

TURNING BACK THE CLOCK

How the Trump Administration Has Undermined 50 Years of Fair Housing Progress

U.S. Senate Committee on Banking, Housing, and Urban Affairs

Minority Staff Report

Ranking Member Senator Sherrod Brown

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EXECUTIVE SUMMARY

More than 50 years after Congress passed the Fair Housing Act, access to housing remains unequal. The contours of our country are still defined by “Black,” “Latino,” “Asian,” or “white” neighborhoods – all with very different levels of access to resources like schools and grocery stores, and experiences with health care, pollution, and public safety.

- In 2020, the Black homeownership rate is just 47 percent and the Latino homeownership rate is just 51 percent, compared to a white homeownership rate of 76 percent.
- Black and Latino renters are more likely to pay more for housing than they can afford than white renters.

This is not an accident. This is by design. The inequities we see today are pernicious hallmarks of decades of government policies and discrimination in the financial system that blocked Black and brown households from achieving equal housing opportunity. For years, the federal government actively promoted housing segregation and discrimination. It was not until Dr. Martin Luther King, Jr.’s assassination in 1968 that Congress finally passed the Fair Housing Act to outlaw discrimination and promote integrated communities. Over the next four decades, reforms to banking laws and housing programs helped facilitate modest gains in homeownership for people of color, but predatory lending still disproportionately targeted borrowers of color. The 2008 financial crisis eviscerated gains in homeownership and wealth that Black and brown communities had fought hard for over the 40 years since the Fair Housing Act passed. Now, the health and economic effects of the COVID-19 pandemic, which are again disproportionately hurting communities of color, threaten to set these same communities back further.

Congress and the Obama Administration took steps to address the 2008 losses by identifying and combating discriminatory lending. Their efforts included steps to – finally – fully implement the 1968 Fair Housing Act by giving communities the tools they need to identify barriers to housing and economic opportunities.

The Trump Administration is systematically undermining the progress that has been made over the past 50 years. Over the past three and a half years, the President and his appointees have carried out a blueprint for policy-making that dismantles foundational housing civil rights protections. The Trump Administration has:

- Rolled back enforcement against systemic fair housing and fair lending violations;
- Undermined fair housing enforcement by making it all but impossible to root out discriminatory housing policies, while also slashing data collection to identify mortgage discrimination;
- Impeded the ability of state and local governments to identify barriers to and build more inclusive communities;

- Gutted rules to ensure banks provide access to credit and invest in low- and moderate-income communities and communities of color;
- Proposed changes to the housing finance system that will make mortgages more expensive and harder to get, particularly for borrowers of color;
- Denied access to home financing for Deferred Action for Childhood Arrivals (DACA) recipients and proposed to lock many immigrant families and children out of vital housing assistance; and
- Proposed to allow federally funded shelter providers to disregard transgender individuals' gender identity in providing shelter and to allow these shelter providers' religious views to inform who they serve and how, threatening the rights and safety of Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals.

Taken together, these policies are a devastating retreat from the progress of the civil rights movement and undo the foundation for a more just society, built through more than 50 years of law, Supreme Court rulings, and policy.

Congress and the Trump Administration must immediately reverse course on harmful policies that would further disinvest from communities and allow housing discrimination to go unchecked. Federal regulators and agencies, including the U.S. Department of Housing and Urban Development (HUD) and the Consumer Financial Protection Bureau (CFPB), must:

- Restore the Fair Housing Act to its full strength by keeping or reinstating rules to root out discriminatory policies, provide tools to help communities create more inclusive housing markets, and require data collection to identify and root out home lending discrimination;
- Expand the tools for state and local governments to evaluate barriers to equity and inclusion in their own communities;
- Provide strong fair housing and fair lending oversight; and
- Maintain and expand meaningful investment in all communities by strengthening, not gutting, banks' commitment under the Community Reinvestment Act.

Congress must also act to:

- Provide long-overdue investments in housing and community development in communities of color that have been ignored by the federal government for far too long;
- Invest in fair housing enforcement; and
- Break down barriers to homeownership and redesign our housing finance system so that it better serves Black and brown communities.

Housing inequality is the result of decades of government policies and a discriminatory financial system that have at times created and often reinforced segregated housing and denied Black and brown people the ability to choose where they live and build wealth through homeownership. If we aspire to be a more inclusive and equal nation, we cannot ignore the injustice that is built into our nation's housing and communities. We must, as a country, finally reckon with these institutionalized inequities and address systemic racism. This report documents the Trump Administration's dismantling of our fair housing and fair lending laws, and sets out a path to reform and renew our nation's commitment to those civil rights protections. That begins by standing up to the Trump Administration and its congressional allies in their efforts to gut our nation's fair housing laws. It also requires that Congress fulfill the promise of the Fair Housing Act and make long-overdue efforts to promote equity and investment in housing.

INTRODUCTION

Home. Few concepts are more important to our sense of well-being and identity than where we live. It is in our homes and the communities where they are located that our memories are made and our identity is forged – as parents, as neighbors, and as participants in our communities. Too often, where we live directly shapes our educational attainment, our economic mobility, and our health outcomes.

Yet for much of our nation’s history, racial and ethnic discrimination – often overt and often with direct government backing – has denied Black, brown, native, and immigrant communities access to decent, affordable housing. Because of systemic racial discrimination and its lasting effects, generations of Americans have been denied access to safe, stable, and affordable housing, and the opportunity to build wealth through homeownership.

In response to the civil rights movement, our nation took action to combat discrimination by establishing protections under federal law – in public accommodations, housing, voting, education, and access to employment. These federal protections sought to not only combat housing discrimination but also advance the notion of fair housing. In the decades since these federal protections became law, they have been expanded to ensure that people have equal access to housing regardless of their sex or disability. Implementation of these laws has not been perfect, but they remain vital as tools in the fight against housing discrimination.

This report provides a brief historical background of our fair housing and fair lending laws and details the Trump Administration’s unprecedented, wholesale effort to undermine those laws and to dismantle the protections they provide. It then sets forth ways our nation can reinvigorate its commitment to address discrimination in housing – ensuring that everyone can live in a community where they and their family are able to flourish.

Because this report details the development of our fair housing laws through the civil rights movement of the 1960s, it focuses on the struggle of Black Americans to secure these rights and on the disparities Black and Latino people still face half a century later. Our nation’s work toward a more just society is not confined to these laws, or to the background that this report provides. Native communities, Asian communities, immigrants, religious minorities, people with disabilities, women, families with children, and LGBTQ individuals, among many others, have all been denied – and are still too often denied – equal access to safe, stable, and affordable housing. Each of these communities have had their own fights for just treatment in our society before and after the passage of our foundational civil rights laws. While their struggles for equal housing rights are not chronicled as part of the passage of our fair housing laws, these struggles for justice must be embedded in our continued fights for fair housing and civil rights.



SECTION I: THE LASTING EFFECTS OF REDLINING

**A Brief History of Housing Segregation
and Inequality**

“SEPARATE AND UNEQUAL”

Our nation’s racial and ethnic disparities in homeownership, wealth, and economic opportunity reflect an intentional effort to lock communities of color out of the mainstream housing and economic system. For much of the 20th century, the federal government was not just a passive observer, but also a driving force behind policies that systematically excluded people of color from neighborhoods, schools, and the labor market.

In the late 19th and early 20th centuries, housing in the U.S. looked very different than it does today. Homeownership rates were far higher for farmers who lived and worked on that farm, while the majority of urban residents were renters.¹ There was no federal role in the mortgage market, and homeowners who had a mortgage were often required to make up to a 50 percent down payment and pay the rest of the loan in six to ten years, which put a mortgage out of reach for many.² Some localities adopted their own restrictions segregating their rental and owner-occupied housing.³ Black homeownership was far lower than the white homeownership rate in both urban and rural areas as Black families suffered further inequities from generations of being enslaved⁴, years of living under local black codes that were designed to undermine the rights of formerly enslaved people⁵, and decades of Jim Crow laws that restricted the rights and freedoms of Black Americans.⁶ Despite these challenges, Black homeownership gradually rose to nearly 23 percent by 1920.⁷

In 1929, the Great Depression triggered a crisis that began the federal government’s involvement in the housing market. Until that time, housing policy largely was controlled by state, local, and private actors, making discrimination localized and ad hoc.⁸ But as the depression deepened, the number of real estate foreclosures ballooned from 68,100 in 1926 to more than 252,000 in 1933.⁹ Half of all mortgages in urban areas were in default by 1934, and families, banks, and the housing industry suffered.¹⁰ With the housing market in free fall and the banking system collapsing, states, localities, and private actors were unable to address these problems.

To reinvigorate the housing market, President Franklin Roosevelt created the government-sponsored Home Owners’ Loan Corporation (HOLC) to purchase mortgages nearing foreclosure and refinance them into longer-term, more affordable loans, or to fix up and rent or sell homes when foreclosure did occur.¹¹ This strategy was a first step to stabilize neighborhoods across the country. To assess and value properties – including the properties it had purchased – HOLC partnered with local real estate agents and appraisers to make “Residential Security Maps.” These maps used color-coding to differentiate between high and low risk neighborhoods, with green signifying the “Best” neighborhoods and red indicating a “Hazardous” area.¹² Neighborhoods that were home to people of color, even a small percentage, were marked “Declining” or “Hazardous.”¹³

The Federal Housing Administration (FHA) similarly was created to rejuvenate the hous-

ing market by providing access to more affordable homeownership by insuring mortgages.¹⁴ Like HOLC, FHA relied on maps, similar to the HOLC maps, as well as appraisers and its own underwriting manual to determine the viability of a loan.

Under the auspices of sound underwriting and protecting the government from risk, HOLC and FHA initiated decades of federally-sanctioned discrimination in the U.S. housing system. FHA's underwriting manual contained racially-biased standards for assessing risk for home mortgage lending, even going so far as to say that "[i]f a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes."¹⁵ Once a community was "redlined" by the HOLC or rated as too risky by FHA's guidelines, residents were excluded from the long-term, affordable home loans offered with FHA insurance. The result was that capital – in the form of low-cost, stable mortgages – flowed to white neighborhoods and dried up in neighborhoods that were, or seemed likely to become, home to Black or immigrant families. This set white borrowers of Northern European ethnic backgrounds on a path to build wealth through homeownership that could be passed down through families, while systematically denying the same wealth-building opportunity to borrowers of color and more recent immigrants. From 1934 to 1968, 98 percent of FHA-backed loans were made to white applicants.¹⁶

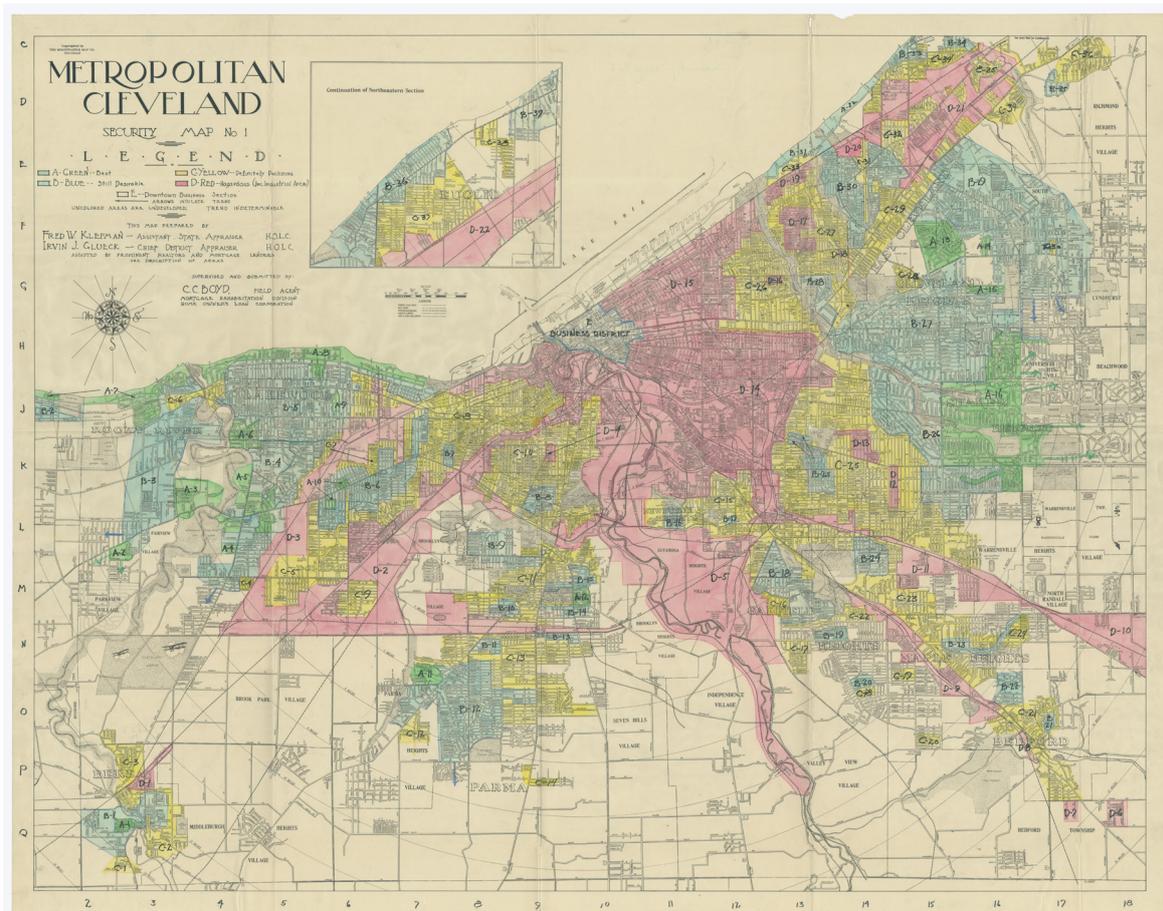
The federal government also sought to address the nation's housing shortage by constructing the first public housing not for military use. The Public Works Administration (PWA) constructed 21,800 units across 51 public housing communities between 1933 and 1937 – all segregated by race.¹⁷ This new housing was also available only to lower-middle income or middle income families who could afford the rents. In some cases, new, segregated public housing replaced integrated neighborhoods and displaced more people of color than were rehoused, forcing Black families into already overcrowded, segregated neighborhoods.¹⁸

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In 1937, the U.S. Housing Act created the foundation for the modern public housing program and transferred the work of building public housing to localities, which could receive federal subsidies if they wished to construct public housing. The program created another 100,000 units in over 140 cities by 1942.¹⁹ Some public housing was also created in areas designated for "slum clearance"²⁰ or "urban renewal" – where cities received federal grants to acquire and demolish large portions of low-income neighborhoods and marketed the cleared land to new developers.²¹ Again, the resulting public housing was largely segregated. The federal government directed localities to comply with the "neighborhood composition rule," which required the community to match the race of new public housing occupants to the race of the existing neighborhood.²² As a result, public housing further

enshrined segregation in the communities where it was built.

