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Separate and Unequal: The Legacy of Racial Discrimination in Housing

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Introduction

The National Fair Housing Alliance (NFHA) is the country's only national non-profit civil rights agency dedicated to eliminating all forms of housing discrimination and ensuring equitable housing opportunities for all. We do this by providing leadership, education, outreach, advocacy, community development, enforcement, and services to our membership. NFHA is also the trade association for over 200 fair housing organizations throughout the United States.

Many of the economic challenges facing our nation—the racial wealth, income and homeownership gaps; the racial health disparities resulting from the COVID-19 pandemic; the disparate outcomes of the COVID-19 economic impacts; inequities in credit access—have their origins in discriminatory housing and economic policies implemented from the colonial period through present times.

There is a centuries-long perception that many have held asserting that people's accomplishments were the result of a hard work ethic and determined grit, and that others who did not achieve similar success just did not work hard enough or were not smart about the choices they made in life.

The reality is that Whites in this nation have always benefited from government and other systems that supported them, making the American Dream more attainable, while People of Color have been deliberately excluded from these same opportunities.

Throughout U.S. history, People of Color have been restricted from owning land or homes. Laws were passed directing where People of Color could live often placing Communities of Color next to undesirable land or hazardous sites. Laws were passed restricting the conditions under which People of Color could own homes. And it was common for prohibitions to be placed on the ability of People of Color to pass on their wealth to their heirs.

Federal laws and policies created residential segregation, the dual credit market, institutionalized redlining, and other structural barriers. When we passed our nation's civil rights laws, we restricted the ability of lenders and housing providers to consider a person's race or national origin when making a decision. But we left the structures of inequality in place. We passed the Fair Housing Act, but we left residential segregation and exclusionary zoning ordinances in place; we passed the Equal Credit Opportunity Act, but we left the Dual Credit Market in place. We passed other civil rights laws but we left structural racism in place. Well those systemically unfair systems that we left in place are doing their job; they are performing their function. So we should not be surprised at growing inequality and racial disparities.

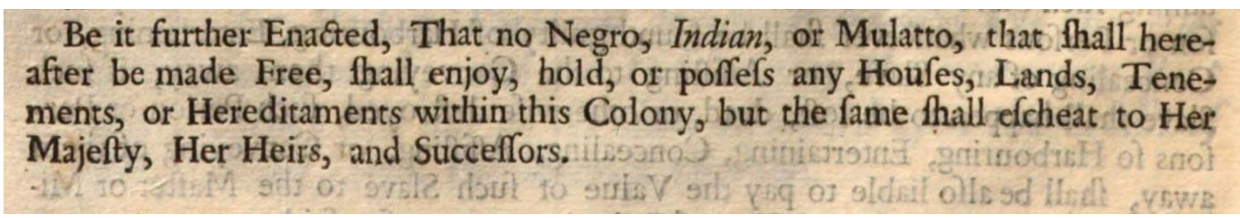
Until we dismantle structural racism, we'll continue to see these injustices. It is imperative that we not only enforce our nation's civil rights laws, including the Civil Rights Act of 1866, the Fair Housing Act, the Equal Credit Opportunity Act, and other laws, but that we pass additional laws that level the playing field, create equitable opportunities for people in this country, and promote U.S. productivity.

Historical Discrimination

For centuries, laws and policies passed to create land, housing, and credit opportunities were race-based, denying critical opportunities to Blacks, Latinos, Asian Americans, and Native Americans. From the Black Codes passed during the colonial period, to Slave Codes passed after the inception of the U.S., to Jim Crow laws passed after passage of the 13th Amendment, to the bevy of laws passed during and in the aftermath of the Great Depression, policies were explicitly designed to provide land, housing, and financial benefits to Whites while denying them to People of Color.

Hundreds of laws and policies were passed creating housing and finance systems that were inequitable and unjust. Many of these systems are still in existence – residential segregation, school segregation, restrictive and exclusionary zoning ordinances, the dual credit market, biased technologies – are still performing their functions, perpetuating discriminatory and disparate outcomes that continue to disproportionately impact consumers and communities of color.

Black Codes Restrict Land, Housing and Financial Independence for People of Color


Be it further Enacted, That no Negro, *Indian*, or Mulatto, that ſhall hereafter be made Free, ſhall enjoy, hold, or poſſeſs any Houſes, Lands, Tenements, or Hereditaments within this Colony, but the ſame ſhall eſcheat to Her Majeſty, Her Heirs, and Succeſſors.

Section of the 1712 New York Statute prohibiting Free Blacks, Indians, and Mulattos from possessing houses, lands, or tenements.

