A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP

HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

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A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP

Wednesday, May 8, 2019

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING,
COMMUNITY DEVELOPMENT,
AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Wm. Lacy Clay [chairman of the subcommittee] presiding.

Members present: Representatives Clay, Velazquez, Cleaver, Beatty, Green, Gonzalez of Texas, Maloney, Vargas, Lawson, Tlaib, Axne; Duffy, Luetkemeyer, Huizenga, Tipton, Kustoff, Gonzalez of Ohio, Rose, Steil, and Gooden.

Ex officio present: Representatives Waters and McHenry.

Chairman CLAY. The Subcommittee on Housing, Community Development, and Insurance will come to order. Good morning, and welcome to this morning's hearing entitled, "A Review of the State of and Barriers to Minority Homeownership."

As the Chair of the Subcommittee on Housing, I am honored to mark the anniversary of the congressional passage of the Fair Housing Act during the month of April, which was National Fair Housing Month.

It is clear from the evidence in front of us, though, that 51 years later there is still much work to be done to promote and ensure fair housing in America.

Just a few weeks ago, The Washington Post published an article entitled, "The Heartbreaking Decrease in Black Homeownership", which told a sad tale but also discussed some of the historical discrimination that led the homeownership rates to decrease for blacks and other minorities as a result of the recent financial crisis.

President Lyndon Johnson signed the Fair Housing Act on April the 11, 1968, 1 week after the assassination of Dr. Martin Luther King. The Fair Housing Act was a monumental step forward for the civil rights movement and pivotal to establishing equal opportunity in housing for all Americans.

The discrimination which the Act attempted to outlaw did not occur through happenstance, and although many private actors were complicit, research has shown that the government played a significant role. And although it was officially outlawed 50 years ago, as the National Fair Housing Alliance's 2018 report noted, some discriminatory practices are still prevalent.

In fact, since 1988, dozens of cases alleging redlining and discrimination by mortgage lenders have resulted in close to $1 billion in compensation to victims of mortgage lending discrimination and for investment in communities.

A recent New York Times bestseller by researcher Richard Rothstein provides a very sobering account of how government policy supporting and directing segregation was not accidental. And we should all be alarmed that the homeownership rate for blacks is now 42 percent, and for Hispanics, is 47 percent, compared to 73 percent for white households.

Homeownership has proven to be one of the most consistent paths to attaining wealth in America and narrowing the wealth gap. Closing the racial wealth gap will be an essential path towards countering historic discrimination and predatory lending practices and would no doubt be a boon for the housing market.

It is also clear that minority borrowers must have access to credit on the same terms and conditions as everyone else. Otherwise, the racial wealth gap will persist.

In theory, enhanced fair lending, increased financial intelligence, and the use of creative ways to promote community development will spur the type of development that will help the economy grow and help our community to thrive and not just survive.

There is much work to be done but there are resources available. And I want to acknowledge the housing advocates in St. Louis and to acknowledge the work of the St. Louis Affordable Housing Trust Fund Task Force which issued a report yesterday that spells out a number of recommendations to address affordable housing. And I will be introducing comprehensive legislation to address some of the problems that still exist.

Let me also acknowledge the contributions of my colleagues who have introduced or are working on legislative proposals that will work to improve this dire situation.

As chairman of this subcommittee, my mission is to promote pragmatic policy through smart legislation, intelligent collaboration, and sound policy choices to help make that dream a reality again. And I look forward to the witnesses' testimony.

At this time, I now recognize the ranking member of the subcommittee, Mr. Duffy of Wisconsin.

Mr. DUFFY. Thank you, Mr. Chairman. I appreciate you holding this hearing.

Welcome, witnesses. It is hard to imagine that 50 years after passing a myriad of laws aimed at incentivizing low-income and minority homeownership, we find ourselves in a place where African-American ownership is lower than it was when Congress passed the Fair Housing Act.

That is not an assault on Fair Housing. But it is that we have to reevaluate what we are doing and how we can be more effective, I think to the chairman's point.

It is especially hard to imagine that with the lowest unemployment since 1969 at 3.6 percent, this is actually taking place today. I don't have the answers, but I want to work with the Majority and Chairman Clay to uncover reasons for the disparity of homeownership and what the solutions are to fix it.

Looking at recent history, we know minorities were targeted for predatory mortgages prior to 2008 and the crisis. Congress acted to ensure that lenders verify employment, debt levels, costs involved in the loan, and the borrower's ability to repay at the FHA. Those disclosures are important, and we are still debating if we have hit the right balance on those disclosures.

I think most people will point to a lack of financial resources for a down payment, poor credit history, a lack of understanding of the home buying process, regulatory burdens, and housing discrimination as barriers to homeownership.

Sometimes, we can find microtargeted solutions for these issues by allowing the use of alternative data such as paying your phone bill or paying your medical bills when lending institutions use credit scores to determine a borrower's risk.

The reality is we have an opportunity to address some of the inequities through a more holistic approach to housing finance reform and one cause of the financial crisis that Congress just hasn't seemed to get its hands around, but I think actually we need to address, again, housing finance.

As I held hearings not long ago when I used to be the chairman, we invited many of the groups to testify at a roundtable where we discussed the barriers to minority homeownership in the context of major housing finance reform. And we will hear some of those ideas again today.

I do want to use this opportunity to call on the chairwoman of the full Financial Services Committee to take the issue of housing finance reform up and do this in a bipartisan fashion because it is long overdue.

Chairwoman Waters started this Congress by calling for a bipartisan working group on flood insurance and I am looking forward to participating in that. And I think she can use the same model to tackle housing finance reform and the issues that we are going to talk about today.

I, for one, am ready to sit down with Chairman Clay, we have a great working relationship, and others on the subcommittee to work towards a solution that will benefit everyone in this room and all of our communities and all of our districts in all of our States.

In today's hearing, we are looking at four bills and asking if they will solve some of the problems that you all will be highlighting. If they are legitimate solutions, we should stand with those bills and with those ideas. And if not, we want your feedback on how we can reform these proposals and make them work better and be more effective.

While I have some initial opinions on the bills, I am looking forward to your testimony and your insight and your expertise to guide this Congress on how we should move forward.

With that, if I could ask the Chair for a point of personal privilege?

Chairman CLAY. Proceed.

Mr. DUFFY. I would just like to make a quick note that Clinton Jones has served our committee and this subcommittee for 24 years. I know he doesn't look that old, but we have been blessed to have his expertise for 29 years in the Federal Government, 2 years at Fannie Mae. I am not sure how he would speak about the

2 years at Fannie Mae. Maybe he was happy to come back to the committee.

But this is his last week. This is his last subcommittee hearing before he goes over to the FHFA.

