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Committee on Banking, Housing, and Urban Affairs

“Home = Life: The State of Housing in America”

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I. Introduction

Good afternoon Chairman Brown, Ranking Member Toomey, and Members of the United States Senate Committee on Banking, Housing, and Urban Affairs. Thank you for the opportunity to testify in today's hearing on, "Home = Life: The State of Housing in America." I am an Executive Vice President of the Center for Responsible Lending (CRL), CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 160,000 mostly low-income families through 72 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington, and Wisconsin.

My testimony today draws extensively from remarks delivered on March 10, 2021 to the United States House Financial Services Committee on "Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services.[1]" It will:

- Explain how historic and ongoing discrimination stifles economic growth.
- Provide an overview of the current state of the single-family market highlighting areas of concern.
- Illustrate how COVID-19 is devastating already economically vulnerable Black and brown communities and other low-wealth families.
- Advocate for a broad new public investment in housing, with significant funding and resources for homeownership opportunity for the hardest-hit families long denied access.

A. Homeownership is the Bedrock of the American Middle Class

When we think of the American Dream, many people think of owning a home: a safe, affordable, and decent place to raise a family. Beyond the physical dwelling, homeownership represents being part of thriving communities of neighbors with access to clean air, healthcare, good public schools, jobs, parks, and recreation. A place to put down roots, invest in your community, and provide stability for children to flourish. As the foundation of the American Dream, homeownership is also the primary way that most middle-class families build wealth and economic stability. Home equity accounts for 69% of American family wealth.[2] However, it accounts for only 30% of the net worth for wealthier households but constitutes 67% for middle-to- low-income households.[3] Home equity accounts for 53% of African

[1] Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services, United States House Committee on Financial Services, 117th Cong. (March 10, 2021) (Testimony of Nikitra Bailey), available at https://financialservices.house.gov/uploadedfiles/testimony_of_nikitra_bailey_for_hfsc_hearing_3_10_21.pdf.

[2] James H. Carr, Michela Zonta, and Steven P. Hornburg, 2017 State of Housing in Black America, National Association of Real Estate Brokers, September 18, 2017, http://www.nareb.com/site-files/uploads/2017/09/SHIBA2017-final-for-web-0918.pdf.

[3] Brendan Greely, U.S. Homeowners Are Repeating Their Mistakes, Bloomberg, February 14, 2013, https://www.bloomberg.com/news/articles/2013-02-14/u-dot-s-dot-homeowners-are-repeating-their-mistakes.

American wealth as compared to 39% for whites.[4] For many low-to-moderate income (LMI) families and people of color in particular, a home represents the only asset that a family may ever own and the equity in their homes constitutes a larger share of personal wealth.

Widespread access to low-cost, fairly structured credit is critical for building family wealth, closing the racial wealth gap, and for sustaining the housing market overall. This in turn contributes significantly to our overall economy. Yet the opportunity to purchase, maintain and refinance a home still has not reached significant portions of low-to-moderate income families and people of color.

B. Homeownership Opportunity has not Equitably Included Black and Brown Families

As the cornerstone of opportunity in our nation, wide-spread homeownership was largely created by federal economic subsidies that primarily benefitted whites, while excluding Black, Hispanic, Asian American Pacific Islander, and Native communities. This has given many white Americans a crucial lever for amassing wealth that cushions families against economic setbacks and creates a nest egg for the next generation. This crucial lever has been unjustly and disproportionately denied to many Black and brown families, for whom a lack of intergenerational wealth forces each successive generation to start anew, without a firm foundation to build upon.

Although housing discrimination, including the ability to purchase a home, was made unlawful by the Civil Rights Act of 1866, these long-standing discriminatory policies produced segregated housing patterns across the nation and disinvestment from Black communities for over 102 years until the Fair Housing Act of 1968 provided meaningful enforcement and an affirmative obligation for the federal government to create inclusive communities. This legacy has limited access to traditional low-cost credit for Black families and other families of color, and unduly exposed them to exploitative predatory lending, such as land installment contracts or contracts for deeds that robbed families of the wealth building benefits of homeownership. For instance, in Chicago, Illinois, 85% of Black homebuyers purchased their homes "on contract" from white sellers in the mid-20th century.[5] Estimates show that these Black homebuyers had more than $500 million legally extorted from them from 1940-1970.[6] Hispanic families also have a history of being victimized by these practices.[7]

As a result of this troubled history of inequity and continuing discrimination, Black homeownership levels, the primary asset of Black families, is at levels similar to when the Fair Housing Act was passed in 1968.[8] In fact, the gap between white and Black homeownership rates today is the largest it has been

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[4] Thomas Shapiro, Tatjana Meschede, and Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy, at 3 (February 2013), http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf.

[5] Megan Wright, *Installment Housing Contracts: Presumptively Unconscionable*, 18 Berkeley J. Afr.-Am. L. & Pol'y, at 5 (2016).

[6] Rebecca Burns, *The Infamous Practice of Contract Selling is Back in Chicago*, Reader News and Politics, March 2017, https://www.chicagoreader.com/chicago/contract-selling-redlining-housingdiscrimination/Content?oid=25705647.

[7] Ann Carpenter, Taz George, And Lisa Nelson, *The American Dream or Just an Illusion? Understanding Land Contract Trends in the Midwest Pre- and Post-Crisis*, Harvard Joint Center for Housing Studies, March 2019, https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_housing_tenure_symposium_carpenter_george_nelson_0.pdf.

[8] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Figure 3, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-

since 1890.[9] The homeownership rate for Black Americans is 42%, compared to white homeownership of 72.1%, and 48.1% for Latinos.[10] In large part because families of color were not afforded the opportunity to build wealth through federally supported investment in homeownership and were later devastated by the financial crisis, the median white family has 10 times the wealth of the median Black family and eight times the wealth of the median Latino family.[11] In fact, the racial wealth gap between Black and white families grew from about $100,000 in 1992 to $154,000 in 2016.[12] The median white family gained significantly more wealth, with the median increasing by $54,000, while median wealth for Black families did not grow in real terms over the same time period.[13] The racial wealth gap contributes to the fact that in the 46 largest housing markets in the country, a median income Black household could only afford 25% of homes on the market last year in comparison to the 57% that a median income white household could afford.[14] It will require focused and bold action to reverse these inequities. If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth white families own today.[15] For the average Latino family, matching the wealth of white families could take 84 years.[16]

Historic and ongoing systemic racism has left families of color more vulnerable going into the 2008 housing crisis, and that crisis, and the inadequate response to it, left them even worse off. Black and Hispanic communities lost over $1 trillion during the Great Recession that was never regained because the help came too late and well after foreclosures unnecessarily devastated neighborhoods—needlessly pushing families from their communities, pulling children from their schools, and wiping out the lifetime of savings they needed to move on. The COVID-19 pandemic is likewise hitting these families the hardest again, and the response so far is not equitable or sufficient. But beyond the pandemic response, we must address the long-term structural flaws that produce and perpetuate this inequity.

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gaps-building-black-wealth-through-homeownership_0.pdf; *see also* Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?*, Urban Institute (February 14, 2017), https://www.urban.org/urban-wire/are-gains-black-homeownership-history.

[9] Adam Levitin, *How to Start Closing the Racial Wealth Gap*, The American Prospect (June 17, 2020), https://prospect.org/economy/how-to-start-closing-the-racial-wealth-gap/.

[10] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Figure 3, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf.

[11] Asset Building Policy Network, *The Hispanic-White Wealth Gap Infographic* (September 2019), https://prosperitynow.org/sites/default/files/resources/ABPN_Hispanic_White_Racial%20Wealth%20Gap%20Infographic_Final.pdf; Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company (August 2019), at 5, Exhibit 1, https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-theracial-wealth-gap.

[12] Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company, August 2019, at 5, Exhibit 1, https://www.mckinsey.com/industries/publicand-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.

[13] *Id*.

[14] Paul Davidson, *Black Households Can Afford Just 25% of Homes For Sale*, USA Today, October 15, 2019, https://www.usatoday.com/story/money/2019/10/15/homes-sale-black-households-can-afford-just-25-percenthouses-market/3976383002.

[15] *See* Dedrick Asante-Muhammad, et al., The Road to Zero Wealth, at 15 (Sept. 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[16] *Id*.

COVID-19 has exacerbated economic inequality, leaving in its wake a "Tale of Two Americas": One where the haves, mostly wealthy and white, are equipped with the means to shelter in place throughout the global health pandemic, working from home, and actually growing their wealth due to roaring stock market surges, historically low mortgage rates, and increasing valuation of home properties. The have-nots, mostly low wage workers and people of color, could not shelter in place because of being relegated to jobs in the service sector as they became America's new essential workers. Nor could they afford to shelter in place because, while "essential," they have for too long been treated as expendable, paid wages inadequate to cover life's essentials, let alone allow sufficient savings. Facing heightened COVID-19 risk by going to work, many of these essential workers fell ill themselves or brought COVID-19 home to their loved ones. And still, these hardworking families faced massive reductions in working hours, wage cuts, unemployment, food pantry lines that cover entire city blocks and country roads, a growing bill for back rent with no idea how it will be repaid, and threats of eviction. In many of their formerly redlined neighborhoods, quality medical care is in too-short supply and toxins in the physical environment increase the risk of chronic disease, including COVID-19. Moreover, many of these families struggle more due to insufficient access to the cost-reducing mortgage refinances at historically low rates that would ease their financial burdens.

Over the course of one year, over 29 million people have been infected and more than 520,000 people have died in the United States, with Black and Hispanic communities being overwhelmingly devastated. Moreover, increasingly, as misperceptions about COVID continue to circulate and breed anti-Asian sentiments, too many Asian Americans live in constant terror as the result of an increase of hate crimes in their communities.

We can choose to stay the course and embark on a prolonged K-shaped recovery, or we can pivot toward a more inclusive America where all families have an opportunity to thrive. If we choose the latter, homeownership can be the fuel that ignites future economic growth and leads our nation to shared prosperity. This time though, we must ensure full access as discrimination, especially in housing, is a drag on the economy that hurts families and limits economic opportunity for all Americans. Recent reports show that addressing discrimination targeted at Black Americans alone can generate $1 trillion a year, billions for local jurisdictions, and thousands of jobs.[17]

II. Previous Federal Investments in Homeownership Significantly Contributed to Today's Wealth Disparities and Cemented Racial Wealth Gaps

A. Federal Policies Created Homeownership Inequity

1. Federally Sponsored Land Grants Excluded Families of Color

[17] Dana M. Peterson and Catherine L. Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi Global Perspectives & Solutions (Sept. 2020), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company, at 6, Exhibit 2 (Aug. 2019), https://www.mckinsey.com/industries/publicandsocial-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap; Jeff Cox, *Morgan Stanley says Housing Discrimination Has Taken a Huge Toll on the Economy*, CNBC, November 13, 2020, https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-on-theeconomy.html.

Homeownership is the primary way that most middle-class families build wealth and economic stability. Yet, the ability to build wealth through homeownership has not been provided equitably throughout most of our country's history and discrimination remains a pervasive problem.[18] Our nation's painful history of forceful dispossession of land, slavery, racism, and discrimination are well documented. As these ills were targeted racially, rather than spread equally, so too have their accumulated impacts occurred in unequal, racially targeted ways. These unequal impacts must be taken into account in designing an effective and equitable way forward. Discriminatory federal policies are significant contributors to today's racial wealth inequity. Federal laws such as the Homestead Act of 1862 enacted during the Civil War to encourage western expansion promised 160 acres of public land to settlers. Twenty percent of the families that received Homestead Act land grants can trace their families' wealth to this single piece of legislation.[19] Most of these families were white Americans.

2. New Deal Exclusionary Policies and Practices Lock Black and Brown Families Out of the Mortgage Market

New Deal housing policies established redlining and explicitly discriminated against Black and brown families. At the same time, they created economic subsidies for white families that allowed them to enter homeownership and build financial security. These policies helped to expand the American middle class. These policies bestowed upon white families a crucial measure of financial stability and a cushion against economic setbacks that were denied to families of color. Policies and practices underlying these federal programs included denial of credit for qualified borrowers buying in predominantly Black neighborhoods, thereby depressing the value of homes in those neighborhoods. At the same time, the federal government subsidized mortgages for homes in predominantly white suburbia—where builders included requirements that no homes be sold to Black Americans. These policies granted whites the ability to build wealth through homeownership while denying equal opportunities for Black families and other families of color to build similar home equity over the same period.[20]

This explicit discrimination was not a small matter; it determined the distribution of a massive federal subsidy to spur homeownership. Homeownership, in turn, became the primary way most American families accumulate wealth. These explicitly discriminatory policies did not occur centuries in the past;

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[18] For a more robust discussion of how federal housing policies benefitted whites while disadvantaging African Americans and other people of color, see Ta-Nehisi Coates, *The Case for Reparations*, The Atlantic, June 2014, http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/; Bob Herbert, *Against All Odds: The Fight for the Black Middle Class*, Bob Herbert and Public Square Media, Inc (2016), http://www.pbs.org/wnet/chasing-the-dream/films/against-all-odds/; James Carr and Nandinee Kutty, *Segregation: The Rise Costs for America*, Routledge (2008); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America*, W. W. Norton & Company (2005); Thomas M. Shapiro, *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality*, Oxford University Press (2004); Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, Routledge (1997); Richard Rothstein: *The Color of Law: A Forgotten History of How Our Government Segregated America*, Liveright Publishing Corporation (2017).

[19] Dedrick Asante-Muhammad, et al., *The Road to Zero Wealth: How the Racial Wealth Divide Is Hallowing Out America's Middle Class*, at 15 (September 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[20] Terry Gross, A '*Forgotten History' of How the U.S. Government Segregated America*, NPR Fresh Air, May 3, 2017, www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america.

they directly impacted the parents and grandparents of people in this room today. Perhaps some in this room experienced these impacts themselves.

These discriminatory policies were established in the housing finance system starting in 1933 with the underwriting guidelines of the Home Owners Loan Corporation (HOLC) that allowed redlining of African-American and other communities of color, denying them access to mainstream banking services.[21] In FHA's 1936 Underwriting Manual, a multitude of provisions indicated that "inharmonious" racial groups should not live in the same communities.[22] The manual also recommended that "natural and artificially-established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences."[23] In other words, barriers such as highways were deemed a beneficial way to separate Black and other families of color from white neighborhoods. Examples of the impact of this structural inequity include the reality that only 2% of FHA insured mortgage loans went to Black and other homebuyers of color during the first 35 years of the program due to redlining.[24] Further, the administration of the GI Bill loan programs enacted by Congress in 1944 continued this discrimination. In the state of Mississippi alone, just 2 out of 3,229 VA insured mortgages went to Black servicemembers seeking to finance a home, business, or farm in the first three years of the program.[25] Recent news reports show that racist language remains in the deeds of existing homeowners across the nation.[26]

Consequently, the suburbanization of America following the Great Depression financially benefited white Americans and excluded people of color. As a result of federal policies, whites amassed an economic advantage in the form of home equity over families of color that has been passed on to future generations through intergenerational wealth transfers. Today, disparities in homeownership are a key

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[21] For a more robust discussion of how federal housing policies benefitted whites while disadvantaging African Americans and other people of color, *see* Ta-Nehisi Coates, *The Case for Reparations*, The Atlantic, June 2014, http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/; Bob Herbert, *Against All Odds: The Fight for the Black Middle Class*, Bob Herbert and Public Square Media, Inc (2016), http://www.pbs.org/wnet/chasing-the-dream/films/against-all-odds/; James Carr and Nandinee Kutty, *Segregation: The Rise Costs for America*, Routledge (2008); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America*, W. W. Norton & Company (2005); Thomas M. Shapiro, *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality*, Oxford University Press (2004); Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*, Routledge (1997); Richard Rothstein: *The Color of Law: A Forgotten History of How Our Government Segregated America*, Liveright Publishing Corporation (2017).

[22] Federal Housing Administration, Underwriting Manual, Excerpts (1936).

[23] *Id*.

[24] Dedrick Asante-Muhammad, et. al, *The Road to Zero Wealth: How the Racial Wealth Divide is Hallowing Out America's Middle Class*, at 15 (September 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[25] *Id*.