In colonies established by the Netherlands, Spain, France, Sweden, and England, laws were created to control rights and privileges for enslaved people – primarily Black people from African countries. Slavery was introduced in what is now the U.S. as early as 1526 by the Spanish government which launched expeditions to the southern part of North America. People of African descent were brought as slaves to what is now Florida and South Carolina to work against their will. In 1586 Sir Francis Drake brought enslaved Africans with him to help establish a colony in Roanoke, VA. That colony failed. Later, in 1619 about 20 Africans from Angola were brought to the Jamestown colony which had been settled by England. In 1621 the Dutch West India Company established a colony in what is now New York and introduced African Labor although the first person of African descent, Juan Rodriguez, arrived in the area in 1613. While there were people of African descent who were free, in 1655 the Dutch established the area as a slave trading port and significantly increased restrictions on Black people. Prior to 1639, the Swedish primarily used Native peoples as slaves. The first person of African descent to serve as a slave in the Swedish colony was a man by the name of Anthony who was brought to the area in 1639.

When the Dutch took over the Swedish colonies in 1655, the number of African slaves grew precipitously.[1]

In all of the colonies established by European countries, laws were established to restrict the privileges of People of Color. Most of these laws were directed at people of African descent since they became the primary group to be enslaved in the colonies. The laws, sometimes call Black Codes[2] dictated where free and enslaved people could live, restricted their ability to purchase and own land, stripped them of their wealth, and prohibited their ability to pass their land, homes, and wealth to their progeny.

For example, in 1707, the New York colony passed a new law prohibiting free Black people from owning or inheriting land. In 1712, this law was not only strengthened but a statute was also passed prohibiting Black people from being freed by their owners unless the owner paid a bond. This provision served to quash the possibility of freedom to many people who were enslaved. Similar laws were passed in multiple jurisdictions throughout the colonies.

The story of Anthony Johnson reflects the reality of life for People of Color during the colonial period in the U.S. Mr. Johnson was captured in Angola, Africa as a slave and eventually sold to the Virginia Company and brought to the British Virginian colony in 1621. After 15 years of servitude, he was able to secure his freedom. At some point, his wife Mary was able to secure her freedom as well. Mr. and Mrs. Johnson ultimately purchased 250 acres of land on the Pungoteague Creek on the eastern shore of Virginia by purchasing the headrights of 5 indentured servants. He gave 50 acres of that land to his son, Richard. But upon Mr. Johnson's death in 1670, a court seized the land from Richard and his wife, even though they had lived on the land for 50 years, and gave it to Mr. Johnson's White neighbor, George Parker.[3] The court ruled that Mr. Johnson was Black and therefore an "alien," that he could not be a citizen by virtue of the fact that he was not White.[4]

Land Extracted from Native Peoples Creates Wealth Disparities

Long before passage of the Indian Removal Act in 1830 or the 1887 Dawes Act, early colonists commandeered land from American Native nations. In some cases, Indian tribes gave land to European settlers, but the lion share of the land acquired by new colonists under the Headrights system or through Land and Homestead grants was taken forcibly.

Native Americans have lost control of hundreds of millions of acres of land. As more European immigrants came to the U.S., indigenous people were moved from their lands. Even military action was evoked to extract land. Native peoples were forced to move to areas established for them by whatever government was in control of the area at the time.

The forced removal of Native groups had a devastating impact. Not only did Native Americans lose their lives and way of life, they lost much of their wealth, access to the resources the land provided, and the

[1] *Slavery in Delaware*, March 28, 2009, Committee on Slavery of the Diocese of Delaware. Available at http://www.ssam.org/wp-content/uploads/2018/12/SlaveryInDelaware.pdf
[2] The French established the Code Noir in 1685.
[3] Charles Johnson and Patricia Smith, *Africans in America: America's Journey through Slavery* (San Diego: Harcourt & Brace, 1999), 37–43
[4] "*Race and Belonging in Colonial America: The Story of Anthony Johnson,"* 2021, Facing History and Ourselves. Available at https://www.facinghistory.org/reconstruction-era/anthony-johnson-man-control-his-own

ability to pass on their prosperity to future generations. What amounted to untold loss for Native Americans represented a bounty for and tremendous transferal of wealth to European settlers.

Native American groups are still disproportionately impacted by the bevy of laws and actions taken to rob them of their lands, wealth, and culture. Today, the homeownership rate for Native Americans is roughly 51%[5] compared to 74.5%[6] for Non-Hispanic Whites.

United States Department of the Interior advertisement offering 'Indian Land for Sale'.