I couldn't have a better friend on the committee as someone who gives great insight. And it is fascinating as we go through some of these debates that Mr. Jones is sometimes a radical conservative and sometimes he is a radical socialist leftist. It just depends on the issue.

And we never know where he is going to stand, but he always shares his opinion, and the loss to this committee from Clinton leaving will be to the benefit of FHFA. And so, Clinton, I just want to say thank you for your service and your friendship, and good luck as you make this transition.

[applause]

Chairman CLAY. The gentleman yields back.

Let me also congratulate Mr. Jones on your years of service here and good luck in your future endeavors.

Today, we have a well-rounded panel of experts in the area. Oh, I see.

Let me stop there with my opening statement and ask the chairwoman, did you want to make an opening statement?

Chairwoman WATERS. Yes. I would like to, right after you but not before you.

Chairman CLAY. Oh, I have done it. We have done ours—

Chairwoman WATERS. You have? Okay.

Chairman CLAY. So we will yield to you.

Chairwoman WATERS. Well, thank you for the opportunity. I would like to do that. I would like to thank you, Mr. Clay. The racial gap in homeownership represents a failure to remedy decades of explicit government-sponsored discrimination in our housing markets.

Due to the projected growth of minority households in the coming decades and the economic importance of the housing market, some analysts have argued that a failure to address the gap in minority homeownership and the corresponding wealth gap is not only a major civil rights issue, it is a threat to America's economic security. This hearing is an important hearing to hear from experts about the ongoing barriers to homeownership as well as potential solutions.

I am also very concerned that under Kathy Kraninger's leadership, the Consumer Financial Protection Bureau (CFPB) last week issued a proposal to severely curtail data reporting under the Home Mortgage Disclosure Act (HMDA).

HMDA data is a crucial tool used by researchers, advocates, journalists, and the government to identify and combat predatory and discriminatory mortgage lending. And the CFPB must rescind this proposal at once. I look forward to discussing this and other issues with our witnesses. Thank you very much.

I yield back.

Chairman CLAY. The chairwoman yields back, and I thank you for your opening statement.

We have a well-rounded list of witnesses, and I will start off by introducing them all. The first witness will be Ms. Alanna

McCargo, vice president of housing finance policy at the Urban Institute.

The second witness will be Ms. Nikitra Bailey, executive vice president for the Center for Responsible Lending.

Third, will be Mr. Joseph Nery, partner at Nery & Richardson, LLC, and past president of the National Association of Hispanic Real Estate Professionals, and a current national board member.

Fourth, will be Mr. Jeffrey Hicks, president of the National Association of Real Estate Brokers.

Fifth, will be Ms. Carmen Castro-Conroy, managing housing counselor at the Montgomery County Housing Initiative Partnership.

Sixth, will be Ms. JoAnne Poole, the 2019 vice chair of the Multicultural Real Estate Leadership Advisory Group of the National Association of REALTORS.

And finally, Mr. Joel Griffith, research fellow, Financial Regulations, from the Heritage Foundation.

Welcome to you all. You will each be recognized for 5 minutes to present your oral testimony. And without objection, your written statements will be made a part of the record.

And we will start with Ms. McCargo. You may proceed.

STATEMENT OF ALANNA MCCARGO, VICE PRESIDENT, HOUSING FINANCE POLICY, THE URBAN INSTITUTE

Ms. MCCARGO. Chairman Clay, Ranking Member Duffy, and members of the subcommittee, thank you for the opportunity to testify today.

My name is Alanna McCargo. I am the vice president of the Housing Finance Policy Center at the nonprofit Urban Institute. The views I express today are my own and should not be attributed to the Urban Institute, its trustees or funders.

This morning, I will share data on the critical role of homeownership access, housing affordability, and sustainability for households of color. My remarks will often focus on black homeownership because the homeownership trends for black Americans today are in a dire and declining state, and the Housing Finance Policy Center has been extensively researching these issues over the past several years.

The face of our nation is changing profoundly and literally. As communities of color grow, their experiences will increasingly come to define the housing market of the future. Some projections suggest that in just 25 years, no racial or ethnic group will represent more than 50 percent of the U.S. population.

The overwhelming majority of new homebuyers in the next 10 years will be non-white, with more than half being Hispanic. If current trends persist, however, the homeownership rate will significantly decline and opportunities to build wealth through homeownership will as well.

Becoming a homeowner in America today is getting further out of reach for most families. The cost of buying a home is high and it is difficult to get a mortgage unless you have pristine credit. High rental cost makes saving for a down payment on a house very challenging.

The result has been a persistent and significant racial homeownership rate gap in the United States. Just to level set, the national homeownership rate today is at 64 percent. Broken down by race, rates stand at 42 percent for blacks, and 47 percent for Hispanics, reflecting gaps of 30 and 25 percentage points less than whites, whose homeownership rate is at around 72 percent.

The racial homeownership gap is larger today than it was 50 years ago, as the chairman mentioned, and that was when race-based discrimination was actually legal in this country. Not only have we failed to make progress, we have lost precious ground. New solutions, programs, and policy interventions are needed.

There are four facts I will highlight around the severity and persistence of the crisis in homeownership for people of color. First, despite big gains made during the housing boom, black and Hispanic homeownership rates have never hit 50 percent in this country, and minorities disproportionately suffered the biggest stripping of wealth through the foreclosure crisis.

Second, racial disparities exist across the nation. We looked at cities with the 100 largest black populations across the country, and there is no city without a racial homeownership gap.

Third, racial homeownership gaps are a generational dilemma, intergenerational dilemma. The homeownership gap is present with our seniors, our Baby Boomers, and Generation X, and our research shows it persists with a large and very diverse generation of 74 million-plus millennials.

Finally, there are historical and structural barriers and biases that continue to live in our housing system that cannot be ignored or put aside if we are to make any progress over the next 50 years. These barriers must be eliminated in order to reverse these trends.

The racial homeownership gap will have consequences for the financial health and well-being of future generations and for the entire country because homeownership remains the primary wealth-building tool for most Americans.

That survey data shows that homeowners have significantly more wealth than renters. Today, the median homeowner has a net worth of roughly $200,000 compared to just $5,000 for renters. And while the black and Hispanic homeowners have less than half the net worth of white homeowners, they still have considerably more than black and Hispanic renters.

The returns on homeownership are not just financial, of course. Homeownership provides shelter, stability, and enables families forced savings each month when making their mortgage payment. And the home equity plays an increasingly important part in retirement security for seniors.

I have shared several ideas for reducing the racial homeownership gap in my written testimony. Many of these ideas will require action from Federal, State, and local agencies.