In the decades that followed, communities and borrowers of color faced blatant, government-sanctioned housing discrimination. But with a victory in the courts, prospective homeowners and renters began to chip away at the legal barriers to housing equality. In 1948, the Supreme Court struck down the use of racially restrictive covenants²³ – deed provisions that barred the sale of those homes to people of color – removing one of many legal barriers facing non-white families.²⁴ Still, those same families could be denied a loan or refused a home based on their race, ethnicity, family type, disability, or other characteristic, with no legal recourse.



1936 HOLC map of redlining in Cleveland, Ohio. (Source: Ohio State University Library)

Legislative progress towards a more equitable housing system did not immediately follow. When Congress created a new Veterans Administration (VA) mortgage guarantee program in 1944 for servicemembers returning from World War II, these loans, like FHA loans, went almost exclusively to white servicemembers²⁵, denying access to the nearly one million Black servicemembers.²⁶ The federal government also further enshrined segregation in rental housing with the Housing Act of 1949, which made public housing a slum clearance program.²⁷ Displaced residents – often Black families – were given preference to return to the new public housing that replaced their old homes.²⁸ Meanwhile, white families increasingly left the cities for the low-cost single-family home financing available in the suburbs through FHA and VA.²⁹ With few mortgage options, families of color who wanted to

own their own homes often found themselves buying homes at inflated prices in “contract sales.” These predatory arrangements claimed to offer borrowers the ability to pay for the home in installments like an amortizing mortgage, but if just one payment was late, the borrower could lose all of their accumulated equity and their rights.³⁰

As the civil rights movement gained momentum and confronted widespread racial violence and suppression of Black voters, Congress passed the Civil Rights Acts of 1957 and 1960. The passage of these laws ushered in modest progress toward protecting Black Americans’ voting rights, but provided no protection from discrimination in the workplace, public spaces, or housing. It was not until 1964, following many more protests for justice and the assassination of President John F. Kennedy, that Congress finally passed the landmark Civil Rights Act of 1964, which outlawed discrimination in employment and public accommodations – but not housing. That same year, President Lyndon B. Johnson announced a coordinated federal effort aimed at reducing poverty and ending racial injustice through a series of programs, branded as the “Great Society.”³¹ Among the federal departments and agencies established through the Great Society was the Department of Housing and Urban Development (HUD).³² HUD became a cabinet-level department responsible for federal support for homeownership, community development, and affordable housing.

“OUR NATION IS MOVING TOWARD TWO SOCIETIES, ONE BLACK, ONE WHITE — SEPARATE AND UNEQUAL.”

1968 KERNER COMMISSION REPORT

But tensions caused by widespread and centuries-old economic inequality, especially for communities of color, boiled over. Racial tension erupted in massive civil unrest that forced the federal government to pay greater attention. President Johnson established the National Advisory Commission on Civil Disorders, known as the “Kerner Commission,” to investigate the root causes of urban violence and civil unrest. Chairman Otto Kerner and his Commission investigated for seven months and concluded that the events were caused by widespread economic inequality and racial segregation that threatened to permanently divide the country into “two societies, one black, one white – separate and unequal.”³³ To address the pervasive inequities that had grown over centuries, the Commission determined that “[f]ederal housing programs must be given a new thrust aimed at overcoming the prevailing patterns of racial segregation.”³⁴

The Kerner Commission’s report detailed how federal programs created ghettos in urban areas around the country, and how the federal government failed to support these communities after the passage of the Civil Rights Act. The report placed the onus for redressing these inequities and repairing the systems that had created them on President Johnson and the entire federal government. The report called for the creation of a federal fair hous-

ing law, among other solutions.³⁵

Facing the pressure of continued social unrest, the Kerner Commission's report, and the assassination of civil rights leader Reverend Dr. Martin Luther King Jr., Congress and the Johnson Administration passed the Civil Rights Act of 1968. This law included the Fair Housing Act³⁶, which for the first time prohibited anyone from refusing to sell or rent a property to someone based upon the protected classes of race, color, religion, or national origin.³⁷ The Act also addressed discrimination in the home finance and mortgage industry, protecting the same protected classes from acts, "...to deny a loan or other financial assistance to a person."³⁸ Lastly, the Act included a provision that required that federal housing funds be used "affirmatively to further" fair housing.³⁹ The result was that the federal government had a dual role in combating housing discrimination. The law made clear that it was not enough for the federal government to simply uphold the law barring discriminatory practices – it must also take positive steps to promote equitable housing opportunities. With this legislation, legal discrimination in housing and lending was outlawed, and federal promotion of equitable community development and integrated communities became the law of the land.

HUD's creation and the Fair Housing Act's passage were watershed moments for housing equality. However, outlawing discrimination did not stop it in its tracks. Discrimination based on race and ethnicity came to light as HUD began its own investigations in implementing the law. And when then-HUD Secretary George Romney tried to carry out his new legal obligation to "affirmatively further" fair housing by rejecting funding requests from communities that perpetuated housing segregation, he was hamstrung by his own administration, with President Nixon telling advisors to "[s]top this one."⁴⁰ Communities of color and redlined neighborhoods continued to experience the effects of decades of disinvestment and lost opportunities for stability and wealth building through affordable homeownership that had been conferred on white families and neighborhoods. And while housing discrimination was outlawed in 1968, other types of discrimination, including discrimination in access to consumer loans, car loans, and other forms of credit were not.

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Congress began tackling these inequities by passing another series of laws. The first, in 1974, was the Equal Credit Opportunity Act (ECOA), which prohibited creditors from discriminating against an applicant for any type of credit "on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Con-

sumer Credit Protection Act.”⁴¹ By banning this form of discrimination, the ECOA reduced barriers for applicants from historically disenfranchised groups when buying a home or a car, and applying for loans or credit cards.

Soon after the ECOA’s passage, advocates and Congress turned to another concern – transparency in the mortgage market. Even though the Fair Housing Act outlawed housing discrimination, many banks continued discriminatory practices and did not provide mortgages in lower-income and majority-minority areas. To ensure that financial institutions were being held to public account and providing home loan credit on equal terms across neighborhoods, Congress passed the Home Mortgage Disclosure Act (HMDA), which required lenders to provide reports on the home loan applications they received and the home loans they made to their regulators and the public.⁴² Through HMDA, the federal government made it possible for communities and regulators to access data about local lending – shining sunlight on lending practices. HMDA became and remains an important tool in assessing lenders’ compliance with fair housing and fair lending laws, including the Fair Housing Act and the ECOA.

Lastly, in 1977, amid reports⁴³ that banks were engaging in their own versions of discriminatory “redlining” by lending to individuals based upon their race or their neighborhood, Congress passed the Community Reinvestment Act (CRA), which required banks to show that they were meeting the “convenience and needs of the communities in which they are chartered” and gave regulators the tools to examine banks for compliance.⁴⁴ If banks failed to meet local needs, regulators could prohibit them from growing through mergers and acquisitions or opening new branches.

The CRA set an important precedent – it acknowledged the historic disinvestment by banks and the government in redlined communities and required banks to address this pattern of disinvestment by meeting the needs of all of their customers. More than 40 years later, the CRA remains a vital tool to ensure investments, such as affordable homeownership opportunities, are made in historically underserved, redlined, and majority-minority neighborhoods around the country.

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40 YEARS OF GAINS AND LOSSES

While the Fair Housing Act and subsequent federal legislation created mechanisms to identify and address discrimination in access to credit, the 2008 financial crisis reminded the nation that housing discrimination and the exploitation of communities of color were pervasive. Following the passage of critical fair housing and fair lending laws in the 1960s and 1970s, the gap in homeownership rates between Black and Latino borrowers and their white counterparts narrowed somewhat in the 1970s but expanded again in the 1980s, at the same time that government policies that supported corporate interests and deregulation were put in place.⁴⁵ While the gaps remained large, they narrowed throughout the 1990s as Fannie Mae and Freddie Mac's affordable housing goals and other housing counseling and downpayment assistance programs targeted to low- and moderate-income families sharpened the focus on equitable access to sustainable loans for creditworthy borrowers. By 2000, while still far lower than the national homeownership rate of 66 percent, the Black homeownership rate was above 46 percent, and the Latino homeownership rate was nearly the same.⁴⁶

During this period, federally assisted rental housing also changed both in its form and in the populations it served. During the 1970s and 1980s, HUD increasingly provided subsidies for private rental housing, reduced construction of public housing, and underfunded public housing that increasingly served families of color, allowing existing housing to fall into disrepair.⁴⁷ By the 1990s, the public housing program was segregated along both economic and racial lines, and many buildings were in areas with little access to work, transportation, or basic necessities.⁴⁸ The War on Drugs also came to assisted housing. As crime and drug use rose around the country and in public housing, which is disproportionately occupied by Black and brown families, housing authorities were allowed to provide their own police and security forces⁴⁹ and federal law and local administrators adopted a "One Strike" policy for federally-assisted renters.⁵⁰ As a result, even today, tenants can face eviction if they are suspected to be involved in drug-related criminal activity on or off of the premises of that housing.⁵¹

The federal government sought to address the economic segregation and deterioration of public housing through the HOPE VI program, which provided funds to replace existing public housing with less dense, mixed-income housing. Over the late 1990s and early 2000s, HOPE VI provided 260 grants to revitalize public housing.⁵² While the new housing produced through HOPE VI generally has improved living conditions, it also produced fewer units for low-income families than existed before. Today, many of the low-income families of color who were displaced from public housing may not qualify for the new housing programs put in public housing's place.⁵³

Discrimination also continued in the mortgage market. Reports suggested that communities of color were targeted for unaffordable and predatory home loans. In a 2000 report of

their National Predatory Lending Task Force, HUD and the Department of Treasury noted that “[p]redatory lenders often engage in “reverse redlining” – specifically targeting and aggressively soliciting homeowners in predominantly lower-income and minority communities who may lack sufficient access to mainstream sources of credit.”⁵⁴ The report found that homeowners in predominantly Black communities refinanced into the subprime market – where they received loans with higher costs and predatory features that set borrowers up for failure – more often than people living in predominantly white communities, even when controlling for income. Just three years later, then-HUD Secretary Mel Martinez noted that predatory lending “poses a significant danger to minority and women homeowners targeted for equity-stripping loans” as well as loans with “abusive terms and conditions” which HUD believed may violate the Fair Housing Act.⁵⁵

BETWEEN 2007 AND 2009, BLACK AND LATINO HOMEOWNERS WERE MORE THAN 70 PERCENT MORE LIKELY THAN WHITE BORROWERS TO LOSE THEIR HOMES TO FORECLOSURE.

Despite warnings from community advocates, multiple federal agencies, and multiple Administrations, predatory lending continued – and accelerated. By 2005, the number of higher-risk, less sustainable subprime loan originations had increased fivefold⁵⁶, and subprime and Alt-A loans made up more than one-third of new mortgages.⁵⁷ These loans were disproportionately concentrated in communities of color and were made disproportionately to borrowers of color.⁵⁸ As targets for toxic and unsustainable loan products, communities and borrowers of color felt the greatest pain from the mortgage crisis that followed.

Between 2007 and 2009, Black and Latino homeowners were more than 70 percent more likely than white borrowers to lose their homes to foreclosure.⁵⁹ Subsequent federal investigations and settlements by the Department of Justice (DOJ) documented practices at the largest mortgage lenders that led them to approve Black and Latino borrowers for more expensive and riskier subprime loans when they gave similarly situated white borrowers safer and cheaper prime loans.⁶⁰ In just four years, Countrywide Financial Corporation put more than 10,000 Black and Latino borrowers into riskier subprime loans while white borrowers with the same qualifications were put into safer, prime loans.⁶¹ Similarly, over a five-year period, Black borrowers receiving a loan from Wells Fargo were twice as likely to get a subprime loan as a white borrower with the same qualifications, and Latino borrowers were 1.3 times as likely to receive a subprime loan.⁶² DOJ concluded that the higher fees charged and riskier loans given to Black and Latino borrowers “put increased economic burdens on those families.”⁶³ Settlements reached years after the fact could not repair the

lasting damage that predatory and discriminatory lending caused for so many people and neighborhoods.

Faced with the devastation of the financial crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) in 2010.⁶⁴ This multi-dimensional regulatory reform law sought to eliminate the types of high-risk mortgages and loan features that were allowed to spread in the lead-up to the crisis and that disproportionately harmed borrowers of color. Dodd-Frank also established a new agency, the Consumer Financial Protection Bureau (CFPB), dedicated to ensuring the safety and rights of consumers. Whereas federal enforcement of consumer protection statutes was divided between the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), HUD, and the Federal Trade Commission (FTC), the CFPB centralized consumer protection in one independent federal agency. In addition to its enumerated powers to implement existing consumer protection laws, the CFPB was given the authority to create rules and regulations in response to new and harmful practices, including in the mortgage industry. Dodd-Frank also delegated to the CFPB oversight and enforcement of multiple fair lending laws, including the ECOA and HMDA, and required the Bureau to establish an Office of Fair Lending and Equal Opportunity (OFLEO, or Office of Fair Lending).

Yet these efforts could not fully address the yawning disparities that were exacerbated by predatory lending and the financial crisis. It is difficult to overstate the disproportionate and catastrophic consequences that the financial crisis had for communities of color. The resulting decline in Black homeownership wiped out two decades of gains in homeownership⁶⁵, returning the Black homeownership rate back to the level it was at in the 1960s – when racial discrimination in housing was still legal.⁶⁶

THE RESULTING DECLINE IN BLACK HOMEOWNERSHIP WIPED OUT TWO DECADES OF GAINS IN HOMEOWNERSHIP.