[5] "Homeownership Rates Show that Black Americans are Currently the Least Likely Group to Own Homes," July 28, 2020. USA Facts. Available at: https://usafacts.org/articles/homeownership-rates-by-race/

[6] "*White Homeownership Rate Hits Nine-year High*," February 2, 2021. HousingWire. Available at: https://www.housingwire.com/articles/white-homeownership-rate-hits-nine-year-high/

European Settlers Receive Tremendous Support for Land and Homeownership

The same policies and practices that deprived People of Color from the benefits and opportunities to own land, housing, businesses, and build wealth provided wide-scale benefits to White Americans. Historical "housing" policies formed the basis for current homeownership and racial wealth disparities, and our dual and bifurcated credit market.

When the English established colonies, they offered what were known as *headrights* to settlers. The headrights system, credited for the quick and broad expansion of the thirteen British colonies, provided heads of households 50 acres of land (or more) for each person in the household, including indentured servants and slaves. But the land granted these settlers was not just free for the taking. It was land that was primarily seized from indigenous tribes. Militias were employed both to commandeer lands and provide protection to settlers and assist in infrastructure development and building projects.

The provision of lands and assistance provided by troops came at a not-small cost supported by government and corporations like the Virginia Company and Plymouth Company. It was this government supported resource that made it possible for early settlers to obtain land and pass down wealth for their families.

The headrights system morphed into the Land Grant and Homestead Grant programs, which were based on similar principles. Land grants were given to veterans of the Revolutionary War as payment and compensation for their service. Ironically, enslaved Black people who requested their freedom, given the premise of the Revolutionary War–freedom from tyranny–were denied, and slavery would continue in the United States for another 82 years. New European immigrants who became citizens, as well as those who were already living in the United States, including people who were formerly indentured servants, were able to take full advantage of these government supported programs.

U.S. citizens received 1.6 million homestead grants, and through headrights, land, and homestead grants combined, hundreds of millions of acres were redistributed, amounting to a phenomenal transference of wealth. These programs almost exclusively benefited White people.

Private actors such as banks, real estate professionals, and other players in the housing and financial sectors created their own policies and practices that robbed People of Color from the ability to build and maintain wealth while simultaneously supporting Whites. The erroneous belief that People of Color were inferior to people of European descent served as the basis for discriminatory practices that existed for centuries.

An excellent example of the pervasiveness of race-based policies is the system of ranking "races" and "nationalities" refined by noted real estate expert Homer Hoyt who served as the Federal Housing Administration's first principal housing economist. The system Hoyt developed was based on the perceived "beneficial effect upon land values" that "those having the most favorable" impact on land values are ranked at the top of the list and those who were perceived as having a negative impact on land values are ranked at the bottom. Below is the ranking as perfected by Hoyt:

1. English, Germans, Scotch, Irish, Scandinavians
2. North Italians
3. Bohemians or Czechoslovakians

4. Poles
5. Lithuanians
6. Greeks
7. Russian Jews of the lower class
8. South Italians
9. Negroes
10. Mexicans

We still feel the impacts of this hierarchy today as studies reveal that the racial composition of a neighborhood can greatly impact the property valuation in the area. One study revealed that, after controlling for factors like housing quality, neighborhood quality, amenities, education levels, and crime rates, homes located in predominately Black communities are valued 23% lower than those in predominately White communities. At an undervaluation of $48,000 per home, this represents an amount of $156 billion in lost wealth for homeowners in Black communities.

The support of White households and communities and simultaneous deprivation of Black, Latino, and Native American communities have contributed to the stark racial wealth gap and ability of people to pass on wealth to their children. Data from the 2019 Survey of Consumer Finances conducted by the Federal Reserve reveals the median household wealth for Whites is $188,200. The median for Black and Latino households is $24,100 and $36,100 respectively. While 26 percent of White families receive an inheritance, only 8 percent of Black families receive one, and when Black families do inherit wealth, it is only 35 percent of what White families inherit.[7]

The COVID-19 pandemic may well worsen the wealth gap. The majority of Latino, Black, and Native American households are not able to withstand the financial upheavals associated with the current economic crisis. According to an analysis by NPR, 72% of Latino households, 60% of Black households, 55% of Native American households, 37% of Asian households, and 36% of White households are experiencing serious financial programs during the COVID pandemic.[8]

Segregation Remains a Major Driver of Inequality

In this nation where you live matters. Your address determines almost everything about you - your chances of graduating from high school or college, getting arrested, net worth, income, ability to own a home, credit score and how long you will live. Your zip code is a better determinant of your health than your genetic code. Segregation creates a built inequitable environment where resources and opportunities get concentrated in predominately White communities and are sparsely located in Communities of Color.

