BETTER MARKETS

February 20, 2024

Natalia Li, Director
U.S. Department of the Treasury
Office of Consumer Policy
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Request for Information on Financial Inclusion; TREAS-DO-2023-0014; 88 FR 88702 (Dec. 22, 2023)

Dear Ms. Li:

Better Markets[1] appreciates the opportunity to comment on the Request for Information ("RFI") cited above. The RFI seeks information regarding the development of a national strategy ("Strategy") for financial inclusion.[2]

The 2023 Financial Services and General Government Appropriations Act ("Act") directed the U.S. Department of Treasury ("Treasury") and other federal partners to develop this Strategy to meet two specific financial inclusion goals for the benefit of underserved communities:

- broaden access to financial services; and
- improve the ability to use and benefit from financial tools and services.[3]

The Act specified that the Strategy should:

- establish national objectives for financial inclusion;
- set benchmarks for measuring progress; and

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Request for Information on Financial Inclusion; TREAS-DO-2023-0014; 88 FED. REG. 88702 (Dec. 22, 2023), https://www.federalregister.gov/documents/2023/12/22/2023-28263/request-for-information-on-financial-inclusion.

3 Consolidated Appropriations Act, H.R. 2617; Public Law 117–328; 1154 (2023), https://www.congress.gov/117/cprt/HPRT50347/CPRT-117HPRT50347.pdf.

- offer recommendations for how public policy, government programs, financial products and services, technology, and other tools and infrastructure can advance financial inclusion.[4]

We support the Strategy and urge Treasury to develop and implement it as soon as practicable. Better Markets has consistently supported financial inclusion.[5] Generations of discrimination and mistreatment informed by racist beliefs, narratives, laws, policies, and practices have contributed to deeply entrenched structural inequities within the financial services sector that continue to profoundly undermine the economic status of people of color. This will not be easily undone. A concerted commitment is badly needed and long overdue. Racial economic inequality has not only limited economic opportunities for many people of color and undermined their quality of life, but it has also put in place a structurally regressive economic and financial system that perpetuates tremendous and growing economic inequality in the United States. These dynamics not only hurt people of color, but they also continue to hold our economy back from achieving its full potential, ultimately hurting every American.

BACKGROUND

The Financial Literacy and Education Commission ("FLEC") was established in 2003 and was originally directed to develop a national strategy on financial education. With direction from the Secretary of the Treasury as chair, and participation from the leaders of more than 20 federal agencies,[6] the FLEC has responsibility for:

- holding three public meetings per year to coordinate and promote financial literacy and education among federal agencies;

- publishing the annual Strategy for Assuring Financial Empowerment ("SAFE") Report, which updates Congress on the progress of the FLEC in carrying out its mandate;

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4 *Id.*

5 *See, e.g.*, Better Markets, *Better Markets' Work Addressing Racial Economic Inequality In Finance* (Feb. 16, 2024), https://bettermarkets.org/analysis/better-markets-work-addressing-racial-economic-inequity-in-finance/.

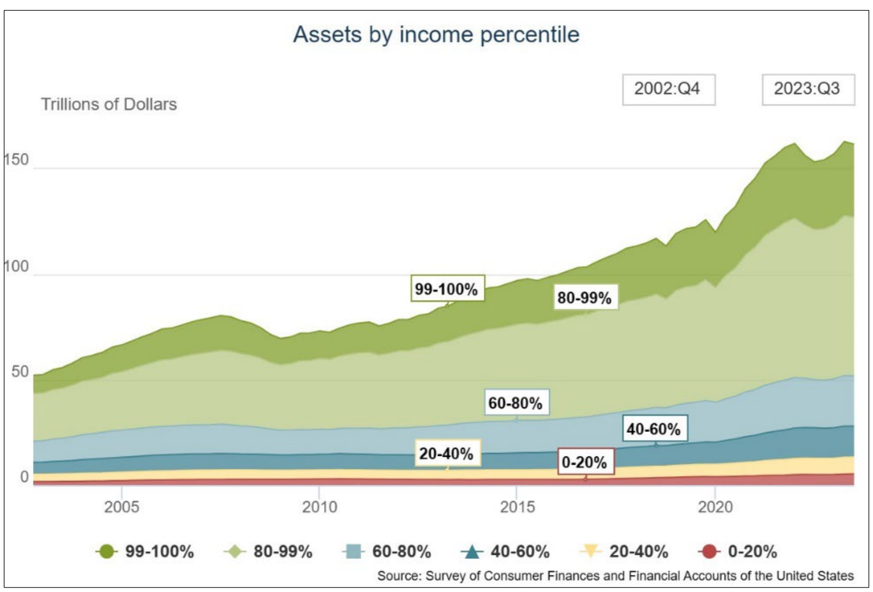
6 The FLEC member agencies include: Department of the Treasury (Chair), Consumer Financial Protection Bureau (Vice Chair), Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Department of Agriculture, Department of Defense, Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Labor, Department of Veterans Affairs, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, Federal Housing Finance Agency, Federal Trade Commission, General Services Administration, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Personnel Management, Securities and Exchange Commission, Small Business Administration, Social Security Administration, and White House Domestic Policy Council. *See* U.S. Financial Literacy and Education Commission, *Annual Report to Congress* (FY 2022), https://www.mymoney.gov/sites/my_money/files/2023-12/Fiscal-Year-2022-US-Financial-Literacy-and-Education-Commission-Annual-Report-to-Congress.pdf.

- implementing and updating the National Strategy to Promote Financial Literacy and Education among all American consumers; and

- managing MyMoney.gov, a consumer-facing website that serves as a clearinghouse of information about federal financial literacy and education programs.[7]

Clearly, there has been broad support for financial education, empowerment, and inclusion for numerous underserved communities. However, a data-driven analysis of the results of these efforts shows that there has been little progress toward more inclusion, and in some cases a slide backwards. For example, financial wealth is increasingly concentrated among individuals in the highest income brackets (see Chart 1).[8] In 2003, when the FLEC and the first national strategy for financial education was created, Americans held about $44 trillion in aggregate wealth. The highest 1% of income-earners held nearly 20% of that total and the top 20% of income-earners held more than 60% of the total. At the other end of the spectrum, ***the bottom 40% of income-earners held about 10% of total wealth***. By 2023, total wealth had tripled to more than $150 trillion. However, the distribution of that wealth became even more concentrated at the upper end of the income spectrum. At the start of 2023, the top 1% of income earners held 23% of total wealth and the top 20% of income earners held more than 70% of total wealth. Meanwhile, the ***bottom 40% of income earners' share of the total wealth declined to just 7.7%***.