I urge this committee to pursue a bipartisan action that will help change the direction of the persistent growing racial homeownership gap by addressing these priorities.

The segregation in our communities and the disparities in accessing our housing markets did not come about by accident. Our history and the role that the Federal Government played in creating segregated and undervalued neighborhoods through explicit race-based policies that benefited white families, helping them purchase homes through FHA and other programs that excluded people of color, is well documented.

It is my view that intentional policies will be needed to reverse decades of wealth-stripping and decline. The data and the evidence are clear on this.

Ensuring an equitable and accessible housing finance system is something Congress can and should undertake with all of the housing agencies.

This includes modernizing and bolstering the Federal Housing Administration, particularly its outdated servicing systems, safely expanding access to fairly-priced conventional mortgages to borrowers of color through Fannie Mae and Freddie Mac, updating underwriting practices and models to consider modern living arrangements and varying income types, and innovating to make alternative forms of credit available and mortgage decisions to improve access to credit and reduce mortgage application denials.

[The prepared statement of Ms. McCargo can be found on page 95 of the appendix]

Chairman CLAY. The gentlewoman's time has expired. Thank you, Ms. McCargo.

And now, Ms. Bailey, you are recognized for 5 minutes.

STATEMENT OF NIKITRA BAILEY, EXECUTIVE VICE PRESIDENT, CENTER FOR RESPONSIBLE LENDING

Ms. BAILEY. Good morning, Chairwoman Waters, Ranking Member McHenry, Chairman Clay, and Ranking Member Duffy. Thank you for the opportunity to testify in today's hearing on barriers to homeownership for families of color.

Four hundreds of years after the enslaved Africans arrived in Jamestown, Virginia, and hard-fought battles won granting citizenship and equal protection to African Americans, homeownership remains the driver of inequality.

Our nation's housing finance system was built with discrimination as the cornerstone. The mortgage ecosystem favored whites and set them up for success while curtailing opportunity for families of color.

Today's racial wealth gap is the outcome of this discrimination. White families have 13 times the wealth of African Americans and 10 times the wealth of Latino families. The white homeownership rate is 73 percent compared to 41 percent for African Americans and 47 percent for Latinos.

These stubborn and persistent figures will only disappear when we stop underwriting practices that falsely equate race with risk. This hearing can be a catalyst for change, a step towards addressing the Federal Government's role in lending discrimination that produced winners and losers among American citizens in the pursuit of the American Dream.

I am executive vice president of the Center for Responsible Lending, an affiliate of Self-Help, one of the nation's largest community economic development lenders based in North Carolina. Self-Help has provided over $7 billion in financing to borrowers all across the nation, including in a secondary market program that has helped low- to moderate-income families and people of color succeed in homeownership.

President Johnson signed the Fair Housing Act in 1968 following the assassination of Dr. Martin Luther King, Jr., stating that he was delivering on the promise of a century, referencing Lincoln's emancipation.

In 1866, Congress passed the Civil Rights Act that promised fair lending. It was limited by a private right of action and that weakened its enforcement manifesting in discrimination for 102 years of legal mortgage discrimination. Race remains an impediment to fair lending.

Today, African Americans have the same rates of homeownership as they did in 1968. Home Mortgage Disclosure Act data consistently show low levels of lending by conventional lenders to communities of color, with only 3.1 percent of conventional loans going to African Americans and 5.8 percent to Latinos in comparison to 70.2 percent to white families in 2016.

Discriminatory lending birthed redlining. Redlining birthed predatory lending. Predatory lenders target families of color with high-cost and risky mortgages.

CRL's research found that consumers of color were steered towards these unsustainable loans even when they qualified for loans with lower cost and fewer risks. The spillover costs for black and Latino families totaled $1 trillion.

Today's mortgage market delivers as designed. Conventional loans are for whites only. Families of color, including upper-income Latinos and African Americans, are disproportionately represented in the FHA. Government-backed loans cannot and should not be the only sources of credit for low-wealth families.

Post-recovery, banks experienced record profits, reporting $59.1 billion in the fourth quarter of 2018, up 133.4 percent from a year earlier. Fannie Mae data shows that loans to low-income families originated between 2010 and 2015 had a default rate of just 0.3 percent, approximately equal to that of loans to high-income borrowers originated in 2002 through 2004.

Rather than remediate the damage done by abusive subprime lending, excessive risk-based pricing dominates in today's mortgage market, driving out the very borrowers that a future system depends on. Harvard's Joint Center tells us that 7 out of 10 future borrowers will be families of color.

Mortgage discrimination's impact on families of color needs a Federal response equal to the problems it created. Now is the time for action and not retreat.

Some ways that we can achieve this goal include increasing support for down payment assistance, requiring national banks to ensure that 10 percent of their mortgage lending and small business lending occurs in communities where at least 20 percent of the population has experienced poverty for the last 30 years in exchange for FDIC insurance or to have their loans sold to the GSEs or Ginnie Mae.

Strengthen and fairly enforce our nation's lending laws. These laws have never been fairly enforced. African Americans and Latinos have never operated in a fair and equitable mortgage system. If we had, many of the disparities discussed would be smaller than they are today. According to Demos, we would see a reduction in the homeownership and equity building for communities by considerable percentages.

Whites have better life outcomes in wealth accumulation, housing, education, employment, and health. Our nation's lending system contributed to these inequities. Remediating the Federal Government's role will level the playing field, creating more equity of opportunity so that all Americans can share in its prosperity.

Thank you. I look forward to answering your questions.

[The prepared statement of Ms. Bailey can be found on page 48 of the appendix.]

Chairman CLAY. Thank you for your testimony.

And, Mr. Nery, you are recognized for 5 minutes.

STATEMENT OF JOSEPH NERY, PARTNER, NERY & RICHARDSON LLC, AND PAST PRESIDENT OF THE NATIONAL ASSOCIATION OF HISPANIC REAL ESTATE PROFESSIONALS (NAHREP)

Mr. NERY. Good morning, Chairwoman Waters, Chairman Clay, Ranking Member Duffy, and distinguished members of the Subcommittee on Housing, Community Development, and Insurance.

My name is Joseph Nery, and I am here representing the National Association of Hispanic Real Estate Professionals (NAHREP), both as 2016 NAHREP national president and as a Chicago-based real estate attorney where I serve a largely Latino market.

With over 30,000 members in over 80 local chapters, our organization is one of the largest Latino business organizations in the country. The force and passion behind our growing membership revolves around one primary mission: advancing sustainable Hispanic homeownership. Bottom line, we believe every individual who desires to become a homeowner and is able to sustain a mortgage should be granted access to the American Dream.

