banks’ applications are denied on CRA

¹³⁹ FRANCISCO FRANCÉS & DANIEL LA PARRA-CASADO, PARTICIPATION AS A DRIVER OF HEALTH EQUITY 30 (2019), <https://iris.who.int/bitstream/handle/10665/324909/9789289054%20126-eng.pdf?isAllowed=y&sequence=1>.

¹⁴⁰ *Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations*, OFF. OF THE COMPTROLLER OF THE CURRENCY (May 5, 2022), <https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47.html> [<https://perma.cc/B2HF-PWFQ>].

¹⁴¹ 12 C.F.R. § 228.26.

¹⁴² *Legal Developments*, 75 FED. RES. BULL. 297, 304 (1989) (describing a case in which an application by the Continental Bank Corporation and Continental Illinois Bancorp, Inc. to acquire the stock of Grand Canyon State Bank was rejected on CRA grounds).

grounds is unavailable, with approximately 97% of banks receiving a CRA rating of Satisfactory or Outstanding, the danger of getting an expansion application denied rarely functions as a realistic threat.¹⁴³ Furthermore, CRA enforcement would be toothless if a bank has no expansion plans. Enforcement mechanisms must be strengthened along with the publication of the qualifying activities list. One purpose of doing so is to increase public engagement to pressure banks to engage in robust CRA activities.

The increase in public engagement must involve more complex planning than a mere list for a change to be truly effective. The OCC plans to gather feedback from the public on community credit needs and to codify the practice of forwarding all public comments received by the agencies to the banks. Ballot boxes and public hearings are at the core of American democracy, giving people the power to participate in legislative functions. Public hearings must be held in a manner that truly enables public participation, not held as mere formalities.¹⁴⁴ For example, hearings held during working hours on a weekday would exclude wage workers commuting into the city for work. Public comments or feedback requested solely in English would exclude input from non-English speakers. In some cases, fundamental decisions may have already been made before public input. States like California, with a high immigrant population, must take extra caution to prevent ineffective public hearings.¹⁴⁵ A notable example is the San Francisco Planning Commission, which consistently organizes public hearings providing language interpretation services and remote participation options.¹⁴⁶ The OCC must provide some guidance within the NPR on effective public participation for the banks to adopt inclusive public engagement strategies.

Furthermore, a functional public engagement system will likely require robust partnerships with community-based organizations that could advocate for the residents who may not be able to individually engage in CRA initiatives. As part of its CRA efforts, the Northern Trust Company (“TNTC”) in Chicago partnered with the Chicago Development Fund, a

¹⁴³ CONG. RSCH. SERV., R.43661, THE EFFECTIVENESS OF THE COMMUNITY REINVESTMENT ACT 10 (2019); *FFIEC Interagency CRA Rating Search*, FED. FIN. INST. EXAMINATION COUNCIL, <https://www.ffiec.gov/craratings> (last visited Mar. 12, 2024).

¹⁴⁴ Barbara L. Bezdek, *Citizen Engagement in the Shrinking City: Toward Development Justice in an Era of Growing Inequality*, 33 ST. LOUIS UNIV. PUB. L. REV. 3, 27 (2013).

¹⁴⁵ See generally *Jeronimo v. B&G Realty, LLC*, 2022 Cal. Super. LEXIS 78462 (ruling that attorneys must provide translations of documents and interpreters at hearings for non-English speakers).

¹⁴⁶ See generally S.F. PLAN. COMM’N, NOTICE OF HEARING & AGENDA (2022), https://sfplanning.org/sites/default/files/agendas/2022-11/20221110_cal.pdf [<https://perma.cc/6Q6R-FZX7>].

local Community Development Entity (“CDE”), to build a full-service grocery store and pharmacy in South Shore, an LMI neighborhood in Chicago considered a food desert.¹⁴⁷ The store is currently in operation and has helped to provide approximately 350 full-time and part-time job opportunities, as well as fresh food options for approximately 30,500 food desert residents.¹⁴⁸ Similar initiatives are feasible in other communities through appropriate community partnerships.