Chart 1

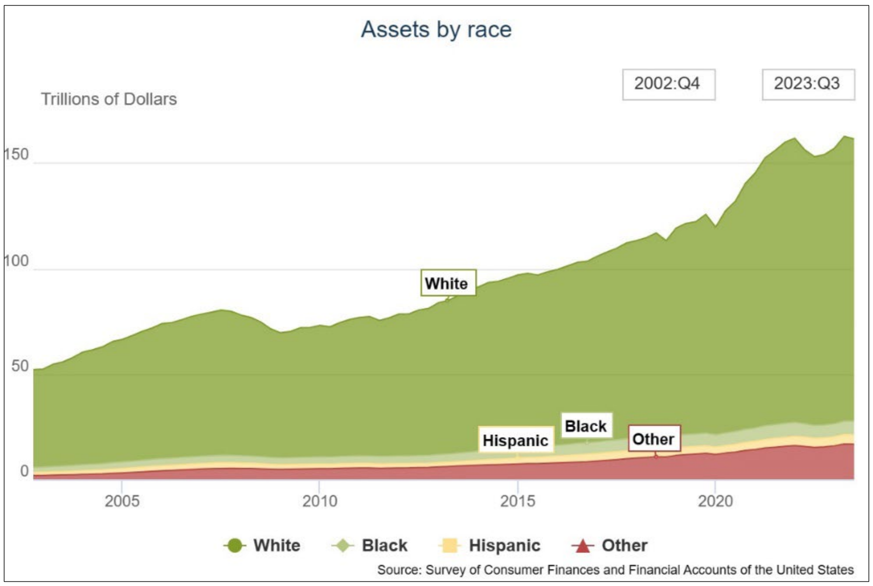


7 *Id.*

8 Board of Governors of the Federal Reserve System, DISTRIBUTIONAL FINANCIAL ACCOUNTS, https://www.federalreserve.gov/releases/z1/dataviz/dfa/ (last visited Jan. 25, 2024).

A similar pattern of persistent inequity exists when we examine data of wealth by race (see Chart 2).[9] In 2003, white Americans held more than 90% of total wealth, Black Americans held only 4%, and Hispanic Americans held just 2%. ***By 2023, Black Americans' wealth share declined to 3% of the overall total and Hispanic Americans' share was unchanged at 2%***. These results prove that there is a desperate need for a clear and data-driven analysis of the effectiveness of current programs as well as new strategies that will better address financial inclusion challenges.

Chart 2



The Federal Deposit Insurance Corporation ("FDIC") National Survey of Unbanked and Underbanked Households reports a similarly stark disparity in the usage of and access to banking services for Black and Hispanic households (see Chart 3).[10] As of the most recent survey in 2021, 11% of Black households and 9% of Hispanic households were unbanked, meaning that no one in the household had a checking or savings account at a bank or credit union. These shares were much higher than the just 2% of white households that were unbanked. The share of unbanked households is even higher for Black and Hispanic households with low incomes. ***Nearly one in every three Black or Hispanic households in the lowest income bracket were unbanked.***

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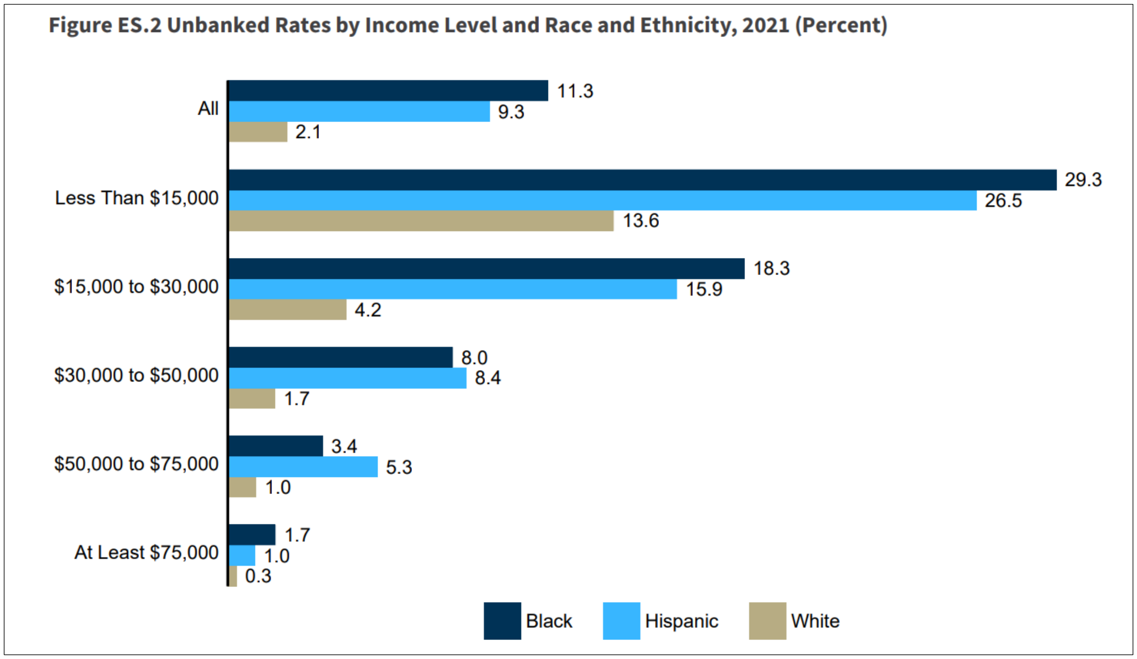
9 *Id.*

10 Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households* 2 (2021), https://www.fdic.gov/analysis/household-survey/2021report.pdf.