Today, my testimony will outline the current state of Hispanic homeownership and make several actionable recommendations for this committee to consider. This year's edition of our annual State of Hispanic Homeownership Report highlighted four consecutive years of homeownership growth for Latinos and the largest increase since 2005.

In spite of this remarkable growth, homeownership rates among Latinos and other minority populations lag behind that of their non-Hispanic white counterparts. At the end of 2018, the Hispanic homeownership rate was 47.1 percent compared to 73 percent for the non-Hispanic white population and 64.4 percent for the general population.

While homeownership trends are positive, they should be much higher. And this is important because Hispanics will account for more than half of all new potential homeowners over the next several years and 56 percent of all new homeowners by 2030.

Hispanics have also accounted for more than half of the nation's population growth since the year 2000. And at a median age of 29, Hispanics are just entering into their prime homebuying years, further increasing homeownership potential for decades to come.

If homeownership rates across all ethnic groups were to remain what they are today, the national homeownership rate would decline to 55 percent over the next 40 years. The last time the homeownership rate was that low was in the years immediately following World War II.

So that bring us to the unique challenges credit-worthy Latinos face in today's market. A young couple I assisted in buying their first home are a prime example of the Hispanic homebuyer today. Jose and Laura own a small gardening business, while Laura occasionally caters at events.

Laura's mother and sister live with them, both of whom contribute to the monthly mortgage payment, yet it took 6 months for this household to be able to gain access to a reasonable loan. Much like my clients, potential Hispanic homeowners are more likely to be self-employed or involved in the gig economy, live in multigenerational households and tend to use cash over credit.

Given these characteristics, coupled with today's regulatory constraints, lenders consistently fail to accurately assess the credit risk of many otherwise credit-worthy Hispanic borrowers.

To that end, NAHREP offers these actionable Federal policy solutions. First, we must temporarily extend the GSE QM patch until it is replaced with a workable solution. Communities of color would be disproportionately impacted if the GSE QM patch were to expire, given that Hispanics are 38 percent more likely to have a high DTI loan.

As data is still being developed to support alternatives and replacements for the patch, the Hispanic community is poised to be negatively impacted without clear solutions for non-W-2 borrowers, particularly for the growing number of Latino small business owners.

Second, Congress must prioritize efforts to fund FHA's much-needed modernization. No Federal housing finance reform should be devoid of a plan for how to do so. Today, Hispanics are more than twice as likely to make use of the FHA programs than non-Hispanics, yet the agency is understaffed, underfunded and operating with severely outdated technology and computer systems.

Third, we must put a halt to the practice of denying taxpayer-supported loans to taxpaying DACA recipients. We support today's Homeownership for Dreamers Act legislation and join its co-sponsors in their call to clarify that eligibility of a government-sponsored mortgages may not be conditioned on the status of a consumer being a DACA recipient. We must ensure that FHA and other Federal housing agencies do not get ahead of the judiciary to decide immigration law.

Fourth, we urge the Subcommittee on Diversity and Inclusion to take on the issue of diversifying the mortgage industry at all levels. A diverse lending community stimulates homeownership rates for minority borrowers.

And finally, we would be remiss if we did not mention the need to increase the inventory of affordable owner-occupied housing, quite possibly the biggest short-term barrier to minority homeownership today.

While we are proud to see a resilient Latino population consistently increasing its rate of homeownership, this progress is in spite of the structural barriers to homeownership. Today, more than ever, broad access to affordable credit, low-down-payment mortgage products, and sufficient affordable housing stock will be imperative to ensuring the long-term prosperity of the nation.

Now is not the time to curtail access to the very products that have catapulted so many working-class Americans into the middle class. Instead, we must ensure that our housing system adequately adapts to the changing face of America's aspiring homeowner.

Thank you.

[The prepared statement of Mr. Nery can be found on page 117 of the appendix.]

Chairman CLAY. Thank you, Mr. Nery.

Mr. Hicks, you are recognized for 5 minutes.

STATEMENT OF JEFFREY HICKS, PRESIDENT, NATIONAL ASSOCIATION OF REAL ESTATE BROKERS

Mr. HICKS. Good morning, Chairwoman Waters, Chairman Clay, Ranking Member Duffy, and distinguished members of the subcommittee. Thank you for holding this hearing and for giving me the opportunity to testify about the important issue of minority homeownership in America.

My name is Jeffrey Hicks and I'm from from Atlanta, Georgia. I am the president of the National Association of Real Estate Brokers, NAREB. Founded in 1947, NAREB is the oldest minority real estate trade association in America. Its members are known as REALTIST. The primary mission is reflected in NAREB's motto: Democracy in Housing.

For 72 years, the association has worked to ensure that all Americans have equal access to homeownership opportunities in urban, suburban, and rural communities throughout the United States, and equal opportunity in the real estate profession for black Americans. I am honored to be here today to provide our perspectives on what NAREB believes to be the barriers to minority homeownership in the United States.

Our nation has a very complicated and checkered history with providing equal and equitable access to homeownership for black Americans.

At the end of World War II, when black Americans sacrificed their lives for the cause of freedom, dignity, and human rights, the United States Federal Government created an economic divide between black and white veterans, and their families were denied the multi-generational enriching impact of homeownership and economic security that the G.I. Bill conferred on the majority of white veterans, their children, and their grandchildren.

Unequal implementation of the G.I. Bill, along with Federal Government policies and practices at the Federal Housing Administration, including the redlining of black neighborhoods, but at the same time financing the construction of suburbs restricted to whites only and providing subsidized mortgages, financing only for whites, set the stage for today's wealth and homeownership gap statistics.

It is against this backdrop that I give my testimony. Annually, NAREB publishes the State of Housing in Black America Report. The 2018 edition examined the need for Federal policies to address and bolster the rate of black American homeownership since previous Federal policies discriminated against blacks which helped to create a disparity in black American homeownership, which lags a whopping 32.1 percent behind that of white Americans.

According to the first quarter 2019 Census Bureau statistics, the homeownership rate for black Americans is 41.1 percent for blacks versus 73.2 percent for whites. For these reasons, NAREB has adopted three policy principles that can work to increase homeownership among minorities.

One, we must continue to promote homeownership as a high priority public policy. NAREB calls for the passage of the American Dream Down Payment Savings Plan proposal by Congressman Meeks that will function from a tax perspective like the 529 College Savings Plan.

Potential homebuyers and existing homebuyers desiring a move-up home would be allowed to save in an authorized account where the savings could grow tax free and be used as a down payment for purchasing a home.

Two, loan level equality, which would be the absence of hereditary or arbitrary class distinctions, biases or privileges in the mortgage origination process.