[26] Nick Watt and Jack Hannah, *Racist language is still woven into home deeds across America. Erasing it isn't easy, and some don't want to*, CNN, February 15, 2020, https://www.cnn.com/2020/02/15/us/racist-deeds-covenants/index.html; Clara Howell, *Removing racist language from Oregon property deeds not easy*, Portland Tribune, August 25, 2020, https://pamplinmedia.com/pt/9-news/477920-386292-removing-racist-language-from-oregon-property-deeds-not-easy; Justin Wm. Moyer, *Racist housing covenants haunt property records across the country. New laws make them easier to remove*, Washington Post, October 22, 2020, https://www.washingtonpost.com/local/racist-housing-covenants/2020/10/21/9d262738-0261-11eb-8879-7663b816bfa5_story.html; Camille Erickson Casper, *Bill would allow removal of racist language in real estate deeds*, Rocket Miner, March 3, 2021, https://www.wyomingnews.com/rocketminer/news/state/bill-would-allow-removal-of-racist-language-in-real-estate-deeds/article_7d5714c8-3c6d-59fe-a9ac-69fc84894ed0.html.

driver of the persistent racial wealth gap and home equity still plays a central role in shaping family wealth for the middle class. Moreover, the neighborhoods we live in largely determine the schools our children attend, our proximity to healthy food and well-paying jobs, and, in some cases, the quality of the very air we breathe. It is difficult to overstate the vast and on-going inequities that these discriminatory policies have created.

3. Subprime Lending's Abuses Cost Black and Latino Families More Than $1 trillion in Lost Wealth

Compounding the effects of the discriminatory polices described above, families of color were then devastated by the subprime lending boom in the early 2000s, in which lenders sold millions of families abusive loans that were not sustainable.[27] Leading up to the 2008 financial crisis, these dangerous niche products that lenders mass-marketed included interest-only loans, adjustable rate mortgage (ARM) loans that combined "teaser" rates with subsequent large jumps in payments, negative amortization loans, and loans made with limited or no documentation of the borrower's income or assets.[28] Studies have shown that these products in and of themselves caused about half of the increased risk in mortgage lending that led to the Great Recession.[29]

Center for Responsible Lending research demonstrated that Black and Latino families disproportionately received subprime loans at a greater rate than whites and that borrower ***credit*** characteristics did not explain the differences in lending.[30] About half of all mortgages made to Black and Latino families during the run-up to the crisis were subprime loans with patently unsustainable terms.[31] Indeed, much

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[27] The GSEs' affordable housing goals and loans counting for Community Reinvestment Act credit did not cause the crisis, although it is a much-repeated myth. As the Financial Crisis Inquiry Commission concluded, the affordable housing goals "only contributed marginally to Fannie's and Freddie's participation in [risky mortgages]." Financial Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at xxvii (2010), https:// www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. Furthermore, "none of Fannie Mae's 2004 purchases of subprime or Alt-A securities were ever submitted to HUD to be counted toward the goals." *Id*. at 123. Additionally, the Federal Reserve Bank of St. Louis determined that there was "no evidence that the affordable housing goals of the CRA or of the GSEs affected" the volume, pricing, and performance of securitized subprime mortgages originated in the sample studied. Rubén Hernández-Murillo, Andra C. Ghent, and Michael T. Owyang, Federal Reserve Bank of St. Louis, *Did Affordable Housing Legislation Contribute to the Subprime Securities Boom?* (March 2012), https://research.stlouisfed.org/wp/more/2012-005.

[28] Financial Crisis Inquiry Commission, *The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at pp. 104-111 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[29] Morris A. Davis, William D. Larson, Stephen D. Oliner, and Benjamin R. Smith, A *Quarter Century of Mortgage Risk*, FHFA Staff Working Paper 19-02, at 35, October 2019 (revised) January 2019 (original) (finding that "risky product features accounted for more than half of the rise in risk during the boom years", defining "risky product features" as those ineligible for QM status). For characteristics of subprime loans, *see* Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, *Turmoil in the U.S. Credit Markets: The Genesis of the Current Economic Crisis*, Center for Responsible Lending (October 16, 2008) at pp. 11-14, 34-39, https://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/senate-testimony-10-16-08-hearing-stein-final.pdf.

[30] Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li Center, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending (May 31, 2006), https://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf.

[31] Federal Reserve researchers, using data from 2004 through 2008, have reported that higher-rate conventional mortgages were disproportionately distributed to borrowers of color, including African American, Latino, American

evidence indicates that borrowers of color, including higher-income borrowers, were disproportionately steered into toxic mortgages ***despite qualifying for safer and more responsible loans with lower costs***.[32] Because of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[33] Further, Black homeownership has been the slowest to recover from the Great Recession. In fact, there would be 770,000 more Black homeowners if the homeownership rate recovered to its pre-crisis level in 2000.[34]

4. Post Great Recession Mortgage Lending Is Overly Restrictive and Limits Access for Black and Brown Families Today

In recent years rather than remediating the damage done by this history of discrimination against families of color, lenders' overcorrections to lending standards and more restrictive GSE credit policies have instead closed off lending options for these families. Data from the Home Mortgage Disclosure Act and the GSEs themselves continues to demonstrate low levels of conventional mortgage loans to Black and Latino families. For example, in 2019, 4.8% of Fannie Mae and 3.6% of Freddie Mac home purchase loans were from Black borrowers, and 4.1% and 3.7% of refinance loans.[35] Since the financial crisis, many lenders and the GSEs have limited lending and increased prices for borrowers with lower credit scores and/or lower down payments. Borrowers of color, low and moderate-income families, and first-time homebuyers tend to have both lower FICO scores and fewer resources to put towards a down payment due to lower levels of family wealth, which in turn is due in large part to generations of systemic discrimination, including by the federal government as discussed previously.

Discrimination in the mortgage market is also by no means a relic of the past and can manifest in multiple ways. For example, a recent Center for Investigative Reporting Reveal report analyzed 31 million mortgage records and found that, controlling for income and other available characteristics, in 61 U.S. metro areas African Americans and Latinos are more likely to be turned down for a loan than

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Indians, Alaskan Natives, Native Hawaiians, Pacific Islanders, and Hispanic borrowers. *See* R.B. Avery, K.P. Brevoort, and G.B. Canner, *Higher-Priced Home Lending and the 2005 HMDA Data*, Federal Reserve Bulletin (September 2006), http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf. For example, in 2006, among consumers who received conventional mortgages for single-family homes, roughly half of African American (53.7 percent) and Hispanic borrowers (46.5 percent) received a higher-rate mortgage compared to about one-fifth of non-Hispanic white borrowers (17.7 percent). According to the researchers, "[F]or higher priced conventional first-lien loans for an owner-occupied site-built home, the mean APR spreads were about 5 percentage points above the yields on comparable Treasury securities both for purchase loans and refinancings." R.B. Avery, K.P. Brevoort, and G.B. Canner, *The 2006 HMDA Data*, at A88, Federal Reserve Bulletin (December 2007), http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf.

[32] Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall Street Journal (December 2007), https://www.wsj.com/articles/SB119662974358911035.

[33] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at 2 (Oct. 24, 2012), https://www.responsiblelending.org/mortgagelending/research-analysis/collateral-damage.pdf.

[34] Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A Five Point Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at 1 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

[35] FHFA Annual Housing Report at 11, Table 6 (October 2020), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf.

whites in conventional mortgage applications.[36] Furthermore, testing has repeatedly demonstrated housing discrimination. In 2019, Newsday published the results of a three-year undercover investigation which exposed widespread discriminatory home-selling practices by Long Island real estate agents.[37] Two similarly situated testers of different racial backgrounds independently approached the same agent to test whether they were treated differently based on their race. Black testers experienced disparate treatment 49% of the time, compared with 39% for Latino and 19% for Asian testers.[38] And in 8% of the tests, the agents accommodated white testers while imposing more stringent conditions on other testers.[39]

Black Americans also pay more to be homeowners. The overall differences in mortgage interest payments ($743 per year), mortgage insurance premiums ($550 per year), and property taxes ($390 per year) total $13,464 over the life of the loan, which amounts to $67,320 in lost retirement savings for Black homeowners.[40] Nearly a quarter of the disparity in homeownership costs for Black homeowners is due to local property tax assessments. A research study relying on a national data set found that Black homeowners bear a 13% higher property tax burden than white homeowners in the same jurisdiction; the study identified large tax assessment areas and an appeal process that tends to benefit white homeowners as the key factors resulting in higher relative property tax burden on Black homeowners.[41] Despite paying more, Black families realize less growth in home equity as homes in Black neighborhoods of similar quality and amenities as other neighborhoods are worth 23% less, $48,000 per home on average, amounting to $156 billion in cumulative losses.[42]

The future health of the housing market depends on closing these disparities. Demographic projections for the United States point to future increases in the population shares of people of color, making the need to serve these groups increasingly important for the health and future growth of the housing market. For example, over the past decade, Latinos have accounted for over 40% of all household formation growth and 58% of all population growth. Despite representing 18% of the population,

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[36] Emmanuel Martinez and Aaron Glantz, *Kept Out: For People of Color, Banks Are Shutting the Door to Homeownership*, Center for Investigative Reporting (Feb. 15, 2018), https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/ (the study did not have available data on credit scores, but it controlled for nine economic and social factors, including an applicant's income, the amount of the loan, the ratio of the size of the loan to the applicant's income, type of lender, racial makeup and median income of the neighborhood where the applicant wanted to purchase the property).
[37] Ann Choi, Keith Herbert, Olivia Winslow, and Arthur Browne, *Long Island Divided*, Newsday (November 17, 2019), https://projects.newsday.com/long-island/real-estate-agents-investigation/.
[38] *Id*.
[39] *Id*.
[40] Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), http://gcfp.mit.edu/wpcontent/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.
[41] Carlos Avenancio-León and Howard Troup, *The Assessment Gap: Racial Inequalities in Property Taxation*, Washington Center for Equitable Growth (2020), https://equitablegrowth.org/working-papers/the-assessment-gap-racialinequalities-in-property-taxation/.
[42] Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, Brookings (November 27, 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/.

Latinos accounted for more than 60% of new homeowner gains over the past decade.[43] Further, a recent study shows that increasing homeownership to Black homeowners as well as addressing other structural discrimination has the potential to grow the economy by at least $1 trillion per year over the next five years.[44] Another study shows that addressing discrimination in mortgage lending targeted at Black Americans can create 4.9 million more households, 784,000 jobs, and $400 billion in tax revenue.[45]

According to a report by Demos, if homeownership rates were the same for whites and people of color, we would see a decrease in the racial wealth gap by 31% for Black Americans and 28% for Latinos.[46] More targeted aid is required to overcome discrimination in homeownership opportunity. As research from Freddie Mac and Urban Institute demonstrates, there are millions of mortgage-ready borrowers of color, based on borrowers' current credit scores and debt-to-income ratios, though not funds available for a down payment. In fact, there are 6.3 million mortgage ready Black and Latino millennials in the 31 largest metropolitan statistical areas.[47] Given that many of these borrowers do not have family wealth for a down payment because of the lack of intergenerational wealth, targeted down payment assistance will be critical to enable mortgage-ready borrowers of color to become homeowners.

III. The State of the Single-Family Mortgage Market

The value of the housing market is $33 trillion, which is comprised of $11.5 trillion of mortgage debt outstanding and roughly twice that amount, or $22 trillion, of home equity. These figures include mortgages from owner-occupants and investors. GSE and Ginnie Mae mortgage-backed securities (together called agency MBS) account for 64% of the total mortgage debt outstanding, portfolio first liens make up 30% and home equity loans 4%, and private-label securities (PLS) make up 4% of the total. Of agency MBS, 43% is Fannie Mae, 30% Freddie Mac, and 27% Ginnie Mae, composed largely of Federal Housing Administration (FHA) and Veterans Administration (VA) loans.

Among owner-occupied houses, from the depths of the Great Recession in 2009 until 2019, home equity has grown from 37% to 60% of the total housing value, which is currently $26 trillion. This equity is

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[43] Laura Kusisto and Ben Eisen, *Wave of Hispanic Buyers Shores Up U.S. Housing Market*, Wall Street Journal, July 15, 2019, https://www.wsj.com/articles/wave-of-hispanic-buyers-boosts-u-s-housing-market-11563183000.

[44] Citi, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S*. (Sept. 2020), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

[45] Jeff Cox, *Morgan Stanley says housing discrimination has taken a huge toll on the economy*, CNBC, November 13, 2020, https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-on-the-economy.html.

[46] Tanvi Misra, *Why America's Racial Wealth Gap is Really a Homeownership Gap*, Demos, March 12, 2015, http://www.demos.org/news/why-americas-racial-wealth-gap-really-homeownership-gap.

[47] Alanna McCargo, *America's Persistent Racial Homeownership Gaps*, Urban Institute, https://www.nar.realtor/sites/default/files/documents/policy-forum-2020-presentation-racial-homeownership-gaps-02-06-2020.pdf. *See also* National Association of Hispanic Real Estate Professionals, *2019 State of Hispanic Homeownership Report*, https://nahrep.org/downloads/2019-state-of-hispanic-homeownership-report.pdf; Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A Five Point Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at 8 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

divided between owners who do not have a mortgage – now up to 37% of the total – and greater equity held by owners with a mortgage.[48]

As a result of the COVID-19 crisis, as occurred following the previous financial crisis, private sources of capital have retreated and the government has stepped in to fill the gap in the countercyclical manner the country requires. 2020 was a record year for mortgages, with $4 trillion originated during the year, and the GSE share was up significantly at 59%, compared to 43% in 2019. Portfolio originations were down to 22%, from 36% in 2019. The FHA/VA share was 18%, down one percentage point compared to 2019. The PLS share was just 0.9% in 2020, down from 1.9% in 2019 and from an astonishing 40% of the market in 2006, which fueled the boom that led to the financial crisis.[49]

Nonbanks, which cannot generally hold onto loans, now originate 75% of loans sold on the secondary market to GSEs and Ginnie Mae. Given the low interest rate environment, 70% of all GSE mortgages are refinances, as are half of Ginnie Mae loans.

A total of 30% of FHA loans serve Black (13%) and Hispanic (17%) borrowers. For GSE loans, the percentage is just 13%: 4% Black and 9% Hispanic. Single women made up 16% of total home purchases nationwide in the fourth quarter of 2020, single men 18%, and couples—two (or more) people buying a home together—49%.[50] In 2020, an all-time high of 83% of FHA purchase loans went to first-time homebuyers, while 50% of GSE purchase mortgages did.

The mortgage market is challenged today along two dimensions. First, credit is relatively tight. The median FICO score for purchasing a home is now 45 points higher than it was before the housing crash, up to 742 for purchase loans. Loan-to-value (LTV) ratios for purchase loans have remained relatively constant since 2009, with the median LTV at 95%, and debt-to-income ratios have come down slightly, with a median of 38%.

The Urban Institute has developed a Housing Credit Availability Index, which measures the degree of risk that lenders are taking from the mortgages they originate. That index shows that credit is significantly tighter than it was in the years prior to the housing bubble. Agency underwriting tightened through the first three quarters of 2020 due to the COVID-19 crisis, with credit overlays by lenders reducing mortgage availability for borrowers with credit characteristics that would have been approved in the past, and portfolio and PLS lending declined significantly. According to the Urban Institute, "[s]ignificant space remains to safely expand the credit box. If the current default risk was doubled across all channels, risk would still be well within the pre-crisis standard of 12.5% from 2001 to 2003 for the whole mortgage market."[51]

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[48] Michael Neal, *Mortgage Debt Has Peaked: Why Has the Share of Homeowners with a Mortgage Fallen to a 13-Year Low?*, Urban Institute (Aug. 20, 2019), https://www.urban.org/urban-wire/mortgage-debt-has-peaked-why-has-share-homeowners-mortgage-fallen-13-year-low.

[49] Information gathered from Urban Institute's Housing Finance Policy Center *Housing Finance at a Glance* (February 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf.