Chart 3



The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") directed the federal banking agencies and the Secretary of the Treasury to cultivate and support minority depository institutions ("MDIs") to directly reach underserved populations. MDIs are defined as banks that have either 51 percent or more of voting stock owned by minority individuals—Black Americans, Asian Americans, Hispanic Americans, or Native Americans—or a majority of the board of directors is minority ***and*** the community that the institution serves is predominately minority.[11] Recent research proves that MDIs positively affect their borrowers, and their broader communities, in multiple ways:

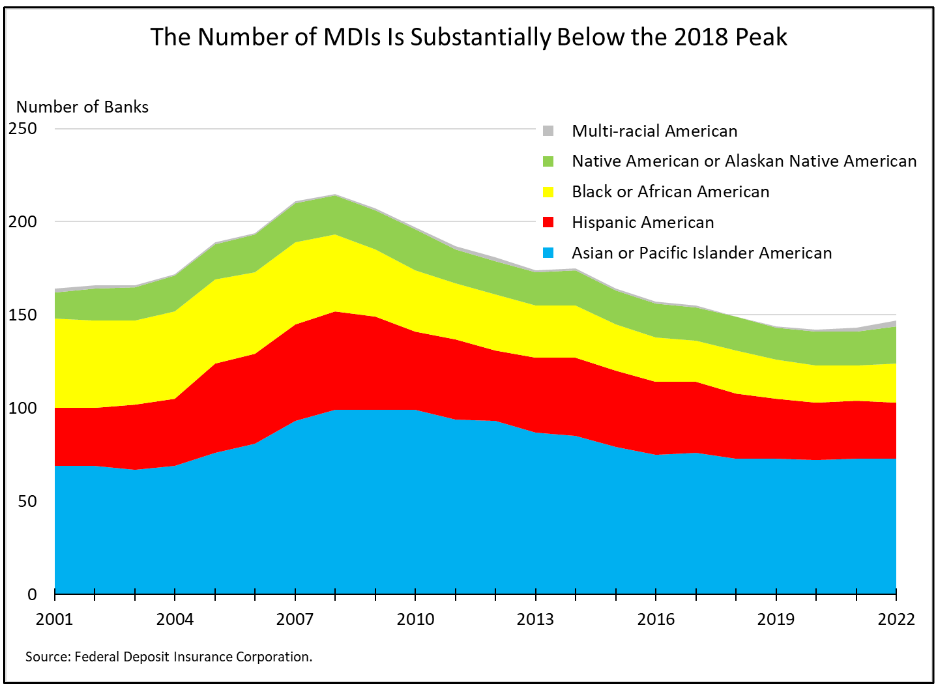
- **MDIs positively affect minorities' access to credit.** For instance, minority borrowers applying for mortgages in banks whose owners are of the same minority group are nine percentage points more likely to be approved than otherwise identical minority borrowers in non-minority banks. This effect is over six times greater than the likelihood of loan approval when only a minority loan officer is involved. Moreover, the study uses lending data from before and after MDI failures to show that MDIs actually ***expand credit*** to minority borrowers, rather than simply reallocating it from another bank.
- **MDIs specialize in same-race mortgage lending.** Nearly three-fourths of MDI mortgages are extended to borrowers of the bank owners' race, which directly helps to address the related challenge of lower homeownership among minority communities.

[11] Federal Deposit Insurance Corporation, FDIC DEFINITION OF MINORITY DEPOSITORY INSTITUTION, https://www.fdic.gov/regulations/resources/minority/mdi-definition.html (last visited Jan. 25, 2024).

- **MDI's minority borrowers perform better than other minority borrowers.** The default rate of MDIs' same-race borrowers is much lower than that of otherwise identical borrowers of other underserved races from non-MDI banks.[12]

Unfortunately, despite the statutorily-mandated focus by the federal banking agencies and a range of additional support for MDIs relative to other banks, the number of MDIs has declined in recent years along with the overall decline in the number of community banks (see Chart 4).[13] The number of MDIs peaked in 2008 at 215 and has declined to just 147 in 2022 (the latest data available).[14] This decline results in a reduction in banking access for underserved communities, which in turn leads to a number of costs for both the underserved communities and society as a whole, including increased usage of alternative—and often more expensive—financial services such as payday lenders or check cashers; limited savings and asset building; increased poverty and financial vulnerability; and reduced entrepreneurship.

Chart 4



In addition to a lack of access, minorities and other underserved groups are often victims of banks' discriminatory and illegal actions. Better Markets has tracked enforcement actions at the

[12] Agustin Hurtado & Jung Sakong, *The Effect of Minority Bank Ownership on Minority Credit*, GEORGE J. STIGLER CTR. FOR THE STUD. OF THE ECON. & THE ST. Working Paper No. 325 (Oct. 2, 2023), http://dx.doi.org/10.2139/ssrn.4590142 (emphasis added).

[13] Federal Deposit Insurance Corporation, MINORITY DEPOSITORY INSTITUTIONS LIST, https://www.fdic.gov/regulations/resources/minority/mdi.html (last visited Jan. 25, 2024).

[14] *Id*.

nation's six largest megabanks for several years in its Rap Sheet Report,[15] detailing the dollar amounts of penalties and harm to the American public that this misconduct creates. While the list is alarmingly long, we will mention just a few examples:

- Wells Fargo discriminated against qualified African American and Hispanic mortgage loan customers from 2004 through 2009.[16] These borrowers were charged larger fees, higher rates, or improperly placed into subprime loans. The U.S. Department of Justice reached a settlement of $175 million with Wells Fargo.
- Citi engaged in a pattern of discrimination against applicants for certain credit card products, based on their surnames that were assumed to indicate Armenian descent, from 2015 through 2021.[17] Citi supervisors conspired to conceal their illegal conduct by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines. Citi employees also lied about the basis for denial of credit, providing false reasons to deny applicants. This discrimination resulted in penalties of more than $25 million.
- Goldman Sachs settled a lawsuit alleging discrimination and bias against female employees as well as consistent undervaluation of women by their male colleagues.[18] The bank agreed to pay $215 million to approximately 2,800 associates and vice-presidents that had been victimized by the banks' actions.