And three, non-bank financial institutions should have an accountability structure. There is a growing concern about the lack of regulation for non-deposit mortgage lenders while these entities are the growing force, now more than 50 percent of all mortgage originations, yet there is very little regulatory accountability.

In closing, we need lawmakers and policymakers, local officials, homebuilders and the financial industry to promote homeownership. I fear the value of homeownership is being lost on our young people and will be lost on future generations.

Realtist will continue to be the conscience of the real estate industry, forever promoting democracy in housing, which is the right for every person to live in a neighborhood of their choice. Thank you, and I will be happy to respond to any questions.

[The prepared statement of Mr. Hicks can be found on page 89 of the appendix.]

Chairman CLAY. Thank you, Mr. Hicks.

Ms. Castro-Conroy, you are recognized for 5 minutes.

STATEMENT OF CARMEN CASTRO-CONROY, MANAGING HOUSING COUNSELOR, HOUSING INITIATIVE PARTNERSHIP, INC.

Ms. CASTRO-CONROY. Good morning, Chairwoman Waters, Chairman Clay, Ranking Member Duffy, and members of the subcommittee. Thank you for the opportunity to testify today. My name is Carmen Castro-Conroy, and I am the managing housing counselor at the Housing Initiative Partnership.

We are a nonprofit affordable housing developer and HUD-approved housing counseling agency located in Maryland. Our housing counselors have provided counseling, education, and advocacy to over 20,000 households to help them enter homeownership, avoid foreclosure, secure affordable rental housing, and strengthen their personal finances.

We serve Prince Georges County, Maryland, one of the most affluent majority African-American communities in the country, and

Montgomery County, the 25th most diverse county in the country. The two primary barriers to minority homeownership our counseling staff witnesses are the lack of generational wealth and the shortage of affordable housing.

The parents, grandparents, and great-grandparents of African American and immigrant populations either did not benefit from or were intentionally excluded from the Federal programs that allow white families to build generational wealth.

During the housing bubble, the housing market exploited the communities that lack wealth. We worked with over 10,000 homeowners in default during the foreclosure crisis. A vastly disproportionate percentage, 98 percent, of those defaulting homeowners were minority households. To a person, our clients presented their counselors with the most toxic loan documents we had ever seen.

We know now that lenders created these dangerous predatory products to be easily accessible specifically to this population that had been historically excluded from access to credit.

The result? The African-American and immigrant households we worked with watched as their hard-fought financial gains and accumulation of equity slipped through their hands, draining their wealth away at an alarming and devastating rate.

An African-American family we work with illustrates this loss of wealth. This family purchased in 2005, and despite their solid income and recent savings, their mortgage contained an adjustable interest rate that had spiked to 15 percent by the time we met in 2008.

A housing counselor helped negotiate a loan workout with a new 4 percent interest rate, but the home had lost value after the housing crash, and the family continues to be saddled with close to $80,000 in negative equity.

In communities of color we serve, home values are often far below pre-recession levels, and in some cities you will find as many as one in five homeowners with negative equity.

On the purchase side, the lack of affordable rental housing creates barriers for minority households seeking to enter homeownership. Minority households that have sufficient income to qualify for a mortgage are often unable to save or pay down debts due to the high cost of rental housing.

One of our clients who immigrated from the Republic of Congo in 1995 and began working as a nursing assistant illustrates this challenge. She had achieved a household monthly income of $6,000, but her credit was low due to her debts.

She worked steadily for 2 years to adhere to a very strict budget, often meeting monthly with a counselor, and succeeded in paying down debt, building savings, and purchasing a $320,000 townhouse in 2018 with an FHA loan.

This allowed her to access homeownership, but it came at a high cost. Her higher-than-market interest rate and high mortgage insurance fees will cost her $89,000 over the life of the loan.

Minority households that have been historically excluded from or exploited by the credit market deserve a better Federal response, one that provides low-wealth borrowers with safe and sustainable mortgages without the prohibitive fees.

Finally, any Federal response to increase homeownership for low-wealth minority communities should include housing counseling. Research is clear: Loans made to borrowers who had received pre-purchase counseling performed better.

We hope Congress will improve access to sustainable homeownership for the minority communities. Thank you.

[The prepared statement of Ms. Castro-Conroy can be found on page 80 of the appendix.]

Chairman CLAY. Thank you, Ms. Castro-Conroy.

Ms. Poole, you are recognized for 5 minutes.

STATEMENT OF JOANNE POOLE, 2019 VICE CHAIR, MULTICULTURAL REAL ESTATE LEADERSHIP ADVISORY GROUP, NATIONAL ASSOCIATION OF REALTORS (NAR)

Ms. POOLE. Thank you. Good morning, Chairwoman Waters, Chairman Clay, Ranking Member Duffy, and members of the subcommittee.

My name is JoAnne Poole. As a REALTOR in Baltimore, Maryland, I have 33 years of experience working with the people of Anne Arundel County, Prince Georges County, Baltimore City, and Baltimore County.

I have been an active member of the National Association of REALTORS for over 20 years, serving as its vice president, Chair of the Federal Housing Policy Committee, and currently as the 2020 chair of the REALTORS Multicultural Real Estate Leadership Advisory Group.

On behalf of NAR's 1.3 million members, I want to thank you for the opportunity to present our association's concerns surrounding the state of and the barriers to minority homeownership in the United States.

In addition to my work with NAR, I am also a member of the National Association of Real Estate Brokers. I am proud to sit here today with President Jeffrey Hicks. Under President Hicks' leadership, NAREB continues to play its historic role, highlighting the critical issues this committee has convened to discuss.

To many people in this country, homeownership is synonymous with the American Dream. Homeownership provides for stable communities, increases civic participation, and builds our feelings of self-worth and self-esteem.

In fact, studies have shown that the children of homeowners go on to earn more as adults. But sadly, stark racial disparities in the rate of homeownership demonstrate that this dream remains out of reach for countless families and potential homebuyers across the United States. For example, the rate of homeownership for African Americans has returned to the levels not seen since before the passage of the Fair Housing Act. And as has been mentioned, that was over 50 years ago.

NAR and NAREB and the Urban Institute recently convened a roundtable focusing on improving African-American homeownership rates. A five-point framework that can be applied across all minority communities emerged and continues to be developed.

Namely, these priorities include advancing local policy solutions, tackling housing supply constraints and affordability, promoting an equitable and accessible housing finance system, engaging in outreach to our mortgage-ready individuals, and maintaining a focus on sustainable homeownership and preservation.

NAR strongly supports the production of affordable housing and efforts to increase the supply of entry level homes. We encourage States and municipalities to consider the input of local experts and to adopt zoning laws, building codes, and other policies that encourage free market production of affordable housing units.