[50] *See* Dana Anderson, *Single Women See Twice as Much Growth in Home Purchases as Single Men*, Redfin, March 3, 2021, https://www.redfin.com/news/single-women-home-purchases-increase-2020/. Purchases by institutions and NA made up the remainder.

[51] Urban Institute, Housing Finance Policy Center, *Housing Credit Availability Index, Q3 2020*, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-credit-availability-index.

Second, the supply of housing for purchase is also constrained. As a recent New York Times article asks, "Where Have all the Houses Gone?"[52] New construction of single-family homes has never recovered from the foreclosure crisis, and an estimated 1.5 million households have transitioned from owning their home to renting, increasingly to institutional single-family rental investors,[53] resulting in a serious housing shortage for owner-occupants.

At the same time, the supply of existing homes for purchase is far below historic norms, particularly in the lower-priced segment, as would-be-sellers have elected not to put their homes on the market during the pandemic.[54] According to Freddie Mac, coming into the COVID-19 crisis the country was 2.5 million houses short of what is needed,[55] and supply is now the lowest it has been in 20 years.[56] And demand for these existing homes is so high that the average residence is on the market for just three weeks.[57]

Constrained demand coupled with low supply has led to an acceleration of housing prices, which were up almost 11% in the fourth quarter of 2020 compared with a year earlier, an incredible 14% in January 2021 compared with January last year.[58] While the increased home equity is helpful for current homeowners who are able to hold onto their homes through current economic dislocations, it poses an increasingly prohibitive barrier for the two groups whose homeownership rates lag the national average, people of color and millennials, to buy their first home. Unable to climb the wealth-building ladder that homeownership provides,[59] Black, brown, and young Americans face a bleaker future than others do.

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[52] Emily Badger and Quoctrung Bui, *Where Have All the Houses Gone?*, New York Times, March 5, 2021, https://www.nytimes.com/2021/02/26/upshot/where-have-all-the-houses-gone.html.
[53] Andrea Eisfeldt and Andrew Demers, *Total Returns to Single Family Rentals*, National Bureau of Economic Research, Working Paper 21804 (Feb. 2021), https://www.nber.org/system/files/working_papers/w21804/w21804.pdf.
[54] Jung Hyun Choi, Josh Walsh, and Laurie Goodman, *Housing Supply Constraints From Before the Pandemic Will Worsen Inequality as We Start to Recover*, Urban Institute (May 27, 2020), https://www.urban.org/urban-wire/housing-supply-constraints-pandemic-will-worsen-inequality-we-start-recover.
[55] Freddie Mac, *The Housing Supply Shortage: State of the States* (Feb. 27, 2020), http://www.freddiemac.com/research/insight/20200227-the-housing-supply-shortage.page.
[56] MReport, *Housing Supply Falls to Lowest Level in Two Decades*, Jan. 29, 2020, https://themreport.com/daily-dose/01-29-2020/housing-supply-falls-to-lowest-level-in-two-decades.
[57] Katy O'Donnell, *Soaring Home Prices are Starting to Alarm Policymakers*, March 8, 2021, https://www.politico.com/states/california/story/2021/03/08/soaring-home-prices-are-starting-to-alarm-policymakers-1367423.
[58] FHFA, *U.S. House Price Index Report, 2020 Q4* (Feb. 23, 2021), https://www.fhfa.gov/AboutUs/Reports/Pages/US-House-Price-Index-Report-2020-Q4.aspx; Katy O'Donnell, *Soaring Home Prices are Starting to Alarm Policymakers*, March 8, 2021, https://www.politico.com/states/california/story/2021/03/08/soaring-home-prices-are-starting-to-alarm-policymakers-1367423.
[59] *See* Christopher Herbert, Daniel McCue, Rocio Sanchez-Moyano, *Update on Homeownership Wealth Trajectories Through the Housing Boom and Bust*, Working Paper: Joint Center for Housing Studies of Harvard University, at 6 (February 2016), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/2013_wealth_update_mccue_02-18-16.pdf (stating that "[e]ven after the precipitous decline in home prices and the wave of foreclosures that began in 2007, homeownership continues to be associated with significant gains in household wealth at the median for families of all races/ethnicities and income levels. Households who are able to sustain homeownership over prolonged stand to gain much. Meanwhile, renters experienced little wealth accumulation over this period. And though homeownership is certainly not without risk, the typical renter household who transitioned into and then exited homeownership by 2013 was no worse off financially than the typical household who remained a renter over the whole period.").

The problem of scarce supply, and the local zoning restrictions that exacerbate the problem, is therefore an urgent racial equity issue for the country to address.[60]

IV. Discrimination in Homeownership Costs Families and the Economy: The Need to Fully Enforce Fair Lending Laws

The COVID-19 pandemic and economic crisis has laid bare and amplified systemic inequity in our nation. As the National Fair Housing Alliance aptly states in its most recent Fair Housing Trends Report:

> This report was not supposed to be about the COVID-19 pandemic. It was supposed to be about fair housing trends in 2019. However, how could we not address the COVID-19 crisis when it illuminated the great disparities at the heart of every fair housing trends report ever released by NFHA? The adverse COVID health outcomes for people of color, and especially for Black Americans, are a manifestation of segregation and absence of opportunity in neighborhoods of color. People of color live in communities with more concrete, toxic facilities, and pollution, but fewer fresh foods or health care facilities. The disparities in economic outcomes reflect the disparities in education and job opportunities linked to differences in school quality, transportation, and employment networks. People of color, especially Latinos, are overrepresented in service industry jobs, those hardest hit by the pandemic. The differences in long-term housing stability relate directly to centuries of differences in housing opportunities–people of color are predominantly renters, while White people are predominantly homeowners.

Additionally, research from NCRC demonstrates that there are statistically significant correlations between redlining and susceptibility to COVID-19.[61] Against this stark backdrop, the Trump administration destroyed critical fair housing protections that are absolutely essential to ensuring that all communities have an opportunity to thrive.

A. HUD's Disparate Impact and Affirmatively Furthering Fair Housing Rules Must be Restored

Disparate impact theory helps create accountability for entities that unjustifiably engage in practices that have a disproportionately harmful effect based on protected class. Furthermore, by focusing on the consequences of unfair credit practices, the disparate impact standard is frequently able to uncover discrimination that is intentional, but subtle or hidden. Equally important, disparate impact helps to eliminate practices that are neutral on their face but have an unjustified discriminatory effect. These practices often maintain the effects of prior intentional discrimination and systemic inequality. The Trump administration's replacement of HUD's 2013 disparate impact rule would make it virtually impossible to bring fair housing cases based on this theory, allowing unjustified policies to flourish.[62]

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[60] Michael Stegman, *Eliminating Exclusionary Land Use Regulations Should be the Civil Rights Issue of Our Time*, Joint Center for Housing Studies of Harvard University (Aug. 19, 2010), https://www.jchs.harvard.edu/research-areas/working-papers/eliminating-exclusionary-land-use-regulations-should-be-civil-rights.

[61] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, and Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

[62] CRL Comment to HUD, Implementation of the Fair Housing Act's Disparate Impact Standard (Oct. 18, 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-sh-comment-disparateimpact-oct2019.pdf.

HUD's 2015 Affirmatively Furthering Fair Housing rule provided HUD program participants with a planning framework and data tools to enable them to take meaningful actions to overcome historic patterns of segregation and foster inclusive communities free from discrimination. The Trump administration's replacement rule removes all considerations of race and the impact of segregation on communities.

President Biden recently issued a Presidential Memorandum on "Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies."[63] The Memorandum directs HUD to reassess these rules. It is critical for the disparate impact and AFFH rules to be fully reinstated. Additionally, HUD, CFPB, and DOJ must revive their fair housing and fair lending enforcement efforts.

B. Mortgage Credit should be Helpful, not Harmful, to Borrowers

The Equal Credit Opportunity Act (ECOA) and Regulation B are essential for fair lending and aim to guarantee a financial marketplace that operates in an equitable and inclusive manner free of discrimination. Credit determinations impact every facet of American life from birth to death and must be conducted in a fair, non-discriminatory manner to ensure equal opportunity for all, especially those within protected classes long denied equal access.

Underserved borrowers and borrowers of color should be able to access sustainable and responsible loan options, not shunted into predatory products. Implicit in ECOA's purpose is an assumption that credit is helpful and not harmful, that it is productive for consumers rather than destructive, that it serves wealth building rather than deplete savings and extract wealth. When the law provides that lenders may affirmatively advertise to disadvantaged groups, or that lenders may not discriminate based on source of income, the law assumes that lenders are not targeting communities of color, or those reliant on minimal public benefits for their income, with toxic loans. Rather, ECOA assumes, as its legislative history reflects, "[c]redit should be granted on one basis alone—the ability of the borrower to repay."[64] As we saw during the subprime mortgage crisis, toxic products create immense harm to families and communities.

So ECOA, especially as it affirmatively seeks to ensure that those who are underserved access low-cost, beneficial credit, must be grounded in a responsible, safe lending market. Fulfilling the purpose of ECOA requires regulators to vigorously supervise and enforce not just ECOA itself, but all statutes aimed at a fair credit market, including CFPB's authority to address unfair, deceptive and abusive practices. All lending should be based on the borrower's ability to repay – a longstanding banking principle and reflected in ECOA's legislative history forty-five years ago. Importantly, lending designed to be affordable aligns lender and borrower incentives so that lenders succeed only when borrowers do, and lenders need not engage in aggressive debt collection practices to support their business model.

C. CFPB, HUD, and DOJ should encourage Special Purpose Credit Programs (SPCPs)

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[63] Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

[64] 121 Cong. Rec. H964 (daily ed. Feb. 20, 1975) (statement of Rep. Annunzio).

Discrimination in the mortgage market remains, as detailed in section II, making a more active approach necessary. ECOA permits creditors to create special purpose credit programs to facilitate lending to underserved consumers with the protection that those lenders would not be held in violation of the nation's fair lending laws. We urge the banking regulatory agencies, CFPB, HUD, and DOJ to more broadly inform lenders of the potential to use special purpose credit programs (SPCPs) in order to facilitate extension of responsible credit favorably designed for underserved communities.[65]

CFPB should coordinate with HUD and DOJ to ensure lenders have confidence that SPCPs do not conflict with other civil rights laws; rather, they promote the purposes of those laws. To address potential regulatory uncertainty, we point to the recently published work of the NFHA and Relman Colfax PLLC.[66] This work explains how ECOA coexists within the regulatory framework with the Fair Housing Act and sections 1981 and 1982 of the Civil Rights Act of 1866.

At the same time, the federal agencies must emphasize that SPCPs are for responsibly designed programs. They are not a license to offer borrowers a slightly less predatory version of a predatory product, which is more likely to extract wealth than to promote financial stability.

D. HMDA is Critical to Shedding Light on Discrimination in the Mortgage Market

When it was enacted in 1975, the Home Mortgage Disclosure Act (HMDA) marked an important change in the way race and ethnicity were treated within consumer financial data. Instead of prohibiting banks and lenders from maintaining records around customer demographics, HMDA required the collection of race data in connection with mortgage lending. Beginning in 1989, HMDA began to require mortgage lenders to report the borrower race for each loan they made.[67] This approach to fighting financial discrimination represented a change in tactics from race-blindness to transparency, and has been instrumental ever since, in allowing elected officials, regulators, advocates, and the public to detect patterns of unfair lending.

Throughout the subprime mortgage crisis and Great Recession, HMDA data was key for demonstrating disparities and reforming practices in the mortgage market. Moreover, the Dodd-Frank Act and subsequent CFPB rulemaking required further transparency by requiring financial institutions to report additional data points, including borrower credit scores.[68]

In recent years, however, CFPB has weakened HMDA. CFPB finalized a rule that would increase the HMDA reporting threshold for mortgages, which means that some smaller lenders may not have to report at all.[69] CFPB also announced an advance notice of proposed rulemaking that would solicit feedback on the costs and benefits of collecting and reporting the additional data points in the 2015 HMDA rule.[70] Additionally, in 2019, CFPB announced it would no longer host or maintain the HMDA

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[65] *See*, *e.g.*, Lisa Rice, President and CEO, *Using Special Purpose Credit Programs to Expand Equality*, Nov. 4, 2020, https://nationalfairhousing.org/using-spcps-blog/.
[66] Relman Colfax LLC and National Fair Housing Alliance, *Special Purpose Credit Programs: How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem* (Nov. 2020), https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.
[67] History of HMDA (March 8, 2021), https://www.ffiec.gov/hmda/history2.htm.
[68] 80 Fed. Reg. 66127 (Oct. 28, 2015).
[69] 85 Fed. Reg. 28364 (May 12, 2020).
[70] *Id*.

Explorer, a vital and user-friendly tool to provide a clear view of the mortgage market and who it serves. It is essential that CFPB replace the data access tool and address the gap in accessibility that will have occurred between the release of the 2018 HMDA data and the launch of a replacement to HMDA Explorer.

We further urge CFPB to conduct research into the racial disparities in mortgage approvals and mortgage pricing, including controlling for FICO, which the CFPB's initial 2019 HMDA report failed to do. Only the Bureau can do this as FICO is not publicly released. We also urge CFPB to immediately cease work on the HMDA rules listed in the Unified Agenda which would narrow data collected under HMDA and codify the privacy policy into Regulation B; create a "trusted researcher" program to allow others to access the full set of HMDA data; and reinstate the requirement for lenders to submit quarterly data so CFPB can observe and report on trends in closer to real time.

E. The Community Reinvestment Act Should Incorporate Consideration of Race and Ethnicity to Address Lending and Investment Gaps

Although the Fair Housing Act made housing discrimination – including redlining in lending – unlawful, discrimination targeted at Black and brown families in the nation's lending markets persisted. Nearly a decade after the Fair Housing Act passed, Congress passed CRA to address the urgent credit needs of low- and moderate-income (LMI) communities. This was intended to include the credits needs of people of color. CRA was designed to open up access to credit for those to whom it had previously been denied and address systemic inequities in financial services. Congress recognized that many banks were serving the convenience and needs of some parts of their communities, but not others.

Indeed, racial equity is inextricable from CRA's history and purpose. We appreciate the Federal Reserve Board's recent request for input in its ANPR on how to better address "ongoing systemic inequity in credit access for minority individuals and communities."[71] Among other recommendations detailed in our comment letter, we urged the Board to explore and consider proposals which embed increasing access to credit to communities of color into the CRA exam and subtests. In other words, to take a race forward approach to create racial justice and equity.

The CRA statutory framework permits consideration of race. The statute includes references to race, including allowing investments in Minority Depository Institutions (MDIs) or low-income credit unions in minority communities to count for CRA credit. The statute further requires reporting to Congress comparing residential, small business, and commercial lending by banks in low-income, minority, and distressed neighborhoods to such lending in other neighborhoods.[72]

The law emphasizes banks meeting credit needs in all communities, but particularly underserved ones. Extensive data indicates that banks are not meeting the credit needs of Black and brown families.[73] To

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[71] Federal Reserve Board Advance Notice of Proposed Rulemaking, Question 2.
[72] Pub. L. 102-550, Title IX, § 910 (Oct. 28, 1992).
[73] *See, e.g.*, Michelle Aronowitz, Edward L. Golding and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), http://gcfp.mit.edu/wpcontent/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf; Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman and Caitlin Young, *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets*, Urban Institute (November 2019), https://www.urban.org/sites/default/files/publication/101160/explaining_the_blackwhite_homeownership_gap_

ameliorate these gaps, CRA exams could include performance measures assessing responsible lending, investing, branching and services to people of color and communities of color. In addition, CRA exams could include racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas. The banking agencies could consider ways to incentivize lenders to participate in Special Purpose Credit Programs targeted at underserved borrowers.[74] The banking agencies could also provide CRA consideration for lending and investing in census tracts that are majority people of color outside of assessment areas, just as the Board is considering for Federal Native Areas (such as Federally Designated Indian reservations) and other underserved areas. NCRC released an analysis exploring where and whether regulators could insert race into the CRA framework from a statutory and constitutional perspective.[75] These proposals should be given robust consideration.

