Statement before the United States Senate Committee on Banking, Housing, and Urban Affairs
Hearing on "Separate and Unequal: The Legacy of Racial Discrimination in Housing"

The Successes and Failures of Federal Housing Policy in the 20th Century

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April 13, 2021

Chairman Brown, Ranking Member Toomey, and distinguished members of the Senate Committee on Banking, Housing, and Urban Affairs, my name is Howard Husock, and I am an adjunct scholar at the American Enterprise Institute, where I focus on local government, civil society, and urban housing policy. I am concurrently an executive senior fellow with the Philanthropy Roundtable. Before joining AEI, I was vice president for research and publications at the Manhattan Institute and director of case studies in public policy and management at the Harvard Kennedy School. I am the author of *America's Trillion-Dollar Housing Mistake: The Failure of American Housing Policy* (Ivan R. Dee, 2003) and a forthcoming book, *The Poor Side of Town—and Why We Need One*.

It is an honor to submit my testimony for today's hearing, titled "Separate and Unequal: The Legacy of Racial Discrimination in Housing," alongside my colleague Tobias Peter and the other distinguished guests. It is a special honor to testify before the distinguished senator from Ohio, my own home state.

Historical Paradigm Shifts in Housing Policy

I will begin by briefly detailing the recent history of housing policy in the 20th century and the important paradigm shifts in housing policy as it affects racial discrimination. That the United States has been marked by an ugly history of race-related housing discrimination is beyond dispute. Private deed restrictions barred African Americans from buying or renting in the neighborhood of their choice, including such iconic American jurisdictions as Levittown, New York. Government policies reinforced and encouraged such bias, as exemplified by the infamous Federal Housing Administration redlining policies, which limited African American homebuyers' neighborhood choices by limiting government mortgage insurance. As a result, the GI Bill helped build generational wealth for returning white World War II veterans while limiting that same opportunity for black Americans.

This tragic path led to the landmark Fair Housing Act of 1968 and its key guiding assumption: that racial prejudice should not preclude any American household from buying or renting a home they can afford. One can think of this as a watershed moment in which government reversed course from the negative discrimination of redlining and the acquiescence in deed restrictions, which were formally struck down by the courts in 1948 (but still socially enforced during much of the mid-20th century).

But the history of government efforts to combat the effects of race in housing policy have also included what can be called "positive discrimination" or "race-conscious" polices—efforts understood as explicit government interventions in the marketplace conceived to benefit racial and ethnic minorities. It is crucial to consider the historical evidence we have based on the circumstances today: Have these efforts worked in furthering homeownership and wealth accumulation in traditionally underserved communities?

The first such broad intervention was public housing, initiated by the Wagner-Steagall Act of 1937. First Lady Eleanor Roosevelt worked to ensure that public housing developments would be set aside for African Americans and attending the ribbon-cutting ceremony for the Frederick Douglas Houses in Detroit. But this government benevolence has turned out to be at least as much curse as blessing. The unintended consequences of creating dependence on public housing has harmed racial minorities the most.

In Detroit—and Chicago, St. Louis, Pittsburgh, and other cities—historic African American neighborhoods with significant owner occupancy of small single-family and multifamily homes were bulldozed to make way for public housing. In many northern cities, public housing replaced the conditions that were in place to build generational wealth. In any one of these blighted urban areas, the consequences have been disastrous. Indeed, early 20th-century federal investigations found that housing conditions in low-income neighborhoods provided by private markets were far from the hellholes of popular imagination—which had fueled the original public housing movement. Table 1 shows the extent of such owner occupancy and owner presence, based on Census statistics.[1]

Table 1. Families and Individuals Living in Owned vs. Rented Tenements, Chicago, 1894