The finalization of the NPR will increase transparency and public engagement in CRA reporting, making it easier for banks to invest in food security issues. For instance, in the Bay Area in California, there are ample community organizations that would be great advocates, including the San Francisco Community Investment Fund. This organization runs programs like Meals on Wheels, which provided nutritious meals to over 18,000 individuals facing food insecurity in San Francisco in 2021.¹⁴⁹ Around 20% of the people served lived in redlined areas, which shows the community’s interest in increasing food security in redlined areas.¹⁵⁰ In contrast to programs like Meals on Wheels and food banks that provide temporary relief, building grocery stores would provide a stable, longer-term solution to increase food security and create local jobs, which could make neighborhoods appear more desirable for further investments.

These community stakeholders will enable banks to better utilize data in their planning for CRA activities. Specifically, in the CRA evaluation reports, banks should analyze community needs more robustly rather than laying out statistics like median housing prices and poverty levels. It would also be worthwhile for banks to analyze these statistics alongside the CRA activities of other banks and other community resources available in the area. Furthermore, by analyzing the distribution of resources by sectors (for example, financial aid provided in housing versus healthcare versus food services), banks will be able to identify underserved areas within the community. Instead of taking on the sole burden of this work, collaborating with community stakeholders will allow resources to be allocated more

¹⁴⁷ *Jeffery Plaza/Local Market*, CHI. DEV. FUND, <https://chicagodevelopmentfund.org/portfolio-item/jeffery-plaza-shop-save-market> [https://perma.cc/7AC4-2KCV]; N. TRUST CO., COMMUNITY REINVESTMENT ACT PERFORMANCE EVALUATION 40 (2021), https://www.federalreserve.gov/apps/CRAPubWeb/CRA/DownloadPDF/210434_20210426 [https://perma.cc/E5LZ-5YEG].

¹⁴⁸ *Jeffery Plaza/Local Market*, *supra* note 147; N. TRUST CO., *supra* note 147.

¹⁴⁹ *2021 in Review: Nourishing the Whole Person*, MEALS ON WHEELS S.F. (2021), https://www.canva.com/design/DAE7RuE_GEg/GhJ_HKdx6jF58DSAIU36xw/view?website#2:2021-in-review.

¹⁵⁰ *Id.*

equitably. Organizations may be able to bring in data analysts to aid with these initiatives.

C. FEASIBILITY OF A GROCERY STORE

One may contend that while building a grocery store may be feasible, sustaining the store may be challenging, provided that the culture and lifestyle in food desert neighborhoods evolved around the absence of such a facility. In Bayview-Hunters Point, for example, Duc Loi, a family-owned grocery store built through significant financial and operational support from the community, closed after just over two years due to repeated theft and a lack of patronage.¹⁵¹ The problems that led to Duc Loi's closure may be inevitable unless coupled with city-level ordinances incentivizing people to buy fresh produce, such as store- or item-specific shopping vouchers, which are already funded by the San Francisco (SF) Soda Tax.¹⁵² The city could allocate increased funding to EatSF's program to subsidize healthy food options in grocery stores like Duc Loi. Maintaining a full-service grocery store will pose its challenges, as seen with Duc Loi, especially in areas like San Francisco with astronomical property values.¹⁵³ However, with the help of programs that incentivize the use of these grocery stores, it is a viable and sustainable strategy to increase food security in redlined communities.

To further incentivize the purchase of healthy products, cities could regulate product locations within these grocery stores to display healthy food options at easily accessible aisles and shelves. Some controversy may arise from vendors arguing the abridgment of their First Amendment rights to commercial speech—by having other products marketed at more desirable locations in the stores, vendors could argue that the government is restricting their ability to communicate information about their products to

¹⁵¹ Carrie Sisto, *Duc Loi's City-Funded Bayview Market Is Closed, Faces Unclear Future*, HOODLINE (Mar. 1, 2019), <https://hoodline.com/2019/03/duc-loi-s-city-funded-bayview-market-is-closed-faces-unclear-future> [<https://perma.cc/97SX-ECNX>].