V. Stopping Algorithmic Bias Can Prevent Future Lending Discrimination

Federal agencies should be vigilant about artificial intelligence and machine learning models and consider the ways in which they can create unjustified outcomes in credit decisions, sometimes without detection. The agencies should be careful not to put forth guidance that suggests support for innovative models and technology without an accompanying fair lending inquiry.

As research demonstrates, algorithms are not objective or free of potential bias.[76] They are only as good as the data that biased humans program into them. And even when the data itself is not biased, the interactions between the data may produce biased outcomes. Bias in the context of algorithmic analysis can create "outcomes which are systematically less favorable to individuals within a particular group and where there is no relevant difference between groups that justifies such harms."[77] In 2018, the New York Times published a study finding artificial intelligence – in particular, facial recognition technology – was much less effective when the subject of the analysis was not a white male.[78] While the software was correct 99% of the time when the subject in the photo was a white man, when the subject was a darker skinned female, the software was wrong 35% of the time.[79] This is because the data set used in artificial intelligence is often reflective of those creating it, who are disproportionately white and male.[80] As Joy

2.pdf; Sarah Strochak, Caitlin Young and Alanna McCargo, *Mapping the Hispanic Homeownership Gap*, Urban Institute (August 2019), https://www.urban.org/urban-wire/mappinghispanic-homeownership-gap.

[74] 12 C.F.R. § 1002.8; National Fair Housing Alliance and Relman Colfax, PLLC, *Special Purpose Credit Programs: How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem* (Nov. 2020), https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.

[75] Gerron Levi, *CRA & Race: The Federal Reserve's Proposal on the Community Reinvestment Act*, NCRC (Dec. 9, 2020), https://ncrc.org/the-federal-reserves-proposal-on-the-community-reinvestment-act-cra/.

[76] Claire Cain Miller, *Algorithms and Bias: Q. and A. With Cynthia Dwork*, NY Times, Aug. 10, 2015, https://www.nytimes.com/2015/08/11/upshot/algorithms-and-bias-q-and-a-with-cynthia-dwork.html.

[77] Nicol Turner Lee, Paul Resnick, and Genie Barton, *Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms*, Brookings Institute, May 22, 2019, https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-toreduce-consumer-harms/.

[78] Steve Lohr, *Facial Recognition Is Accurate, if You're a White Guy*, NY Times, February 9, 2018, https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html.

[79] *Id.*

[80] *Id.*

Buolamwini, MIT professor, stated "[y]ou can't have ethical A.I. that's not inclusive" and "[w]hoever is creating the technology is setting the standards."[81] This is a fundamental issue with algorithms.

Furthermore, devising a model's intent is challenging and often impossible. The complex interactions that AI engages in to form a decision can be so opaque that they prevent any party from being able to devise the intent of the machine's creator.[82] When AI programs are black boxes, they are able to form predictions and decisions in the same way as humans, but they are not able to communicate their reasons for making these conclusions.[83] This situation has been analogized to a human attempting to communicate with another highly intelligent species, with both species able to reason and understand but not able to communicate with each other.[84] Scholars have stated that this difficulty in communication "means that little can be inferred about the intent or conduct of the humans that created or deployed the AI, since even they may not be able to foresee what solutions the AI will reach or what decisions it will make."[85] Indeed, a recent paper argues that artificial intelligence is inherently structured in a manner that makes "proxy discrimination" a likely possibility.[86] Consumers have no way of knowing what data is fed into the models, which factors the algorithm used in making the determination, whether there are proxies for protected classes, or whether the algorithm denied credit based on erroneous or biased data.

Artificial intelligence and algorithms have been exposed as problematic in various sectors, including employment and criminal justice.[87] Potential discrimination claims are shielded due to the black-box nature of algorithms plus the fact that companies claim the algorithm is a trade secret. This creates an insurmountable and unjust obstacle for disparate impact claimants. Federal Reserve Bank Governor Lael Brainard gives a disturbing example taken from a hiring firm's AI algorithm: "the AI developed a bias against female applicants, going so far as to exclude resumes of graduates from two women's colleges."[88] Brookings' Aaron Klein expanded on this example by stating "[o]ne can imagine a lender being aghast at finding out their AI was making credit decisions on a similar basis, simply rejecting everyone from a woman's college or a historically black college or university."[89]

Moreover, non-traditional variables increases the likelihood that conclusions will be biased as well as increase the likelihood that AI will draw a conclusion that there is causation where there is only

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[81] *Id.*
[82] Yavar Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, 31 Harv. J.L. & Tech. 890 (2018), at 892, 897, 907, https://jolt.law.harvard.edu/assets/articlePDFs/v31/The-ArtificialIntelligence-Black-Box-and-the-Failure-of-Intent-and-Causation-Yavar-Bathaee.pdf.
[83] *Id*. at 907.
[84] *Id.* at 893.
[85] *Id.*
[86] Anya Prince and Daniel B. Schwarcz, *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, Iowa Law Review (August 5, 2019), https://ssrn.com/abstract=3347959.
[87] *See, e.g*., Ifeoma Ajunwa, Automated Employment Discrimination (March 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437631; Andrew Guthrie Ferguson, *The Police Are Using Computer Algorithms to Tell If You're a Threat*, TIME Magazine, October 3, 2017, https://time.com/4966125/police-departments-algorithms-chicago/; Julia Angwin et. al., *Machine Bias*, Pro Publica, May 23, 2016, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.
[88] Aaron Klein, *Credit Denial in the Age of AI*, Brookings Institute, April 11, 2019, https://www.brookings.edu/research/credit-denial-in-the-age-of-ai/.
[89] *Id*.

correlation.[90] Nontraditional variables include data obtained from internet search histories, shopping patterns, social media activity, and various other consumer-related inputs.[91] This non-traditional information can be fed into machines, which can draw conclusions based on the patterns it observes in the dataset.[92] This is a major concern because financial technology companies are using nontraditional data more and more to make consumer credit decisions. As one article put it: "If there are data out there on you, there is probably a way to integrate it into a credit model. But just because there is a statistical relationship does not mean that it is predictive, or even that it is legally allowable to be incorporated into a credit decision."[93]

Rather than shield algorithms from examination, a recent research article urges us to create an "auditing imperative" for algorithmic systems.[94] It is critical that regulators do not permit algorithmic models to bypass fair lending scrutiny.

A. Credit Scoring is the original AI and Bakes in History of Discrimination

Today's credit score models "bake in" mortgage discrimination. Historic racial discrimination created pervasive and long-lasting consequences, including a dual credit market.[95] In the dual market, white and wealthier borrowers have access to mainstream credit while people of color and low-income families are limited to fringe financial services providers. Prior to the enactment of the nation's antidiscrimination laws, government and private industry explicitly penalized borrowers for their race and ethnicity by unfairly using those innate characteristics as a factor to assess risk. People of color and homes in neighborhoods that were predominantly communities of color were deemed as riskier simply because they were nonwhite. In fact, as the federal government subsidized the mass production of the suburbs, builders and restrictive covenants prohibited Black homebuyers and other people of color from purchases despite their ability to afford them.[96]

These policies created situations where many families and communities of color were excluded from mainstream affordable credit based on now-protected characteristics, including race and national origin. This exclusion had generational impacts that still contribute to a racial wealth gap today. Moreover, as credit scoring systems developed through the 1990s, they penalized borrowers who had anything other

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[90] White & Case, *Algorithms and Bias: What Lenders Need to Know*, January 20, 2017, https://www.whitecase.com/publications/insight/algorithms-and-bias-what-lenders-need-know. *See also* Ian Ayres, *Testing for Discrimination and the Problem of Included Variable Bias*, at 6 (2010), https://www.law.upenn.edu/live/files/1138-ayresincludedvariablebiaspdf.

[91] *Id.*

[92] *Id.*

[93] Aaron Klein, *Credit Denial*, Brookings Institute (April 11, 2019), https://www.brookings.edu/research/credit-denial-in-the-age-of-ai/.

[94] Ifeoma Ajunwa, *Automated Employment Discrimination* (March 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437631.

[95] National Consumer Law Center, Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf; Lisa Rice and Deidre Swesnick, *Discriminatory Effects of Credit Scoring on Communities of Color*, National Fair Housing Alliance (2012), https://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-creditscoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf.

[96] Tony Dokoupil, *White Americans Confront Legacy of Housing Discrimination*, CBS News, February 19, 2021 https://www.cbsnews.com/video/white-americans-confront-legacy-of-housing-discrimination/#x.

than mainstream credit. Because many of the factors that make up credit scoring systems rely on a dual credit market and its inherent racial discrimination, credit scoring contributes to the self-perpetuating cycle of restricted access to safe and affordable credit that has a dramatic disparate impact on communities of color.

Unfortunately, despite some improvements, current credit scoring models disadvantage borrowers of color and do not adequately serve today's credit market. These models disqualify many first-time homebuyers with thinner credit files – disproportionately people of color who are likely to constitute a significant share of future potential homeowners. The estimates vary, but the CFPB estimates that 26 million Americans are "credit invisible," meaning they have no file with the major credit bureaus, and 19 million are "non-scoreable" because their credit file is too thin or stale to generate a reliable score from the credit bureaus.[97] These consumers are disproportionately African American, Latino, low-income, or young adults. Expanding the use of alternative credit scoring models is a critical element to reverse declines in homeownership, particularly for low- and moderate-income communities and communities of color.

VI. Redlining Must be Factored into Climate Risk Assessments in Mortgage Lending and the Assessments Must Comply with Existing Fair Lending Standards

Climate change is already negatively impacting homeownership and estimates are that climate induced losses in the housing market can be as large as the subprime lending crisis. Recent major natural disasters caused by hurricanes and other violent weather since Katrina have devastated whole communities, including coastal regions. Reports show that 2019 saw $14 billion dollar in weather and climate disaster events, and that these disasters cost more than a record setting $525 billion dollars between 2015 and 2019.[98] According to an analysis of federal data, federal taxpayers hold greater than 60% of mortgages in homes in some areas outside of specially designated federal floodplain, which do not require flood insurance.[99] In these areas, redlining forced Black and brown families to live in the lowest lying areas that are more susceptible to climate induced impact. Moreover, inequitable distribution of natural disaster relief assistance has pushed families of color to abandon their properties in these areas.[100]

Lenders and insurance companies are already using predictive modeling to estimate the risk of climate on homes that they originate and insure, outpacing the GSEs in assessing for risk of climate in homebuying as their regulator, FHFA, just recently issued a request for public proposals to determine the impact of climate on homes outside of the floodplain.[101] The GSEs' broad public mission requires

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[97] CFPB, *Data Point: Credit Invisibles* (May 2015), https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (figures are from 2010 Census).
[98] Dr. Lindsay Owens, *A policy agenda to Prepare for a Climate-Triggered Housing Crash*, The Great Democracy Initiative, July 2020, https://greatdemocracyinitiative.org/wp-content/uploads/2020/07/Climate-and-Housing-Report-Final-Copy.pdf.
[99] Zack Colman, *How Climate Change Could Spark the Next Home Mortgage Disaster*, Politico, November 29, 2020, https://www.politico.com/news/2020/11/30/climate-change-mortgage-housing-environment-433721.
[100] Gary Rivlin, *Why New Orleans's Black Residents Are Still Underwater After Katrina*, The New York Times Magazine, August 18, 2015, https://www.nytimes.com/2015/08/23/magazine/why-new-orleans-black-residents-are-still-under-water-after-katrina.html.
[101] *See* Colman, https://www.politico.com/news/2020/11/30/climate-change-mortgage-housing-environment-433721.

them to exchange national mortgage liquidity for the public benefits that the enterprises receive with borrowers across the country already implicitly subsidizing homes in flood prone regions to help keep mortgage credit affordable in those communities.

However, redlining complicates what creating racial equity in climate assessments means for communities of color that are already credit starved. Additionally, technology already allows lenders to steer away from homes in areas that project extreme climate impact creating the need for regulators or Congress to quickly act to ensure that this risk continues to be pooled to ensure an appropriate balance of mortgage credit availability in existing underserved communities or that displaced underserved homebuyers have access in the communities that they must relocate to.[102] Moreover, in writing the rules, data collection and transparency are essential elements of this process and must comply with existing fair lending laws as it is clear that bias in produces bias out in technological assessments of homeownership and lending variables.

VII. FHFA Must Strengthen the GSEs Affordable Housing Goals Which is Critical to Ensuring Access for LMI Families and Families of Color

FHFA must prioritize strengthening the GSEs' affordable housing goals as outlined in our comment submitted on February 28, 2021.[103] The GSEs have woefully unfulfilled their statutory obligations to ensure adequate support for Black, Latino, and other communities of color since the Great Recession. Therefore, FHFA must take swift and bold action now in creating affordable housing goals that can help return the GSEs to former periods when their activity was much stronger. A key goal of the affordable housing goals must be to help to build toward more racial equity in homeownership. The GSEs should focus explicitly on addressing racial homeownership gaps; marginal improvements are insufficient given the GSEs' charters that cite the GSEs' responsibility to underserved communities and borrowers of color, including to "minority census tracts."

VIII. COVID-19 Exacerbates the Tale of "Two Americas"

The COVID-19 crisis is having a disproportionate impact on families of color, by nearly every metric. Data has shown that the virus is infecting and killing people of color at a much higher rate.[104] People of color are overrepresented among essential workers who are generally not able to work from home and are more likely to encounter the virus.[105] From February to April 2020, the number of Black business owners dropped by 440,000 or 41%, compared to a 17% decline in white small business owners.[106] Families of color who are hardest hit by COVID-19 are the same families long denied equity in homeownership

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[102] *Id*.

[103] Comment from CRL to FHFA on Enterprise Affordable Housing Goals Advance Notice of Proposed Rulemaking (Feb. 28, 2021), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-comment-fhfa-affordable-housing-goals-anpr-feb2021.pdf.

[104] Centers for Disease Control and Prevention, *COVID-19 Racial and Ethnic Health Disparities*, https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html.

[105] Tiana N. Rogers, Charles R. Rogers, Elizabeth VanSant-Webb, Lily Y. Gu, Bin Yan, Fares Qeadan, *Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States*, *World Medical & Health Policy*, 2020; DOI, 10.1002/wmh3.358.

[106] Robert W. Fairle, *The Impact of COVID-19 on Small Business Owners: Evidence of Early-Stage Losses From the April 2020 Current Population Survey*, National Bureau of Economic Research, Working Paper 27309 (June 2020), https://www.nber.org/papers/w27309.

opportunities.[107] Indeed, there are statistically significant correlations between redlining and susceptibility to COVID-19.[108] The same low-income neighborhoods of color that were intentionally cut off from lending and investment today suffer from reduced wealth, greater poverty, lower life expectancy, and higher incidence of chronic disease that are risk factors for poor outcomes from the coronavirus.[109]

According to the Bureau of Labor Statistics, while the unemployment rate of whites, which peaked at 14% in April, has dropped to 5.6%, the reported unemployment rate of Blacks stands at 9.9% and actually increased in February, even while the economy added over 350,000 new jobs. And a recent report from the Center for Economic and Policy Research demonstrates that BLS' surveys systematically understate the unemployment rate for Blacks relative to whites.[110]

Further, the unemployment rate captures only those who are still deemed to be within the labor force and thus misses the decline in workforce participation. That has been especially pronounced for Blacks women and Latinas: there are 9.9% fewer Black women and 8.6% fewer Latinas in the workforce today than at the start of the pandemic.