Units in Structure	Owner Occupied	Renters	Total Number	Owner Presence
1	77	293	370	77
2	73	553	626	146
3	68	413	2,341	204
4	51	569	620	204
5	48	444	492	240
6	48	590	638	288
7	11	135	146	77
8	13	208	221	104
9	0	33	—	—
10	1	18	19	10
11	3	26	29	33
12	0	48	0	0
13	1	14	15	13
14	2	25	27	27
15	1	31	32	15
18	0	18	18	0
22	0	24	24	0
24	0	42	42	0
TOTALS	*397*	*1,335*	*3,484*	*1,412*
OWNER-PRESENCE RATIO: 36 PERCENT				
Note: The district studied is starting from Polk and Halsted streets, along Halsted to Taylor, along Taylor to Newberry Avenue, along Newberry avenue to Twelfth, along Twelfth to State, along State to Polk, and along Polk to Halsted. Source: Census data compiled by Tobias Peter.				

With the clearing of many of these homes also came the clearance of hundreds of black-owned businesses. In Detroit, the New Bethel AME Church, where Aretha Franklin first sang and her father preached, was torn down. So too was Pittsburgh’s Hill neighborhood, immortalized in the plays of August Wilson. These neighborhoods were repositories of African American wealth, modest perhaps but not insignificant. Perhaps more importantly, they were also communities in which wealth accumulation and prosperity were possible.

In contrast, ownership in public housing is by definition impossible. It has unfortunately played a role in the tragic lag in wealth experienced by black families, which has had devastating ramifications for today. And, of course, much of original public housing stock has rapidly deteriorated and was itself bulldozed—with no compensation for residents.

The tragic history of public housing has burdened disproportionately low-income minority residents with no way to build wealth and hindered mobility, both economically and geographically. The well-intended but misguided policy to set public and subsidized housing rents at 30 percent of income has had the collateral effect of raising rent on those whose income increases. This has created a well-documented feeling of being "stuck in place."

Keep in mind that the average tenure in public housing in New York City, the largest public housing authority in the country, is now 22 years, up from 19 in 2005.[2] We encouraged households to stay by discouraging them from increasing their earnings. African Americans today remain disproportionately overrepresented in public housing. This is not an achievement; it is a collective failure, especially in a country where homeownership is the leading route to wealth accumulation.

Moreover, conditions in public housing are often physically abysmal. In New York City, the capital maintenance backlog is estimated at $40 billion.[3] Even that understates the system's problems. As I have written in research reports for the Manhattan Institute, its lack of turnover means that low-income newcomers do not have access to the system[4]; its lack of retail operations means that large numbers of public housing developments, and not just in New York, are in food deserts.[5]

It is time to go beyond doubling down on the failed public and subsidized housing policies of the past. The Obama-era Rental Assistance Demonstration program, which has brought private capital into management and renovation, was a start. But we should even consider outright buyouts of tenants to compensate for their years of missed household asset appreciation. As I have written in *City Journal*, such buyouts could be accompanied by selling high-value public housing properties, such as those in Manhattan and Brooklyn.[6] Such sales could bring in billions of dollars with which to compensate long-term tenants.

As I have written for the *Atlantic*,

> As early as 1907, a study by the U.S. Immigration Commission found that in low-income communities, "84 in every 100 homes were in either good or fair condition. . . . The neglected appearance of the streets is the result of the indifference on the part of public authorities." In 1909 the President's Homes Commission found that even the poorest households, on average, spent just 21 percent of income on rent.[7]

We must never give up on ensuring that low-income neighborhoods, with the proper public safety, public schools, and public amenities, can be good neighborhoods and need not be replaced with government-owned, -operated, and -subsidized housing.

The Trouble with the Community Reinvestment Act

Recent forms of positive housing discrimination or race-conscious housing choices should also concern all those who are committed to upward mobility and wealth accumulation for households of color.

The Community Reinvestment Act (CRA) was enacted in 1977 at a time when regulation sharply limited competition in the financial sector; interstate banking was unknown. The possibility that banks would turn their backs on less profitable but still remunerative lending in lower-income neighborhoods could not be ruled out, and the country was still struggling with the immediate legacy of the Jim Crow South and other forms of discrimination in the lending market.