¹⁵² The SF Soda Tax (1 cent per ounce) provided funding to school nutrition programs as well as to EatSF, an organization that distributes fresh produce vouchers to low-income neighborhoods. In 2020, \$1.65 million from SF's Soda Tax was allocated to provide emergency food relief during the COVID-19 pandemic. *Mayor London Breed Announces Soda Tax Funding Will Provide Emergency Food for People Affected by COVID-19*, OFF. OF THE MAYOR (June 12, 2020), <https://sfmayor.org/article/mayor-london-breed-announces-soda-tax-funding-will-provide-emergency-food-people-affected> [<https://perma.cc/Y6RK-UTU3>].

¹⁵³ Melanie Woodrow, *San Francisco Drops to 3rd Most Expensive City in US to Rent, Data Shows*, ABC7NEWS (Nov. 1, 2022), <https://abc7news.com/san-francisco-rents-is-sf-housing-rentals-getting-cheaper-prices-2022-medium/12403665> [<https://perma.cc/UE5D-R7V5>].

the public.¹⁵⁴ The Supreme Court may uphold these vendors' arguments, given that the Court has held that a restriction on whether a vendor's products could be sold on the sidewalks is an abridgment of the vendor's First Amendment right to commercial speech.¹⁵⁵ While it may be difficult to mandate, cities could incentivize the placement of certain goods in a grocery store by, for example, providing a rebate on tax in return for placing vegetables at a prime store location. Alternatively, the NPR could foster a gradual shift in the food culture by having banks provide conditional CRA lending to existing corner stores and convenience stores if they carry more fresh produce.

Adopting the NPR can potentially diversify banks' investment and funding activities to meet a community's needs more effectively. Unlike other policies, the CRA rightfully places accountability on institutions that created the inequities. Improving physical access to healthy food options is a critical first step to revitalizing disadvantaged communities and fostering a culture of active political engagement.

D. LOOKING BEYOND THE CRA

To expand the scope of our discussion beyond the CRA, it is essential to explore additional legislative measures that could complement the CRA in enhancing food security. Notable among these are the USDA Healthy Food Financing Initiative ("HFFI") loans and inclusive zoning policies.

The 2014 and 2018 Agricultural Acts authorized the HFFI, and the Reinvestment Fund administered it in 2022 on behalf of USDA Rural Development, offering a one-time capital investment to bolster the food retail chain.¹⁵⁶ In 2021, approximately \$22.6 million in grant money was available, with individual grant awards ranging from \$20,000 to \$200,000.¹⁵⁷ For a program to be eligible, it must (1) plan to expand staple and perishable food availability in underserved communities, and (2) if the project involves retail stores, it must accept the Supplemental Nutrition Assistance Program (SNAP) established under the Food and Nutrition Act

¹⁵⁴ Jennifer L. Pomeranz, *Extending the Fantasy in the Supermarket: Where Unhealthy Food Promotions Meet Children and How the Government Can Intervene*, 9 IND. HEALTH L. REV. 117, 138 (2012); U.S. CONST. amend. I.

¹⁵⁵ *Cincinnati v. Discovery Network*, 507 U.S. 410, 430–31 (1993) (upholding the Discovery Network's challenge against the City of Cincinnati's attempt to regulate the placement of news kiosks on sidewalks).

¹⁵⁶ REINVESTMENT FUND, HFFI 2021 TARGETED SMALL GRANTS PROGRAM, (2021), https://www.rd.usda.gov/sites/default/files/hffi_profiledigital2021.pdf [https://perma.cc/Z3G8-CTEH].