[7] Ruth Umoh, "How Closing the Racial Wealth Gap Helps The Economy," *Forbes*, August 15, 2019, https://www.forbes.com/sites/ruthumoh/2019/08/15/how-closing-the-racial-wealth-gap-helps-the-economy/#101119847942.
[8] Rhitu Chatterjee, "How the Pandemic is Widening the Racial Wealth Gap," September 18, 2020. NPR. Available at: https://www.npr.org/sections/health-shots/2020/09/18/912731744/how-the-pandemic-is-widening-the-racial-wealth-gap

Segregation is not a natural construct. Our neighborhoods are segregated by design and it was perpetuated by federal and local governments[9] as well as private actors[10]. Hundreds of laws, policies, and ordinances such as the Land Grants Act, Homestead Act, Home Owners Loan Corporation Act, Indian Removal Act, Dawes Act, National Housing Act, Federal Aid Highway Act, Chinese Exclusion Act, Repatriation Acts, Housing Act of 1949, all worked to create residential segregation, steepen school segregation, put in place restrictive zoning ordinances, support the use of restrictive covenants, create the dual credit market, and entrench inequality. They created systems – still with us today – that are deeply unjust and that drive widescale disparities.

Segregation is a major reason why where people live determines their outcomes in life. That is because *place* is inextricably linked to *opportunity*. Unfortunately, housing segregation remains the primary driver of inequality. It is the bedrock of inequality in America because neighborhoods of color are more likely to have poorly resourced schools and fewer amenities like healthcare facilities, grocery stores, green spaces, and bank branches. But communities of color are more likely to have hazardous and toxic waste plants and more polluted land, air, and water.

Discrimination and segregation lie at the root of the disparities we see related to the COVID-19 pandemic in which Black[11], Latino[12], and Native Americans[13] are hospitalized for and dying from the coronavirus at 2 – 4 times the rate of Whites. These groups are also much less likely to get vaccinated.

Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity

Rate ratios compared to White, Non-Hispanic persons	American Indian or Alaska Native, Non-Hispanic persons	Asian, Non-Hispanic persons	Black or African American, Non-Hispanic persons	Hispanic or Latino persons
Cases¹	1.7x	0.7x	1.1x	1.3x
Hospitalization²	3.7x	1.0x	2.9x	3.1x
Death³	2.4x	1.0x	1.9x	2.3x

Race and ethnicity are risk markers for other underlying conditions that affect health, including socioeconomic status, access to health care, and exposure to the virus related to occupation, e.g., among frontline, essential, and critical infrastructure workers.

Chart prepared by the Centers for Disease Control

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[9] New Towne Court in Boston is a great example of local government creating segregation. The Housing Authority razed about 100 homes in what had been an integrated community and built a public housing development. But the new residents were all White; Blacks were not allowed to live there. The governments had segregated the community. This was by design and it was common, not just throughout Boston, but all over the nation.

[10] For example, the National Association of Real Estate Boards amended its code of ethics in 1924 to state that "a Realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality . . . whose presence will clearly be detrimental to property values in that neighborhood." See Gotham, Kevin F., *Race, Real Estate, and Uneven Development: The Kansas City Experience, 1900–2010*. 2014. Albany: State University of New York Press, page 35.

[11] Scott Neuman, "COVID-19 Death Rate For Black Americans Twice That For Whites, New Report Says," August 13, 2020. NPR. Available at https://www.npr.org/sections/coronavirus-live-updates/2020/08/13/902261618/covid-19-death-rate-for-black-americans-twice-that-for-whites-new-report-says

[12] "Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity," March 12, 2021. Centers for Disease Control. Available at https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html

[13] Ibid.

Residential segregation is the bedrock of this inequality because it serves as the basis for directing which communities will receive certain resources and which areas will be deprived or starved of critical investments. The effects of redlining, residential segregation, discriminatory policies, and disinvestment have created a scenario where people of color do not live in areas with ample access to healthcare facilities, green and healthy environments, clean water, quality credit, healthy foods, high-performing schools, and other important amenities that people need to thrive. These structural factors, coupled with implicit and overt bias in our healthcare system, are driving horrible outcomes related to the COVID-19 crisis.

When you look at our residential and lending patterns, we are a century behind where we need to be. The racial wealth and homeownership gaps are growing. In fact, the Black/White racial homeownership gap – at more than a 30-percentage point difference - is larger than it was when redlining was legal. According to the U.S. Census, the homeownership rate for Whites is roughly 74.5%. Comparatively, the rate for Blacks and Latinos, is 44.1% and 49% respectively. The rate for Native Americans, Asian Americans, Hawaiian Natives, and Pacific Islanders combined is 59.5%. Our markets are not fair. They do not work for People of Color, women, and people with disabilities. Whites have 10 times the wealth of Blacks and 8 times the wealth of Latinos. Lending redlining is flourishing. Housing discrimination is still the norm in too many communities.