If America is to remain a nation of homeowners, we must address the persistent barriers that minorities continue to face. NAR's policy solutions and proposals for this national issue are outlined in more detail in the official testimony submitted to this committee.

I want to thank you again for the opportunity to address this committee, and I look forward to addressing these critical issues at today's hearing and in the months and the years to come.

Thank you.

[The prepared statement of Ms. Poole can be found on page 128 of the appendix.]

Chairman CLAY. Thank you, Ms. Poole, for your testimony.

And now, we go to Mr. Griffith. You are recognized for 5 minutes.

STATEMENT OF JOEL GRIFFITH, RESEARCH FELLOW, FINANCIAL REGULATIONS, THE HERITAGE GROUP

Mr. GRIFFITH. Good morning, Chairwoman Waters, Chairman Clay, Ranking Member Duffy, and members of the subcommittee. Thank you for the opportunity to testify this morning.

My name is Joel Griffith. I am a research fellow at the Heritage Foundation. The views I express in this testimony are my own and should not be considered as representing the official position of the Heritage Foundation.

Efforts to expand homeownership through government programs or policies are often well-intentioned. But as you all know, good intentions are an insufficient basis for public policy.

Directing resources to the housing sector through government subsidies, mandates, and guarantees may financially benefit select special interests such as MBS investors and lenders, but this negatively impacts affordability for all, including minorities.

Furthermore, a focus on simply expanding homeownership fails to recognize that homeownership itself does not suddenly improve a borrower's financial health, enhance their skillset, or expand their economic opportunities.

In other words, homeownership stems from financial health, a profitable skillset, and economic opportunity. These desirable conditions are not simply created by virtue of owning a home.

Closing the gap in wealth accumulation and multiplying the opportunities to create such wealth requires an approach different from the government housing subsidies, mortgage guarantees and mandates of the past. Congress can help make housing more affordable, but this is actually accomplished by shrinking the Federal role in housing finance.

Data show that heavy government involvement in the home finance sector failed to substantially increase homeownership long term, despite the trillions of dollars worth of credit that flowed to those with lower credit scores, minimal income documentation, less stable employment history, and scant down payments.

Robust homeownership in this country was established long before the government became heavily involved in the housing market. Fannie Mae was not allowed to purchase non-government insured mortgages until 1968.

But in the 2 decades prior to that watershed change, government-backed mortgages never accounted for 6 percent of the market in any given year. Yet, the homeownership rate was 64 percent in 1968 overall. That was virtually unchanged compared to today.

For blacks, homeownership actually grew from 35 percent in 1950 to 42 percent in 1970 and increased to 44 percent in 1980. But by 1990, after the securitization market had begun expanding, black homeownership actually declined to 43 percent. And now in 2019, as discussed already, homeownership in the black community has declined even further to 41 percent.

The fact is that homeownership rates for blacks and for the nation as a whole are nearly unchanged today compared to 1990. This indicates that additional leverage that many are recommending should not be relied upon to increase the rate of homeownership further.

Rather than recognize the realities, congressional inaction has expanded the government's role in the wake of the prior financial crisis. This is leading once again to widespread unaffordability and increased taxpayer risk. In fact, adjusted for inflation, residential property prices in the United States in the middle of last year had reached levels close to the peak of the bubble.

The home price-to-income ratio is now at 3½. That is very close to the peak prior to the last crisis. The current system perpetuates inflated prices and deprives other sectors of needed financial resources. It is difficult to argue that these policies improve the status quo for anyone other than lenders, securitizers, and MBS investors.

Optimally, Congress will work to make housing more affordable by gradually reducing those subsidies, but this alone will not close the wealth gap.

What we need is an increase in economic opportunity. This also requires State and local governments sharing that responsibility and eliminating the artificial barriers to economic growth such as unreasonably high minimum wages, occupational licensing, and unreasonable zoning restrictions.

Lastly, failing public schools contribute to a relative lack of education, marketable skills, and other forms of human capital. To better equip the next generation to prosper we need expanded educational choice. Many of the underperforming public schools are located in economically deprived areas with a disproportionately large minority population.

The government-granted education monopoly fails the millions of students who are subsequently unable to effectively compete in the labor market. Educational choice will help close this opportunity gap.

These three steps will unlock human potential and expand opportunities for all. Thank you.

[The prepared statement of Mr. Griffith can be found on page 84 of the appendix.]

Chairman CLAY. Thank you, Mr. Griffith, for your testimony.

I now recognize myself for 5 minutes for questioning.

Ms. Castro-Conroy, in your testimony you mentioned an African-American family who had solid income but was still saddled with a predatory loan.

Do you suspect that there are other families out there like this who unfortunately were not aware of the services that the Housing Initiative Partnership provides?

Ms. CASTRO-CONROY. Yes. There are other families who do not know about the services that we provide. And we have also seen other families who have been impacted very similar to this case as well.

Chairman CLAY. And as a follow-up, how do we educate other families so that they are not subject to the type of bad financial practices that this family encountered?

Ms. CASTRO-CONROY. We provide financial education to all of our clients with the counseling that we do. So when we work with them, we look at their budgets, we look at their credit reports, we talk about savings, we talk about debt.

So we start educating them in the process of becoming homeowners, whether they are renting. Even when they are actual homeowners we always look at their finances, try to educate them.

Chairman CLAY. And that counseling service is effective and it helps?

Ms. CASTRO-CONROY. Yes, we see results. We keep track of how they improve in their credit score, how they improve in their savings, and how they reduce their debt through time.

Chairman CLAY. Thank you so much.

Ms. Bailey, from a historical perspective, you talk about how Jim Crow laws and groups like the Ku Klux Klan worked diligently to keep African Americans down, and when African-American neighborhoods flourished, like the one known as America's Black Wall Street, until the Tulsa Race Riot of 1921 in which white residents massacred 26 black residents, injured hundreds more, and razed the neighborhood within hours.

The riot was one of the most devastating massacres in the history of U.S. race relations, destroying the once thriving Greenwood community. Could you discuss how devastating this was, not just to the black community in Oklahoma, but how it had a chilling effect on blacks' success and wealth?

Ms. BAILEY. Yes, thank you for the opportunity. Many African Americans were making an effort to pursue opportunity across the country in the same way that white American families did. Twenty percent of white American family wealth can be attributed to them getting access to land grants from the Homestead Act.

African-American families were following in that trend and relocated from the south throughout the nation, including western cities like Tulsa, Oklahoma.

However, they faced terrorism, because right as the nation was moving forward with more sound economic and fairness policies, it met an equal and opposite reaction where we wanted to preserve white supremacy in this nation. And in doing that, we created barriers to opportunities for African Americans that really jeopardized their communities in the way that you just identified with the evidence from Tulsa.