Homeowners in predominantly Black and Latino neighborhoods who kept their homes saw drastic declines in home value from nearby foreclosures.⁶⁷ Once a loan went through foreclosure, the lender or agency backing the loan was responsible for maintaining the home until it was sold. In neighborhoods with large numbers of homeowners of color, some lenders neglected foreclosed properties (called real estate owned, or REO), leading to blight and further decline in property values.⁶⁸ Still other FHA, Fannie Mae, and Freddie Mac foreclosed properties, often those in communities of color, were sold in bulk sales to investors that turned large numbers of formerly affordable owner-occupied housing into single-family rental properties.⁶⁹ Foreclosures were heavily concentrated in neighborhoods of color, tracking closely to the redlining maps of the 20th century, and the values of homes in those

communities have yet to recover.⁷⁰

As a result of these and other factors, the Black-white and Latino-white wealth gaps grew following the financial crisis of 2008, with the net worth of white households being 13 times and 10 times the net worth of Black and Latino households, respectively, in 2013.⁷¹ And incomes for households of color remain far below the incomes of white households. In 2018, the median white household's annual income was \$18,000 more than the median Latino family and \$28,000 more than the median Black family.⁷² The median Black family earned less than \$42,000 a year, while the median white family had an income of more than \$70,600.⁷³ With federal rental assistance limited by annual appropriations, rather than expanding to meet the need, today only one-in-four renters who qualify for assistance receive it.⁷⁴ While many renters struggle to pay rent, white renters' higher incomes leave them better able to afford their housing costs. Fifty-five percent of Black and 53 percent of Latino renters are cost-burdened, paying more than 30 percent of their income for housing, while 43 percent of white renters face similar cost burdens.⁷⁵ And while eviction rates vary substantially by locality, studies suggest that Black and Latino renters are more likely to be evicted than white renters. For example, in Milwaukee, Wisconsin, 23 percent of Latino renters and 12 percent of Black renters had been forced to move in the prior two years, compared to nine percent of white renters.⁷⁶

Even these drastic differences in income and homeownership rates cannot explain all of the disparities in housing security. Black individuals make up a disproportionate 21 percent of the people experiencing poverty in the U.S., but a much higher 40 percent of people experiencing homelessness.⁷⁷ LGBTQ youth and youth of color are also overrepresented in the homeless system. LGBTQ youth have a 120 percent higher risk of experiencing homelessness than non-LGBTQ youth, while Black youth have an 83 percent higher risk of experiencing homelessness, and Latino youth have a 33 percent higher risk of experiencing homelessness than their white counterparts.⁷⁸ For Black and brown youth, interactions with both foster care and the juvenile justice system fuel economic and social inequities leading to homelessness and negative health outcomes.⁷⁹ These young people are particularly vulnerable to discrimination and exploitation and need additional support systems to ensure they receive quality education and health services and find safe, stable housing in a supportive environment.

Disparities in housing access and stability are not isolated problems. Housing helps determine which schools children attend and how well funded they are, and commute times of workers. The quality of housing also has a significant impact on health outcomes for children and adults. Exposure to lead-based paint⁸⁰, mold⁸¹, or asbestos⁸² in poorly-maintained properties can result in life-long health consequences. The location of a home can also expose residents to other nearby health hazards from current or former industrial sites. And, housing instability or dangerous conditions can generate toxic levels of stress for both children and adults.⁸³

The Obama Administration – in the face of opposition from congressional Republicans and many in the financial services industry – took steps to address the pervasive inequities in our housing system by clarifying and improving fair housing policies and tools. These efforts included finalizing a regulation to memorialize court rulings affirming the ability to pursue disparate impact claims under the Fair Housing Act⁸⁴, and to address decades-long shortcomings in implementation of the Fair Housing Act's requirement that communities receiving federal housing dollars "affirmatively further" fair housing.⁸⁵ Each of these criti-

cal efforts by the Obama Administration began to address the effects of decades of discrimination in our nation's housing system.

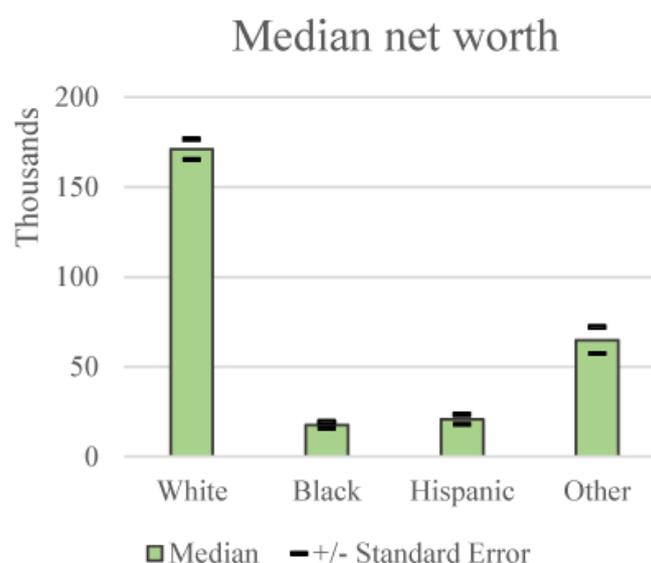
The Obama Administration's actions laid the groundwork for stabilizing the housing market and ensuring full implementation of the Fair Housing Act. Rather than continue these efforts to expand opportunity and confront the enormous challenges remaining in our housing market, the Trump Administration has undermined fair housing at every turn. Through rulemakings and executive orders, the Trump Administration has set out to reverse more than 50 years of civil rights law and court rulings, including Supreme Court rulings, and has concealed these policies' harmful effects by limiting data collection and transparency. These actions threaten to erode efforts to increase equity and opportunity for Black and brown individuals and families, regardless of where they live.

**THE TRUMP ADMINISTRATION'S
ACTIONS THREATEN TO ERODE
EFFORTS TO INCREASE EQUITY AND
OPPORTUNITY FOR BLACK AND
BROWN INDIVIDUALS AND FAMILIES,
REGARDLESS OF WHERE THEY LIVE.**

COVID-19: EXACERBATING HOUSING AND ECONOMIC INEQUITIES

The novel coronavirus 2019 (COVID-19) pandemic has amplified existing racial and ethnic disparities across our health care system and our economy. Before COVID-19 hit the U.S., disparities in health care access, access to healthy food, and access to safe spaces for recreation coupled with the longtime mistrust of the health care system meant that Black and brown communities had higher rates of diabetes, heart disease, and hypertension. These communities are also less likely to have health insurance to help them cover the cost of health care, with Black workers 60 percent more likely to lack health insurance.⁸⁶

Black and brown workers also disproportionately work in jobs that put them in direct contact with the public, increasing their risk of contracting the disease, and do not have jobs that afford them the ability to work remotely.⁸⁷ And in part because of past and present inequities in incomes and homeownership, families of color entered this pandemic with little to no financial cushion. The median household wealth of white families was more than \$150,000 higher than the median wealth of Black and Latino families – with Black families having median wealth of just \$17,600 and Latino families just \$20,700.⁸⁸ Unequal health care, wealth, and employment have amplified the harm of COVID-19 in Black and brown communities. The Centers for Disease Control and Prevention (CDC) reports that the Black, Latino, and American Indian and Alaska Native communities have made up a disproportionate share of COVID-19 related cases, hospitalizations, and deaths. Black people in the U.S. are 2.6 times as likely as white people to contract COVID-19, and 2.1 times as likely to die from the disease.⁸⁹ Similarly, Latino people are 2.8 times as likely as white



Net worth by race (Source: 2016 Survey of Consumer Finances, Federal Reserve Board)

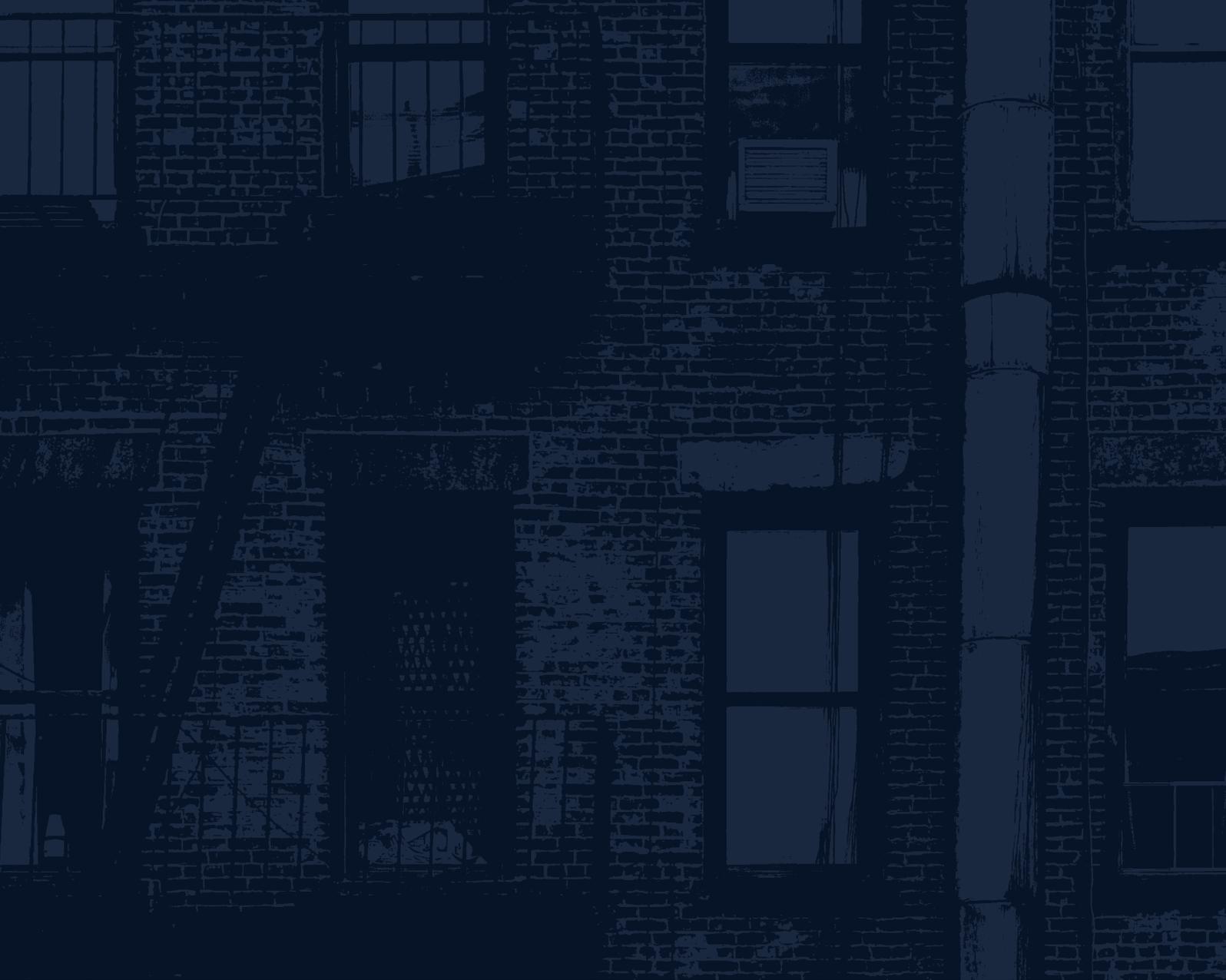
people to contract COVID-19 and 1.1 times as likely to die of the disease in the U.S.⁹⁰ And American Indians and Alaska Natives were 2.8 times as likely as white people in the U.S. to contract COVID-19 and 1.4 times as likely to die from it.⁹¹

In addition to the ways in which housing disparities drive environmental and wealth disparities that expose Black and brown communities to heightened health risk, housing conditions can have a direct effect on the spread of COVID-19. Researchers report that “[s]tructural factors including health care access, density of households, unemployment, pervasive discrimination and others drive these disparities, not intrinsic characteristics of black communities or individual-level factors.”⁹²

The economic fallout of COVID-19, like prior economic crises, has also caused greater economic harm for people of color. As of August 2020, five months into the COVID-19 National Emergency, Black adult unemployment remained at 13 percent and the Latino unemployment rate was 10.5 percent, compared to 7.3 percent for white adults.⁹³ This will have lasting effects, as workers of color pushed out of the labor market will be stuck on the sidelines, finding it harder to get back into decent paying jobs.⁹⁴

The existing wealth gap means that Black and brown communities are left with little to no financial buffer, making them more susceptible to property loss due to foreclosure, housing instability, eviction, and homelessness during the COVID-19 pandemic. In mid-July 2020, more than 31 percent of Black and 28 percent of Latino renters surveyed reported that they were behind on rent for the prior month.⁹⁵ Nearly half of Black and 51 percent of Latino renters reported that they had little or no confidence they could pay next month’s rent on time, compared to about 24 percent of white renters.⁹⁶ And more than 27 percent of Black and 35 percent of Latino homeowners reported that they had little or no confidence they could pay their mortgage next month or had already deferred payments, showing far less confidence than white borrowers, only 12 percent of whom were unsure.⁹⁷

Public health experts have noted that discriminatory housing and lending practices have a lasting impact on communities of color for generations.⁹⁸ For Black and brown communities, housing and economic disparities have already translated into shorter life expectancies, higher rates of infant and maternal mortality, and barriers to economic opportunities. COVID-19 and its fallout throughout our economy and our housing system threatens to exacerbate these inequalities by amplifying the effects of the decades long systemic discrimination experienced by people of color in America.



SECTION II

The Trump Administration's Assault on Civil Rights

This section examines actions the Trump Administration has taken to subvert both elements of the Fair Housing Act and weaken fair housing and lending enforcement. First, the section reviews the Trump Administration's wholesale effort to gut fair housing enforcement. Second, the section examines how the Trump Administration's actions fail to affirmatively promote fair housing and opportunity. Finally, the section concludes by detailing the Trump Administration's uniquely cruel and callous targeting of people — including immigrants and LGBTQ individuals — who have long faced unfair and unjust policies.

THE TRUMP ADMINISTRATION'S EFFORTS TO GUT FAIR HOUSING ENFORCEMENT

Turning a Blind Eye to Housing Discrimination

Under the Trump Administration, HUD has actively worked to slow efforts to fight housing discrimination and ensure that all people have safe, accessible, affordable, and stable housing. The Trump Administration has taken steps to halt fair housing enforcement and has not pursued adequate funding or staffing to oversee fair housing nationwide.

