

**Testimony of Marc H. Morial
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Senate Committee on Banking, Housing, and Urban Affairs**

“Fairness in Financial Services: Racism and Discrimination in Banking”

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Chairman Brown, Ranking Member Toomey, and members of the Committee, thank you for the opportunity to testify before you this morning. My name is Marc Morial, and I proudly serve as President and CEO of the National Urban League. I join you today on behalf of 92 affiliates who serve over 300 communities and over 2 million people across 36 states and the District of Columbia.

The National Urban League is the lineal descendent of a succession of community-aid entities dating back to Emancipation that has specialized in racial parity and the economic and workforce inclusion of the Black community. Since our founding in 1910, the National Urban League has been at the forefront of the effort to build generational wealth within the Black community and other underserved populations. Along with the 20th-century creation and need for fraternal and social organizations, sickness and burial societies, and migration patterns of the Black labor workforce to achieve financial and economic inclusion, the Urban League movement has been a formidable advocate for voting rights, civil rights, and economic justice by way of job training and placement, health and wellness promotion, educational equity, entrepreneurship development, and home ownership. Throughout our work, we have seen the dire consequences of an American financial system that has systematically cut off and shut out individuals, families, businesses, and communities of color from access to capital.

Nearly 150 years after the closing of the Freedman’s Bank, in the wake of a global pandemic that revealed the true extent of the economic insecurity of communities of color; given all that we know about the historical, systemic bigotry of banks and governments against communities of color even after the end of slavery and Jim Crow; and in the shadow of an outrageous, coordinated attack by some against newly systemic efforts to address the harms of that bigotry, I can think of no more important hearing than one on how to achieve greater fairness in financial services. I commend the Chairman, Ranking Member, and the committee members for convening us today.

Discriminatory Practices in Banking

The United States government has long recognized the value of banking, lending, and depository services for its citizens. Moreover, it has recognized the power that such banking services could provide to the Black community and other underserved communities. One of the first post-Civil War acts of Congress to benefit the newly emancipated Freedman was the establishment in 1865 of the Freedman’s Savings and Trust Company. As Vice President Kamala Harris noted in her speech at the 2022 Freedman’s Bank Forum, “[f]reedman’s Bank was guided by a vision — the vision of an economy that works for all Americans and includes all Americans; the vision of a nation in which all people have access to the financial resources they need to succeed, to thrive,

and to determine their own future.”¹ However, the bank shuttered, leaving over 60,000 Black depositors with a loss of over \$3 million in capital (in today's dollars, that's \$68.2 million).² The failure of the bank left many Black depositors and borrowers distrustful of the white banking community, especially since the Freedman’s Bank was established and managed by white men. The government was not alone in its understanding of the power of banking and lending. Former slave owners also recognized the power of financial instruments and wielded that power over newly emancipated Freedmen. In a precursor to modern day payday lending, former slave owners used contracts of adhesion to extend credit to sharecroppers in a successful scheme to extend de-facto slavery for another hundred years.

The similar use of credit and lending negatively impacted the Black community’s access to banking was magnified by a series of discriminatory underwriting and lending regulations beginning in the 1930s. These regulations included in part the Federal Housing Administration restricting insurance of home mortgages to whites-only neighborhoods. These regulations resulted in only two percent of \$120 billion in dollars in new housing subsidized by the federal government between 1934 and 1962 going to non-whites. Indeed, the widely documented and government-sanctioned practice of demarking predominantly Black communities as unsuitable for lending based primarily on racial considerations, known as redlining, had only been officially deemed illegal by the federal government a mere decade before enactment of the Community Reinvestment Act in 1977.

We are only a few years removed from the legal barriers and lack of civil rights protections that prevented most Black Americans from having equal access to commerce and the right to participate in an equal society, particularly when it comes to banking. Further, the enforcement of these laws has become dependent on the willingness of the administration in power to recognize these protections.