The bias in our markets is not a bug but a feature. They were built that way and intended to operate in a discriminatory fashion. They will continue to do so until we make systemic and cultural changes. From the inception of this nation our housing and finance policies were explicitly discriminatory. They created biased systems that still exist today – residential segregation, the dual credit market, and other unfair systems. We continue to see disparities and discrimination because we have not dismantled structures of inequality.

Access to Credit

Consumers in the U.S. do not have equal or equitable access to the financial markets. Centuries of discriminatory policies, segregation, and disinvestment have led to the creation of the dual credit market in which banks and credit unions are concentrated in predominately White communities and payday lenders, check cashers, title money lenders, and other non-traditional financial services providers are concentrated in predominately Black and Latino communities.

An analysis by Trulia revealed stark disparities in where financial services are located. The research showed that Communities of Color had 35% fewer mainstream lenders than predominately White communities. Moreover, there were twice as many alternative financial institutions – like payday lenders and check cashers - in Communities of Color. This, of course, is a legacy of our nation's long history of lending redlining and discrimination. However, current practices are contributing to the growing disparity in credit access. For example, today, according to one analysis by Standards and Poors, banks are closing their branches in high-income, affluent Black neighborhoods at a higher rate than they are closing branches in low-income non-Black areas. What this means is that borrowers of color disproportionately access credit outside of the financial mainstream with payday lenders, title money lenders and other creditors who typically do not report timely payments to the credit repositories.

Today, while many policies and guidelines may not be explicitly discriminatory on their face, many generate widescale disparate outcomes based on race. For example, credit overlay policies, an over-reliance on outdated credit scoring systems and lending policies linked to debt-to-income ratios or loan-to-value ratios are all highly correlated to race and national origin and disproportionately disadvantage Latinxs, Native Americans, Blacks, and certain segments of the Asian-American and Pacific Islander populations. Algorithm-based systems, like automated underwriting systems and risk-based pricing systems, manifest and perpetuate these biases.[14]

Our current financial system relies on assessments that can unfairly lock underserved groups out of the opportunity to access credit. For example, credit scores are a requirement for automated underwriting and risk-based pricing systems and matrices.[15] Yet roughly one-third of Black and Latinx borrowers don't have credit scores[16] because they disproportionately access credit outside of the financial mainstream. One of the reasons consumers of color disproportionately access credit through non-traditional credit providers (who typically do not report timely payments to the credit repositories) is because banks are sparsely located in Black and Brown communities. In fact, high-income Black neighborhoods are losing more bank branches than low-income non-Black areas.[17] An analysis by Standard & Poor found that between 2010 and 2018, majority-Black neighborhoods lost more branches than majority-White, Latinx, and Asian neighborhoods. Median household income did not help explain the pattern since majority-Black areas with median household incomes above $100,000 were as likely to not have a branch as low-income areas.[18]

However, many underserved consumers have nontraditional credit, like timely rental housing payments, or other compensating factors, like residual income, that soundly demonstrate their ability to pay a mortgage obligation. Moreover, the current system relies heavily on debt-to-income ratio requirements that disproportionately affect consumers of color. However, debt-to-income ratio requirements have

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[14] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace, "Consumer-Lending Discrimination in the FinTech Era," *University of California, Berkeley*, November 2019, https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.

[15] "Loan-Level Price Adjustment Matrix," *Fannie Mae*, October 21, 2020, https://singlefamily.fanniemae.com/media/9391/display;
"Credit Fee in Price Matrix," *Freddie Mac*, September 24, 2020, https://guide.freddiemac.com/euf/assets/pdfs/Exhibit_19.pdf.