The Fair Housing Act prohibits landlords, real estate companies, municipalities, banks or other lending institutions, and homeowners insurance companies from making housing unavailable based on race, color, religion, and national origin.⁹⁹ Congress amended the law to prohibit discrimination based on sex in 1974¹⁰⁰ and again in 1988 to prohibit discrimination based on familial status and disability.¹⁰¹ But, the Fair Housing Act must be enforced to have meaning. The Trump Administration's toothless approach to fair housing enforcement and limited funding for enforcement have undermined the law's efficacy.

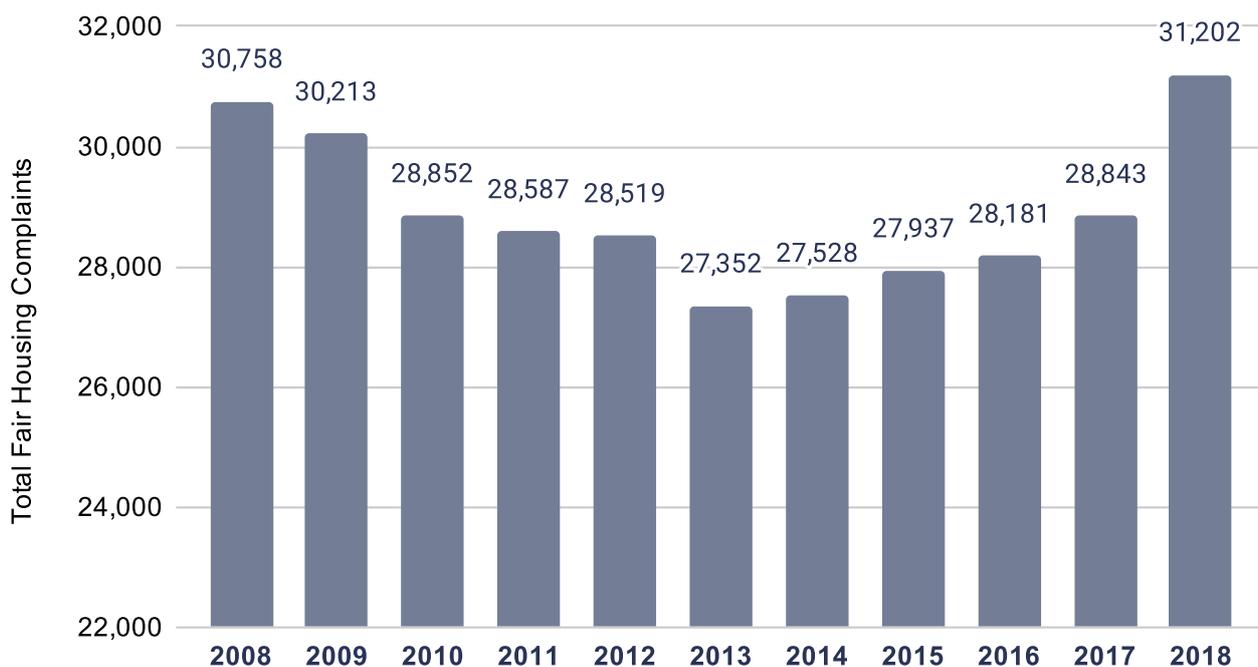
HUD is responsible for administering the Fair Housing Act, including education for members of the real estate community and the public, and both administrative and judicial enforcement through complaints it receives and complaints initiated by the HUD Secretary.¹⁰² HUD also certifies state and local agencies that process fair housing complaints and is required to refer certain complaints to these governmental agencies. If complaints involve state or local policies, patterns or practices of discrimination, or violations of prior agreements to address discrimination, cases may also be referred to the U.S. Attorney General for enforcement.¹⁰³

There remains a pressing need for Fair Housing Act enforcement. In 2018, there were 31,202 reported complaints of housing-related discrimination, the highest of any year since the National Fair Housing Alliance began collecting complaint data in 1995.¹⁰⁴ This represents an eight percent increase over 2017¹⁰⁵, and a small fraction of the estimated four million cases of housing discrimination that take place each year.¹⁰⁶ The vast majority of these complaints – more than 83 percent – were related to discrimination in rental housing.¹⁰⁷ The complaints could include actions like refusing to rent to a family with children, refusing to rent to a person on equal terms because of their race or ethnicity, or failing to provide reasonable accommodations to make a home accessible to a person with disabilities. In the face of growing discrimination complaints, one would expect the Administration to devote additional time and resources to combatting civil rights abuses. Sadly, under the Trump Administration, that has not been the case.

Rather than working to address the growing volume of complaints, the Trump Administration has elected to erode enforcement of the laws protecting households across the

country from housing discrimination. In its 2019 report, the National Fair Housing Alliance stated that “[t]he Fair Housing Act is under attack from the very agency charged with enforcing it – the U.S. Department of Housing and Urban Development.”¹⁰⁸ In just three years, the Trump Administration has neglected cases involving systemic bias; proposed reduced funding for fair housing enforcement; understaffed fair housing enforcement; and eviscerated the legal tools to combat housing discrimination.

Fair Housing Complaints by Year



(Source: 2019 Fair Housing Trends Report, National Fair Housing Alliance)

While the Trump Administration has continued to bring enforcement actions for blatant violations of renters’ and homebuyers’ civil rights, it has ignored systemic bias and associated housing discrimination that has historically been addressed through HUD Secretary-initiated complaints. Secretary-initiated complaints are significant undertakings requiring detailed investigations, often of systemic discrimination, that can lead to substantial settlements with widespread impacts that change market behavior. For example, Obama Administration HUD Secretary Julian Castro initiated a complaint detailing allegations of redlining against Associated Bank that ended with the bank agreeing to increase mortgage lending by nearly \$200 million in majority-minority communities and providing nearly \$3 million to help existing homeowners in predominantly minority communities repair their properties.¹⁰⁹ During the Obama Administration, HUD averaged 10 Secretary-initiated complaints per year.¹¹⁰ Between 2017 and 2018, under the Trump Administration, HUD announced only one new Secretary-initiated complaint, and the number of outstanding Secretary-initiated complaints declined from 33 in 2016 and 16 in 2017 to just 11 in 2018.¹¹¹ In 2019, HUD filed one new Secretary-initiated complaint.¹¹²

In some cases, even when the Trump Administration has initiated complaints of systemic discrimination, it has done so only after the heavy lifting needed to bring a legal action was done by civil rights advocates. For example, HUD Secretary Ben Carson and the Assistant Secretary for Fair Housing and Equal Opportunity, Anna Maria Farias, suspended an investigation, initiated under the Obama Administration, following an allegation that Facebook was providing advertisers the ability to target real estate ads based on a borrower's race, ethnicity, or other protected class under the Fair Housing Act.¹¹³ While HUD eventually reversed course and brought a legal action against Facebook¹¹⁴, it did so only after Facebook had been sued by fair housing leaders and a union.¹¹⁵

Fair housing enforcement is made more difficult by the lack of adequate HUD staffing. Since 2010, staff in HUD's Office of Fair Housing and Equal Opportunity (FHEO) – which is charged with overseeing Fair Housing Act compliance – has declined more than 30 percent.¹¹⁶ Lack of staffing is so acute that HUD has said low staffing "has resulted in significant risks in the execution of FHEO programs" in five key areas, including Fair Housing Act investigations, Fair Housing Act compliance, and grant distribution and monitoring.¹¹⁷ As a result, the Department has finally prioritized hiring staff so that it can fulfill its minimum legal obligations.¹¹⁸

The Trump Administration's budget requests further reveal its efforts to reduce Fair Housing Act enforcement. Local nonprofits known as "private enforcement organizations" pursue and resolve the vast majority of fair housing complaints.¹¹⁹ These organizations conduct fair housing testing, conduct fair housing education, and bring administrative and legal complaints on behalf of victims of discrimination. Faced with a growing number of housing discrimination complaints, the Trump Administration cut the 2021 funding request for these programs by \$5 million from the level Congress allocated in 2020.¹²⁰ That reduced funding was largely a cut to the grants that fund these critical private enforcement organizations.¹²¹

The Trump Administration's pull-back from enforcement of fair housing laws is an abdication of its Fair Housing Act obligations, which also ignores the ongoing and historical discrimination experienced by people of color, persons with disabilities, and families with children, among others, when seeking housing. Community groups and non-profit organizations have been critical of Secretary Carson's enforcement of fair housing laws.¹²² If the Trump Administration is allowed to further undermine fair housing, discrimination in advertising, lending, and renting will persist, and likely increase, with little or no consequence.

**IF THE TRUMP
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Preventing Victims of Discrimination from Seeking Justice

To fulfill the Fair Housing Act's promise, victims of discrimination must be able to allege discrimination occurred and pursue legal relief. Key to this effort is the legal doctrine of "disparate impact," which provides that a policy may be considered discriminatory if it has a disproportionate "adverse impact" against any protected group.¹²³ In the context of the Fair Housing Act, disparate impact prohibits policies that have a disproportionate and negative effect on a group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy.

In 2013, HUD issued a disparate impact rule to codify this longstanding doctrine, which has been instrumental in identifying and remedying systemic housing discrimination.¹²⁴ While the rule was opposed by, and the subject of litigation from, multiple trade associations, including the American Property Casualty Insurance Association shortly after it was finalized¹²⁵, it was built on four decades of jurisprudence and referenced in the Supreme Court's 2015 decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project (Inclusive Communities)*, upholding the use of disparate impact theory under the Fair Housing Act.¹²⁶ The 2013 rule follows the same formula as other anti-discrimination legal standards and has been used for decades to seek fair housing access for people of color, individuals with disabilities, families with children, and victims of domestic violence.¹²⁷

The Trump Administration has used its rulemaking process to undermine the Supreme Court's ruling and by extension Fair Housing Act enforcement. One of the earliest actions by Trump-appointed HUD General Counsel Paul Compton was to ask for feedback on how HUD could rewrite this critical rule.¹²⁸ Before this request for feedback was formally published, Compton spoke to a housing organization – that includes the largest banks, non-bank lenders, and mortgage insurers – and told them that "[t]houghtful people differ on the issue, though they generally line up on the left and right" and that it was "imperative that all who are interested in this rule submit comments" because "a lot of comments going in one direction creates a tidal effect that can make rulemaking in that direction easier."¹²⁹ He further told the audience that he could assure them "we will have plenty of comments resisting any changes."¹³⁰ That open and documented solicitation was an unprecedented attempt to build support to circumvent a Supreme Court decision by regulation.

**THE TRUMP ADMINISTRATION HAS USED ITS
RULEMAKING PROCESS TO UNDERMINE THE
SUPREME COURT'S RULING AND BY EXTEN-
SION FAIR HOUSING ACT ENFORCEMENT.**

Following HUD's General Counsel's lobbying effort, it is unsurprising that HUD proposed a framework in which disparate impact would exist in name only. HUD's proposal generated more than 45,000 public comments, the majority of which opposed HUD's proposed framework. This overwhelming opposition included Senators¹³¹, members of the House of Representatives¹³², civil rights advocates¹³³, and local leaders.¹³⁴ HUD's proposal replaced its existing three-part test, which was discussed by the Supreme Court in *Inclusive Communities*, and instead required plaintiffs to meet a five-part test to essentially prove their entire case – and disprove the defendant's case – before even bringing suit, all without the benefit of discovery.¹³⁵ Rather than reflect the *Inclusive Communities* ruling, HUD proposed to undo the ruling and, according to the NAACP Legal Defense and Education Fund, create "insurmountable barriers for victims of housing discrimination."¹³⁶

In addition to raising the legal bar for victims of discrimination, the proposed rule provided new defenses that would allow financial institutions, insurance companies, governments, and other market participants to continue unnecessary, systemically discriminatory practices. This included a new safe harbor for policies or practices driven by algorithms, which numerous leading fair housing and consumer organizations concluded would "effectively immuniz[e] covert discrimination by algorithm."¹³⁷

As HUD drew closer to finalizing the rule and in the wake of worldwide protests following the murder of George Floyd at the hands of police, lenders and housing organizations, some of whom previously supported HUD's effort to rewrite the rules, asked HUD to pause or withdraw this rulemaking.¹³⁸ Letters from Bank of America, Citi, JPMorgan Chase, Quicken Loans, and Wells Fargo¹³⁹, as well as the Mortgage Bankers Association¹⁴⁰ and the National Association of Realtors¹⁴¹ urged HUD not to finalize the rule. Instead, they asked HUD to reopen a dialogue with civil rights leaders and industry about how to address racial gaps in housing access, homeownership, and wealth.

HUD rejected their calls¹⁴² to reconsider the proposal, and on September 4, 2020, released the text of a final rule that leaves the framework of the proposed rule intact.¹⁴³ The final rule was met with opposition from civil rights advocates who noted that the final rule's "heightened burden of proof makes it nearly impossible to succeed on discrimination claims."¹⁴⁴ It permits corporations and others to defend a discriminatory practice simply because implementing a less discriminatory policy would impose some greater cost or burden on them, and reduces institutions' accountability and incentives to assess the fair housing results of their policy choices by removing any expectation that they would collect data necessary to track the outcomes of their policies. The rule also removes any reference to policies or practices that perpetuate segregated housing patterns in the discussion of discriminatory effects. This attempt to remove segregated housing patterns as an element of disparate impact would perpetuate discriminatory behavior and runs counter to the majority's opinion in *Inclusive Communities*, which concludes with the statement that "[the] Court acknowledges the Fair Housing Act's continuing role in moving the Nation toward a more integrated society."¹⁴⁵

One leading housing organization stated that the rule, combined with other civil rights rollbacks at HUD, leaves "no question that the Trump administration is intent on removing every available tool for fighting housing discrimination."¹⁴⁶ This rule reverses efforts to address not just blatant discrimination, but also more subtle discrimination – including the costs that discrimination imposes on individuals and society – that our nation has been fighting to address since the Kerner Commission's report more than 50 years ago.

gutting Housing Data

To create transparency in the mortgage market Congress enacted HMDA in 1975 “to help inform the public and policymakers of mortgage lending activity, and, in doing so, make it possible to identify communities where access to credit is being denied or discrimination is occurring.”¹⁴⁷ HMDA data remains “an invaluable resource for understanding and improving home lending across the country.”¹⁴⁸ The Trump Administration has sought to reduce the critical data provided under this law.