When people of color suffer racist engagement in the financial marketplace, it causes substantial monetary and non-monetary harm. Depending on how the racist behavior occurs, be it systematic, digital, in-person, community members often are unaware they received disparate treatment or a discriminatory outcome. This stems from a centuries-long strain of the Black and minority community with banking institutions.

The exclusionary and biased practices have been widely documented, including the banking industry’s tendency to disproportionately open and operate branches in white/non-minority communities. In 2021, 4.5 percent of U.S. households (approximately 5.9 million) were unbanked, underbanked, or in banking deserts, meaning that no one in the household had a checking or savings account at a bank or credit union.³ The likelihood of being unbanked is even higher for

¹ House, T. W. (2022, October 4). *Remarks by Vice President Harris at the Freedman’s Bank Forum*. The White House. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/04/remarks-by-vice-president-harris-at-the-freedmans-bank-forum/>.

² *Freedman’s Bank Building*. (2022, November 4). U.S. Department of The Treasury. <https://home.treasury.gov/about/history/freedmans-bank-building>.

³ 2021 FDIC National Survey of Unbanked and Underbanked Households. (n.d.). <https://www.fdic.gov/analysis/household-survey/index.html>.

some population segments, such as low-income and racial and ethnic minority households. Black and Hispanic families are disproportionately likely to be unbanked: 8.0 percent of Black households and 8.4 percent of Hispanic households were unbanked, compared to 1.7 percent of White households.⁴ Less than a decade ago, during the Great Recession, comparably sized banks closed at higher rates in markets serving communities of color between 2009 and 2014, with some Black and Hispanic communities losing half their branches. The uneven distribution of bank branch locations exacts a cost on residents of communities of color in the form of greater travel distance and time to the nearest banking facility.⁵⁶ These practices also create banking deserts in which predatory payday lenders, check cashers, and other non-bank services thrive, thereby implicating banks in facilitating a market dynamic whereby the financial services environments in communities of color are dramatically different in terms of quality, experience, and expense from those in white/non-minority neighborhoods. These racialized examples raise the concern of discrimination, especially when considering recent examples of disparate impact and differential treatment.⁷

In addition to the reluctance to operate in communities of color, another source of racial discrimination may be bank employees' discretionary practices in charging costs and fees.⁸ Bank employees wield discretionary power in racially executing bank policies – they determine how much a customer pays in costs, and customers may face varying fees depending on who they talk to at the bank.

The concerns about racial discrimination and bias in the banking workforce are also not new and are illustrated in analyses of data from mortgage lending lawsuits brought to the U.S. Department of Justice Civil Rights Division,⁹ which illuminated widespread discriminatory practices, including loan officers who "referred to subprime loans in minority communities as 'ghetto loans' and minority customers as... 'mud people.'^{10 11} The consequences of these acts are reflected in the data: in the National Urban League's *State of Black America 2022 Equality Index*, Black Americans are less likely to be approved for mortgages than white Americans, at a disparity rate

⁴ 2021 FDIC National Survey of Unbanked and Underbanked Households. (n.d.-

a). <https://www.fdic.gov/analysis/household-survey/index.html>; <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

⁵ Baradaran, M. (2019). *The Color of Money: Black Banks and the Racial Wealth Gap* (Reprint). Belknap Press: An Imprint of Harvard University Press.

⁶ Rothstein, R. (2018). *The Color of Law: A Forgotten History of How Our Government Segregated America* (Reprint). Liveright.

⁷ Flitter, E. (2022). *The White Wall: How Big Finance Bankrupts Black America*. Atria/One Signal Publishers.

⁸ Fox, M. (2021, January 13). *Black and Hispanic Americans pay twice as much in bank fees as Whites, survey finds*. CNBC.