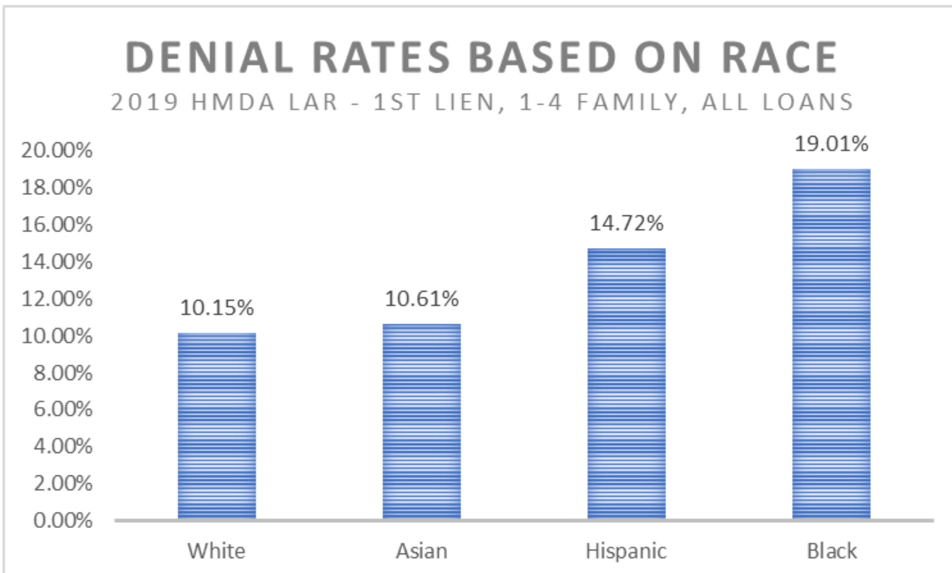
[16] Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman, and Caitlin Young, "Explaining the Black-White Homeownership Gap: A Closer Look at Disparities Across Local Markets," *Urban Institute*, October 2019, https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_a_closer_look_at_disparities_across_local_markets_0.pdf;
"Who Are the Credit Invisibles? How to Help People with Limited Credit Histories," *Consumer Financial Protection Bureau*, December 2016, https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf.

[17] Zach Fox, Zain Tariq, Liz Thomas, and Ciaralou Palicpic, "Bank Branch Closures Take Greatest Toll on Majority-Black Areas," *S&P Global*, July 25, 2019, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-branch-closures-take-greatest-toll-on-majority-black-areas-52872925.

[18] Fox, "Bank Branch Closures Take Greatest Toll on Majority-Black Areas."

been shown to be poor predictors of risk[19] – particularly for borrowers who are used to paying higher percentages of their income on rental housing payments. As a result, not only do these standards disadvantage borrowers of color, but they are also suboptimal for achieving their intended purpose of managing risk.

Because the U.S. lending and housing markets are so exclusionary, a disproportionate percentage of Black, Latinx, and Native American borrowers are turned down for mortgage credit each year. NFHA's analysis of 2019 HMDA data reveals that Black applicants are denied for mortgage loans at almost twice the rate of White applicants. Latinx consumers are denied at almost 1.5 times the rate of White applicants. These trends have persisted over decades. (See chart below.)



Source: Home Mortgage Disclosure Act Data via Compliance Tech. NFHA Calculations.

Additionally, programs designed to extend credit to businesses owned by people of color have lackluster performance. The Paycheck Protection Program developed to help businesses impacted by the COVID-19 pandemic has provided minimal benefits to companies owned by Blacks and Latinxs. The Center for Responsible Lending estimated that during the first round of the PPP program, when support for small businesses was most critical, only about 5% of Black-owned and 9% of Latinx-owned businesses would be able to access the program.[20] Its projections were borne out. One analysis revealed that a disproportionate majority of PPP loans went to businesses in majority-White communities while a

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[19] "NFHA Comments on the CFPB's Advance Notice of Proposed Rulemaking for the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)" *National Fair Housing Alliance*, September 16, 2019, https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA-QM-Comments-Final.pdf.

[20] Tommy Beer, "Minority-Owned Small Businesses Struggle to Gain Equal Access to PPP Loan Money," *Forbes*, May 18, 2020, https://www.forbes.com/sites/tommybeer/2020/05/18/minority-owned-small-businesses-struggle-to-gain-equal-access-to-ppp-loan-money/#3dff24c75de3.

disproportionately small share of loans went to those located in majority-Black or majority-Latinx areas.[21]

Additionally, borrowers of credit face discriminatory roadblocks when trying to access car loans. An investigation by the National Fair Housing Alliance revealed that consumers of color with better financial profiles than their White counterparts were more often charged higher interest rates, received more costly options, presumed to be less qualified than they actually were, taken less seriously as buyers, and were more likely to be subjected to disrespectful treatment.[22] Sales people and finance officers at the dealerships where the investigations took place were much more likely to work with White consumers to bring prices down, sometimes through breaking policies, rules, and procedures or by making an extra effort to give the White consumer better pricing.[23]

In many respects the cards are stacked against underserved borrowers. Maintaining the status quo will never provide these families and consumers with the opportunities they need and deserve to access credit or secure housing stability. While building more affordable housing is critically necessary and may help expand equal housing opportunities, increasing affordable housing units alone will not address the racial inequality gap.[24]