All of these examples and the many more contained in Better Markets' Rap Sheet Report[19] clearly show how deficient processes and inadequate oversight at banks lead to discrimination against underserved communities and women as well as massive harm to innocent consumers. To make matters worse, the settlement amounts are a fraction of the megabanks' total profits, and clearly too small to incentivize changes in the megabanks' behavior, since the discrimination and unlawful actions persist. In summary, given the limited access to banking services and continued

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15 BETTER MARKETS, RAP SHEET REPORT: WALL STREET'S ONGOING CRIME SPREE — 490 MAJOR LEGAL ACTIONS AND NEARLY $207 BILLION IN FINES AND SETTLEMENTS (Oct. 12, 2023), https://bettermarkets.org/wp-content/uploads/2023/10/BetterMarkets_Wall_Street_RAP_Sheet_Report_10-2023.pdf.

16 U.S. Department of Justice, *Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims* (July 12, 2012), https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief.

17 Consumer Financial Protection Bureau, *CFPB Orders Citi to Pay $25.9 Million for Intentional, Illegal Discrimination Against Armenian Americans* (Nov. 8, 2023), https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/.

18 Joshua Franklin & Joe Miller, *Goldman Sachs To Pay $215mn To Settle Gender Discrimination Lawsuit*, FIN. TIMES (May 9, 2023), https://www.ft.com/content/57d61e54-295c-40db-a9a6-100b5bfcb6ff.

19 BETTER MARKETS, RAP SHEET REPORT, *supra* note 15.

discrimination, it should surprise no one that this contributes to the wealth disparities between minority and non-minority groups. We can, and we must, make changes to benefit all Americans.

SUMMARY OF THE REQUEST FOR INFORMATION

To assist in the development of its national strategy for financial inclusion, Treasury requests information in several areas:

- **Defining Financial Inclusion:** access, safety, usefulness, appropriateness, and affordability of financial products as well as the relationship between financial inclusion and financial security and wealth building.
- **Barriers to Financial Inclusion:** pricing strategies, fees, penalties, underwriting methods and standards, uses of consumer data, technological systems or constraints, institutional protocols related to fraud or risk management that create inequalities in the ability of consumers and communities to access, use, and benefit from financial products and services.
- **Measuring Financial Inclusion:** key indicators that can be used to measure and track financial inclusion, at an individual and/or system-level.
- **Actions To Promote Financial Inclusion:** existing programs, initiatives, products, or services that have been successful in promoting financial inclusion.
- **Other Topics Related to Financial Inclusion:** additional aspects of or topics related to financial inclusion that Treasury should be aware of in this effort.

SUMMARY OF COMMENTS

Despite the best of intentions as well as money, time, and effort devoted to financial inclusion and education efforts in the last 20 years, it is clear that significant changes are needed because little progress has been made, and in some cases, underserved communities are worse off now than in 2003 when Treasury's original financial inclusion efforts began. As an organization that has advocated for underserved communities,[20] Better Markets urges the Treasury and other federal agencies to take action now to reach our shared goals of improving financial inclusion for all Americans, including:

- Dramatically increase, improve, and support MDI operations, including through technology and digital solutions. Research and data show that underserved communities greatly benefit from financial institutions with focused, community-oriented operations.

- Require alternative methodologies to expand financial system access for underserved

[20] Tim P. Clark & Phillip Basil, *Addressing Racial Economic Inequality Through the Banking System*, Better Markets (Dec. 2, 2021), https://bettermarkets.org/wp-content/uploads/2021/12/BetterMarkets_Banking_And_Racial_Justice_Dec-2021.pdf.

communities. Federal agencies and the private sector should prioritize the development of alternative methods such as rent payments, mobile phone payments, or cable TV payments for underserved populations to build a credit history.

- Aggressively strengthen oversight and increase accountability and punishment for unlawful, discriminatory, or predatory actions and scams, especially those that target underserved communities. The fact that illegal and discriminatory activity is continuing suggests that the punishment and fines are not large enough to incentivize changes in banks' behavior and ensure better protection for underserved communities.

- Increase diversity among public and private leadership and staff. Improved representation at federal agencies and financial institutions will contribute to underserved communities' ability to better access and engage with the financial system.

- Immediately enhance and broaden data collection to support financial inclusion as well as communication about actions and outcomes. More robust, granular, and transparent data are needed to understand both underserved communities' financial needs as well as the outcomes of financial inclusion efforts. Agencies should also increase communication about successful actions to demonstrate progress to members of underserved communities.

COMMENTS

I. DRAMATICALLY INCREASE AND IMPROVE MDI OPERATIONS, INCLUDING THROUGH TECHNOLOGY AND DIGITAL SOLUTIONS.

Research and data show that underserved communities greatly benefit from financial institutions with focused, community-oriented operations.[21] As displayed earlier in Chart 4, there were 147 MDIs in operation throughout the country in 2022. In other words, this means that only about 3% of the 4,706 banks in operation nationwide at the end of 2022 were focused on serving minority communities.