⁹ Assistant Attorney General Kristen Clarke Delivers Remarks Announcing. (2022, July 27). <https://www.justice.gov/opa/speech/assistant-attorney-general-kristen-clarke-delivers-remarks-announcing-justice-department>

¹⁰ Powell, M. (2009, June 7). *Bank Accused of Pushing Mortgage Deals on Blacks*. The New York Times. <https://www.nytimes.com/2009/06/07/us/07baltimore.html>

¹¹ Egan, M. (2018, February 27). *Wells Fargo accused of preying on black and Latino homebuyers in California*. CNNMoney. <https://money.cnn.com/2018/02/27/investing/wells-fargo-sacramento-lawsuit-discriminatory-lending/index.html>

of 41%.¹² Further, the homeownership rates for Black Americans stand at 43.1% compared to 74.4% of white Americans.¹³ The individuals who make decisions exercise enormous power: their responses to the needs of the communities they serve help determine the character of the American economy. Traditionally, decision-making authority at banks has been the bastion of middle- and upper-class white males. However, in recent years, this monopoly of power has been challenged with the work of diversity and inclusion initiatives in the belief that all members of society should be represented in the upper echelons of bank management.

A clear solution to this issue is to invest and strengthen Black-owned banks, of which there is an incredible need. In our *2022 State of Black America Report*¹⁴, we found that the number of Black-owned banks has dwindled immensely over the years. Between 1888 and 1934, there were 134 Black-owned banks to help the Black community. Today, there are only 19 Black-owned banks that qualify as Minority Depository Institutions (MDIs). Due to historic undercapitalization, Black banks are small, with average assets of \$363 million compared to \$4 billion for all U.S. banks. The small number of Black banks and their small asset size limits their overall impact. A century of data proves that Black banks matter. When there is a Black bank in a community, Black people are more likely to be able to buy a home or secure a small business loan. These institutions help minorities build wealth by providing mortgages, small business loans, and financial services when others will not. That is why the work of uplifting Black banks is so vital. But if we are not careful, Black banks will disappear.

A clear example of this need is through the distribution of Paycheck Protection Program (PPP) funds. Billions of dollars were supposed to help small businesses through PPP. But the money was marred by racial inequity. PPP lending revealed stark disparities across the country. When seeking PPP funding as a form of emergency assistance, employer firms owned by people of color, and particularly Black-owned firms, were less likely to receive all the PPP funding that they requested. Only 61% of Black-owned firms applied for a PPP loan compared to 85% of Asian-owned firms, the largest share of any group. When Black-owned firms applied for PPP funds at large banks, 41% received all the funding sought (compared to 71% for white-owned firms). When applying to small banks, 48% of Black-owned firms received the full share (versus 80% for white-owned firms), and 24% were fully approved at online lenders (versus 49% for white-owned firms).¹⁵

Efforts to Address Discriminatory Practices and Increase Equitable Access to Banking

There is work being done at the federal level and additional bipartisan solutions that Congress and the Executive Branch can take to address these ills and barriers. The National Urban League has partnered with both to be part of the solution, because just as redlining and disinvestment in communities of color is contagious, so is “Greenlining” and reinvestment in those communities.

¹² National Urban League, *State of Black America 2022 Equality Index*, <https://soba.iamempowered.com/sites/soba.iamempowered.com/files/State-of-Black-America-2022-Black-White%20Index.pdf>.

¹³ *Id.*

¹⁴ Elam, N., & James, R. (2022). The National Urban League- The State of Black America® Report. <https://Soba.Iamempowered.Com/Strengthening-Black-Banks-Will-Strengthen-Black-America>

¹⁵ 2022 Report on Firms Owned by People of Color Based on the Small Business Credit Survey. (n.d.). <https://www.fedsmallbusiness.org/survey/2022/2022-report-on-firms-owned-by-people-of-color>