Increase in Asian American Violence

Since the advent of the COVID-19 pandemic, there has been a dramatic uptick in violence against Asian Americans. According to Stop AAPI Hate, from March 19, 2020 to February 28, 2021, there were 3,795 incidents of hate levied against Asian Americans. Verbal harassment made up 68.1% of the reported incidents and physical assault made up 11.1% of the cases. Of the reported incidents, 35.4% occurred at a business, 25.3% occurred on a public street or sidewalk, 10.8% occurred online, and 9.2% occurred at a residence.[25] Women were 2.3 times more likely than men to report hate incidents. Chinese Americans (42.2%) reported the lion share of cases. An analysis by the Pew Research Center reveals that 31% of Asian Americans reported being subjected to racial slurs or jokes amid the COVID pandemic.[26]

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[21] Jason Grotto, Zachary R. Midler, and Cedric Sam, "White America Got a Head Start on Small-Business Virus Relief," *Bloomberg*, July 30, 2020, https://www.bloomberg.com/graphics/2020-ppp-racial-disparity/?sref=437r7DCu&utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axiosmarkets&stream=business.

[22] Lisa Rice and Erich Schwartz, Jr., "Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience," National Fair Housing Alliance, January 2018, https://nationalfairhousing.org/wp-content/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf.

[23] Rice, "Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience."

[24] Reprinted from blog by Lisa Rice: "Using Special Purpose Credit Programs to Expand Equality," November 4, 2020. Available at: https://nationalfairhousing.org/using-spcps-blog/

[25] Russel Jeung, Aggie Yellow Horse, Tara Popovic, and Richard Lim, "Stop AAPI Hate National Report," February, 2021. Stop AAPI Hate Coalition. Available at https://secureservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf

[26] Neil Ruiz, Juliana Menasce Horowitz, and Christine Tamir, "Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak," July 1, 2020. Pew Research Center. Available at https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/

When a hate incidence occurs at a person's residence, it may well invoke Fair Housing Act protections. However, most consumers are not aware of the law's protections. Most people who experience an attack only think to report the incident to law enforcement and few law enforcement agencies understand how the Fair Housing Act can help protect victims of hate crimes.

Hate crimes against Asian Americans have been particularly brutal as perpetrators appear to be buoyed by former President Trump's hate-filled rhetoric with respect to the coronavirus. In New York, a young woman was attacked when a man poured acid on her face as she was taking out her garbage. She suffered chemical burns on her face, neck, and back.

The Asian American community is calling out for help. That help must come by the Federal government stepping up efforts to educate the Asian American community about their rights under laws like the Fair Housing Act. Additionally, the government must expand resources and support for local fair housing organizations to conduct outreach and provide assistance to victims of hate crimes.

Solutions to Overcome Housing and Lending Inequity

When thinking about solutions to overcome housing and lending discrimination and systemic barriers to opportunity, we must consider the extensive resources this nation has invested in creating a deeply inequitable society. Thousands of laws, ordinances, and policies have been passed that were either explicitly race-based - such as the Indian Removal Act, the Chinese Exclusion Act, the Black Codes, and Jim Crow laws - or that were implemented with racialized policies – such as the Housing Act, the Social Security Act, the Federal Aid Highway Act, and the Home Owners Loan Corporation Act. This nation has spent hundreds of trillions of dollars implementing unfair policies, through a racialized lens, which created the deep-seated racial inequality we see today manifested in housing, lending, health, employment, wealth, and other outcomes.

While we have passed civil rights laws designed to stop discriminatory actions and create a fairer society, we have never fully enforced those statutes. Instead, legislators and special interest groups have spent enormous resources chipping away at civil and human rights protections. The last four years of unprecedented attacks on fair housing, fair lending, and other civil rights protections by the Trump administration are a testament to that.

What is more, when civil rights laws were passed, they did not include comprehensive provisions to dismantle the structures of inequality that had been put in place. There is no mechanism in our laws to deconstruct the dual credit market. There is no comprehensive strategic system for dismantling school segregation. Our laws hold no systematic way to undo systemic residential segregation or exclusionary zoning ordinances that were passed years ago create and maintain a separate and unequal landscape throughout this country.

The only real provision for creating well-resourced, fully-invested, inclusive neighborhoods is the Affirmatively Furthering Fair Housing provision of the Fair Housing Act. But this provision of the law does not offer any private right of action and must be achieved through voluntary compliance. One mechanism for enforcing the AFFH provision was established via the 2015 AFFH Rule promulgated by HUD. However, that rule was summarily overridden by the Trump administration and replaced in 2020 by a toothless rule that does nothing to advance fair housing goals. In fact, the 2020 "Preserving

Community and Neighborhood Choice" rule[27] cannot even seriously be considered as a fair housing rule. The other mechanism for implementing the Affirmatively Furthering Fair Housing provision was through the establishment of the President's Fair Housing Council. However, the Council has not been operational in over 20 years.[28]

The inability to stop discrimination and overhaul unfair systems is crippling this nation. It has not only impeded our economic progress and productivity, but it has harmed countless millions resulting in mental, physical, social, and economic duress. Housing discrimination and segregation are literally killing people. This point could not be clearer when the devastating impacts of the COVID-19 pandemic are considered as Communities of Color are dying at inordinately high rates.