About 25% of the MDIs were headquartered in California, mainly in the Los Angeles metropolitan area and other surrounding areas in southern California. Texas ranked second among the states, with about 15% of the MDI headquarters locations. New York and Oklahoma were each home to nearly 10% of the MDI headquarters. In total, 32 states and Washington, DC, had at least one MDI headquarters, leaving 18 states without any MDI headquarters presence at all.[22] Furthermore, MDIs operated about 1,500 branch and office locations as of June 30, 2022, less than

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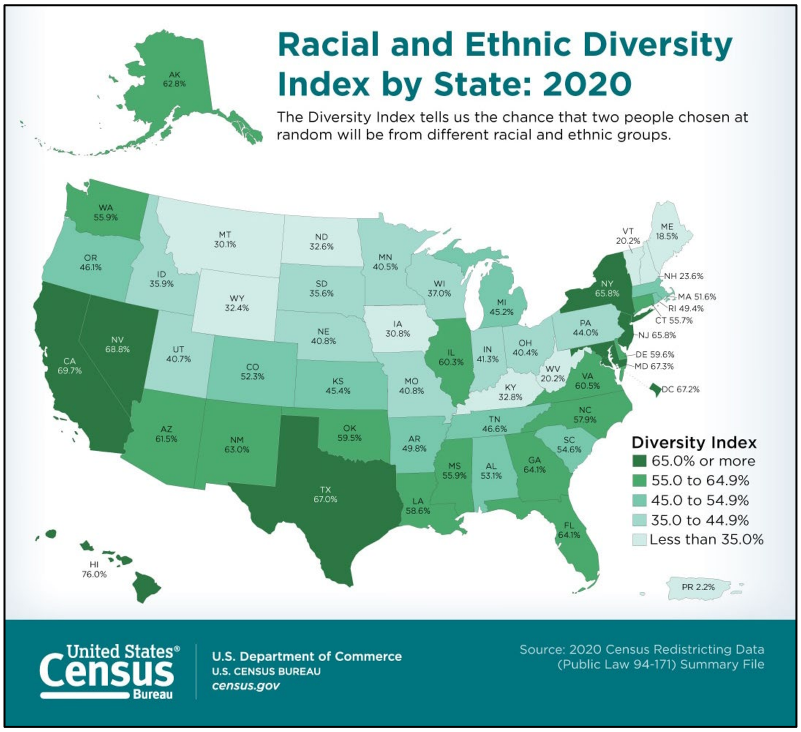
21 Agustin Hurtado & Jung Sakong, *supra* note 12.

22 Federal Deposit Insurance Corporation, supra note 13.

2% of the more than 79,000 bank branch and office locations in operation around the country.[23] Clearly, there are opportunities for expansion in MDI's reach into underserved communities.

The most recent Census data show that minority populations exist throughout our country (see Chart 5).[24] In the most diverse states, there is more than a 65% chance that two people chosen at random will be from different racial or ethnic groups. Even in the least diverse state, West Virginia, there is more than a 20% chance that two random people will be from different racial and ethnic groups. The Treasury simply must work with existing MDIs to broaden their reach into new markets or partner with other banks to expand services for underserved communities. It must also, along with other agencies, establish and enact plans to promote the establishment of new MDIs.

Chart 5



[23] Angela Hinton, Michael Hoffman, Caitlyn R. Kasper & Joycelyn Lu, *2022 Summary of Deposits Highlights*, Federal Deposit Insurance Corporation, 17 FDIC Q. 50, 54-55 (2023), https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2023-vol17-1/fdic-v17n1-4q2022.pdf.

[24] U.S. Census Bureau, 2020 CENSUS: RACIAL AND ETHNIC DIVERSITY INDEX BY STATE, https://www.census.gov/library/visualizations/2021/dec/racial-and-ethnic-diversity-index.html, (last visited Jan. 26, 2024).

The FDIC's MDI and CDFI Bank Headquarters and Branches Locator[25] is one tool that could be leveraged to assist policymakers and banks in their expansion efforts. This tool provides users the capability to select a specific bank to view its current branch structure in an interactive map format. Additionally, the tool can be used to see areas quickly and easily where there are no MDI headquarters or branch locations. This information should be paired with data that shows where underserved populations are located to find potential areas for MDI expansion opportunities.

Finally, financial inclusion could be further advanced with a focus on both physical branch locations as well as digital services. The FDIC found that bank branches are especially important to underserved communities:

> While use of bank tellers as the primary method of account access declined across the board, this method remained prevalent among certain segments of the population, including lower-income households, less-educated households, older households, and households that did not live in a metropolitan area . . . For example, 33.4 percent of households without a high school diploma and 30.5 percent of households aged 65 or older used bank tellers as their primary method of account access in 2021.[26]

However, the FDIC and other researchers emphasize that digital access to financial services as well as knowledge and confidence with their use is also critical to reach financial inclusion goals, particularly for individuals that do not live near a physical bank location:

> [E]nhancing the accessibility and affordability of financial services holds the promise of boosting future financial inclusion. But . . . even if such innovations ensure better accessibility of financial services, they may not directly translate into greater usage of these services. ***Lack of knowledge and confidence remain major factors that hinder the uptake and usage of these services, especially among those who have been marginalized due to gender, age, education, ethnic origin, disability, socioeconomic status, and location.*** Not only are these vulnerable populations less equipped to reap the benefits of improved financial access and innovative digital solutions, but they also are at risk of not keeping up with the rapid shifts in digitalization and being left further behind.[27]

In conclusion, the Treasury and other Federal Agencies must prioritize actions to increase the availability of banking services focused on minority and underserved populations in ways that are consistent with the urgent need. The results of the actions must also be measured to ensure that underserved populations are actually benefitting from the work, not falling further and further behind as data from the last 20 years shows.

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[25] Federal Deposit Insurance Corporation, MDI AND CDFI BANK HEADQUARTERS AND BRANCHES LOCATOR, https://fdic-gis.maps.arcgis.com/apps/webappviewer/index.html?id=76c05acdf50f4e3db35cd042103e998e, (last visited Jan. 26, 2024).

[26] Federal Deposit Insurance Corporation, *FDIC National Survey of Unbanked and Underbanked Households, supra* note 10, at 25.

[27] Angela Lyons & Josephine Kass-Hanna, *A Multidimensional Approach to Defining and Measuring Financial Literacy in the Digital Age* 14 (June 24, 2021), http://dx.doi.org/10.2139/ssrn.3873386 (emphasis added).

II. REQUIRE ALTERNATIVE METHODOLOGIES TO EXPAND FINANCIAL SYSTEM ACCESS FOR UNDERSERVED COMMUNITIES.

Beyond accessing the financial system with a traditional bank account, the Agencies must also focus on greater inclusion for underserved communities for credit underwriting. Better Markets, along with federal banking agencies and other researchers, has identified the need for the development of alternative methods and data to assess an individual's track record and ability to repay a loan or maintain a credit card.[28] This effort can open multiple access points into the financial system for underserved communities.