Not surprisingly given their employment situation, Black and brown families are struggling to make ends meet. The most recent Household Pulse Survey from the Bureau of the Census found that 44% of Blacks and 43% of Hispanics reported that they were finding it difficult to pay their usual household expenses, a rate more than 60% higher than for whites. Moreover, according to a CFPB report, as of December, almost one in five Black homeowners and one in seven Hispanic homeowners reported being behind on their mortgage compared to only one in twenty white homeowners.[111]

A. Forbearance and Mortgage Servicing Reforms are Critical to Preventing a Foreclosure Crisis

The CARES Act – coupled with actions taken by FHA, FHFA and the GSEs, as well as many private lenders – have provided a lifeline to many struggling homeowners. Under the CARES Act, those with a federally-backed mortgage suffering a COVID-19 related hardship were granted the right to obtain up to twelve months of forbearance on their mortgage payments. Many private lenders appear to have extended similar rights to borrowers whose mortgages are not federally backed. And in February both FHA and FHFA announced that they would allow those who have obtained forbearance to extend forbearance by

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[107] *See* Alan Gomez, et al, '*An Unbelievable Chain of Oppression': America's History of Racism Was a Preexisting Condition for COVID-19*, USA Today, Oct. 12, 2020, https://www.usatoday.com/in-depth/news/nation/2020/10/12/coronavirus-deaths-reveal-systemic-racism-united-states/5770952002/; Andre M. Perry, *Black Americans Were Forced Into 'Social Distancing' Long Before the Coronavirus*, The Brookings Institution (March 20, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/20/black-americans-were-forced-into-social-distancing-long-before-the-coronavirus/.

[108] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

[109] *Id.*

[110] Yixia Cai and Dean Baker, *Masking Real Unemployment: The Overall and Racial Impact of Survey Non-Response on Measured Labor Market Outcomes*, Center for Economic and Policy Research (March 2021), https://www.ineteconomics.org/research/research-papers/masking-real-unemployment-the-overall-and-racial-impact-of-survey-non-response-on-measured-labor-market-outcomes.

[111] CFPB, *Housing Insecurity and the COVID-19 Pandemic* (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

up to six additional months and also announced that they would extend the CARES Act moratorium on foreclosures, which lasted only six months, through the end of June.

To date, 6.9 million borrowers – 13% of all borrowers – have obtained forbearance. Those in forbearance experienced significant drops in income; indeed, fully 85% received unemployment benefits. Over 60% of those who obtained forbearance have since exited forbearance, leaving 2.7 million borrowers in forbearance as of the end of January. Importantly, a much smaller share of FHA borrowers have been able to exit forbearance.

However, a significant number of borrowers are struggling with their mortgage obligations. There are approximately 500,000 borrowers who are now at least three months past due who are not in forbearance. Many of these borrowers never obtained forbearance in the first place; others exited forbearance but have been unable to resume making their regular payments. Indeed, of those who have exited forbearance, more than one in ten have fallen behind on their mortgages and for FHA borrowers the number is closer to one in five. Moreover, whereas those who were able to exit forbearance last summer have low levels of delinquencies, among those exiting more recently the subsequent delinquency rates have been two to three times higher.

For those still in forbearance, the most significant question is what happens to them once their forbearance period ends. Fortunately, the mortgage market is in a much better position than it was entering the last crisis. The government agencies, led by FHA, as well as FHFA and the GSEs, acted quickly to develop post-forbearance policies to help affected borrowers. As a result, mortgage servicers have much better tools than during the Great Recession to help borrowers struggling to repay.

For federally-backed mortgages, borrowers can exit forbearance and simply resume their regular monthly payments and then repay the arrearages -- that is, the amounts that they would have paid but for the forbearance – without interest, when they pay off the loan. And borrowers who are not able to resume their regular payments can receive a streamlined loan modification that reduces the monthly payments required. If the borrower needs more payment relief than the streamlined offer provides, they may be eligible for greater payment reduction if they provide income documentation.

In addition, servicer capacity is much greater than during the housing crisis, when few were set up to work with borrowers to obtain a modification. However, servicers may be sorely tested when forbearance comes to an end as upwards of two million borrowers may need assistance in a limited time frame, and execution by large organizations is always a challenge, particularly with something as complicated, and important, as a mortgage. Housing counselors have reported instances of borrowers not receiving correct information from servicers, and counselors' support will be essential.

Moreover, when forbearance ends there will be many borrowers – especially Black and brown families – who will need further relief if they are not to lose their homes. Even though many borrowers have equity in their houses today, positive equity alone does not prevent homeowners from losing their home to foreclosure; depending on the time period and associated home price appreciation, between 30% and 80% of foreclosed-upon homeowners had positive equity at the time of default.[112]

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[112] David Low, *Mortgage Default with Positive Equity,* Working Paper (2018), Andrew F. Haughwout and Ebiere Okah, *Below the Line: Estimates of Negative Equity Among Nonprime Mortgage Borrowers,* Economic Policy Review, Vol. 15, No. 1, pp. 32-43 (2009), and Anthony Pennington-Cross, *Subprime and Prime Mortgages – Loss Distributions*, FHFA Staff Working Papers 03-01, Federal Housing Finance Agency (2003).

Foreclosure is costly to society and comes with significant negative after-effects for the household and their neighbors. The average foreclosure costs society between $51,000 (HUD) and $70,000 (U.S. Congress Joint Economic Committee) and is borne by the foreclosed-upon household, their neighbors, the lender, and local governments.[113] Foreclosed upon households are likely to move more frequently, less likely to own a home in the future, and some move to neighborhoods with lower incomes and school test scores and are more likely to get divorced.[114] Foreclosed-upon homeowners also suffer from negative physical health consequences resulting in increased incidences of unscheduled hospital visits[115] as well as a range of mental health issues, including depression, anxiety, alcohol use, and even suicide.[116] Unfortunately, foreclosure is also contagious. Studies show that foreclosure reduces the value of neighboring properties by nearly $15,000 and leads to an additional 0.5 foreclosures in the neighboring area.[117] Foreclosure alternatives (i.e. short sales and deed-in-lieu of foreclosure) and forced sales may be less costly to lenders, but the end result for the homeowner may be equally negative.

As a result, it is incumbent on policymakers at all levels to do everything in their power to reduce the number of needless foreclosures that occur. The following are our suggestions to accomplish this goal.

Congress

Congress should extend the protections that FHFA and FHA provide to private loans, which comprise about 30% of the mortgage market. While many servicers of private loans are voluntarily adopting GSE policies, and forbearance rates for private loans are higher than the market as a whole, some are not providing comparable assistance. In addition, the lack of standardization and specificity in forbearance and post-forbearance terms limits servicers in some cases from offering this relief.[118] Congress should not attempt to spell out these policies in detail in legislation since government policies change as policymakers adjust as circumstances do and in accord with lessons learned.

Therefore, Congress should simply require private loans to adopt the foreclosure moratorium and forbearance policies offered by one of the GSEs or FHA, as well to mirror the federally-backed loans in providing a post-forbearance solution that does not increase borrowers' monthly payments. In addition, Congress should provide servicers of private-label securities a safe harbor from investor lawsuits when they follow these provisions.

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[113] United States Department of Housing and Urban Development, *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010) and U.S. Congress Joint Economic Committee, *Report of the Joint Economic Committee Congress of the United States on the 2007 Economic Report of the President Together With Minority Views,* U.S. Government Printing Office (2007).

[114] Rebecca Diamond, Adam Guren, and Rose Tan, *The Effects of Foreclosures on Homeowners, Tenants, and Landlords*, Working Paper (2020).

[115] Janet Currie and Erdal Tekin, *Is There a Link between Foreclosure and Health?*, American Economic Journal: Economic Policy, 7 (1): 63-94 (2015).

[116] Alexander C. Tsai, *Home Foreclosure, Health, and Mental Health: A Systematic Review of Individual, Aggregate, and Contextual Associations*, *PLoS ONE* 10(4): e0123182 (2015).

[117] Arpit Gupta, *Foreclosure Contagion and the Neighborhood Spillover Effects of Mortgage Defaults*, Journal of Finance 74, 2249–2301 (2019).

[118] Urban Institute, *Why It's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans* (Aug. 13, 2020), https://www.urban.org/urban-wire/why-its-harder-offer-mortgage-assistance-3-million-borrowers-private-loans.

Additionally, the $10 billion dollar Homeowner Assistance Fund is a critical component of the American Rescue Plan bill. It will help protect struggling homeowners and communities by preventing avoidable foreclosures, evictions, and utility shut offs. The Fund would provide a flexible source of federal aid to housing finance agencies to help people who have experienced COVID-19 hardships maintain their housing payments so they can stay in their homes. A critical lesson of the Great Recession is that the communities most impacted need aggressive, targeted, early intervention. Once the Homeowner Assistance Fund is enacted, the Department of Treasury must ensure an equitable distribution of funding to ensure the families hardest hit by the COVID crisis – Black and brown families – are able to access relief.

Consumer Financial Protection Bureau

First, if Congress doesn't enact the 120-day foreclosure pause, CFPB should require it using its RESPA authority. Second, if Congress doesn't require private loans to follow federally-backed requirements after forbearance, CFPB should prohibit servicers from requiring borrowers to repay their arrearages from COVID-related forbearance without first evaluating the borrower for all loss mitigation options the borrower is eligible for. Third, CFPB should facilitate servicers offering streamlined payment reduction modifications to borrowers who indicate that they cannot afford their previous monthly payments, as it did with its interim final rule on deferrals and partial claims, with appropriate consumer protections. Fourth, CFPB should supervise servicer conduct when transitioning borrowers out of forbearance and take appropriate action against servicers who revert to previous bad practices. Fifth, CFPB should continue its good work providing information to borrowers to explain their options in dealing with COVID-19 hardships, and in particular it should provide outreach to borrowers who are delinquent but not in forbearance. Finally, CFPB should help servicers in conducting effective communications with their borrowers by establishing best practices for servicer communications, including websites and emails.

Federal Housing Finance Agency

The modification provided by the GSEs, called the Flex Mod, is commendable. It is streamlined for borrowers 90 days or more delinquent, which reduces frictions and increases take-up rates, and provides substantial payment relief for borrowers with loan-to-value (LTV) ratios above 80%. When the Flex Mod was developed, the expectation was that if there were another crisis, it would look like the last one and housing values would fall, which would push up borrowers' LTVs over 80% and most would get this payment relief. However, the current crisis is accompanied by continued rapid house price appreciation in many communities, and so roughly 75% of GSE borrowers exiting forbearance will have LTVs below 80%.[119] As a result, the only modification step these borrowers are eligible for under the Flex Mod is extension of the mortgage term to 40 years. The GSEs target 20% reduction in principal and interest (P&I) payments, which equates to about a 14% reduction in the overall monthly payment. After receiving the term extension, some borrowers below 80% LTV will receive this level of payment relief but some others will not, depending largely on how old the loan was. However, even if they receive this

[119] Black Knight (https://cdn.blackknightinc.com/wp-content/uploads/2020/10/BKI_MM_Aug2020_Report.pdf) indicates that 84% of homeowners with a GSE-backed mortgage have a current CLTV below 80%. After capitalizing arrearages, roughly 75% of homeowners with a GSE-backed mortgage have a current CLTV below 80%.

amount of payment relief, it will not be enough for many borrowers given the economic dislocations they face and they will lose their house to foreclosure, or in the best case, through a forced sale.

The GSEs should target a higher level of payment reduction with their Flex Mod, providing a 25% or 30% reduction in the P&I payments. For their below 80% LTV borrowers, the GSEs should reduce the interest rate as much as necessary to reach the target, although no lower than the market interest rate, or simply provide the market interest rate as they do with their above 80% LTV borrowers. The GSEs and wealthier borrowers benefit from current low mortgage rates, which is in significant part due to Federal Reserve purchases of their MBS, and these benefits should be shared with the GSEs' most distressed borrowers. The 20% P&I target for reductions should be compared with the FHA-HAMP target of a 20% reduction in the full monthly payment, which equates to a 31% reduction in P&I for the average borrower in forbearance with a Government-backed mortgage. Greater payment relief would also bring the Flex Mod payment reduction target closer to that offered by private modifications; those offered by Chase in the 2011-2014 period targeted a 30% P&I reduction.[120]

Second, the GSEs should provide streamlined refinances for low-wealth borrowers. A key aspect of the current market is that refinances are dominating. Total refinance lending came to a record-setting estimated $2.609 trillion last year and a whopping 144.1% increase from 2019.[121] Especially now, during the COVID-19 crisis and at a time of historic low interest rates, more borrowers should be able to benefit from the current refinance boom to save money on their mortgage payment. Unfortunately, these historically impactful refinances are not reaching lower-income, lower-wealth, or Black and Hispanic families adequately, particularly borrowers with smaller loan balances.[122] Refinance activity for higher FICO borrowers accelerated significantly in 2020, boosting the average FICO score for GSE refinances to 775, well above credit scores for communities of color due to less family wealth.[123]

At a time that the Federal Reserve is purchasing $40 billion in agency mortgage-backed securities per month to help reduce the cost of buying or refinancing a home and to stimulate the economy, FHFA and the GSEs should ensure rate term refinances are more available, not more costly, for lower-income, Black, or Hispanic families who would benefit greatly from the savings on their mortgage payment. We urge the GSEs to create a streamline refinance program to ensure that affordable refinances are more accessible to borrowers, particularly borrowers of color. By doing so, the GSEs would be taking a positive step toward helping the Federal Reserve undo the disproportionate benefits of monetary policy that accrue to the wealthy. Moreover, the GSEs should not charge any LLPAs on a streamline refinance, as LLPAs were already paid at purchase.

Federal Housing Administration

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[120] Peter Ganong and Pascal Noel, *Liquidity Versus Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession*, American Economic Review, 110(10): 3100-3138 (2020).

[121] *See* Inside Mortgage Finance, *Refi Sector Closes Strong in 2020, Dwarfs Homebuying*, March 5, 2021.

[122] Sumit Agarwal, Souphala Chomsisengphet, Hua Kiefer, Leonard C. Kiefer, and Paolina C. Medina, *Inequality During the COVID-19 Pandemic: The Case of Savings from Mortgage Refinancing*, Working Paper (2020); Kristopher Gerardi, Paul Willen, and David Hao Zhang, *Mortgage Prepayment, Race, and Monetary Policy*, Working Paper 20-7. Boston: Federal Reserve Bank of Boston (2020).

[123] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2021), at 17, 23, https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf.

FHA acted quickly as the economic effects of the pandemic began to be felt to create its COVID-19 home retention options. Its waterfall of post-forbearance options is significantly more streamlined than FHA's standard waterfall, and therefore can accommodate the hundreds of thousands of FHA borrowers all needing assistance in a compressed time frame to help them remain in their homes. HUD should be commended for its swift and effective action. However, given the stakes involved for FHA borrowers, their families' futures, and the neighborhoods in which they live, it is worth continuing to evaluate the FHA COVID waterfall to determine whether further improvements could provide greater payment relief to borrowers and permit more to qualify for modifications, while taking into account any effects on the MMIF.

IX. Lenders Must Make Small Balance Mortgage Loans to Assist with Creating Affordable Homeownership Opportunities

Following the Great Recession, credit tightened making it nearly impossible for buyers who need small balance mortgage loans to be able to receive them. Rising home prices and lack of availability of small dollar mortgage loans have impacted entire cities that have not fully recovered from the housing crisis. Cities like Detroit are credit starved leaving families with only exploitative credit availability.[124] Federally-insured banks often cite a lack of profitability in their decision not to issue small balance mortgages while their investment arms benefit substantially from their vanishing presence in the single-family market.[125] In 2019, nearly 475,000 homes priced below $80,000 were sold, according to U.S. Census Bureau data with only 43% of those financed with a mortgage loan.[126] COVID-19 has worsened this reality as the focus of mortgage originations have shifted to the wealthiest borrowers leaving many credit worthy families with limited mortgage access, which has fallen disproportionately on families of color who typically rely on small balance mortgage loans to purchase a home.