In the years since, however, lending has been revolutionized by technology and competition, including by nonbank lenders, which has become fierce. It is certainly no longer clear that, absent regulation, bank redlining would persist. But such positive discrimination as the CRA could harm the prospects of those it sets out to help. I do not refer here to the idea that the CRA—or the affordable housing mandates of the secondary mortgage market institutions Fannie Mae and Freddie Mac—were the key cause of the 2008 financial crisis, although they likely played a supporting role. My concern, rather, is that this regulatory regime creates incentives to extend credit as to meet regulatory targets—and that, as a result, loan performance is at risk.

A 2013 National Bureau of Economic Research paper found reason to conclude that was the case. In answer to the title question "Did the Community Reinvestment Act Lead to Risky Lending?" economists from MIT, the University of Chicago, Northwestern, and the National University of Singapore answer succinctly, "Yes."[8] By comparing the lending behavior of banks in the period immediately before CRA exams by regulators and periods when they do not face such exams, they conclude that loans made in the run-up to exams default about 15 percent more often. My concern here is not for the profits of big banks. Rather, I'm concerned about the minority homeowner who finds themselves living on a block where homes have gone into default and foreclosure, repairs forgone and property values and thus wealth accumulation threatened.

This is exactly what we saw during the 2008 financial crisis. As the Federal Reserve Bank of St. Louis concluded: "The Great Recession was far more destructive for these minorities regardless of income."[9] This is what I foresaw when I wrote in *City Journal* in 2000:

> The CRA's premise sounds unassailable: helping the poor buy and keep homes will stabilize and rebuild city neighborhoods. As enforced today, though, the law portends just the opposite, threatening to undermine the efforts of the upwardly mobile poor by saddling them with neighbors more than usually likely to depress property values by not maintaining their homes adequately or by losing them to foreclosure.[10]

Again, the CRA was not the sole precipitant of the 2008 housing crisis. But it does explicitly focus on minority neighborhoods. In a dramatically more competitive banking environment in which profitable opportunities are eagerly sought, the original justification for the CRA appears superannuated.

Indeed, the history of federal housing programs meant to assist low-income neighborhoods of color is a sobering one. The committee should be mindful of historic 1971 hearings, chaired by Sen. Philip Hart (D-MI), which investigated the devastating effects of low down-payment loans to underqualified homebuyers through the Boston Banks Urban Renewal Group.[11] What was meant to be a boon to minority homeownership led instead to large-scale foreclosure and abandonment in that city's Dorchester and Mattapan neighborhoods, which, to this day, continue to struggle.

Keep in mind that CRA explicitly targets disproportionately minority neighborhoods. In a dramatically more competitive banking environment in which profitable opportunities are eagerly sought, the original justification for the CRA appears superannuated.

Affirmatively Furthering Fair Housing

Another concerning case of positive discrimination is the Affirmatively Furthering Fair Housing (AFFH) initiative, developed by the Obama administration. Again, it has a core of a good idea. Too many of our municipalities have adopted draconian zoning laws, which limit construction of the types of smaller single-family and multifamily homes that have historically served lower-income households well. But the AFFH's emphasis on using federal Housing and Urban Development (HUD) funding as a stick to force the construction of affordable housing targeted for minorities will not serve well those it aims to help.

As in public housing, subsidized rentals do not build household wealth through property value appreciation. Such units are costly, as well; for instance, as the Terner Center at the University of California, Berkeley, has calculated, tax-credit-financed construction of low-income housing in California costs $480,000 per unit.[12] In Westchester County, New York, where HUD used legal action to promote the AFFH-type approach, county funds of $51.6 million had to be used as a portion of funding for some 800 subsidized units targeted for African Americans. That meant that locally raised tax revenues were needed—including those paid by the 16 percent of county residents who are African American and the 26 percent who are Hispanic, many of them homeowners who did not benefit from subsidies.[13] Former HUD Secretary Ben Carson sought to revise the AFFH rule to encourage greater housing-type diversity before ultimately terminating it altogether.