Creating a fair, just and equitable society is critically important for the millions of people in this nation who lack access to viable opportunities to lead successful lives. But it is also imperative for our collective progress as a nation. Groundbreaking research has revealed that if we eliminated racial inequality, the U.S. GDP would increase by $5 trillion over a 5-year period. Instead of directing energy and resources to restricting people's ability to access opportunity, we should be expanding people's access to critical amenities. Doing so would strengthen our neighborhoods, communities, and the broader society and position us in a better position to compete on a global level. Our diversity, it turns out, is our strength. Access to opportunity is not a Zero-sum game. Rather, broadening opportunity provides exponential benefits to everyone.

To address the massive disparities rooted in the nation's history of racism, the persistence of residential and school segregation, overcome the harms of the dual credit market, compensate for existing restrictive zoning policies and if we are going to be serious about eliminating all forms of housing discrimination and creating a truly equitable society, we must do the following:

1) Fully enforce and strengthen anti-discrimination laws – Laws like the Fair Housing Act, Equal Credit Opportunity Act, Community Reinvestment Act, Home Mortgage Disclosure Act, Dodd Frank Consumer Reform and Protection Act, and other civil rights statutes have gone a long way to advancing justice for marginalized and underserved groups. However, these laws cannot stand up to the bevy of statutes passed over the centuries that created systemic injustice in the U.S. We must adopt additional laws, and in some cases strengthen existing statutes, to provide full protections to people in order to stop discrimination, fully compensate victims for the harms they have suffered, dismantle unfair structures, and create new, equitable systems that advance opportunity.

2) Dismantle structural barriers that create and perpetuate bias and replace them with systems that are fair and equitable – U.S. systems are deeply inequitable and both private market players and government must be aligned in deconstructing unfair systems and bringing on board unbiased structures that provide access to a full range of housing and financial services that have been too long denied to people.

3) Invest in underserved communities to address and correct the iniquities of the past – If things are left as is, marginalized communities will never reach parity with Whites – never. No amount of bootstrap-

[27] See 85 FR 47899.
[28] Executive Order 12892—Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994. Available at https://www.govinfo.gov/content/pkg/WCPD-1994-01-24/pdf/WCPD-1994-01-24-Pg110.pdf

lifting will take the place of centuries of harmful disinvestment and equity-stripping. The only way to properly compensate communities that have been denied wealth-building opportunities is to heavily invest in these communities. A comprehensive infrastructure bill that includes strong support for housing is paramount. The bill must include both demand and supply side provisions.

4) Change our culture - We do not have an inequitable society because we adopted policies and practices with the intent of providing fair opportunities for all. We are a deeply biased society because we expressly wanted to create benefits for some and deprive others. We have unfair systems by design, not be accident. If we want to have a society in which everyone has fair access to the benefits and resources this nation holds, we must be intentional about that as well. The bias in our markets are not a bug but a feature. They were built that way and intended to operate in a discriminatory fashion. They'll continue to do so until we make systemic and cultural changes. This change may be uncomfortable, but it is necessary in order to move the nation forward.

To view a more detailed list of the actions that we must undertake post haste to realize housing and lending equity, see the National Fair Housing Alliance's list of priorities for the Biden-Harris Administration.

Priorities for the Biden Administration and 117th Congress

Infrastructure Bill

It is imperative that the infrastructure bill include comprehensive housing provisions that address both supply side and demand side issues. NFHA champions the subsuming of the following bills in the American Jobs Plan:

- Neighborhood Homes Investment Act
- Restoring Communities Left Behind Act
- National Land Bank Network Act
- Housing Supply and Affordability Act
- REHAB Act
- Complete Streets Act

NFHA also strongly advocates applying the Affirmatively Furthering Fair Housing mandate to the entirety of the infrastructure bill. The only way we will achieve housing equity is by recognizing the inextricable link between infrastructure and housing. The two are interconnected. Housing is infrastructure. In the past, infrastructure bills were used to create and perpetuate housing segregation and other housing-related inequalities. This infrastructure bill is a ripe opportunity to correct those errors of the past.

Moreover, NFHA strongly advocates including a strong downpayment assistance provision into the infrastructure bill that includes a set-aside for socially and/or economically disadvantaged groups building off of the design of similar programs in USDA, Small Business Administration, and Transportation.