Furthermore, FHA and the GSEs' bulk sales of distressed loan sales coupled with the lack of small balance mortgage lending is pulling modest and affordable homes off the market. These public interest entities accrued large numbers of loans facing foreclosure. Rather than selling them individually as a local bank would do, they auctioned them off in large pools. While this helped FHA and the GSEs increase their reserves and capital more quickly, hedge funds – the largest buyers of these pools – converted many of the ultimately foreclosed loans into rental properties. This reduced the supply of modest homes for purchase by individuals and altered the character of neighborhoods where the percentage of homeowners declined. The sale of these distressed pools has continued, and hedge funds have announced plans to expand their conversion programs.[127] This, along with other factors limiting

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[124] Ben Eisen, *Dearth of Credit Starves Detroit's Housing Market*, Wall Street Journal, October 29, 2020, https://www.wsj.com/articles/a-broken-mortgage-market-strands-detroits-black-residents-11603984218.
[125] Inside Mortgage Finance, *A Stunning Year for Wholesale Lenders*, March 5, 2021.
[126] Clare Trapasso, *Lots of Homes Under $100K Are for Sale, but Most Buyers Can't Get One for This Reason*, National Association of Realtors, December 30, 2020, https://www.realtor.com/news/trends/small-dollar-mortgages-help-communities-of-color/.
[127] Julia Gordon, *The Dark Side of Single-Family Rental*, ShelterForce (July 30, 2018), https://shelterforce.org/2018/07/30/the-dark-side-of-single-family-rental/. Others have argued that these sales are beneficial in that the buyers have fewer restrictions on the loan modifications they can offer. Laurie Goodman and Dan Magder, *Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors and HUD*, Urban Institute (January 2016), https://www.urban.org/sites/default/files/publication/76626/2000568-Selling-HUD-s-Nonperforming-Loans-A-Win-Win-for-Borrowers-Investors-and-HUD.pdf. A better approach is reform of the HUD foreclosure process; substantial improvements have been implemented in the GSE process.

new starter home construction, including labor and materials shortages and increased costs of both, created a shortage of these starter homes and a substantial barrier to families trying to enter homeownership.[128] Instead of bulk sales to investors, more needs to be done with these properties to ensure that families can purchase them to help preserve access to homeownership in low-to-moderate income communities and communities of color as opposed to only providing rental as an option for hardworking families.

X. Manufactured Housing is a Critical Source of Affordable Housing, But Additional Consumer Protections are Needed

Manufactured homes are the largest source of unsubsidized, affordable housing in the United States, and have the potential to help address the nation's housing affordability crisis. For example, 49% of manufactured housing is affordable for households at or below 50% of AMI, compared to just 26% of all housing.[129] And there is evidence demonstrating that manufactured homes appreciate at levels similar to site-built homes.[130] Because they are less expensive to build, manufactured homes have the potential to greatly expand homeownership opportunities, especially for first-time homebuyers, lower-income households, and people of color.

However, manufactured housing presents distinct challenges. While a modern manufactured home is generally indistinguishable from a site-built home to many observers, a manufactured home is typically considered personal property – not real estate. The personal property designation affects potential and existing owners of manufactured homes in myriad ways. Homebuyers are relegated to high-cost "chattel" financing; there are limited options for financing personal property, resulting in higher-interest loans, shorter loan terms, and a smaller pool of lenders from which to choose.[131] Also, as documented in a series of articles published by the Seattle Times, the manufactured housing industry is dominated by affiliate and joint ownership arrangements between manufactured home dealers and financing shops.[132] Manufactured housing consumers who obtain loans from affiliated lenders pay much more than they would from banks and other lenders and often receive loans with unnecessary or deceptive add-ons. Homeowners do not possess the same consumer protections in the event of loan default or bankruptcy, and are sometimes prevented from working with real estate agents and appraisers due to state

[128] Michael Neal, *Residential Construction Down in June, Eye on Housing*, National Association of Homebuilders (July 18, 2018), http://eyeonhousing.org/2018/07/residential-construction-down-injune/?utm_campaign=EOE2018&_ga=2.126940237.1759872631.1535413976-631253769.1535413976.

[129] American Community Survey 2017.

[130] Laurie Goodman, Edward Golding, Bing Bai, and Sarah Strochak, *New Evidence Shows Manufactured Homes Appreciate as Well as Site-Built Homes*, Urban Institute (Sept. 13, 2018), https://www.urban.org/urban-wire/new-evidence-shows-manufactured-homes-appreciate-well-site-built-homes.

[131] *See* Consumer Financial Protection Bureau, *Manufactured-housing Consumer Finance in the United States* (Sept. 2014), https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf (noting that about 68% of all manufactured housing purchase loans reported under HMDA in 2012 met the definition of a "higher-priced mortgage loan"; by comparison, only 3% of loans for site-built homes were HPMLs).

[132] Mike Baker and Daniel Wagner, *Minorities Exploited by Warren Buffett's Mobile-home Empire*, The Seattle Times (updated Jan. 13, 2016), https://www.seattletimes.com/seattle-news/times-watchdog/minorities-exploited-by-warren-buffetts-mobile-home-empire-clayton-homes/.

restrictions regarding personal property.[133] Such factors make it challenging for potential and existing homeowners to obtain the maximum benefit from homeownership.

Although the classification of manufactured homes as real or personal property is a state decision, and should be addressed on the state-level, the federal government can also encourage states to provide equal rights and protections to owners of manufactured homes.[134] For example, regulatory requirements, such as FHFA's GSE Duty to Serve rule, could provide an incentive for states to improve conversion policy.[135]

Additionally, the majority of the nation's manufactured homes are in land-leased communities in which residents own or rent their homes and rent the land under their homes.[136] In these communities, residents pay lot fees or ground rent and additional fees for shared amenities, services, and utilities. Homes placed on leased land without strong protections against community closure and confiscatory rent increases do not benefit from the appreciation in the value of the land.[137] Homeowners may also be vulnerable to abuses by the community owner. For instance, homes may be uninhabitable if the community owner does not maintain the water, sewer, and electrical systems.[138] And confiscatory increases in the lot rent can make the home unaffordable.[139]

Another major issue is that private equity and other Wall Street investors are increasingly buying up manufactured home communities across the nation.[140] Investments in manufactured and mobile homes communities are among the most profitable in the real estate industry.[141] The new owners commonly increase lot rents dramatically to generate more revenue. And in almost every state, lot rents are unregulated, leaving homeowners subject to abuse.[142] Furthermore, while the rent increase is supposed to go toward improving the community, residents often report few significant changes.[143]

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[133] I'M HOME & National Consumer Law Center, *Titling Homes as Real Property* (Oct. 2015), https://prosperitynow.org/sites/default/files/resources/Updated_Titling_Brief_2015.pdf.
[134] *Id.*
[135] *Id. See also* 81 Fed. Reg. 96242 (Dec. 29, 2016) (Enterprise Duty to Serve Underserved Markets Final Rule).
[136] I'M HOME & National Consumer Law Center, *Manufactured Housing Resource Guide: First Steps Toward a Resident Purchase Opportunity* (Aug. 2011), https://prosperitynow.org/resources/first-steps-toward-resident-purchase-opportunity.
[137] I'M HOME & National Consumer Law Center, *Protecting Fundamental Freedoms in Manufactured Homes*, https://prosperitynow.org/sites/default/files/PDFs/Fundamental%20Freedoms%20Policy%20Brief.pdf.
[138] *Id.*
[139] *Id.*
[140] *See* Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, *Private Equity Giants Converge on Manufactured Homes* (Feb. 2019), https://ourfinancialsecurity.org/wp-content/uploads/2019/02/Private-Equity-GIants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf; Doug Ryan, *How to Temper the Influence of Private Equity in Manufactured Housing*, ShelterForce, https://shelterforce.org/2019/08/02/how-to-temper-the-influence-of-private-equity-in-manufactured-housing/.
[141] Seeking Alpha, *Manufactured Housing REITs: Beat, Raise, Repeat* (July 29, 2019), https://seekingalpha.com/article/4278769-manufactured-housing-reits-beat-raise-repeat.
[142] Doug Ryan, *How to Temper the Influence of Private Equity in Manufactured Housing*, ShelterForce, https://shelterforce.org/2019/08/02/how-to-temper-the-influence-of-private-equity-in-manufactured-housing/.
[143] Private Equity Stakeholder Project, MH Action, and Americans for Financial Reform Education Fund, *Private Equity Giants Converge on Manufactured Homes* (Feb. 2019), https://ourfinancialsecurity.org/wp-content/uploads/2019/02/Private-Equity-GIants-Converge-on-Manufactured-Homes-PESP-MHAction-AFR-021419.pdf

For most residents, it is not feasible to move their homes: The structures cannot withstand the move, the costs of moving are too high, and finding a new spot is difficult.[144] Rather, residents are trapped between paying skyrocketing lot rent and abandoning their home. This arrangement makes manufactured home communities a steady source of revenue for investors, including during economic downturns, and makes residents vulnerable to exploitation.[145]

It is critical that homeowners in manufactured home communities are able to assert their rights and advocate on their own behalf. There must be strong protections against threats of eviction, termination of services, or retaliatory rent increases. In addition to creating tenants' associations, a more structural solution is to promote resident-owned cooperatives.[146]

XI. LEP Consumers Need Better Access to In-Language Services to Promote Their Participation in the Mortgage Market

Limited English proficient borrowers face many challenges that inhibit their ability to obtain and preserve homeownership. According to the 2017 American Community Survey, approximately 25.6 million individuals in the United States were considered limited English proficient (LEP), comprising nearly 9% of the total U.S. population. About 64% of the LEP population speaks Spanish, and over 83% of all LEP individuals speak one of the top eight languages: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, and Haitian Creole. Despite this sizable need and opportunity, the language needs of many current and potential homeowners are left unmet in the mortgage marketplace. LEP individuals need access to information in their preferred language before, during, and after a financial transaction. While marketing may occur in the person's preferred language, frequently the financial transaction documents and later contact is English-only.[147]

Moreover, LEP borrowers face immense challenges in obtaining information about available mortgage relief. LEP borrowers are more likely to face long hold times if they are attempting to speak with their servicer by phone with oral interpretation.[148] Many bilingual representatives lack sufficient information or training.[149] Phone calls through language translation lines take, on average, three times as long as other calls.[150] The alarming numbers of borrowers, including borrowers of color and LEP borrowers, who are not taking advantage of the forbearance options available to them calls for more aggressive outreach by federal government housing agencies. There should be ads in the top LEP languages to get the word out about the options available for mortgage borrowers and how borrowers can obtain them.

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[144] *Id.*
[145] *Id.*
[146] Steve Dubb, *Mobile Home Affordability Threatened by Private Equity*, Nonprofit Quarterly, June 24, 2019, https://nonprofitquarterly.org/preserving-mobile-home-affordability-through-cooperative-ownership/.
[147] *See* Consumer Coalition Comment Letter to CFPB, Request for Information on the Equal Credit Opportunity Act (Dec. 1, 2020), https://www.nclc.org/images/pdf/foreclosure_mortgage/LEP_ECOA_Comments_CFPB.pdf; Kleimann Communication Group, *Language Access for Limited English Proficiency Borrowers: Final Report* (April 2017), https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf.
[148] *Survey of Housing Counselors and Legal Service Advocates*, National Consumer Law Center (Oct. 2020).
[149] *Id.*
[150] Kleimann Communication Group, *Language Access for Limited English Proficiency Borrowers: Final Report*, at 23-24 (April 2017), https://www.fhfa.gov/PolicyProgramsResearch/Policy/Documents/Borrower-Language-AccessFinalReport-June-2017.pdf.

This campaign, which should coordinate with housing counseling, legal services and other community-based organizations that are trusted resources in local communities, should be multilingual and utilize multiple media channels.

Additionally, in order to expand access to homeownership for consumers with limited English proficiency, there must be a standardized method to identify their preferred language and have this information travel with their loan file to subsequent servicers. In particular, FHFA should restore the previously vetted language preference question, as well as a question regarding housing counseling, on the Uniform Residential Loan Application (URLA).

Furthermore, lenders and servicers should be required to provide in-language documents that have been translated and approved by the CFPB, FHFA, or another governmental agency. The CFPB should prioritize the translation of essential documents under its authority, including the Loan Estimate, Closing Disclosure, and Notice of the Right to Rescind, as well as key RESPA loss mitigation notices, including the early intervention notice, five-day notice after a loss mitigation application is received, and the evaluation notice. Many documents within the CFPB's purview contain critical information that should be made available in the top eight languages as soon as possible. Servicers should be required to use translated documents as they become available in other languages from the Bureau, FHFA, HUD or other governmental agencies.

For additional detail on the challenges LEP consumers face in the mortgage market, as well as proposed solutions, please see the consumer coalition letter to CFPB on the Equal Credit Opportunity Act Request for Information.[151]

XII. Appraisal Discrimination is a Systemic Issue

While numerous news stories have highlighted examples of racial bias in the appraisal process,[152] there is a growing body of research that demonstrates appraisal discrimination is a systemic issue.[153] Recent

[151] Consumer Coalition Letter to CFPB, Request for Information on the Equal Credit Opportunity Act, https://www.nclc.org/images/pdf/rulemaking/CFPB-ECOA-RFI-Comment-Letter.pdf.

[152] Julian Glover, *Black California Couple Lowballed by $500K in Home Appraisal, Believe Race Was a Factor*, ABC 7 News, Feb. 12, 2021, https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/; Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, New York Times, Aug. 25, 2020, https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html; Troy McMullen, *For Black Homeowners, a Common Conundrum With Appraisals*, Washington Post, Jan. 21, 2021, https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html; Russell Haythorn, *An Unconscious Bias? Biracial Denver Couple Says They Faced Discrimination on Home Appraisal*, The Denver Channel, Nov. 18, 2020, https://www.thedenverchannel.com/news/local-news/an-unconscious-bias-biracial-denver-couple-says-they-faced-discrimination-on-home-appraisal.

[153] Brentin Mock, *What It Will Take to Close the Race Gap in Home Appraisals*, Bloomberg CityLab, March 3, 2021, https://www.bloomberg.com/news/articles/2021-03-03/appraisers-acknowledge-bias-in-home-valuations; Andre Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/; Junia Howell and Elizabeth Korver-Glen, *Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry*, 4 Sociology of Race and Ethnicity 473 (2018), https://journals.sagepub.com/doi/abs/10.1177/2332649218755178 (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).

research has found that even after accounting for structural and neighborhood characteristics of homes, homes in Black neighbors were valued on average 23% less than they would have been if the residents of the neighborhood were mostly white.[154] This translates to owner-occupied homes in Black neighborhoods being undervalued by $48,000 per home on average, amounting to $156 billion in cumulative losses.[155] Moreover, a 2020 study found that neighborhood racial composition was an even stronger determinant of a home's appraised values in 2015 than it was in 1980.[156] In fact, the race appraisal gap has doubled since 1980.[157] Another 2020 study found that Automated Valuation Models (AVMs) in majority Black neighborhoods produced a larger percentage magnitude of inaccuracies, relative to the underlying sales price, than AVMs in majority-white neighborhoods.[158]

We must address discrimination in the valuation of homes in communities of color and owned by people of color. It is critical to consider all changes in the appraisal business model, including increased use of AVMs, with an equity lens. All processes must be judiciously examined for fair lending risk and should test outcomes for their effect and impact on people and communities of color. Additionally, there should be robust review of federal appraisal standards, including ethics standards, increased training on unconscious bias for appraisers, and expanded initiatives to bring more appraisers of color into the field. Moreover, the use of sales comparisons in a neighborhood carries the legacy of redlining into the present. It allows historically undervalued appraisals to influence current values. As the 2020 study stated, "Since no steps were taken to rectify the historic inequities, this approach has enabled such inequalities to persist."[159] The appraisal industry should continue to explore more equitable alternative methods. We concur with the recommendations of the National Fair Housing Alliance as outlined in their response to FHFA's recent RFI on appraisals.[160]

XIII. Additional FHA Reforms

[154] Andre Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/.

[155] *Id.*

[156] Junia Howell and Elizabeth Korver-Glen, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980-2015*, Social Problems (2020), https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spaa033/5900507.

[157] Brentin Mock, *A Neighborhood's Race Affects Home Values More Now Than in 1980*, Bloomberg CityLab (Sept. 21, 2020), https://www.bloomberg.com/news/articles/2020-09-21/race-gap-in-home-appraisals-has-doubled-since-1980.

[158] Michael Neal, Sara Strochak, Linna Zhu, and Caitlin Young, *How Automated Valuation Models Can Disproportionately Affect Majority-Black Neighborhoods*, Urban Institute (Dec. 2020), https://www.urban.org/sites/default/files/publication/103429/how-automated-valuation-models-can-disproportionately-affect-majority-black-neighborhoods_1.pdf.