Data from the Consumer Financial Protection Bureau ("CFPB") show that minority and low-income populations are most likely to be "credit invisible," or without a credit history with one of the nationwide credit reporting agencies. For example, about 30 percent of Black and Hispanic consumers have no credit history or have stale or insufficient credit history, about double the share of white consumers (see Chart 6).[29] Similarly, about 40 percent of individuals that live in low-income areas are credit invisible or do not have a credit score (see Chart 7).[30]

The CFPB offers several alternatives, including rent payments, mobile phone payments, or cable TV payments for underserved populations to use to build a credit history.[31] To further explore this area, the CFPB issued a request for information regarding alternative data and modeling techniques in 2017.[32] Recently, the CFPB took an important step forward to address inaccurate background and credit checks, to ensure that the consumer reporting system produces accurate and reliable information and does not keep people from accessing their personal data.[33] The Treasury and other agencies must continue this effort to help underserved populations build credit histories, and consequently increase financial inclusion.

28 *See e.g.*, Clark & Basil, *supra* note 20, at 11; Ying Lei Toh, *Addressing Traditional Credit Scores as a Barrier to Accessing Affordable Credit*, 108 FEDERAL RESERVE BANK OF KANSAS CITY ECONOMIC REVIEW (Third Quarter 2023), https://www.kansascityfed.org/research/economic-review/addressing-traditional-credit-scores-as-a-barrier-to-accessing-affordable-credit/.

29 Consumer Financial Protection Bureau, *Who Are the Credit Invisibles?* 4 (Dec. 2016), https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf.

30 *Id*. at 3.

31 *See* Brian Kreiswirth, Peter Schoenrock, & Pavneet Singh, *Using Alternative Data To Evaluate Creditworthiness*, Consumer Financial Protection Bureau (Feb. 16, 2017), https://www.consumerfinance.gov/about-us/blog/using-alternative-data-evaluate-creditworthiness/.

32 Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process, CFPB-2017-0005, (Feb. 21, 2017), https://www.regulations.gov/document/CFPB-2017-0005-0001.

33 Consumer Financial Protection Bureau, *CFPB Addresses Inaccurate Background Check Reports and Sloppy Credit File Sharing Practices* (Jan. 11, 2024), https://www.consumerfinance.gov/about-us/newsroom/cfpb-addresses-inaccurate-background-check-reports-and-sloppy-credit-file-sharing-practices/.

Chart 6

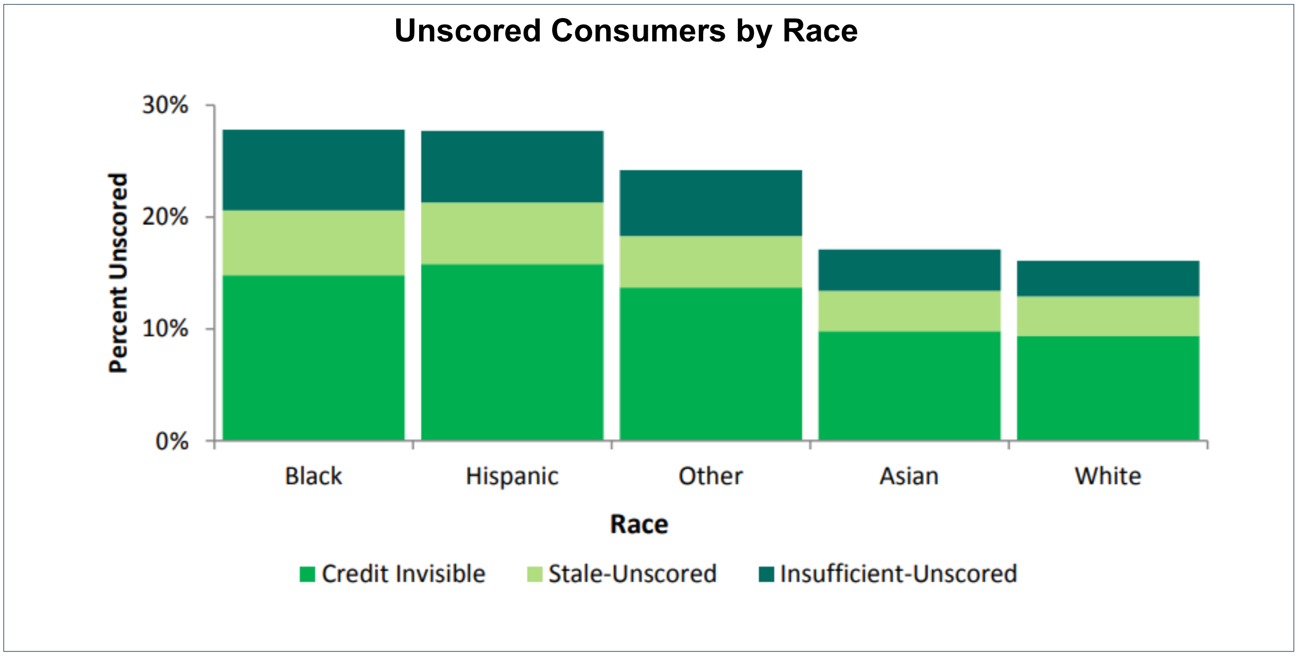
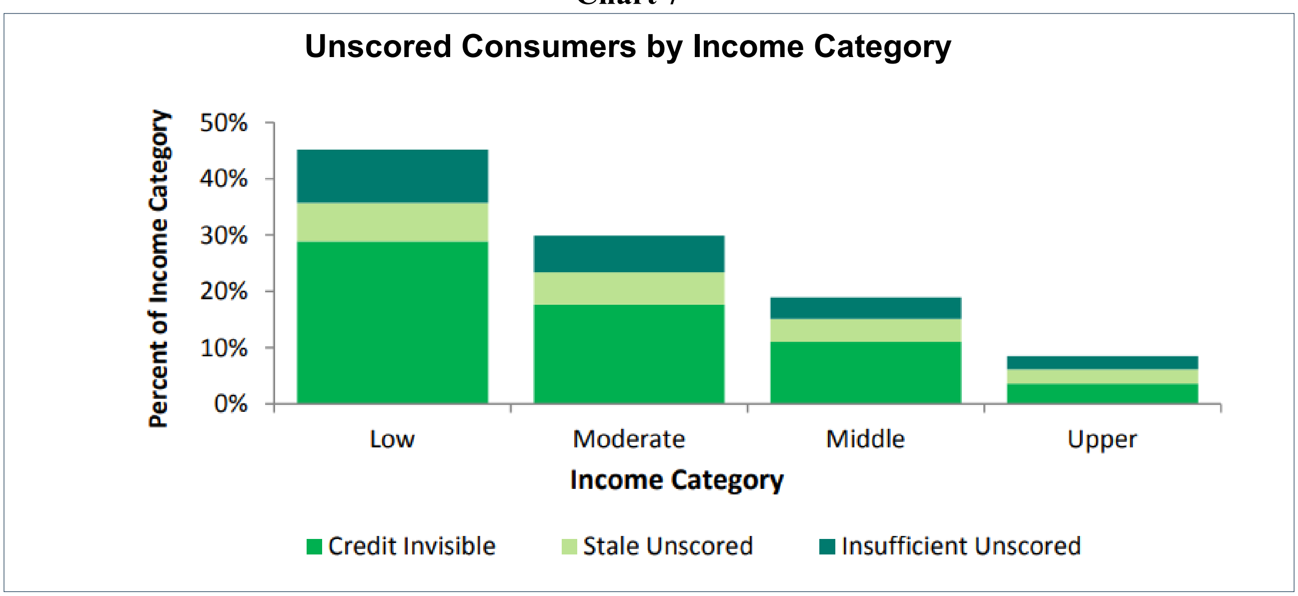