It is important to say that Tulsa is not the only place. There is also evidence that this happened in places like Rosewood, Florida, and in other communities across the country.

So we really need to get at the real hardship that families of color face. People who were really pulling themselves up by their bootstraps, doing everything right in a nation that promised opportunity, we had all of these fair lending laws that promised opportunity and that opportunity was resisted by white Americans who wanted them to remain as second-class citizens.

Chairman CLAY. And you cite some notable historic examples.

Ms. McCargo, you cited a paper by your colleague, Lori Goodman, which concluded that homeownership is still one of the better paths towards accumulating wealth. And when you think about it, if a family saves for a home, their spending behavior changes, usually for the better.

They become more financially astute and they work towards a goal. Could you discuss homeownership and retention and some of the solutions which you mentioned in your testimony?

Ms. MCCARGO. Thank you for the question, Mr. Chairman. Undoubtedly, homeownership has provided a wealth-building opportunity for families for generations. It is noteworthy that we talk about the homeownership rate nationally at 64 percent. It has been, for over 30 years, over 70 percent for white households, and the accumulation of wealth during that same time has been significant.

And I think it is important to recognize the significant opportunity that forced savings and essentially paying into something that you will ultimately own, as well as the intergenerational implications of that wealth transfer opportunity for families.

That is something that has been afforded for decades to white families. And I think it is really important as a foundation for us to think about how disproportionately wealth is built in black and Hispanic communities through home equity. And that opportunity needs to be made more available and readily available for most.

Chairman CLAY. Thank you so much for your response.

And the gentleman from Wisconsin, Mr. Duffy, is recognized for 5 minutes.

Mr. DUFFY. Thank you, Mr. Chairman. Listen, I want to thank the panel for the insightful conversation and good insight you provided to the committee. Just, it is troubling the disparity that we are talking about today in homeownership and actually the disparity in wages. And I think it brings us to the point that Mr. Griffith was mentioning.

I don't think there is any one solution here. I think it is pretty clear that, as Mr. Jones just mentioned, this is a salad bowl of ideas that we are going to have to look at.

I don't think there is any one single bullet, but you talked about regulation and education and choice. What impact do you think that will have on incomes but also then on homeownership?

Mr. GRIFFITH. Thank you for your question. I think, yes, we, all of us, regardless of what side of the political line we fall on, are deeply troubled by the fact that there is this gap in opportunity.

But what we see is that you have minority communities that are disproportionately in areas, in local areas that have in an inordinate number of regulations that are impeding the ability to even get on that first rung of the economic ladder.

When you compound that with the lack of educational opportunities that many minority communities have because of where they are located, it compounds the problem. And that is why I talked about the educational choice of it.

This is a more difficult solution than simply subsidizing somebody's purchase. But longer term, this can have lasting impacts because somebody with a better education will be better equipped to make prudent financial choices and probably more importantly will have the opportunity to earn more over a longer term.

Mr. DUFFY. And I know this is not an education hearing and this is not the full solution, but I do think you are right. When you can look at the success of a young child based on their ZIP code because the quality of their school, not giving kids an equal opportunity for economic success because we keep them in failing schools is a problem and that we wouldn't give families, parents, and children a choice to go to a better school.

I find that to be outrageous because I think better than Mr. Clay and myself, families know better what is best for their children and we don't offer that opportunity. I think that is maybe getting more to some of the root causes as to some of the other issues that were brought up today. But I appreciate that.

Also, you have to be able to save money, right? So if you start out as a renter, you have to be able to save money for a down payment. And Mr. Hicks, I like your testimony and some of the ideas that you brought up.

Let's give people an incentive to save for a down payment. Maybe a tax-free incentive to say, I am not paying that whatever percent you are at. I get to keep all that money and I am going to work towards that homeownership.

But one of the problems that we have discussed in this committee is, and as we dealt with flood insurance, I am all about making sure that we have smart regulations so we are building quality homes for the spaces in which we build.

But if we have too many rules and regulations and too many ordinances, all of a sudden we start jacking up the cost of housing so we have people who can least afford it paying higher rents. That is less money they can put in the bank to save for a home.

And I think, again, it is a holistic approach that is going to put people in a better situation to take that leap, because I agree with everyone on the panel that homeownership does help you create wealth, and it helps you buy into a community. And I think it is better for families.

And if we have policies that don't incentivize that, that is a problem here. But also I, as and we have talked about this since the 2008 crisis, I don't want to see people buy homes that they can't afford because—we have heard countless witnesses testify that if you are foreclosed upon how far that sets your family back and just the personal anguish that a foreclosure does to a family.

We don't want anyone to go through that. Is that fair? We don't want to give loans to people who can't afford them just to say homeownership is the highest priority? Actually, homeownership for a home that you can afford is the highest priority. Is that fair?

Mr. HICKS. Yes.

Mr. DUFFY. I only have 40 seconds. If you could just give us your one, the one thing, and I know there is no silver bullet so you are all going to have different answers, but give me the one thing we can do that you think will make the biggest different on minority homeownership?

And by the way, my wife is a Latina, and she will tell you that Hispanics start businesses at 3 times the national average, and your point on W-2s is exactly right. And my wife would be singing off your sheet. But I'm sorry.

Ms. McCargo, would you start?

Ms. MCCARGO. Sure. I think that one of the critical things is increasing the supply of affordable housing. I think that that is one of the most important things that we need in this country.

Mr. DUFFY. Supply.

Ms. MCCARGO. Absolutely, supply.

Mr. DUFFY. Great.

Ms. Bailey?

Ms. BAILEY. Reforming the housing finance system, GSEs, to regulated utilities with oversight to preserve the important public interest mission of duty to serve.

Mr. DUFFY. Great.

Mr. Nery?

Mr. NERY. And I would say definitely some modernization of FHA is vitally important to make sure that we don't lose some important protections that we have for communities of color because we need to have low down payment assistance programs. Those are vital to our communities to be able to obtain and increase our homeownership rates.

Mr. DUFFY. Mr. Hicks?

Mr. HICKS. I would say support of the American Dream Down Payment Savings Plan, and support of programs like the Federal Home Loan Bank of San Francisco's WISH Program, which is a 4:1 percent match for savings.

Mr. DUFFY. Great.

Ms. Castro-Conroy?

Ms. CASTRO-CONROY. I would have to say to support comprehensive housing counseling agencies that provide credit counseling, rental counseling—

Mr. DUFFY. Education.

Ms. CASTRO-CONROY. Repurchase, homebuyer relocation which we see all the cases. We see the needs. We know how we can help our families.

Mr. DUFFY. Ms. Poole?