[159] Junia Howell and Elizabeth Korver-Glen, *The Increasing Effect of Neighborhood Racial Composition on Housing Values, 1980-2015*, Social Problems (2020), https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spaa033/5900507

[160] Comment letter from National Fair Housing Alliance to FHFA on Request for Information on Appraisal-Related Policies, Practices, and Processes (Feb. 26, 2021), https://www.fhfa.gov//AboutUs/Contact/Pages/input-submission-detail.aspx?RFIId=1320.

A. Technology Funding

CRL has consistently called for FHA to be adequately funded. FHA is the world's largest mortgage insurer, *providing over $1.3 trillion* in mortgage insurance for single family, multifamily, and healthcare loans, yet has historically operated on a shoestring budget with outdated technology. Under FHA's authorizing statute, all its revenue must go to the Mutual Mortgage Insurance Fund and is prohibited from being used for operations. As a result, FHA must compete with other HUD program offices to obtain IT funds. Paradoxically, FHA's business success has left it stretched to have enough resources to manage its loans and create robust quality control systems.

Fortunately, FHA is currently in year three of five of a massive overhaul of its technology systems. We urge continued effort to commit appropriations to this important endeavor.

B. False Claims Act Reform

FHA also recently reformed the way it exercises quality control and manages loan defects. There was a recognized need to clarify what types of errors can trigger liability under the False Claims Act. The statute imposes treble damages against anyone who submits a false claim to the government, including FHA insurance payments. Because these treble penalties can cost a far greater amount than the loan itself, this has the potential to decrease the appetite for making FHA insured loans that have only a modest risk of defaulting. Lender concern over False Claims Act liability drove lenders to impose credit overlays on FHA's standards, and contributed to many larger lenders withdrawing from FHA lending entirely. In 2019, FHA reformed its lender and loan-level certifications as well as created a Defect Taxonomy which categorizes loan defects of various severities with remedies.[161] These changes were intended to clarify lender liability for loan defects in the origination process and assuage lender concerns about False Claims Act liability for minor errors. In addition, on October 28, 2019, HUD and the Department of Justice entered into a memorandum of understanding regarding the use of the False Claims Act against participants in FHA single family mortgage insurance programs.[162] Given these changes, we expect that banks that previously exited the FHA program will consider offering FHA loans again.

C. Factoring Student Loan Debt into DTI

Student debt in this country has reached crisis levels and has negatively impacted the prospects of homeownership for an entire generation, particularly people of color.[163] To help address this, FHA should modify its policy on how it factors in student loan debt when calculating DTI. Currently, FHA presumes a monthly payment of 1% of the outstanding student loan balance if borrowers are actively participating in a repayment plan resulting in a monthly obligation that does not fully amortize the debt. Black and Latino borrowers are more likely to be enrolled in income-based repayment and more likely to have loans that are negatively amortizing. While Fannie Mae, Freddie Mac, the Department of Veterans

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[161] FHA, Single Family Housing Loan Quality Assessment Methodology, Defect Taxonomy, https://www.hud.gov/sites/dfiles/SFH/documents/sfh_defect_taxonomy_v2_01_01_20.pdf.

[162] DOJ-HUD Interagency Memorandum of Understanding on the Application of the False Claims Act (Oct. 28, 2019).

[163] *See* discussion on pp. 9-14 in Testimony of Nikitra Bailey, House Financial Services Committee, *Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services* (March 10, 2021), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-nikitra-bailey-hfsc-hearing-10mar2021.pdf.

Affairs (VA) and the Department of Agriculture (USDA) qualify borrowers using the actual monthly obligation or an alternative that is more closely aligned with a fully amortized payment calculation, FHA continues to assume a monthly payment of 1% of the outstanding balance – which is almost always larger than the actual payment being made by potential borrowers in both covered plans and fully amortized plans. This policy may be disqualifying creditworthy borrowers because of the inflated DTI ratios that it produces. As a result, many potential borrowers may have more limited financing options or may be unable to obtain mortgage credit entirely. While this fix is necessary, addressing the student debt crisis and increasing access to homeownership will require bold solutions, including broad-based debt cancellation.

D. Incentivize Housing Counseling

CRL supports the proposal that first-time homebuyers that complete a HUD-approved housing counseling program could receive a discount on the mortgage insurance premium. FHA has noted that first-time home buyers who partake in counseling experience a 30% reduction in default and serious delinquencies as compared to first-time buyers who do not partake in counseling.[164]

XIV. A Broad New Public Investment Can Cure Homeownership Inequity

According to the 2019 American Community Survey, homeownership among Black families is 30 percentage points below that of white families – a larger gap than existed in 1968 when the Fair Housing Act was passed. The disparity in homeownership rates is a large driver of the enormous racial wealth gap, with the median Black family having thirteen cents in net worth for every dollar of net worth held by the median white family.

A. Restorative Justice Housing Fund Through a Targeted Down Payment Assistance Program

For a Down Payment Assistance (DPA) program to reduce barriers to home ownership in a way that advances the Biden-Harris Administration's commitment to racial equity and puts the nation on a firm trajectory to closing the wealth and home ownership gaps between whites and people of color, we recommend the following:

1. Eligibility should be limited to first-generation homebuyers whose income is within 120% of the Area Median Income (AMI). This will create an eligible pool of 12.8 million families, 72% of whom will be families of color, including 42% Black families.
2. Half of the funds should be set aside for state Housing Finance Agencies that have adopted Affirmatively Furthering Fair Housing (AFFH) Plans, awarded based on the size of the renter population in each state. The other 50% should be awarded through a competitive bidding process run by the CDFI Fund to select Administrators committed to and capable of delivering funds to socially and economically disadvantaged individuals.
3. The DPA should be a minimum of $20,000 per applicant (could be increased for high-cost markets) to provide sufficient funds to make homeownership affordable.

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[164] FHA, *Homeowners Armed With Knowledge (HAWK) for New Homebuyers*, 79 Fed. Reg. 27896 (May 15, 2014), https://www.federalregister.gov/documents/2014/05/15/2014-11152/federal-housing-administration-fha-homeowners-armed-with-knowledge-hawk-for-new-homebuyers.

In addition, strong reporting and evaluation requirements should be included to ensure transparency and efficacy.

Finally, the Departments of Justice and Housing and Urban Development should be directed to conduct a study to determine whether this program, in conjunction with any other extant efforts, will succeed in remedying the effects of past and present discrimination and closing the racial homeownership gap. If the study finds that more is needed, the Administrators shall be authorized to use race-conscious remedies to overcome discriminatory barriers to serving socially and economically disadvantaged people, using a rebuttable presumption that people of color are socially and economically disadvantaged.

See Appendix 1 for more detailed information on the proposal.

B. Administratively Reforming the GSEs Can Advance Affordable Housing

Conservatorship has created an historic opportunity for addressing the nation's affordable housing crisis and advancing racial equity in housing. As part of the assistance plan for the GSEs, the government received stock interests in the GSEs, now valued at $48 to $98 billion by the Congressional Budget Office.[165] The value of these assets comes from fees collected from GSE loans and that value should remain in the housing market to further affordable housing. In particular, the government's stock interests in the GSEs should be exchanged for a comparable commitment by the GSEs of additional affordable housing measures and a restorative justice housing program that provides targeted down payment and other assistance aimed at closing the racial homeownership gap.

A primary statutory purpose of the GSEs is to advance affordable housing. While the GSEs have maintained their affordable housing programs in recent years, conservatorship has constrained these activities. The GSEs have operated with limited capital at a time when the country needed substantially increased focus on and support of affordable housing from the GSEs.

Now they must greatly increase their work to meet the country's pressing affordable housing needs. The past year has also seen a national reckoning on the history and continuation of racial discrimination, exclusion, and segregation in our country. Systemic racial barriers exist in all facets of American life, including policing, healthcare, education, environmental, and housing. The housing market profoundly manifests these barriers as discussed throughout this testimony. For the GSEs, only a small percentage of their home purchase loans have gone to Black and Latino homebuyers in recent years, with less than 5% of their loans made to Black families in 2019.[166] The GSEs' charters include a duty to advance fair lending and equity, and much more has to be done by them to advance that national responsibility. The success of the GSEs in conservatorship – in which they have operated as de facto utilities and stabilized the housing market following the 2008 housing crash – establishes that utility oversight is the best structure for the GSEs going forward.

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[165] Congressional Budget Office, *Effects of Recapitalizing Fannie Mae and Freddie Mac Through Administrative Actions* (August 2020), https://www.cbo.gov/system/files/2020-08/56496-GSE.pdf.

[166] *See* FHFA Annual Housing Report at 11, Table 6 (October 2020), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf (noting that in 2019, 4.8% of Fannie Mae and 3.6% of Freddie Mac loan purchases were from Black borrowers, and 12.1% and 9.4% were from Latino borrowers).

During the COVID public health and economic crisis, a utility structure has enabled the GSEs to provide critical relief to the housing market and the overall economy – assistance that was possible only due to the GSEs' special status, their substantial resources, and the enhanced oversight authority granted to FHFA under conservatorship. A utility structure should be implemented permanently in order to secure the GSEs as an emergency backstop during a crisis, enhance operation of the GSEs in regular times, and advance the GSEs' public mission.

Increased affordable housing support, racial equity programs and utility oversight should be solidified and formalized during conservatorship while the GSEs build up capital. It is critical for these reforms to be implemented before release of the GSEs occurs. While GSE reform can be implemented legislatively or by administrative action, enacting GSE legislation has proven difficult. Thus, continuing administrative reform is more likely. Central to the reform process is resolution of the GSEs' obligations for the aid it received following the 2008 crisis and the ongoing backup support the government will continue to provide in the future. Any amendments to the documents governing these issues will lock in the terms of the GSEs' operation and obligations going forward and will be difficult to change. Thus, bolstered affordable housing and racial equity measures and utility oversight must be baked into these steps.[167]

Conclusion

President Biden has called for acknowledgment and redress of the impacts of this long history of the nation's and the Federal Government's housing discrimination including the racial gap in homeownership. He stated in one of his early executive orders:

> Throughout much of the 20th century, the Federal Government systematically supported discrimination and exclusion in housing and mortgage lending. While many of the Federal Government's housing policies and programs expanded homeownership across the country, many knowingly excluded Black people and other persons of color and, promoted and reinforced housing segregation. Federal policies contributed to mortgage redlining and lending discrimination against persons of color.[168]

Now is the time for bold solutions that centers racial justice in homeownership opportunity. Doing so will allow all communities a chance to thrive.

Appendix 1

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[167] *See* Mike Calhoun, Lewis Ranieri, *The GSEs at the Crossroads*, Brookings Institution (February 2021), https://www.brookings.edu/wp-content/uploads/2021/02/20210219_CRM_CalhounRanieri_FINAL.pdf, for a fuller discussion on how to achieve the outlined goals.

[168] The White House, *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies* (January 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

First Generation Down Payment Assistance Program Proposal[169]

Homeownership is the primary way that most families build wealth and achieve economic stability. But buying a home is an expensive proposition, and the upfront costs stand as a significant impediment, especially for those who cannot fall back on their families for help with a down payment and closing costs. Accordingly, we welcome and applaud the efforts to develop a new DPA program to complement existing programs and put homeownership in reach of those currently excluded from the market.

For people of color, homeownership is especially elusive. For decades, federally-sanctioned discrimination in the housing finance system denied them access to homeownership opportunity on parity with whites as discussed in section I above. As a result of this and other forms of long-standing institutional discrimination, Black and Hispanic families have less wealth and lower homeownership rates, and thus less ability to provide financial assistance to their children. At the same time, broader societal discrimination, including in education and employment, have produced a massive income gap that makes it more difficult for Black and Hispanic families to accumulate sufficient savings. For these and other reasons, access to homeownership and its wealth-building benefits continue to be delayed or denied to far too many people of color and other low-wealth families, and the wealth gap continues to grow.

The numbers tell the story. The homeownership rate for Blacks under age 35 is below 20% – less than half the rate for whites. The gap closes some over the lifecycle, but even for those aged 35-54, the Black homeownership rate is just 50% compared to over 70% for whites.[170] Overall, the gap – more precisely, the chasm – today is even higher than it was in 1968 when the Fair Housing Act was enacted. Bringing the Black homeownership rate up to the level of whites would require increasing the number of Black homeowners by roughly five million, which would represent approximately a 66% increase.

Even more troubling, the Urban Institute projects that over the next twenty years all net new household growth will be from families of color, but that the homeownership rate, left unaddressed, will continue to fall for every age group.[171] Even more starkly, the same study projects that the Black homeownership rate will fall even further by 2040, with the decline particularly pronounced for households age 45-74. This is an economic disaster for the Black families who will be unable to achieve homeownership, but it is also a moral and economic problem for the country. The safety and soundness of the future mortgage market depends on there being consumers who can access safe and responsible loans. Acting now to increase homeownership among underserved communities is a cost-effective solution to strengthen the middle-class and grow the economy.[172]

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[169] The proposal is a joint project of the Center for Responsible Lending, National Fair Housing Alliance, and Self-Help. Appreciations to the Urban Institute Housing Finance Policy Center for its research and data analysis on this proposal.

[170] Bhutta *et al*, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*

[171] Urban Institute, By 2040, the US Will Experience Modest Homeownership Declines. But for Black Households, the Impact Will Be Dramatic

[172] Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, The Economic Impact Of Closing The Racial Wealth Gap, McKinsey & Company (August 13, 2020); Dana M. Peterson and Catherin L. Mann, Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S., Citi GPS: Global Perspectives & Solutions (September 20, 2020); Jeff Cox, Morgan Stanley Says Housing Discrimination Has Taken A Huge Toll On The Economy, CNBC, November 13, 2020.

Further, even those Black families who eventually are able to assemble a down payment and money for closing costs are able to afford less home and must take out more debt at a higher cost than whites; that plus the delay in entering the market depresses Black families' ability to accumulate wealth through their investment.[173]

A robust and sustained federally-funded DPA program is a proven strategy that can begin to address these barriers and facilitate new homeownership. Although there undoubtedly are millions of young families for whom down payment assistance could accelerate their path to homeownership, given limited resources, it is essential that this program be targeted in a way that delivers on President Biden's promise to address the long-term discrimination and racial inequities that continue to plague our society, especially those rooted in exclusionary housing policies.[174] It is also critical that the program reaches potential homebuyers who bear the burdens of past discrimination and who may never be able to achieve the dream of homeownership without this assistance. The following proposal is recommended to target a DPA program to accomplish these objectives.

Part 1: Core Program Elements

The group most in need of DPA assistance are those who neither have the income to accumulate money for a down payment nor family resources to draw upon for these purposes but are able to afford the monthly payments for a mortgage. Accordingly, drawing on the approach in the educational arena in which there are special programs targeting first-generation college students, we recommend that the core program be limited to first-generation, first-time homebuyers within certain income limits. We would add to this a house price limit as an additional safeguard to assure the money is well targeted.

Eligibility Criteria

The following table summarizes the criteria that recipients of the DPA would have to meet. Appendix 1a has an analysis of the number and percent of eligible individuals based on these criteria.