In response to the 2008 financial crisis, Congress amended HMDA to require reporting of new data points that would provide insight into the prevalence of predatory mortgage features common during the crisis; charged CFPB with overseeing HMDA compliance; and provided CFPB with the authority to modify HMDA reporting requirements, including collecting additional data points for each loan, to fully implement the statute.¹⁴⁹ When the CFPB issued its rule implementing these changes in 2015, it required lenders to report a number of additional data points to help regulators and the public monitor loan features that could signal higher-risk and higher-cost lending, including data on interest rates and a borrower’s debt-to-income ratio.¹⁵⁰ By monitoring whether certain risky loan features are disproportionately offered to borrowers by race or ethnicity in addition to tracking approval or denial of credit, regulators can identify patterns of discriminatory and predatory home lending like the lending that was targeted to borrowers of color in the run-up to the 2008 financial crisis and that stripped wealth from communities of color.

Since taking office on December 11, 2018, Trump-appointed CFPB Director Kathy Kraninger has taken steps to reduce the amount and transparency of information available through HMDA. In April 2020, the CFPB increased the threshold number of loans a lender must make before they are required to report loan data under HMDA from 25 to 100.¹⁵¹ This decision was made over the objections of Senators¹⁵², civil rights advocates¹⁵³, and researchers.¹⁵⁴ As a result, the public and regulators will no longer have any information on mortgage lending at an estimated 1,700 financial institutions – almost 35 percent of those currently reporting.¹⁵⁵ Exempting still more lenders from HMDA reporting means regulators will have little data on mortgage lending in large swaths of the country. In its comment to the CFPB’s proposal, the Housing Assistance Council reported that “in some rural areas HMDA coverage will be substantially reduced,”¹⁵⁶ and UnidosUS concluded that these exemptions would “effectively weaken fair lending protections for Latinos and other consumers that belong to protected classes.”¹⁵⁷

But the Trump Administration’s efforts to weaken HMDA go beyond exempting more lenders from reporting. In May 2019, the CFPB also asked whether it should reduce the loan-level data points that lenders must report in response to “concerns about the burden associated with reporting certain of the new or revised data points.”¹⁵⁸ The CFPB asked whether it should curtail collection of information to ascertain the reason a loan was denied, the interest rate, and a borrower’s loan-to-value ratio – all of which, as the Urban Institute noted in its comment letter to the CFPB, were added to HMDA data collection “in response to the issues that led to the housing crisis.”¹⁵⁹ Disaggregated race and ethnicity data required under the 2015 rule, which facilitates identification of differences in credit access within broader groups, or return to using broader categories like “Asian” or “Hispanic or Latino,”

is also among the data being reconsidered. Democratic members of the House of Representatives¹⁶⁰ and the Senate¹⁶¹ opposed the sudden reduction in data collection, which would reverse progress towards transparency made since 2008.

In addition to rolling back HMDA reporting requirements, Trump CFPB officials brought just one fair lending enforcement action for violation of HMDA requirements, compared to three actions and the issuance of 44 warning letters related to HMDA compliance issued under prior leadership.¹⁶²

The CFPB is undermining data collection under HMDA, preventing the public from understanding discriminatory trends in the mortgage market just as the CFPB abdicates its responsibility to enforce fair lending laws. Without the data to hold regulators and lenders accountable, Trump's CFPB could exacerbate, rather than help address, discrimination in mortgage lending.

**THE CFPB IS UNDERMINING DATA
COLLECTION UNDER HMDA,
PREVENTING THE PUBLIC FROM
UNDERSTANDING DISCRIMINATORY
TRENDS IN THE MORTGAGE MARKET.**

Letting Lending Discrimination Go Unchecked

Disparities in pricing, loan features, and loan access between white borrowers and borrowers of color remain. Discrimination in credit access is not limited to mortgage lending. A 2018 investigation found that borrowers of color were offered fewer car financing options than white borrowers and, based on those offers, would have paid almost \$2,700 more for their car than less qualified white borrowers.¹⁶³ A 2019 report found that student debt exacerbates the persistent and growing racial wealth gap.¹⁶⁴ During the COVID-19 pandemic, small business owners in majority-minority areas were far less likely to receive small business loans during the first round of the Paycheck Protection Program (PPP)¹⁶⁵, and the Small Business Administration (SBA) Inspector General noted that the SBA had failed to issue guidance to ensure the program was targeted to underserved markets.¹⁶⁶ And payday lenders offering much more expensive credit on often predatory terms are concentrated – and charge higher prices – in minority neighborhoods.¹⁶⁷

When Congress created the CFPB, it made clear that ensuring fair, affordable, and non-discriminatory access to all types of credit was at the core of the CFPB's mission: pro-

tecting consumers and promoting openness in America's financial markets.¹⁶⁸ To carry out this mandate, Congress expressly created the Office of Fair Lending within the CFPB and charged it with "oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit."¹⁶⁹ This includes oversight and enforcement of the ECOA and HMDA. Just a few years later, the Trump Administration sidelined this office and undermined the CFPB's fair lending oversight.

Early in his tenure at the CFPB, Acting Director Mick Mulvaney announced that he would transfer the Office of Fair Lending from the Supervision, Enforcement, and Fair Lending (SEFL) division, where fair lending oversight was integrated into supervision activities, to the Office of Equal Opportunity and Fairness (OEOF) within the Director's Office. The Office of Fair Lending's new home, OEOF, is charged with promoting diversity and inclusion inside the Bureau. OEOF has no enforcement functions and does not interact with the entities outside the Bureau. By moving this critical fair lending office out of the SEFL division, where it could fulfill its statutory enforcement mandate, to the Director's office, the Trump CFPB significantly undermined its own fair lending mission.

The Trump Administration also worked to undermine fair lending through its choice of personnel. To head the SEFL division, Acting Director Mulvaney hired Eric Blankenstein.¹⁷⁰ In October 2018, reporters unearthed 2004 racist blog posts in which Mr. Blankenstein

SINCE TRUMP APPOINTEES TOOK OVER AT THE CFPB IN LATE 2017, THE CFPB HAS BROUGHT JUST ONE FAIR LENDING ENFORCEMENT ACTION.

questioned whether using the n-word was inherently racist and claimed that the great majority of hate crimes were hoaxes.¹⁷¹ Even after Mr. Blankenstein's racist statements became public, both Acting Director Mulvaney and his successor, CFPB Director Kathy Kraninger, refused to remove Mr. Blankenstein from his role overseeing enforcement of fair lending laws, despite calls from advocates¹⁷² and Congress to do so.¹⁷³ After being permitted to oversee the enforcement of lending laws designed to protect minorities for another eight months, and following an Inspector General investigation into Mr. Blankenstein's conduct while at the Bureau, Mr. Blankenstein was allowed to resign voluntarily¹⁷⁴ and was subsequently hired by HUD.¹⁷⁵

Since Trump appointees took over at the CFPB in late 2017, the CFPB has brought just one fair lending enforcement action and made just two referrals of possible fair lending violations to DOJ, with no redress going to harmed consumers. In contrast, from 2012 to 2017, the CFPB took 14 fair lending enforcement actions resulting in nearly \$629 million in redress for harmed consumers and referred another 101 cases to DOJ. These cases included discrimination in auto lending and in the terms and pricing of credit cards offered both in the U.S. and in U.S. territories. After sidelining the CFPB's fair lending experts and putting in place personnel with a history of racist statements to oversee enforcement of fair lend-

ing laws, it is no surprise that the CFPB has failed to bring fair lending enforcement actions under the leadership of Trump appointees.

The CFPB is not the only federal financial regulatory agency that has abdicated its responsibility to enforce fair lending laws. Federal banking regulators including the OCC have the responsibility to examine banks for violations of fair housing and fair lending laws, take enforcement actions when a violation is identified, and refer any violations that are outside the scope of the agency's enforcement to HUD or DOJ. But under Trump Administration regulators, OCC employees report that their agency has also sidelined fair lending enforcement.

In 2020, OCC employees reported that the agency had dropped at least six investigations of housing and home lending discrimination since 2017.¹⁷⁶ These alleged violations included requiring home loan borrowers of color to have greater wealth than white borrowers to qualify for a loan, offering discounted mortgage prices to white men more often than to Latino and female borrowers, and denying mortgage borrowers of color more frequently than white mortgage borrowers. OCC employees report that at least one investigation into an alleged violation was undermined when the bank's lawyers were allowed to sit in on the agency's investigative work. That investigation has not resulted in a public enforcement action. Other investigations were simply dropped or resulted in no public action after the OCC made a recommendation that DOJ review the case for a pattern or practice of fair lending violations and the DOJ did not act.

Senate Democrats raised concerns about the OCC's willful neglect of fair lending enforcement with Acting Comptroller of the Currency Brian Brooks¹⁷⁷ and requested that the Treasury Inspector General investigate the OCC's procedures for reviewing fair housing and fair lending compliance and taking enforcement actions.¹⁷⁸ In his response, Acting Comptroller Brooks showed no concern about weaknesses in the OCC's fair lending processes and offered no suggestion that the agency would change course.¹⁷⁹ The CFPB, the OCC, and DOJ's refusal to take responsibility for fair housing and fair lending enforcement has left victims of systemic discrimination with nowhere to turn.

**THE CFPB, THE OCC, AND DOJ'S
REFUSAL TO TAKE RESPONSIBILITY FOR
FAIR HOUSING AND FAIR LENDING
ENFORCEMENT HAS LEFT VICTIMS OF
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EMBRACING INEQUALITY: THE TRUMP ADMINISTRATION'S REJECTION OF ITS OBLIGATION TO PROMOTE FAIR HOUSING

The Fair Housing Act not only barred discrimination – it also required that the federal government and its grantees take affirmative steps to promote fair housing. The Trump Administration has explicitly rejected that obligation by gutting the rule designed to further fair housing. It has also taken steps to undermine fair housing access by rewriting the rule requiring banks to serve the communities where they do business – including by providing home loans – and attempting to reshape the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, which make mortgages more affordable and available across the country. Each and every change signals another retreat from efforts to promote a more equitable housing system.

Perpetuating Segregation

The Fair Housing Act's obligation to affirmatively further fair housing (AFFH) mandates that HUD and its grantees not only combat discrimination, but also proactively advance the Fair Housing Act's purposes by addressing discriminatory housing practices. Under both the Fair Housing Act and HUD regulations, recipients of federal grants (including the Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs (HOME)) must further fair housing opportunities. But for too long, under administrations of both parties, the requirement to affirmatively further fair housing has languished.

Beginning in 1995, HUD grantees were required to complete an "Analysis of Impediments" to identify both barriers to fair housing opportunities and actions taken to address those barriers.¹⁸⁰ But, a September 2010 Government Accountability Office (GAO) report found most of the analyses they reviewed were deficient and likely failed to comply with the law.¹⁸¹ GAO concluded that it was unclear whether HUD's approach was an effective tool for identifying and addressing obstacles to fair housing and directed that HUD "enhance its requirements and oversight of jurisdictions' fair housing plans."¹⁸²

In response to GAO's recommendations, the Obama Administration issued a proposed rule to fulfill the Fair Housing Act's requirement that the federal government and its partners take steps to affirmatively further fair housing. HUD released a final rule on July 16, 2015.¹⁸³ The final rule "provide[d] HUD program participants with an approach to more effectively and efficiently incorporate into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act."¹⁸⁴

The 2015 rule is the federal government's first attempt to truly enforce the Fair Housing Act's requirement to affirmatively further fair housing. The rule not only prohibited discrimination, but also directed HUD's program participants to take direct action to overcome historic patterns of segregation in their communities, achieve truly balanced and integrated living patterns, promote fair housing choice, and foster inclusive communities that are free from discrimination, as required by the Fair Housing Act.

Within one year of taking office, the Trump Administration began to dismantle the 2015 rule. By May 2018, HUD took AFFH implementation back to the pre-2015 framework that had been criticized by GAO.¹⁸⁵ HUD also withdrew data and analysis tools that the agency had designed to help communities successfully recognize and evaluate their fair housing barriers and ceased to update the local housing data and maps it provided to communities and the public to inform local assessments of fair housing needs under the 2015 rule.¹⁸⁶ As a result, today, even communities that want to engage in a robust fair housing analysis are unable to access up-to-date data.

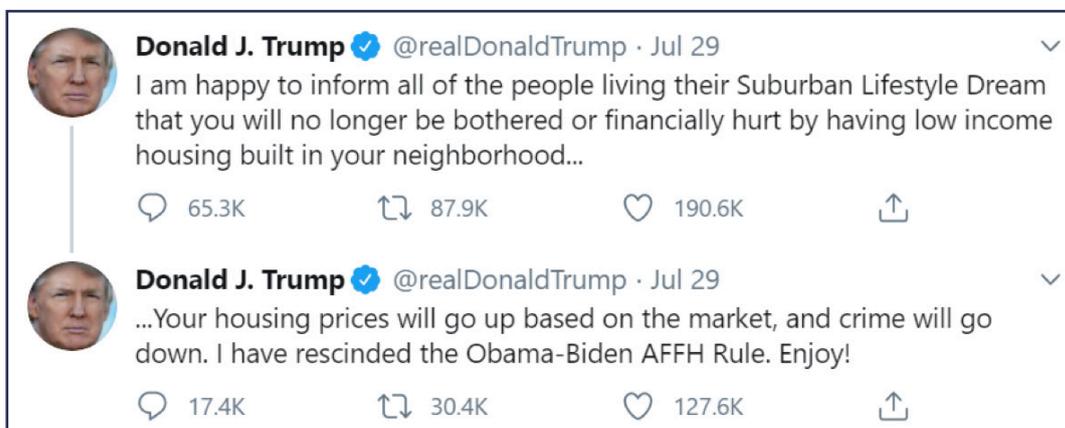
To further dismantle the newly adapted framework, the Trump Administration proposed an entirely new AFFH rule on January 14, 2020.¹⁸⁷ This proposed rule redefined what it means to affirmatively further fair housing under the Fair Housing Act. In 2015, HUD – consistent with the Fair Housing Act – defined AFFH with a focus on civil rights and desegregation. The Trump Administration's proposal jettisoned any reference to segregation, civil rights, or the equity requirement on which the 1968 law was based.