The Biden Harris Administration made clear its intention to focus on racial equity by making one of its first actions an executive order on racial equity, which directs all agencies to implement policies to reduce barriers to entry for communities of color and other underserved populations.¹⁶ As an example, the Biden-Harris Administration's released the PAVE (Property Appraisal and Valuation Equity) Action Plan, which represents the most wide-ranging set of reforms ever put forward to advance equity in the home appraisal process. Most significantly, these equity efforts have been reflected by signing into law the historic American Rescue Plan (ARP) and Bipartisan Infrastructure Law.¹⁷ The Bipartisan Infrastructure Law permanently authorized the Minority Business Development Agency (MBDA) for the first time since its inception and elevated the agency head to the position of Under Secretary, held by Don Cravins, former Executive Vice President, and Chief Operating Officer of the National Urban League, which granted the agency expanded power to support Black- and other minority-owned businesses.. We appreciate the efforts the Administration is taking to combat inequity.

Further, in partnership with the National Urban League, the Treasury Department Office of the Comptroller of the Currency (OCC) announced Project REACH¹⁸ to promote greater access to capital and credit for underserved populations through policy and structural issues at the national and local level. REACH, which stands for Roundtable for Economic Access and Change, brings together leaders from the banking industry, national consumer advocacy and civil rights organizations, business, and technology companies to identify and reduce barriers that prevent full, equal, and fair participation in the nation's economy. The aim is to promote full and fair economic participation by reducing the number of "credit invisibles" in the U.S. (*i.e.*: consumers without a credit score); and increase the inventory of affordable and sustainable housing, as well as enhance the future of minority-owned depository institutions.

For our part, the National Urban League is continuing to advance "greenlining" initiatives by investing directly in the communities we serve. In March of this year, the Treasury Department also certified the National Urban League's small business lending subsidiary, The Urban Empowerment Fund, as a Community Development Financial Institution (CDFI), bolstering its ability to deliver vital capital to urban communities. The Fund provides direct loans to Black and other minority-owned businesses in tandem with select Urban League Entrepreneurship Centers, which are currently operating in thirteen Urban League affiliate cities.

Perhaps one of our greatest achievements to date, however, will be the opening of the National Urban League's new headquarters, the Urban League Empowerment Center. Our new home is not

¹⁶ House, T. W. (2021, January 21). *Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. The White House. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁷ House, T. W. (2022, June 19). *FACT SHEET: The Biden-Harris Administration Advances Equity and Opportunity for Black Americans and Communities Across the Country*. The White House. <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/19/fact-sheet-the-biden-harris-administration-advances-equity-and-opportunity-for-black-americans-and-communities-across-the-country/>

¹⁸ *OCC Announces Project REACH to Promote Greater Access to Capital and Credit for Underserved Populations* | OCC. (n.d.). <https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-89.html>

just a home for us, it is a \$242 million, 414,000-square-foot investment in the community – including both businesses and families – of Harlem, New York. Located on Harlem’s “Main Street,” 125th Street, near legendary cultural institutions like the Apollo Theater and the Studio Museum in Harlem, the Empowerment Center will include the National Urban League’s headquarters; the Urban Civil Rights Museum; the National Urban League Institute for Race, Equity and Justice; 170 units of affordable housing; and below-market office space for non-profits and community groups including One Hundred Black Men of New York and the Harlem-based Jazzmobile. It will also include retail space featuring Target and Trader Joe’s, which will bring much needed jobs to the area.

Our Empowerment Center is one of the most significant economic development projects in Harlem’s recent history. And in constructing it, we are leading with our values. In addition to affordable housing, we are using minority and women-owned contractors and businesses throughout the building’s conceptualization to construction – from our owners’ representative to our construction firms to our professional services firms. We are also ensured that our retail partners share our commitment to diversity and hiring from the community when they hire from contractors to management to front-line workers. With this project, the National Urban League is leading by example and showing what can happen when you put equity first. Our project – built in one of the toughest real estate markets in the world – is on time, on budget, embraced by the community, and slated to open fully by early 2025.