Conclusion

I will leave you with a few final policy recommendations.

- **Public Housing.** Adopt fixed-rent leases for public and other subsidized housing tenants. Experiment with public housing tenant buyouts, financed by property sales. Introduce supermarkets and other retail uses to public housing developments.

- **Community Reinvestment Act.** If CRA is to continue in force, include regular loan performance reviews specifically for CRA-qualified lending—and make it clear to lenders that performance matters, not just the extension of credit.

- **Fair Housing.** Enforce testing-based models to ensure that no household that can afford to rent or buy is turned away because of race. Fair Housing Act enforcement, however, must be mindful that differences other than race—including credit scores—cannot be overlooked in any assessment of discrimination.

- **Zoning.** The proposed $5 billion incentive plan for communities willing to relax regulatory barriers to housing may be a start, but, in the long run, relaxing such barriers will be up to the thousands of local zoning and planning boards across the U.S. HUD must demonstrate the virtues of such changes not rely on incentives or coercion. Use HUD to provide models, not mandates, for local communities to reform zoning in ways that will accommodate a wider range of income groups, without subsidies. These should include "missing middle" structures, such a small single-family homes and two- to four-unit structures that allow on-site owners to enter the market. In my forthcoming book, I demonstrate how that approach has worked effectively.

These approaches will effectively provide vehicles of opportunity for those of all races—but especially minorities who have been harmed by a history of ill-conceived government assistance policies.

It is an honor to testify in front of you, and I look forward to your questions. Thank you.

Endnotes

[1] These data were generously compiled by Tobias Peter, Research Fellow and Director of Research, AEI Housing Center.
[2] Mireya Navarro, "As New York Rents Soar, Public Housing Becomes Lifelong Refuge," *New York Times*, August 3, 2015, https://www.nytimes.com/2015/08/04/nyregion/as-new-york-rents-soar-public-housing-becomes-lifelong-refuge.html.
[3] Community Service Society, "CSS Report: NYCHA Residents Sharply Divided over Authority's Plans to Generate Funds Needed to Address $40 Billion Capital Backlog," press release, July 9, 2020, https://www.cssny.org/news/entry/css-report-nycha-residents-sharply-divided-over-authoritys-plans-to-generat.
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[5] Howard Husock, "Turning Food Deserts into Oases: Why NY's Public Housing Should Encourage Commercial Development," Manhattan Institute, October 25, 2016, https://www.manhattan-institute.org/html/turning-food-deserts-oases-new-york-public-housing.
[6] Howard Husock, "Project Phaseout," *City Journal*, 2009, https://www.city-journal.org/html/project-phaseout-13186.html.
[7] Howard Husock, "Public Housing Becomes the Latest Progressive Fantasy," *The Atlantic*, November 25, 2019, https://www.theatlantic.com/ideas/archive/2019/11/public-housing-fundamentally-flawed/602515/.
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[9] Carlos Garriga, Lowell R. Ricketts, and Don E. Schlagenhauf, "The Homeownership Experience of Minorities During the Great Recession," *Federal Reserve Bank of St. Louis* (First Quarter 2017): 139–67, https://files.stlouisfed.org/files/htdocs/publications/review/2017-02-15/the-homeownership-experience-of-minorities-during-the-great-recession.pdf.
[10] Howard Husock, "The Trillion-Dollar Bank Shakedown That Bodes Ill for Cities," *City Journal*, Winter 2000,

https://www.city-journal.org/html/trillion-dollar-bank-shakedown-bodes-ill-cities-12096.html.
[11] Competition in Real Estate and Mortgage Lending: Hearings before the United States Senate Committee on the Judiciary Subcommittee on Antitrust and Monopoly, 92nd Cong., 2nd sess. (September 13–15, 1971).
[12] Carolina Reid, "The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program," Terner Center at the University of California, Berkeley, March 2020, https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/LIHTC_Construction_Costs_March_2020.pdf.
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