Chart 7



III. <u>AGGRESSIVELY STRENGTHEN OVERSIGHT AND INCREASE ACCOUNTABILITY AND PUNISHMENT FOR UNLAWFUL, DISCRIMINATORY, OR PREDATORY ACTIONS AND SCAMS, ESPECIALLY THOSE THAT TARGET UNDERSERVED COMMUNITIES</u>.

As detailed earlier, minorities and other underserved groups are often victims of banks' discriminatory and illegal actions. In its Rap Sheet Report, Better Markets outlines the illegal activities of all six U.S. megabanks for much of the last two decades.[34] The nature and variety of the violations are astounding and appalling, spanning virtually every conceivable type of white-collar crime, fraud, and breach of contract that a bank could commit including money laundering, market manipulation, foreclosure abuses, unlawful debt collection practices, antitrust violations, conflicts of interest, and kickback schemes. And, many of the violations target minorities and other underserved communities.

We urge the Treasury to work with other federal agencies to strengthen enforcement practices to better protect consumers from banks' and bankers' lawlessness by:

1. Focusing on large banks' boards of directors to ensure that they are in fact carrying out their responsibilities and holding them accountable when they are not;[35]

2. Focusing on banks' senior executives and officers as well as gatekeepers like internal and external auditors, inside and outside lawyers, and compliance and risk personnel, and imposing meaningful personal sanctions against individuals rather than merely imposing the cost of doing business through fines against the banks that are so meaningless that they all but reward past crimes and incentivize future lawbreaking;

3. Increasing and revising the structure of penalties that result from banks' unlawful behavior to make the financial and reputational cost to banks and their executives commensurate with the nature of the offense and severe enough to incentivize behavior change;[36] and

4. Increasing the public disclosure of supervisory information related to unlawful behavior and risky practices at banks to leverage the power of market discipline. This should also include outreach efforts to underserved communities to share violations that have been addressed to begin to rebuild trust and confidence and hopefully encourage individuals to re-engage with the financial system.

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34 BETTER MARKETS, RAP SHEET REPORT, *supra* note 15.

35 *See, e.g.*, Better Markets Comment Letter re *Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of $10 Billion or More* (Feb. 9, 2024), https://bettermarkets.org/wp-content/uploads/2024/02/Better-Markets-Comment-Letter-FDIC-Corporate-Governance-Risk-Management.pdf; Better Markets Comment Letter re *Proposed Guidance on Supervisory Expectation for Boards of Directors* (Feb. 15, 2018), https://bettermarkets.com/sites/default/files/FRS-%20CL-%20BoD%20Supervison%20Expectations%202-15-18.pdf.

36 For example, monetary amounts, including penalties, although sometimes headline-grabbing, typically represent just a fraction of a bank's profits. Moreover, those amounts are typically significantly less than they appear because the settlements often assign unrealistically high values to future purported remedial actions (many of which the banks would have undertaken anyway) and because the settlements are usually structured to be largely tax deductible.

IV. INCREASE DIVERSITY AMONG PUBLIC AND PRIVATE LEADERSHIP AND STAFF.

As Better Markets detailed in a recent report,[37] diversity and inclusion need to be strengthened at both federal agencies and throughout the banking system. The recent appointments of Dr. Phillip Jefferson, Dr. Lisa Cook, and Dr. Adriana Kugler were important and positive steps forward for minority representation at the Board of Governors of the Federal Reserve System ("Fed'),[38] but more work needs to be done.[39] The latest data show that minorities account for just 25% of executive managers at the FDIC[40] and 27% of executive managers at the Office of the Comptroller of the Currency ("OCC").[41] Both of these shares are below the benchmark—the share of minority population within the U.S. civilian labor force—of 33%.[42] Furthermore, as Better Markets explains:

> The Dodd-Frank Act attempted to address diversity at the Agencies by requiring the creation of Offices of Women and Minority Inclusion. . . . However, they were not granted the authority needed to achieve their goals. They cannot enforce civil rights laws, require special actions, or issue fines or any kind of penalties when the Agencies fail to meet diversity goals. While many of the programs run by OMWIs are well intended, it has been almost 15 years since the Dodd-Frank Act and the continued underrepresentation of people of color at the Agencies shows that more must be done to address racial equity in the agencies' personnel practices.[43]

Simply put, research shows that diversity in leadership and on teams results in better performance within the corporate workplace.[44] The Treasury should work with federal agencies

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37 *See, e.g.*, Clark & Basil, *supra* note 20, at 17.