This Committee, Congress, and the Administration can take additional steps to protect traditionally marginalized communities by advancing and passing the *Fair Access to Financial Services Act*. As noted by the Committee, the *Civil Rights Act of 1964* addressed discrimination in places of public accommodation. This milestone, which resulted in overturning centuries of legalized discrimination, was the culmination of bipartisan Congressional leadership, brave men, women, and children whose peaceful protests often received brutal responses, and determined activism from grassroots and national leaders like Dr. Martin Luther King, Jr., Roy Wilkins, Dorothy Height, and the National Urban League’s own Whitney M. Young. By declaring racial discrimination illegal, the Civil Rights Act opened the doors of opportunity for Americans, who were provided access to better schools, jobs, and housing.

In 2010, Congress passed, and the President signed into law the *Dodd-Frank Wall Street Reform and Consumer Protection Act*. Not only did this bill prohibit some of the most outrageous practices witnessed by predatory banking lenders, but it also created the Consumer Financial Protection Bureau (CFPB). We have championed the primary focus of CFPB in developing and implementing fair rules for consumers, targeted for too long by unscrupulous financial services.

However, in the half century since the Civil Rights Act became the law of the land, and in the 12 years since the passage of the Dodd-Frank Act, it is clear that more is needed to ensure that banks and other financial institutions are held accountable for discriminatory banking practices. We are disappointed by recent actions and court rulings¹⁹ aimed at preventing the CFPB from using its existing authority to protect consumers from racial discrimination when seeking mortgages, auto loans, credit cards, bank accounts or other financial services. Just two years after banking

¹⁹ *Appeals court finds CFPB funding unconstitutional*. (2022, October 19). POLITICO. <https://www.politico.com/news/2022/10/19/appeals-court-cfpb-unconstitutional-00062626>.

executives named themselves allies in the fight against systemic racism, these lawsuits feel like a betrayal to communities who have been too long discriminated against by these institutions.²⁰ These threats against CFPB may result in a return to the system of inadequate financial supervision that failed taxpayers, depositors, investors, homeowners, and other consumers. Allowing continued predatory and discriminatory practices against consumers will inject greater risk into the financial system. That will raise the threat of a repeat of a Wall Street-caused financial crisis that costs Americans millions of lost jobs, billions of dollars in taxpayer-funded bailouts, and trillions of dollars in lost home values and retirement savings. It will also perpetuate the targeting of racial and ethnic minority communities by wealth-stripping lenders. Our nation's federal financial regulatory agencies such as CFPB must utilize their statutory mandate to supervise U.S. lending institutions for enforcement of the *Equal Credit Opportunity Act (ECOA)* compliance.

Congress and the Biden-Harris Administration must vigorously work to ensure that banks chartered to provide lending services in the U.S. are not discriminating against U.S. taxpayers. Banks with egregious track records must face the appropriate recourse for failing to hold their end of the bargain, including losing their privilege to have funds held at their banks insured by U.S. taxpayers, if necessary. The *Fair Access to Financial Services Act* has an opportunity to build upon the *Dodd-Frank Act of 2010* and regulatory protections by ensuring that all Americans have equal access to goods and services offered by financial institutions and that they are held liable if they do not comply with these standards. The legislation would prohibit banking and other financial institutions from conducting discriminatory practices and services on the basis race, color, religion, national origin, or sex – closing the gap and fulfilling the spirit of the Civil Rights Act to ensure that all people in this country have access to economic equity and empowerment. Congress must take action to advance and pass this critical piece of legislation.

Thank you for your focus on this issue and I look forward to answering your questions.

Attachment:

- 2022 State of Black America Report :
<https://soba.iamempowered.com/sites/soba.iamempowered.com/files/State-of-Black-America-2022-Black-White%20Index.pdf>.

²⁰ Son, H. (2020, June 1). 'Appalled'— Here's what Wall Street CEOs are saying about the killing of George Floyd and protests rocking US cities. CNBC. <https://www.cnbc.com/2020/06/01/wall-street-ceos-speak-out-about-george-floyd-and-protests-rocking-us-cities.html>.