Eligibility Criteria	
Borrower Status	First-Generation Homebuyer[175]
First Home Requirement	First-Time Homebuyer[176]

[173] Urban Institute, Three differences between black and white homeownership that add to the housing wealth gap
[174] See Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. January 20, 2021. 86 FR 7009. See also Presidential Memorandum Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies. January 26, 2021. 86 FR 7487.
[175] We include within the category of "first generation homebuyer" those whose parents never owned a home, those whose parents owned a home but lost it to foreclosure, and those who grew up in foster care. Modeled on the first generation homebuyer assistance program of the Massachusetts Affordable Housing Alliance, borrowers would self-certify, as first generation college students currently do. In particular, at least one of the borrowers would certify to the best of their knowledge via affidavit that: (1) their parents never owned a home while the borrower was alive; (2) their parents owned a home while the borrower was alive but lost it through foreclosure, deed-in-lieu, or short sale; or (3) they were in foster care for some period of time as a minor. If the borrower is found to have provided false information, they must return the money (without criminal or civil penalties). Applicants may be required to provide their parents' full names and most recent address(es).
[176] All borrowers (and spouse of a borrower if not a co-borrower) must certify to being First Time Homebuyers. An individual is to be considered a first-time homebuyer who (1) is purchasing the security property; (2) will reside in the security property as a principal residence; and (3) had no ownership interest (sole or joint) in a residential

Borrower Household Income Limit	Borrower household shall earn less than 120% of the Household Area Median Income
Counseling	Pre-purchase counseling by HUD-approved agency required
Mortgage Features	Qualified Mortgages as defined after March 1, 2021

The rationale for targeting first-generation homebuyers is clear: those whose parents were the victims of exclusionary housing policies or otherwise unable to become homeowners are unlikely to have the benefit of intergenerational wealth and thus are most likely to be limited in their ability to purchase by the long-standing and massive racial wealth gap. Given that first-generation homebuyers almost certainly cannot turn to their parents for assistance with a home purchase and must rely on whatever savings they have been able to accumulate, we also recommend an income limit above the traditional line defining low-income families – 80% of Area Median Income (AMI) – in recognition of the fact that families with incomes above that level (which translates to roughly $62,000 on a national basis), but without the benefit of intergenerational wealth, face severe challenges in achieving homeownership.

Our recommended income limit of 120% of AMI (approximately $94,000 on a national basis) would create an eligible universe of 12.8 million first-generation homebuyer households nationwide. Importantly, although not surprisingly, precisely because it has been so difficult for Black and Hispanic families to obtain homes in the past and because of the large income gap between white families and families of color, the first generation homebuying population with incomes below 120% of the AMI is disproportionately comprised of people of color. Indeed, fully 66% of this population are Black (42%) or Hispanic (24%), although the percentage drops to 60% (32% Black, 27% Hispanic if we were to assume that those with incomes below 40% of AMI and younger than 25 or over age 54 as a practical matter are unlikely to participate in this first-time homebuyer program. See Appendix 1 for a detailed analysis of targeting First Generation, First Time Homebuyers.

Many programs aimed at first-time homebuyers provide eligibility for all low-income households, i.e. for all families with income up to 80% of AMI. We recognize that obtaining homeownership is a struggle for low-income families generally. However, we estimate that there would be 28.8 million eligible households if the DPA program were open to all such households, of whom roughly half have incomes above 40% of AMI. Among that group, further limited to the age range of 25 – 54, 45% would be white compared to just 23% Black and 23% Hispanic (with the rest falling in the "other" category). Moreover, with an eligible universe of 28.8 million families, the almost inevitable result would be that those best able to work the system would succeed in getting the available DPA dollars. Such a result would not begin to shrink disparities – and could even increase – the Black-white homeownership gap. See Appendix 1b for a detailed analysis of targeting Low-Income, First Time Homebuyers.

Focused Delivery Channel Criteria

Even with the eligibility limitations recommended above, the universe of eligible and likely participants, i.e. those meeting the eligibility criteria who are likely participants, with incomes above 40% of AMI and between the ages of 25 and 54, would be large (5.4 million). It would take over $100 billion dollars to

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property during the three-year period preceding the date of the purchase of the security property. In addition, an individual who is a displaced homemaker or single parent also will be considered a first-time homebuyer if he or she had no ownership interest in a principal residence (other than a joint ownership interest with a spouse) during the preceding three-year time period.

serve all those households. Although we believe that the size of the program should be commensurate to the need, we recognize that there likely will be substantially more eligible would-be buyers than funds available for DPA. For that reason, the channels through which DPA will be delivered are every bit as important as the eligibility criteria to assure that the program works as intended. Previous experience with homeownership assistance funds, specifically the Hardest Hit Fund, have demonstrated that without targeting, resources will not equitably reach Black and brown communities. Black and Hispanic communities lost $1 trillion in wealth during the Great Recession as much of the relief came too late and lacked the programmatic designs necessary to reach the needs of Black and Latino communities.[177]

Specifically, we recommend the following approach to allocating funds and to selecting recipient agencies to administer the funds. The DPA funds should be appropriated to the CDFI Fund for it to disburse as set forth below and subject to the requirement that the Treasury Department and CDFI Fund must explicitly acknowledge that the CDFI Fund is subject to the Fair Housing Act's Affirmatively Furthering Fair Housing mandate. The CDFI Fund would be responsible for disbursing 50% of the funds through a competitive grant process to "Targeted DPA Administrators" who would be organizations with the capabilities and commitments to administer funds to achieve the Program's overall objectives. The Targeted DPA Administrators would, in turn, provide DPA to eligible mortgage applicants sourced through retail and wholesale channels. Although CDFIs could apply for funding through this competitive process, they would be judged by the same criteria as all other bidders and would not be provided with any competitive advantage.

A Consumer Advisory Board will be established to advise and consult with the CDFI Fund in the exercise of its functions in administering the DPA and will help ensure compliance with the requirements laid out in the legislation establishing the DPA. The Consumer Advisory Board will be composed of experts in civil rights, fair housing, fair lending, consumer protection, housing counseling, consumer financial products or services; representatives of financial institutions that primarily serve underserved communities; representatives of communities that have been under-served by the financial services mainstream industry; and real estate housing professionals drawn from and serving underserved communities. Geographic diversity will be a criterion for selection, including allocating at least one seat for a community representative from the Deep South.

We recommend that the remaining 50% of the funds (plus any of the first 50% not delivered through the competitive process) be disbursed to state Housing Finance Agencies (HFAs) in accordance with a formula based on the number of renters in each state but with the requirement that to obtain a disbursement the HFA must meet certain criteria as set forth below.

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[177] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, Collateral Damage: The Spillover Costs of Foreclosures, Center for Responsible Lending, at 2 (Oct. 24, 2012).

Channel Summary Table:

DPA Delivery Channel	Allocation	Notes
Targeted DPA Administrators	50%	Annual competitive process that awards allocations based on the criteria set forth below. If the selected Targeted DPA Administrators do not have sufficient capacity to deploy this 50%, remaining unallocated funds can be distributed via state HFAs.
State Housing Finance Agencies	50%	Allocation methodology to State HFAs based on number of renters in each state; requirement that to be eligible to receive funds HFAs (1) have an AFFH Plan and (2) have existing partnerships with federally-insured depositories, mortgage banks, non-profit loan funds, and/or mortgage brokers that serve underserved groups, nonprofit intermediaries, including local fair housing organizations and/or community development corporations.

Targeted DPA Administrators may include:[178]

- Federal Home Loan Banks;
- Community Development Financial Institutions;
- Community Development Credit Unions;
- Non-profit community lenders;
- Minority Depository Institutions; and
  Depository and non-depository mortgage lenders for use in conjunction with Special Purpose Credit programs.

Criteria used to select Targeted DPA Administrators in the competitive process described above should include:

- Strong track record of serving first-time Black, Hispanic, Asian American and Pacific Islander, and Native homebuyers and other underserved populations;
- Affirmative outreach plan to reach underserved populations, including existing and/or new partnerships with mortgage brokers that serve underserved communities;
- Partnerships with nonprofit intermediaries, including local fair housing organizations and community development corporations;
- Adoption of an Affirmatively Furthering Fair Housing Plan;
- Relationship with HUD-approved housing counseling agencies to prepare potential homebuyers; and
- Use of innovative products and programs that address barriers to attaining and sustaining homeownership.

[178] This section incorporates recommendations from the Black Homeownership Collaborative.

Amount of Assistance

In determining how much assistance should be available to eligible participants it is important to recognize the challenges first-generation homebuyers face in accumulating sufficient savings to purchase a home. We estimate that it would take nine years for a household earning the median income to save sufficient money to be able to make even a 3% down payment and cover the closing costs on a median-priced home.[179] The table below shows a simplified calculation of the minimum cash required to purchase the median home in 2020[180]:

Funds Needed	$	% of Home Price	Funds Required	$	% of Home Price
Median Home	$ 334,700	100.0%	Mortgage	$ 324,659	97.0%
Closing Costs	$ 10,041	3.0%	Borrower Cash	$ 29,201	8.7%
Moving Costs	$ 1,250	0.4%			
Reserves	$ 5,494	1.6%			
First Year Taxes	$ 2,375	0.7%			
Total Needed	$ 353,860	105.7%	Total Required	$ 353,860	105.7%

Given this reality, we recommend that the program provide a minimum of $20,000 of DPA to eligible families (could be adjusted up for high cost markets). That would significantly reduce the number of years of savings required to purchase their first home to three years. Further, for those able to accumulate some savings, a $20,000 DPA grant could be used to reduce the mortgage amount, which would make the housing payment more affordable for lower income families and help the family create wealth faster. A $20,000 DPA also would enable at least some families to preserve some of their own money for a critical reserve to maintain the home or manage through unforeseen life events.

Additional Requirements

Liquidity: The DPA program should include a requirement that the Government Sponsored Enterprises (Fannie Mae, Freddie Mac, and Federal Home Loan Banks) provide ongoing assistance and liquidity instruments to support this program.

Accountability and Transparency: Every administrator that receives funds under the DPA program, including each HFA recipient, should be required to report program results to the CDFI Fund in a timely manner in an electronically accessible format specified by the CDFI Fund and at intervals specified by the CDFI Fund but initially no less frequently than annually. The report should include applicant and loan-level data sufficient to assess the extent to which the program is adequately and safely closing homeownership and wealth gaps between and among racial and ethnic groups (including but not limited to applicant demographic information, application outcomes, terms of the DPA assistance), and property information (including geography, property value and type, and first mortgage type and investor). The loan-level data should be made publicly available by the CDFI Fund subject to modifications made by CDFI Fund to protect the privacy of borrowers in a manner consistent with the accountability purposes of this section.

Program Evaluation: The program should be evaluated 24 months after the initial disbursement of funds under this program. The CDFI Fund shall issue a report evaluating the program's effectiveness in achieving its objectives, including closing homeownership and wealth gaps between and among racial

[179] Calculations on file with Center for Responsible Lending; available on request.
[180] CNBC, Here's how much you will really need to buy your first home (Hint: It's more than you think)

and ethnic groups and enabling socially and economically disadvantaged households to become homeowners in a manner that is likely to enable them to sustainably remain homeowners and to build their family's assets. The program will be re-evaluated every 12 months after the initial 24-month initial evaluation.

Part 2: Program Element to Enhance Targeting

Within 60 days after enactment of the legislation, the Department of Housing and Urban Development and the Department of Justice should be required to jointly prepare and release a report analyzing the evidence of the existence and continuing effects of discrimination in the mortgage lending market that precludes certain classes of consumers from fairly obtaining credit. The report should also analyze evidence of structural or other barriers, such as policies, systems, technologies, practices, or other impediments that restrict the ability of socially and economically disadvantaged groups to fairly access mortgage credit.

The report must evaluate the extent to which there exists a significant gap in mortgage credit access for socially and economically disadvantaged groups, including Black, Hispanic, Native American, Asian American, and other groups. The analysis must also examine whether existing race-neutral lending programs, including the program established in Part 1 by this legislation, will be sufficient to cause a significant decline in the access gap such that the nation is put on a firm trajectory toward homeownership parity among advantaged and disadvantaged groups.

The purpose of this report shall be to determine whether adding the consideration of race to the DPA program, along with other modifications, are necessary to achieve the compelling governmental interest of eliminating the effects of past and present discrimination in the mortgage lending market so that all people, including underserved communities, have equal access.

In the event the Department of Housing and Urban Development and Department of Justice determine that the gap in access to mortgage credit is unlikely to be closed by the Core Program Elements as set forth in Part 1, Administrators shall establish programs—including a modification to the program in Part 1—that use race-conscious remedies to overcome discriminatory barriers to serving socially and economically disadvantaged people, using a rebuttable presumption that people of color are socially and economically disadvantaged.

Conclusion

Homeownership is the primary way that most Americans build wealth. Unfortunately, historic and ongoing discriminatory housing policies result in Black families and other people of color being excluded from having access to owning a home. As a result, persistent and growing racial wealth gaps continue with many hardworking families lacking the resources to save for a down payment to purchase their first home. A targeted down payment assistance program will serve as a critical first step in addressing these disparities, strengthening the wealth building capacity for millions while also growing the economy.

Appendix 1a: Targeting of First Generation, First Time Homebuyers with <120% AMI

Row	Description	White	Black	Latino	Other	Total	Black & Latino	Source
		By Race						
Total Households								
1	# of All Households (Millions)	84.9	17.1	17.7	8.9	128.5	34.7	*Census Bureau* [(1)]
2	% of Total Households	66%	13%	14%	7%	100%	**27%**	*% of Sum of Row 1*
Eligible Households								
3	% Renter Households	26%	56%	51%	42%	34%	53%	*Census Bureau* [(2)]
4	% of Renter Households at or Below 120% AMI	79%	87%	87%	78%	82%	87%	*PSID* [(3)]
5	% of All Above, First Generation Homebuyer	21%	65%	39%	27%	36%	57%	*PSID* [(3)]
6	% of Race Eligible	4%	32%	17%	9%	10%	24%	*Product of Rows 3-5*
7	# of Eligible Households (Millions)	3.6	5.4	3.0	0.8	12.8	8.4	*Row 1 x Row 6*
8	% of Total Eligible	28%	42%	24%	6%	100%	**66%**	*% of Sum of Row 7*
Likely Program Participants								
9	% of Race Eligible	4%	32%	17%	9%	10%	24%	*Row 6*
10	% of All above, Eligible, Income Above 40% AMI	61%	39%	66%	80%	50%	44%	*PSID* [(3)]
11	% of All above, Households Age 25 - 54	74%	83%	73%	83%	78%	78%	*PSID* [(3)]
12	% of Race Likely Program Participants	2.0%	10.2%	8.3%	5.8%	3.8%	9.2%	*Product of Rows 9-11*
13	# of Likely Program Participants (Millions)	1.7	1.7	1.5	0.5	5.4	3.2	*Row 12 x Row 1*
14	% of Total Likely Program Participants	31%	32%	27%	10%	100%	**60%**	*% of Sum of Row 13*

(1) Census Bureau "Historical Households Tables"; calculated using 2020 estimates for number of households by race from Table HH-7.

(2) From the "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020" report published by the Census Bureau.

(3) Urban Institutue calculations using PSID data.

Appendix 1b: Targeting of First Time Homebuyers with <80% AMI

Row	Description	White	Black	Latino	Other	Total	Black & Latino	Source
		By Race						
Total Households								
1	# of All Households (Millions)	84.9	17.1	17.7	8.9	128.5	34.7	*Census Bureau* [(1)]
2	% of Total Households	66%	13%	14%	7%	100%	**27%**	*% of Sum of Row 1*
Eligible Households								
3	% Renter Households	26%	56%	51%	42%	34%	53%	*Census Bureau* [(2)]
4	% of Renter Households at or Below 80% AMI	61%	76%	68%	56%	66%	73%	*PSID* [(3)]
5	% of Race Eligible	16%	42%	35%	24%	22%	39%	*Row 3 x Row 4*
6	# of Eligible Households (Millions)	13.3	7.2	6.2	2.1	28.8	13.4	*Row 1 x Row 5*
7	% of Total Eligible	46%	25%	21%	7%	100%	**46%**	*% of Sum of Row 6*
Likely Program Participants								
8	% of Race Eligible	16%	42%	35%	24%	22%	39%	*Row 5*
9	% of All above, Eligible, Income Above 40% AMI	50%	39%	50%	56%	47%	43%	*PSID* [(3)]
10	% of All above, Households Age 25 - 54	58%	68%	65%	61%	61%	66%	*PSID* [(3)]
11	% of Race Likely Program Participants	5%	11%	11%	8%	7%	11.3%	*Product of Rows 8-10*
12	# of Likely Program Participants	3.8	1.9	2.0	0.7	8.5	3.9	*Row 1 x Row 11*
13	% of Total Likely Program Participants	45%	23%	23%	9%	100%	**46%**	*% of Sum of Row 12*

(1) Census Bureau "Historical Households Tables"; calculated using 2020 estimates for number of households by race from Table HH-7.

(2) From the "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020" report published by the Census Bureau.

(3) Urban Institute calculations using PSID data.