¹⁵⁷ *Id.*

of 2008.¹⁵⁸ For instance, in Oakland, CA, an HFFI loan helped fund the Saba Grocers Initiative, a project that increased the availability of fresh produce in Arab-immigrant- and Black-run local corner stores.¹⁵⁹ The CRA and the HFFI could together fund the building of grocery stores or other local initiatives to increase fresh produce in existing corner stores.

Furthermore, zoning policies may also be used to increase healthy food retail in disadvantaged neighborhoods. In *Euclid v. Ambler Realty Co.*, zoning was held as a legitimate exercise of states' police power, which allows states to promote the health, safety, morality, and welfare of the community.¹⁶⁰ However, zoning laws could trigger the Dormant Commerce Clause, which deems unconstitutional state and local laws that unduly interfere with interstate commerce.¹⁶¹ In *Pike v. Bruce Church*, the Court established a balancing test, which determines that a law will be overturned if the state law's burdens significantly exceed its benefits.¹⁶² However, while an inclusive zoning law to increase healthy food retail may face a Dormant Commerce Clause challenge, the zoning law would likely prevail due to its healthful impact.

VI. CONCLUSION

The Community Reinvestment Act plays a pivotal role in addressing the enduring effects of redlining, particularly in the realm of food insecurity. The nuanced interplay between redlining and the present-day disparities in food access highlights a critical need for strategic interventions to promote community well-being through equitable credit access. The examination of the CRA's legislative framework and operational dynamics shows us that while the CRA has spurred investments in low- to moderate-income neighborhoods, it has yet to reach its full potential in scope and effectiveness.

Assessing CRA's legislative history, performance evaluation mechanisms, and the potential for enhancement, the urgency to broaden its applicability to non-traditional financial institutions and to incorporate food

¹⁵⁸ *Eligibility*, AM.'S HEALTHY FOOD FIN. INITIATIVE, <https://www.investinginfood.com/eligibility> [<https://perma.cc/R3FK-RU7Z>]; see generally 7 U.S.C. § 2011.

¹⁵⁹ *What Do We Do?*, SABA GROCERS INITIATIVE, <https://sabagrocers.org/about> [<https://perma.cc/U8AA-9M66>]; *Impact*, AM.'S HEALTHY FOOD FIN. INITIATIVE, <https://www.investinginfood.com/impact> [<https://perma.cc/MF5L-FZ4L>].

¹⁶⁰ *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926).

¹⁶¹ Jackson S. Davis, *Fast Food, Zoning, and the Dormant Commerce Clause: Was It Something I Ate?*, 35 B.C. ENV'T AFFS. L. REV. 259, 260 (2008).

¹⁶² *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 146 (1970).

insecurity as a focal issue within CRA initiatives becomes evident. This requires a concerted effort to refine the CRA's regulatory language, enhance community stakeholder engagement, and allocate capital to improving food accessibility as a core component of community development.

Moreover, building successful grocery stores in food deserts is feasible through the CRA and should be complemented by other legislative measures such as the USDA Healthy Food Financing Initiative and inclusive zoning policies. However, the sustainability of these interventions necessitates a multifaceted approach, incorporating incentives for healthy food purchasing, strategic product placement, and the cultivation of a supportive food culture within communities.

As we move forward, it is imperative to recognize the CRA's potential as a transformative instrument for social change, while also acknowledging the need for continuous adaptation and innovation. Engaging with community voices, leveraging cross-sector partnerships, and adopting evidence-based strategies will be crucial in expanding the CRA's impact on food security and, ultimately, in advancing the broader agenda of health equity and economic inclusion in historically redlined districts.

The journey toward realizing equity through the strategic utilization of the CRA is challenging but promising and certainly exciting. It calls for a collective commitment to ensure that the pursuit of food security and equitable development remains at the forefront of our endeavors. By embracing this opportunity, we can forge a path toward a more just and resilient society, where access to nutritious foods is not a privilege, but a right afforded to all, irrespective of our zip code or the color of our skin.