38 Better Markets, *With the New Highly Qualified Vice Chair and Governors, the Federal Reserve Board After 110 Years Finally Reflects the Strength of America's Diversity* (Sept. 7, 2023), https://bettermarkets.org/newsroom/with-the-new-highly-qualified-vice-chair-and-governors-the-federal-reserve-board-after-110-years-finally-reflects-the-strength-of-americas-diversity/.

39 *See, e.g.*, Chris Brummer, *What Do the Data Reveal About (the Absence of Black) Financial Regulators?* BROOKINGS INST. (Sept. 2, 2020), https://www.brookings.edu/articles/what-do-the-data-reveal-about-the-absence-of-black-financial-regulators/; Jeanna Smialek, *Why Are There So Few Black Economists at the Fed?*, N. Y. TIMES (Feb. 2, 2021), https://www.nytimes.com/2021/02/02/business/economy/federal-reserve-diversity.html.

40 Federal Deposit Insurance Corporation, *Section 342 Dodd-Frank Wall Street Reform And Consumer Protection Act 2022 Report To Congress* 26 (Apr. 10, 2023), https://www.fdic.gov/about/diversity/pdf/rtc-4-10-23.pdf.

41 Office of the Comptroller of the Currency, *Office of Minority and Women Inclusion 2022 Annual Report* 48 (Mar. 30, 2023), https://www.occ.gov/publications-and-resources/publications/omwi-publications/files/2022-omwi-annual-report.html.

42 Federal Deposit Insurance Corporation, *supra* note 40, at 12.

43 Clark & Basil, *supra* note 20, at 17.

44 *See, e.g.*, Gennaro Bernile, Vineet Bhagwat, & Scott Yonker, *Board Diversity, Firm Risk, and Corporate Policies*, 127 J. OF FIN. ECON. 588-612 (Mar. 2018), https://www.sciencedirect.com/science/article/abs/pii/S0304405X17303215.

as well as with financial institutions to continue to increase representation of underserved communities in leadership and other positions of power.

V. IMMEDIATELY ENHANCE AND BROADEN DATA COLLECTION TO SUPPORT FINANCIAL INCLUSION AS WELL AS COMMUNICATION ABOUT ACTIONS AND OUTCOMES.

Finally, the Treasury and other agencies must collect more robust, granular, and transparent data to understand both underserved communities' financial needs as well as the outcomes of financial inclusion efforts. This will specifically address two of the goals of the Act related to national objectives for financial inclusion and benchmarks for measuring progress. While there are several reports that contain activities that the FLEC member agencies have undertaken,[45] we need more specific data to understand the tangible outcomes of the efforts. We also need to understand the cost of the efforts and determine whether they are yielding the desired results.

Currently, the lack of comprehensive data to fully understand the financial inclusion problem is a barrier to achieving change. Without this data, we are left to rely on occasional media reports and lawsuits. For example, in recent years, there has been an increased focus on minorities experience in banks, or "banking while black." Black customers report being racially profiled during routine visits to bank branches to open accounts or cash checks. Often, law enforcement is called, only to discover that the customer or check that bank employees thought was suspicious or fraudulent was actually perfectly legitimate. Under federal law, there is little that victims can do in these situations.[46] One of the worst examples of this unfair and abusive treatment is the case of Clarice Middleton, a 71-year-old woman who won money on a church outing. When she went to the bank to cash her check, the bank refused and would not even return the check to her until she protested:

> Clarice Middleton ***shook with fear*** as she stood on the sidewalk outside a Wells Fargo branch in Atlanta one December morning in 2018. Moments earlier, she had tried to cash a $200 check, only to be accused of fraud by three branch employees, who then called 911.
>
> Ms. Middleton, who is black, remembers thinking: "I don't want to die."[47]

Given how embarrassing and terrifying these interactions are, however unfair, it is only reasonable to believe that the vast majority are not reported or known. But we do know from the few media reports that they are likely much more common and almost certainly represent just the tip of the iceberg of this problem. Until banks stop being seen as hostile environments that must

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45 U.S. Financial Literacy and Education Commission, *Annual Report to Congress*, *supra* note 6.

46 *See, e.g.*, Emily Flitter, *'Banking While Black': How Cashing a Check Can Be a Minefield*, N.Y. TIMES (June 18, 2020), https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html; Malia Lazu, *'Banking While Black' Still Happens, Even If You're Famous*, BANKER & TRADESMAN (Mar. 20, 2022); Eric Rasmussen, *'Banking While Black': Police Video Shows How Cashing a Paycheck Led to Handcuffs*, KSTP-TV (Jan. 10, 2022), https://kstp.com/kstp-news/top-news/banking-while-black-police-video-shows-how-cashing-a-paycheck-led-to-handcuffs/.

47 Emily Flitter, *supra* note 46 (emphasis added).

be avoided and instead as places where all Americans can access banking services and create wealth, we cannot stop working or claim success.

To that end, more granular data are necessary and should be required to understand the experiences and needs of underserved communities. For example, FDIC and Fed surveys contain information about unbanked and underbanked individuals, but these are broad labels that are not useful to truly understand the financial inclusion problem. Additional metrics to capture persons who are "banked and discriminated against" or "banked and charged a high fee" would provide more valuable insight into underserved individuals' experience with banks. We understand that underserved individuals may be hesitant to report such occurrences, but we think it is critical to try to gather the data. Finally, we think it is vital to use the gathered data to enhance the reporting of change and financial inclusion progress to increase communication with all Americans to demonstrate progress with our shared and ongoing challenges related to financial inclusion.

CONCLUSION

We hope these comments are helpful for our shared goal of increased financial inclusion.

Sincerely,

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