THE TRUMP ADMINISTRATION'S JANUARY 2020 PROPOSED AFFH RULE IGNORED CONGRESS'S CLEAR DIRECTIVE.

The 2020 proposed definition would have reversed a legally-established, statutory civil rights principle and replaced it with a policy solely focused on "housing choice" and land use deregulation with little regard for the broad range of fair housing issues within communities. The proposed rule would have also reduced participation by key stakeholders in a community's fair housing analysis and removed elements of the 2015 rule that were designed to engage the public, particularly members of underserved communities most affected by discrimination, in their assessments of fair housing challenges and strategies for improvement. The Trump Administration's January 2020 proposed AFFH rule ignored Congress's clear directive and would have abdicated HUD's legal obligation to affirmatively further fair housing by confusing affordable housing with fair housing and was met with objections from both the House¹⁸⁸ and Senate.¹⁸⁹

But, even this misguided proposal did not go far enough for President Trump. In an after-hours tweet in late June 2020, President Trump declared that he was "studying the AFFH housing regulation that is having such a devastating impact on these once thriving Suburban areas" and that he may end the rule.¹⁹⁰ Soon after, the President declared that he would be taking action on AFFH.¹⁹¹ On July 23, 2020, HUD Secretary Carson announced

that HUD had “terminated” the 2015 AFFH rule – despite having already suspended the rule and withdrawn its related tools in 2018.¹⁹² Secretary Carson also abandoned the AFFH proposed rule he had championed just six months earlier and, in an about face, issued a new rule titled “Preserving Community and Neighborhood Choice.”¹⁹³



(Source: @realDonaldTrump, Twitter)

The new rule rejects both the 2015 final and the 2020 proposed AFFH rules and even rolls back the 1995 changes. Communities’ fair housing obligations will return to pre-1995 status. The rule excises all references to community planning or evaluation of barriers to fair housing and replaces them with a simple certification that the community has taken “any action rationally related to promoting any attribute or attributes of fair housing.”¹⁹⁴ The rule takes the definition of affirmatively furthering fair housing even further away from what is needed to build a more fair and equitable housing system.

REWRITING THE DEFINITION AGAIN – 2015 VS. 2020 PROPOSED VS. 2020 FINAL DEFINITION

2015 RULE	2020 PROPOSAL	2020 FINAL
<p>taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing</p>	<p>advancing fair housing choice within the program participant’s control or influence</p> <p>[Note: Fair housing choice is defined as allowing “individuals and families [to] have the opportunity and options to live where they choose, within their means, without unlawful discrimination related to race, color, religion, sex, familial status, national origin, or disability.”]</p>	<p>to take any action rationally related to promoting any attribute or attributes of fair housing as defined in the preceding subsection</p> <p>[Note: Fair housing is defined as “housing that, among other attributes, is affordable, safe, decent, free of unlawful discrimination, and accessible as required under civil rights laws.”]</p>

When it announced the new rule, HUD employed a little-used loophole in administrative procedure law that HUD claims allows the department to forego the required notice and public comment period when a rule involves grant or loan funds.¹⁹⁵ While HUD issued its own regulation in 1979 stating that the department will provide notice and opportunity for public comment for most rules, HUD claims it is still permitted to waive those procedures.¹⁹⁶ In the final rule, HUD asserted that it had determined that this rule was “particularly well-suited” to this waiver because “further notice and comment concerning AFFH is unnecessary and would simply be a legal formality without adding substance to the debate.”¹⁹⁷ The rule was therefore issued as a final rule and went into effect on September 8, 2020.¹⁹⁸

In its justification for the new “Preserving Community and Neighborhood Choice” rule, HUD made clear that the Trump Administration’s sudden pivot on AFFH had come at the direction of the President himself. It stated that “when the President reviewed the proposed rule, he expressed concern that the HUD approach did not go far enough” in either reducing federal control of local housing decisions or lessening the burden of data requirements.¹⁹⁹ President Trump’s rhetoric makes clear he was involved. After the rule was issued, President Trump tweeted that he was “happy to inform all of the people living their Suburban Lifestyle Dream that you will no longer be bothered or financially hurt by having low income housing built in your neighborhood.”²⁰⁰ And in an op-ed, President Trump and Secretary Carson claimed that the 2015 Affirmatively Furthering Fair Housing rule was a “radical social-engineering project” and that they would not “let [the left] export their failures to the suburbs.”²⁰¹ This was a sudden about-face for Secretary Carson, who had testified before Congress that the very “low-density” development he is now defending has “slowed integration.”²⁰²

While ostensibly aimed at allowing communities to exclude low-income people from living in their neighborhoods, the Trump Administration is clearly aware that such a policy would have the effect of excluding people of color from these communities. HUD Secretary Carson himself drew a link between exclusion based on income and racial segregation in testimony before the House Financial Services Committee in May 2019. In justifying the Administration’s original proposed rule on AFFH, Carson stated his own view that “Why do you have segregation in housing? Not because George Wallace is blocking the door. It’s because people can only afford to live in certain places.”²⁰³

“WHY DO YOU HAVE SEGREGATION IN HOUSING? NOT BECAUSE GEORGE WALLACE IS BLOCKING THE DOOR. IT’S BECAUSE PEOPLE CAN ONLY AFFORD TO LIVE IN CERTAIN PLACES.”

HUD SECRETARY BEN CARSON, MAY 2019

President Trump and Secretary Carson's retrograde rule and the President's tweets were immediately condemned by civil rights leaders, housing advocates, public housing agencies (PHA), and Democratic members of Congress. Lisa Cylar Barrett of the NAACP Legal Defense and Education Fund called the rule "an unacceptable affront to civil rights" that "constitutes a reprehensible regression for fair housing in this country."²⁰⁴ Shamus Roller of the National Housing Law Project called President Trump's actions "deeply racist."²⁰⁵ The Public Housing Authorities Directors Association (PHADA) asserted that the rule "fails to fulfill HUD's obligations to faithfully execute requirements of Title VIII and IX of the Civil Rights Act of 1968" and was put forward through "a novel, illegitimate rulemaking procedure that is contrary to law and to the department's regulations."²⁰⁶ And the Council of Large Public Housing Authorities wrote that the new rule is "a deliberate rejection and dereliction of HUD's statutory and moral obligations" and that the group is "left to conclude that HUD is actively attempting to eliminate decades of fair housing progress by legalizing discriminatory and racist housing policies through the new AFFH Rule."²⁰⁷

Quality affordable housing options are essential, but fair housing is not just affordable housing. It is also access to opportunity, equal access to all types of housing, and the ability to fully participate in all aspects of a community, regardless of race, ethnicity, familial status, or disability. Unfortunately, the Trump Administration has rejected both affordable housing and fair housing with this rule, and it has dismantled a key element of the Fair Housing Act – a fundamental civil rights tool.

Disinvesting in Communities

Enacted by Congress in 1977, the CRA was created in response to redlining, which had locked low- and moderate-income communities and borrowers of color out of opportunities to access credit on fair, affordable terms, including financing to buy a home. In passing the CRA, Congress affirmed that banks must provide equal access to credit for all communities and established a CRA evaluation process whereby banks could be held accountable for discriminating against low- and moderate-income families and communities.

The CRA requires federal banking regulators to assess how well banks fulfill their obligations to serve the needs of the communities in which they are located.²⁰⁸ These assessments are considered when regulators decide whether to approve bank mergers, charters, acquisitions, branch openings, and deposit facilities.²⁰⁹ Since its enactment, the CRA has undergone significant amendments to improve its ability to meet community needs. One of the most significant amendments requires that banks publicly disclose their CRA evaluations. The CRA was amended to improve bank examination and training uniformity and transparency, increase the range of qualifying activities eligible for CRA credit, and tailor CRA evaluations to the size of the bank.

The CRA plays a critical role in community lending and community investment, particularly in communities of color. Between 1993 and 2000, the number of home loans made to Black borrowers increased by 94 percent, to Latino borrowers by 140 percent, and to other minority borrowers by 92 percent.²¹⁰ From 2009 to 2017, banks issued more than \$2.2 trillion in home loans and more than \$564 billion in small business loans to low- and moderate-income borrowers and communities within CRA assessment areas, which means they

likely helped the bank fulfill their CRA obligations.²¹¹ Benefits were not limited to mortgage and small business lending. Since 1996, CRA-covered banks made more than 551,000 community development loans worth \$796 billion within CRA assessment areas.²¹²

Early in the Trump Administration, the interim head of the OCC, Keith Noreika, acted to reduce consideration of a bank's discriminatory practices in CRA evaluations and to limit the OCC's ability to downgrade a bank's CRA rating for discriminatory practices to just one level downgrade.²¹³ This announcement came shortly after Wells Fargo Bank, N.A. was downgraded by two CRA grade levels following a fake accounts scandal.²¹⁴ When Trump-appointed Comptroller of the Currency Joseph Otting took office, he reinstated the ability to downgrade a bank by more than one CRA level for violations, but also made wholesale reform of the CRA one of his top priorities.²¹⁵ Comptroller Otting called the existing CRA rule "complex, outdated, cumbersome, and subjective,"²¹⁶ and requested public comments on how to revise the CRA regulation through an Advanced Notice of Proposed Rulemaking.²¹⁷ Comptroller Otting elected to issue the notice without the support of the two other banking agencies responsible for CRA examinations, a departure from the agencies' history of working together to implement uniform CRA regulations.

The OCC received over 1,500 comment letters from banks, trade organizations, community advocates, nonprofits, and local government officials. Those letters consistently told the OCC that "the context of information about the institution, its community, and its competitors" was "essential" for CRA evaluations²¹⁸ and that using one numerical ratio to assess a bank's CRA performance "would interfere with the ability of examiners to ensure that banks are meeting their statutory responsibilities" to meet the credit needs of local communities.²¹⁹ Following the responses, the three CRA regulators engaged in months of negotiation on a new, joint regulation. But, in December 2019, the OCC and the FDIC announced that they would put out a proposed CRA overhaul without the Federal Reserve.²²⁰

The proposed rule that followed was released to widespread condemnation. When the FDIC Board voted to join the OCC's proposed regulation, it did so with only the support of Trump appointees and over the objections of Board Member Martin Gruenberg, who called the proposed rule "a deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act."²²¹ The OCC and FDIC proposed to overhaul the existing CRA evaluation system and create a presumptive evaluation metric for banks based in large part on the dollar amount of CRA activities a bank does in an area or across the institution to the ratio of deposits – exactly the type of proposal that was widely rejected in initial comments. The proposal was released without data sufficient to evaluate its implications, and the OCC issued a request for data from banks the day after the proposal was formally released.²²²

A diverse coalition of civil rights and consumer organizations said the proposal "invites a return to discrimination against communities of color and low- and moderate-income neighborhoods."²²³ A group of housing stakeholders said that the regulators "have come up with a formula-driven approach that almost nobody in the housing community supports and that is rife with millions of dollars in hidden costs and enormous unintended consequences."²²⁴ Among these consequences are discouraging smaller loans, including home mortgages and small business loans, and diluting the value of a bank originating a mortgage. Democrats in the House²²⁵ and Senate also weighed in, urging the OCC and FDIC not to pursue their proposal as drafted.²²⁶

Over the last decade a wide range of community groups, non-profits, and financial institutions have called for changes to the CRA regulatory framework to improve access to credit

and community development dollars for underserved individuals and neighborhoods. But, the OCC and FDIC proposal, which was based on little data and provided credit for activities like financing sports stadiums, investments in Opportunity Zones, and other infrastructure projects that may not have any direct benefit to underserved communities, fails to meet those needs.

On May 20, 2020, just six weeks after the comment period closed on the OCC and FDIC proposed rule, in the middle of the coronavirus pandemic, and after receiving more than 7,500 comments²²⁷, the vast majority in opposition, the OCC unilaterally released a final rule.²²⁸ The FDIC, as the Federal Reserve had done previously, declined to join the OCC's ill-considered rule. The final rule made a number of changes and acknowledged that the agencies lacked the data necessary to set dollar volume thresholds for CRA activity.²²⁹ But, rather than moving away from the controversial dollar volume frameworks, the OCC simply pushed out the implementation timeline to collect the data it felt it needed to support its rule. The next day, Comptroller Otting announced he would resign from the agency.²³⁰

The final rule was met with criticism from civil rights leaders²³¹, housing advocates²³², and lenders.²³³ The House of Representatives passed a Joint Resolution disapproving the rule, the first step in a legislative process to repeal the rule.²³⁴ If the OCC's unilateral rule is allowed to stand, it will guarantee inconsistency and confusion over CRA enforcement. As a result of the OCC's changes to the CRA rule, low- and moderate-income communities, communities of color, and rural areas could see reduced access to credit and investments based on who regulates their local bank at a time when the country is facing an affordable housing crisis and increased economic inequality.

Limiting Access to Affordable Homeownership

FHA and the GSEs were created to facilitate access to affordable homeownership. In 2020, with racial gaps in homeownership clearer than ever, it is critical that these agencies serve all borrowers and intentionally create more equitable access to homeownership and rental housing. But, the Trump Administration has proposed changes to the housing system that would eliminate existing mechanisms that ensure the GSEs serve lower-income borrowers and borrowers of color and that raise costs and limit access to homeownership.

Across the entire mortgage market, the Black and Latino homeownership rates remain far below the rates of their white counterparts. In 2018, the Black-white homeownership gap had expanded to 30 percentage points, while the Latino-white gap was more than 25 percentage points.²³⁵ Despite progress, very low- and low-income borrowers and borrowers of color remain underserved by the GSEs and the parts of the mortgage market that do not rely on federal insurance or a guarantee (like FHA or VA). This is particularly true for Black and Latino borrowers. In 2018, nearly 61 percent of Black homebuyers and 49 percent of Latino homebuyers received a government-insured or -guaranteed loan, compared to just 30 percent of white homebuyers.²³⁶ Most of these government-insured loans were FHA loans.²³⁷ During this period, well below five percent of the loans the GSEs backed went to Black borrowers and less than 11 percent went to Latino borrowers, while 77 percent went to white borrowers.²³⁸ While FHA and other government-insured and -guaranteed loans are an important source of credit, they can also be more expensive over the life of the

loan and offer borrowers fewer choices at loan origination than having access to the prime mortgage market.²³⁹

Since the financial crisis, the GSEs have made policy changes that have likely resulted in higher costs and reduced access for borrowers of color. For example, the GSEs started charging borrowers different up-front fees based on factors including a borrower's credit score, the loan-to-value ratio, and product features. These changes are likely to raise costs for borrowers of color, who are more likely to have lower credit scores²⁴⁰ and higher loan-to-value ratios²⁴¹ resulting from historic inequities in income, homeownership access, and wealth, as well as the consequences of foreclosures and other defaults caused by predatory lending during the financial crisis. And while the GSEs and their regulator have made strides to address barriers to mortgage access for borrowers with limited English proficiency²⁴², the work has been slow and the GSEs' new Trump regulator has undermined data collection about borrowers' English proficiency.²⁴³ This change will disproportionately affect borrowers of color.

Even with troubling racial homeownership gaps and continued barriers for Black and brown borrowers' access to GSE-backed and bank-held mortgage loans, in September 2019 the Trump Administration advanced two housing finance reform plans – one outlining changes to the GSEs²⁴⁴, the other to HUD programs – that would take the country backward in access to homeownership for communities of color.²⁴⁵ The plans propose to eliminate the existing public purpose charters of the GSEs and replace the GSEs' existing affordable housing goals and Duty to Serve requirements, which were put in place by Congress to sharpen the GSEs' focus on serving very-low and low-income borrowers and renters.

The Trump Administration's plans also proposed to reduce the government's role in the mortgage market, to create a clear delineation between FHA-eligible and GSE-eligible borrowers, and to make the GSEs' underwriting standards more restrictive. On top of these changes at the GSEs, the Trump Administration would impose risk-based pricing for FHA borrowers, which would increase the cost of homeownership for those who could least afford it.

Taken together, these plans would reduce access to and increase the costs of homeownership for borrowers seeking FHA or GSE-backed loans. These policies would also eliminate the few critical tools Congress has created to facilitate access to homeownership for low-income households and communities of color who are too often left behind. Finally, these policies would limit borrowers' ability to choose the type of loan that is best for them.

**TAKEN TOGETHER, THESE PLANS WOULD
REDUCE ACCESS TO AND INCREASE THE
COSTS OF HOMEOWNERSHIP FOR
BORROWERS SEEKING FHA OR
GSE-BACKED LOANS.**

Civil rights leaders made clear that the Trump Administration's proposals would "increase the cost of mortgages for all borrowers, especially families of color, low- to moderate-income families, and rural families" and that any change "must build upon the GSEs' important public mission, including support for the GSEs' existing duty to serve mandate and the affordable housing goals."²⁴⁶

Despite the consequences outlined by civil rights and housing advocates, the Trump Administration continues to pursue its housing finance reform initiatives. While the Administration cannot change the GSEs' affordable housing goals, Duty to Serve, or underlying public mission without action from Congress, it can make changes that determine pricing and loan availability. The Trump Administration's continued push for reform threatens to further erode access to homeownership for those who have historically been locked out.

CRUELTY IS THE POINT: DOUBLING DOWN ON UNFAIR AND UNJUST POLICIES

While we have outlined the steps the Trump Administration has taken to weaken or reverse civil rights protections in housing, the Administration has also created new barriers to affordable housing and safe shelter for millions of people. This Administration has undertaken a conscious strategy to undermine access to housing for immigrant families, deny homeownership opportunities for Deferred Action for Childhood Arrivals (DACA) beneficiaries, bar LGBTQ individuals from accessing shelter based upon their gender identity, and cement religious discrimination in federal program administration. For the Trump Administration, cruelty seems to be the point.

Separating Families

Inadmissibility on Public Charge Grounds and Mixed-Status Rules

In February 2020, both the Department of State and Department of Homeland Security finalized their public charge rule, which expands the programs considered in a public charge determination for applicants seeking U.S. admission or a change in immigration status. Under current law, immigrants who receive cash assistance may be deemed a “public charge,” and denied visas, admission into the U.S., or a change in immigration status. The Administration’s final rule deems immigrants who previously used or are currently receiving non-cash public benefits, including subsidized housing, a public charge. In an unprecedented move, this cruel policy will force immigrant families to choose between keeping a roof over their heads and putting food on the table or a pathway to citizenship.

**THIS CRUEL POLICY WILL FORCE
IMMIGRANT FAMILIES TO CHOOSE
BETWEEN KEEPING A ROOF OVER THEIR
HEADS AND PUTTING FOOD ON THE
TABLE OR A PATHWAY TO CITIZENSHIP.**

The Trump Administration's 2019 attempts to finalize the rule resulted in several federal injunctions that stopped the rule from taking effect. Unfortunately, in 2020 the U.S. Supreme Court issued an order lifting the injunctions and allowing the Administration to implement the rule.²⁴⁷ Since the Administration's initial proposal, fear and uncertainty have swept through immigrant communities across the country. Rather than risk a public charge determination, reports have shown that immigrant families are making the untenable choice to forego public benefits for their families.²⁴⁸

Under current law, a household with at least one U.S. citizen occupant is eligible for federal housing assistance, including housing choice vouchers and Section 8 Project-Based Rental Assistance, regardless of the immigration status of other household members. Assistance to the household is provided only for those who are eligible; all other members of the family must pay their full portion of the rent without any subsidy. In 2019, however, the Trump Administration proposed a rule that, according to HUD's own analysis, would force mixed-status families to make the impossible choice between family separation and eviction, putting thousands of families – including 55,000 children – at risk of homelessness and exacerbating the rental affordability crisis.²⁴⁹

Under the Trump mixed-status rule, an entire household would be ineligible for federal assistance if a single household member cannot verify their immigration status. The rule would affect an estimated 25,000 households, forcing family separation.²⁵⁰ The attack on low-income, mixed-status families is yet another shameless attack on vulnerable groups – including children – and is targeted specifically at people of color – 95 percent of individuals in mixed-status families are people of color and 85 percent identify as Latino.²⁵¹ This rule would not only be detrimental to the economic security and stability of families with the most need, but by HUD's own account, it would cost the federal government up to \$437 million more in the first year alone.²⁵² Housing, faith, civil rights, social justice, and immigration leaders have condemned this rule²⁵³, which one civil rights group said would "have an obvious, foreseeable discriminatory impact on the basis of race and ethnicity – and will punish thousands of low-income families who literally have nowhere else to live."²⁵⁴ Members of the House²⁵⁵ and Senate have also opposed the proposal based on the harmful effects it would have on thousands of low-income families.²⁵⁶ In the midst of an affordable housing and public health crisis, those funds could be used to house additional families, rather than tear families apart.

Cutting Off Access to Homeownership

In 2012, President Obama announced the creation of the DACA program. The DACA program was created to bring certainty to the lives of hundreds of thousands of young people who were brought to the U.S. as children and did not have legal immigration status. Eligible individuals could register to get protection from deportation and become eligible for a work permit, offering them expanded economic opportunities. With more certainty about remaining in the U.S., some DACA recipients, continuing their pursuit of the American Dream, also looked to purchase homes.

In 2018, lenders and realtors began reporting that FHA would no longer insure mortgage loans for DACA recipients. While HUD provided no materials in writing, lenders reported that HUD staff were now informing them that their loans to DACA recipients would not be accepted.²⁵⁷ HUD staff's internal e-mails that have been made public reveal that in September 2017, HUD career staff treated DACA recipients as eligible for FHA loans.²⁵⁸ As of April 2018, HUD's FHA Resource Center, which provides technical support for the housing industry, was also informing inquiring lenders that DACA recipients were eligible for FHA loans.²⁵⁹ But that same month, political appointees at HUD sent internal e-mails stating

that the HUD handbook was “unclear” about whether DACA recipients were eligible for FHA loans²⁶⁰, and HUD officials later developed a policy that DACA recipients were not eligible under the FHA program.²⁶¹ In workshops, HUD political staff were reportedly telling lenders that DACA recipients were ineligible for FHA loans.²⁶² But, despite multiple inquiries from lenders and members of Congress²⁶³ – including inquiries directly to Secretary Carson and FHA Commissioner Brian Montgomery – HUD officials would not clarify DACA recipients’ eligibility or ineligibility in writing.²⁶⁴

----- Forwarded message -----
 From: DoNotReplyFHA <DoNotReplyFHA@hud.gov>
 Date: Mon, Apr 23, 2018 at 12:16 PM
 Subject: Thank you for contacting the FHA Resource Center, RE: CAS-7024379-R7C9G3
 To: [REDACTED]
 Dear [REDACTED]
 Thank you for contacting the FHA Resource Center. The information you requested in response to the above referenced service request number is provided below.
 If the information does not fully address your question, please forward this email (do not reply) to answers@hud.gov, and provide additional information so that we may better serve you. You may also speak directly to a customer service representative by calling 1-800-CALL-FHA (1-800-225-5342) or visit our online knowledge base at www.hud.gov/answers, 24 hours/7 days a week.
 Your question was regarding DACA Recipients. FHA will insure loans made to DACA Recipients as long as they meet the following requirements.

April 2018 HUD email confirming DACA Recipients’ eligibility for FHA loans.
 (Source: HUD Records published by Democracy Forward)



D. Hot Topics

Issue	
Deferred Action for Childhood Arrivals (DACA)	Are non-permanent resident aliens that have been granted deferred action under DACA eligible for an FHA mortgage? FHA’s longstanding policy has been that Non-U.S. citizens without lawful residency in the U.S. are not eligible for FHA insured mortgage. According to the USCIS, the Deferred Action for Childhood Arrivals (DACA) program is an administrative program that grants deferred prosecutorial action against persons who came to the United States as juveniles meeting certain conditions. DACA recipients are not granted lawful residency status, although they are given work authorization for a 2 year period and therefore are not eligible for FHA financing.

October 2018 HUD FHA Office of Single Family Housing Attendee Briefing Book
 (Source: HUD Records published by Democracy Forward)

In November 2018, FHA’s Escalation Review Committee – which resolves unclear or disputed policies – determined that DACA recipients were not eligible for FHA loans.²⁶⁵ E-mails from December 17, 2018, show that FHA was no longer insuring loans to DACA recipients.²⁶⁶ Still, no new written policy was provided to lenders or the public. Four days later, HUD wrote to Congress stating that HUD “has not implemented any policy changes during the current administration, either formal or informal, with respect to FHA eligibility require-

ments for Deferred Action for Childhood Arrivals (DACA) recipients.”²⁶⁷

When Secretary Carson again was asked whether there was an unannounced change in policy, he testified to Congress that “no one was aware of any changes to the policy whatsoever” and that he was “sure we have plenty of DACA recipients who have FHA mortgages.”²⁶⁸ The Secretary also said that he would be surprised to hear that the mortgage industry received guidance about changes that would prohibit FHA from insuring loans for DACA recipients.

Contrary to the Secretary’s assertions, in a letter to Congress the next month HUD wrote that there had been no changes with respect to FHA eligibility for DACA recipients and that DACA recipients “remain ineligible for FHA loans.”²⁶⁹ This single letter, and the months of policy changes leading up to it, made hundreds of thousands of DACA recipients ineligible for FHA loans, cutting off a key avenue for homeownership. On June 5, 2020, the HUD Inspector General was asked to review whether Trump Administration officials had violated the law and misrepresented Department policy to Congress.²⁷⁰ On June 8, 2020, 45 members of Congress also asked the HUD Inspector General to review HUD officials’ conduct and the policy change that locks DACA recipients out of an avenue for affordable homeownership.²⁷¹ While these inquiries are pending, DACA recipients remain locked out of FHA loans.

Diminishing Protections for LGBTQ People

Denying Equal Access to Shelter in Accordance with Gender Identity

According to the National Center for Transgender Equality, nearly one-in-three transgender people have experienced homelessness, leading to increased vulnerability for physical and sexual violence.²⁷² Even more alarmingly, 70 percent of transgender people face unique barriers and disparate treatment at homeless shelters.²⁷³ Under the Obama Administration’s 2016 Equal Access Rule, all shelters receiving HUD funding must provide individuals equal access to shelter facilities, programs, benefits, and services according to their gender identity.²⁷⁴ The rule is founded on the undeniable premise that discrimination and bias limits housing options for transgender people, putting their lives at risk, as well as exacerbating the homelessness crisis.

In July 2020, HUD published a proposed regulation entitled “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs.” This proposed rule would roll back the 2016 protections for transgender people experiencing homelessness and undermines basic respect for transgender individuals seeking housing assistance. In the proposed rule, HUD proposes to allow shelter providers running sex-segregated shelters “to establish a policy that places and accommodates individuals on the basis of their biological sex, without regard to their gender identity.”²⁷⁵ The proposed rule would further allow a shelter provider to “determine an individual’s sex based on a good faith belief,” which may be based on factors that “may include, but are not limited to a combination of factors such as height, the presence (but

not the absence) of facial hair, the presence of an Adam's apple, and other physical characteristics which, when considered together, are indicative of a person's biological sex."²⁷⁶ This troubling proposal to allow federally-funded shelters to disregard the gender identity of individuals seeking shelter followed reports that HUD Secretary Ben Carson made disparaging comments about transgender people at a staff meeting.²⁷⁷ If adopted, this rollback would allow shelter providers to set policies that leave transgender individuals feeling unsafe in shelter, or unsafe in seeking the shelter they need.

Equal Participation of Faith-Based Organizations

In May 2018, the Trump Administration issued an executive order directing multiple federal agencies to establish rules rolling back Obama-era regulations requiring federally-funded faith-based social service providers to serve all people, regardless of their religious affiliation and inform them of their rights to seek services at a non-religious entity.²⁷⁸ In order to comply with this executive order, in February 2020, HUD issued a proposed rule that would allow taxpayer-funded, faith-based organizations to refuse to honor an individual's request for referral to an alternative provider.²⁷⁹ As Lambda Legal concluded in its comment on the proposal, "the acknowledged purpose of the Proposed Rule is not to improve the Department's methods of alleviating the diverse effects of inadequate housing and poverty, and of improving the health and well-being of our nation's marginalized, vulnerable populations, but instead to prioritize the religious interests of faith-based grantees."²⁸⁰ Members of the House of Representatives²⁸¹ and the Senate²⁸² also opposed HUD's proposed rule, which would place a provider's religious beliefs over the needs of the clients the federal programs serve, limiting options for vulnerable people, such as LGBTQ populations, persons with disabilities, pregnant and parenting youth, and victims of domestic violence. In addition to violating the civil rights of people HUD is commissioned to serve, the proposed rule would do nothing to address the affordable housing and homelessness crisis burdening people across the country.

Summary

Whether through limiting victims' right to pursue justice under the Fair Housing Act, threatening to displace thousands of children in households with an immigrant caregiver, or allowing taxpayer funded discrimination, communities across the country have felt the sting of this Administration's cruel policies. The Trump Administration's persistent and systematic attacks on civil rights construct barriers to affordable housing and opportunity for future generations, destabilize communities of color, and reverse progress combating gender identity and sexual orientation discrimination.



SECTION III

Moving Forward



MOVING FORWARD

Laws and policies that came out of the civil rights movement started our country down a path to acknowledge and address centuries of discrimination and inequality woven into the fabric of this country. But more work remains to ensure each of these laws lives up to its full promise, and unfortunately, this work is not limited to just housing. While critical laws like the Fair Housing Act, ECOA, HMDA, and CRA are on the books, underfunded programs, reduced data collection and analysis, and attempts to limit the tools available to enforce each of these laws, as outlined in this report, has slowed the country's progress toward housing equity. To renew these efforts, we must begin by restoring existing civil rights laws related to housing to their full strength. We must:

Incorporate fair housing into every office and program within HUD and increase resources to enforce the Fair Housing Act. Historically, fair housing has been the purview of HUD's FHEO. But, every program and office within HUD, and any agency, should be advancing, rather than impeding, fair housing progress. Moving forward, HUD must look at all of its offices, programs, and policies through a fair housing lens and incorporate fair housing frameworks and analyses into the work of every office throughout the Department.

Fair housing enforcement is still vital. FHEO needs resources. Congress must fully fund FHEO and return its staff levels to at least the 2010 levels, which would be a 46 percent increase over today's staffing.²⁸³ Congress must also increase funding for Fair Housing Initiatives Program (FHIP) grants to local organizations that handle the vast majority of fair housing complaints and do the ground work, including testing, that identifies discrimination throughout our housing market. This includes increased funding for education and outreach to ensure that individuals know their rights and know where to turn if those rights are violated. It's also critical that Congress provide sufficient funding for the state agencies that are delegated the responsibility to enforce fair housing laws through the Fair Housing Assistance Program, and that Congress and HUD are not afraid to hold those agencies accountable for neglecting their critical civil rights responsibilities.

Rescind the Trump Administration's dangerous interpretation of disparate impact, which thwarts decades of legal opinions, including a Supreme Court decision. HUD must rescind the Trump Administration's disparate impact rule, which undoes HUD's 2013 disparate impact rule and undermines victims of discrimination's ability to seek justice through disparate impact suits under the Fair Housing Act. As technology advances, HUD must also expand its review of predictive models, algorithms, artificial intelligence, and advertising that could violate fair housing laws, whether through a disparate impact on a protected class or improper use of protected class for decision making.

Restore and expand critical fair housing data collection. The Trump Administration has covered our nation's collective eyes when it comes to housing discrimination by rolling

back data collection necessary to see market-wide and lender-level disparities. The CFPB and Congress must restore vital mortgage lending data collection under HMDA and disclose that data to the public. That includes both reporting from lenders who make smaller numbers of loans, and also ensuring all important loan-level data points are available. The CFPB and Congress must also continue to update the data collected through HMDA reporting to ensure that regulators and the public have the information they need so that lenders do not engage in widespread discrimination.

Restore the CFPB’s Office of Fair Lending to its full strength and independence. CFPB leadership must immediately restore the Office of Fair Lending to its position within the CFPB’s enforcement division, giving it the power and independence to review practices and enforce fair lending laws when it finds violations. Fair lending specialists must be part of all agency supervision efforts.

Fully implement the Fair Housing Act by restoring the Affirmatively Furthering Fair Housing Rule. As GAO affirmed in 2010, our country has never fully implemented the requirement that grantees “affirmatively further” fair housing. The 2015 AFFH rule and the associated tools and data resources that HUD provided to communities were an important step in finally fulfilling the promise of this 1968 law until they were revoked by the Trump Administration. HUD must immediately withdraw its new AFFH rule, which was born of the President’s desire to convince “suburban housewives” that dangerous forces were coming to “destroy” their neighborhoods and does not fulfill HUD’s legal obligations under the Fair Housing Act. Next, HUD must restore the 2015 AFFH rule and all of the data and tools that can help communities identify the fair housing and opportunity barriers in their jurisdictions. Congress and HUD must also invest in technical assistance to help communities assess their fair housing barriers and develop their own plans to address them. We have the data and tools necessary to help communities rectify decades of deliberate segregation and neglect; we must use them.

Repeal the Trump Administration’s partial overhaul of the CRA and use data and community feedback to strengthen it. Civil rights and community development stakeholders have called for updates to the CRA to encourage additional investment and access to consumer-friendly services in low- and moderate-income communities and for small businesses that have seen disinvestment for too long. The OCC must immediately rescind its misguided rule, and regulators should use the data and input provided by the civil rights community, community development financial institutions (CDFIs), minority depository institutions (MDIs), local governments, affordable housing developers, and lenders to develop a proposal to strengthen the CRA. Any proposal must reflect all of this input and data, and must have consensus from all of the stakeholders and all three federal regulators overseeing the CRA – not just one.

Preserve and strengthen tools at Fannie Mae and Freddie Mac to facilitate access to affordable homeownership and rental housing, including the affordable housing goals and Duty to Serve, and strengthen FHA. As Congress and members of the Administration continue to discuss reforms to Fannie Mae, Freddie Mac, and FHA, any serious proposal must preserve and strengthen the existing tools intended to ensure equity in our housing finance system. This includes preserving and strengthening the affordable housing goals and Duty to Serve, examining the effects of GSE pricing, ensuring FHA continues to offer nondiscriminatory pricing to all families, and giving consumers the ability to choose the type of loan that is best for them. The housing agencies, the GSEs, and Congress must consider

the unequal housing barriers that exist in developing policies, and Congress and the agencies must make the necessary investments to ensure equitable access to housing. More work will be needed to ensure that our housing finance system is just and serves everyone, regardless of race, English proficiency, or familial status. This includes regulating the GSEs as utilities, providing equitable treatment for all lenders regardless of size, serving all housing markets throughout the country, providing a catastrophic government backstop, expanding investments in affordable housing, and maintaining the GSEs' successful multifamily business models. These principles are essential starting points to ensuring equal access to our nation's housing market.

Invest in Black, brown, and native communities. The federal government has an obligation to affirmatively further fair housing. Accordingly, the federal government must invest in historically underserved people and communities in order to provide equal opportunities to a shared, prosperous future. We must invest so that individuals and families live in neighborhoods with access to the resources they need to thrive: jobs, housing, healthy food and safe water, high quality schools, transportation, health care, and a healthy environment. This means providing financial assistance and counseling to families so that they can rent or buy homes in areas of opportunity. It also means investing in our neighborhood businesses and infrastructure, including safe housing, to bring opportunities to people where they live, and ensuring that long-time residents are not displaced when economic opportunities come to historically underserved communities. Finally, we must invest and design recovery programs to ensure that the current health and economic crisis does not exacerbate underlying inequities in our housing system and communities.

Examples of investments necessary to help Black, brown, and native families and communities access economic mobility include initiatives to:

Preserve and create affordable housing for low-income renters and homeowners through grants to states, local communities, and housing nonprofits. Housing creation and preservation must be shaped by the goals of reducing housing cost burdens, and mitigating the effects of segregation and disinvestment that have been largely felt by people of color. This includes the long-term preservation of the nation's public housing through investments in necessary repairs, comprehensive rehabilitation, sustainability improvements, and removal of health and safety hazards such as lead, mold, radon, or carbon monoxide. We must also provide communities tools to responsibly update local regulations to remove barriers to affordable housing production.

Invest in underserved neighborhoods by boosting funding for initiatives like Choice Neighborhoods and Community Development Block Grants to improve quality of life and spur investments and job creation in communities struggling to improve legacy infrastructure, address vacant and abandoned properties and environmental hazards, and address deep disparities in access to health, nutrition, education, green space, and economic opportunities. These critical programs enable communities to build community-driven infrastructure, revitalization, resilience to natural disaster, and housing.

Support CDFIs and MDIs that work directly in Black, brown, and native communities and rural areas. CDFIs and MDIs can also provide access to credit and affordable homeownership for borrowers and areas that might otherwise go unserved.

Preserve and expand affordable housing in rural, tribal, and native communities through additional, targeted investments. Improve affordable housing in rural communities with

investments in USDA's Rural Housing Service rental housing and homeowner assistance programs. In addition, address the unique housing challenges on tribal lands by providing new investments in the Indian Housing Block Grant (IHBG) created through the Native American Housing Assistance and Self Determination Act (NAHASDA) and Indian Community Development Block Grant.

Enhance public accountability and engagement in local investment decisions by providing data and mapping tools to help communities identify and address disparities and equipping residents and governments with technical assistance for community development plans.

Make cost-effective investments to protect the health and future of our children by addressing lead-based paint and other health hazards in America's housing stock. Exposure to lead can undermine children's neurological and physical development, and the CDC now estimates that 535,000 children under the age of six are affected by lead poisoning. Every \$1 invested in lead hazard control saves \$17 in health, educational, criminal justice, and other societal costs.

Address income, wealth, and health disparities by providing new work and career training opportunities and requiring that grantees conduct outreach to minority and women owned businesses to inform them of opportunities created through these investments. These disparities should also be addressed by increasing climate resilience, and providing broadband access to rural communities and the three million federally-assisted homes in order to eliminate the digital divide in accessing telehealth, work, and educational opportunities.

Ensure that the Fair Housing Act protects LGBTQ individuals and families. While many cities have acted to ensure LGBTQ individuals and people who receive rental assistance are protected from discrimination, the federal government has not. The Supreme Court's recent ruling in *Bostock v. Clayton County* clearly recognized that prohibitions on sex discrimination in federal civil rights laws regarding employment include sexual orientation and gender identity discrimination. The *Bostock* ruling sets a clear precedent for this recognition to apply in other civil rights laws, including the Fair Housing Act. Our federal agencies should immediately begin enforcing these critical civil rights protections. Congress should further codify these protections to ensure that no one is subject to illegal discrimination based on sexual orientation or gender identity.

Ensure that the Fair Housing Act protects people receiving assistance with housing payments. Congress must also pass legislation to ensure that no person receiving rental assistance is denied a place to live by a landlord just for their source of payment (known as source of income discrimination). Source of income discrimination coupled with tight housing markets can mean that families receive a voucher after years on the waiting list, only to lose that voucher after months of searching because they can't find a landlord who will take it. This is both unjust and undermines efforts to ensure that renters have access to housing and opportunity throughout our communities. The federal government must act to provide a level playing field for families and individuals across the country.

Restore access to homeownership for DACA recipients. Our nation must be invested in the economic wellbeing of everyone who lives in our country, regardless of their immigration status. For many people, part of that economic wellbeing is affordable homeowner-

ship. DACA recipients have been part of our country since childhood and many are working in our local businesses or attending college to expand their opportunities. We should not limit those opportunities by locking them out of homeownership. HUD must restore the ability of these members of our society to access affordable homeownership financed through FHA. If HUD will not act, Congress must act to ensure access to homeownership for DACA recipients.

Protect access to federally-assisted affordable housing and preserve housing stability for tens of thousands of children in families with mixed immigration status. For decades, eligible low-income households with “mixed-status” members – made up of families with members who are both eligible and ineligible for housing assistance based on immigration status – have been able to access that assistance. This longstanding policy is at risk of being overturned by the Trump Administration through final action on its “mixed status” rule. We must ensure that these families can continue to access prorated assistance to prevent the eviction and displacement of tens of thousands of people eligible for and receiving rental assistance, including an estimated 55,000 children.

Ensure that all people experiencing homelessness are treated with dignity, regardless of their faith or whom they love. People experiencing homelessness are particularly vulnerable to discrimination. They often have few options for safe shelter or adequate nutrition. If service providers receiving federal funds are allowed to impose their religious views on people seeking basic help, millions of people, particularly LGBTQ individuals and religious minorities, could find themselves without any of the sources of help. Since our country’s founding we have recognized the value of the separation of church and state, including in the use of federal dollars. This principle has protected both individuals and religious institutions helping administer federal dollars. We must restore that basic legal principle by rejecting the Trump Administration’s proposed rule to implement the President’s Executive Order on Equal Participation of Faith-Based Organizations in HUD Programs and Activities and restoring HUD’s guidance on equal access to shelter for transgender individuals.

Each of these individual actions is critical to fulfilling the promise of our existing fair housing and lending laws. But, true change will require our society to take a hard look at the many policies that hold us back from true racial and economic justice. In the housing system, this will mean evaluating all policies for their impacts on protected classes and communities that have historically seen disinvestment. Every policy must be evaluated to recognize, prevent, and mitigate systemic inequalities.

Conclusion

Our communities and the entire nation are stronger when we invest in every person. While this report focuses on the Trump Administration's efforts targeted at civil rights laws in housing, the Trump Administration has taken steps to roll back numerous other foundational civil rights laws, moving our nation in the wrong direction. Critical civil rights laws provided the foundation we need to invest in Black and brown communities, and to identify, prevent, and combat discrimination. Now is not the time to gut these efforts. Now is the time to use our civil rights laws to take stock of the inequities and barriers that still exist and continue to work in partnership with communities— including advocates, civil rights leaders, activists, young people, researchers, and most importantly, members of communities harmed by discriminatory policies.

Only by doing this can we address systemic racism and centuries of disinvestment in communities of color. This requires commitment from every community, the private sector, and from the federal government, which must provide the resources, oversight, and tools necessary to enforce these laws. If we make this commitment, we can fulfill the promise of the civil rights movement to provide opportunity to every child and every family.

Now is the time to renew this commitment.

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