Ms. POOLE. Removing some of the local zoning issues and restrictions that cause affordable housing not to be built.

Mr. DUFFY. Absolutely.

Mr. Griffith?

Mr. GRIFFITH. Equipping the next generation to earn more so they can seize economic opportunities to make investment decisions of their own choosing.

Mr. DUFFY. Thank you.

Chairman CLAY. The gentleman's time has expired.

The Chair now recognizes the Chair of the full Financial Services Committee, Chairwoman Waters, for 5 minutes.

Chairwoman WATERS. Thank you very much.

Let me thank all of our panelists.

And allow me to thank you, Mr. Clay, for putting this panel together. This is perhaps one of, if not the most, diverse panel that we have had before us on any issue. And it is good to know that with the fact that Democrats are in the leadership, we can have these kinds of panels that reflect America. Thank you so very much for putting this panel together.

I just want to say to our panelists today that during the crisis I got very much involved in learning a lot about loan modifications. Of course we were advised by, I think, our Ethics Committee that we were not supposed to do that, but I defied all of that. And I started to call these institutions to find out about why certain of my constituents were being foreclosed on and the way that it was happening.

Now, in doing all of this, I learned a lot about what has evolved and what is being utilized in the banking community in different ways that they operate. For example, and I just want to give you a few of the things that I would like to see us scrub all of the practices and laws that are employed by the banks, many of which we take for granted.

Let us take, for example, interest-only loans, which have an adjustable rate. When the adjustable rate, I guess expires, I don't know how many years it is and whether or not we should have a law to say how many years it is, take 5 to 10 years, and now you are paying not only interest but you are paying for the principal.

And on that adjustable rate, the interest rate is going to increase, and so now what you have is a homeowner who is paying interest only. And based on their income and all of that, they got into it because they thought this was a good way to do it.

But now they are paying the principal and the interest, and because of the adjustable rate, they are paying a high interest rate. They can't afford the loan anymore and they are foreclosed on.

The other thing that I noticed was too many of the banks were saying they wouldn't even entertain a loan modification unless you have missed at least two payments. And by the time you miss two payments and you go through a loan modification attempt, you can't afford to pay up and get back into the loan. We want to take a look at that kind of stuff.

The other thing is many of these foreclosures and particularly what was happening with the robocalling that was done and you found that there were people who lost their homes because they missed x number of payments. And then they packaged these loans with hedge funds or some of these other folks who go about, I call them scavengers almost, and then the equity that was built up in the home is not given any consideration for the cost of selling that or putting it in the package.

That home might be worth, I don't know, $300,000, but when they packaged them, you have Countrywide that used to be in operation and all of their folks who are buying the things for pennies on the dollar. And if you had done that for the people living in the homes who could not afford to make their payments for a couple of months, they could have stayed in their home.

So I bring this to your attention along with fraud. I had folks who said that this person who sold me this loan said don't worry about my income. They could fix that and they signed the loan for me.

Where do they turn? If they don't have a private attorney, there is no fraud division in the bank that is going to take a look at that and help out with unraveling this fraud.

So there are a lot of things that have developed, some of which we take for granted, in the way that they do business. We need to scrub these mortgages and all of the rules and practices and come up with a laundry list of what we think needs to be taken out of the way that these home mortgages are done.

These are just some of the things that I ran into as I was helping to do loan modifications. And so I would like to ask all of you who are experts, Ms. Bailey, all of you, to begin to take a look at all of the practices. Let us not assume that just because they do it, it is right to do.

Let us begin to think about what just is not right and what absolutely operates against the homeowner's ability to stay in that home, and see if we can't get rid of some of the practices and laws in operation today.

Thank you so very much. And that is not a question as much as it is a plea to you because you know this stuff. And let us scrub them and find out what we can eliminate. Thank you so much.

I yield back.

Chairman CLAY. Thank you. I thank the chairwoman for her comments.

I now recognize Mr. Luetkemeyer from Missouri for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

And first, I would like to recognize my good friend, Mr. Clinton Jones. I was the chairman of the Housing and Insurance Subcommittee for a couple of years and I got to know Clinton very well. He is a fantastic individual, a wonderful staff person, and I just wish him the very, very best in his new endeavor.

I know he will be very successful. I am just thankful this opportunity came his way and he is able to take advantage of it. So again, all my best to you, Clinton.

With regards to what we are doing here today, we are looking at barriers to minority homeownership. And a couple of weeks ago, we had a hearing that talked about regulations being, like, 34 percent of the cost of a home. And today, a number of you have talked about adequate and affordable housing finance system.

And what I want to do is talk about a regulation that is in that that I believe is causing or could cause the housing financial system to hurt people to be able to afford a home because of the increased cost. And it is called CECL. How many of you have heard of CECL already? One?

One? Okay. Okay, let us educate. Current Expected Credit Loss (CECL) is proposed by the Federal Accounting Standards Board (FASB). And what they are proposing to do is they believe that there needs to be better transparency with regards to loss on a bank's balance sheet with regards to mortgage loan exposure.

Unfortunately, that goes across the board, not just banks but credit unions, mortgage bankers, anybody that makes a housing loan, as well as the GSEs. I have even had asset managers, insurance companies as well as credit card companies talk to me because it will affect them in certain ways.

Last week, we even had one of the bankers here talk about how $6 billion to $10 billion of additional reserves are going to have to be put because of credit card exposure.

The reason it is concerning to me is because in a committee back in December that I chaired, which was the Financial Institutions Subcommittee, the Home Builders Association indicated that it would cost, if you have increased cost of a home loan of $1,000, 100,000 people across the country no longer have access to home loans.

Is that familiar? Are you familiar with that, Mr. Nery?

Mr. NERY. I am familiar with it. It definitely is a proposal that would be onerously burdensome for a lot of the smaller regional banks. Certainly if you are going to have a standard rule that is going to apply across the board I think, obviously, you would have more adherence and it would be easier to adhere to by the larger institutions.

But when you are talking about credit unions and you are talking about municipal, small, regional banks, it is going to be a higher burden, which I think is very, very difficult to accept because we have institutions, at least in communities of color, that are often reliant on these local institutions as well.

And if you burden them and put them out of business or make it unreasonable for them to be able to afford or to be able to offer loans, it really would do an injustice to those communities which they serve.

Mr. LUETKEMEYER. Yes, my thought process is this is going to really impact the low- and moderate-income folks tremendously because when you increase these costs, which, you know, the credit unions have given me a couple of studies. So different ones said there were going to be an additional $30 billion in lost capital they are going to have to replace.

One of them talked like over 30 percent of their members are either going to cut lending or they are going to have to increase costs or increase the cost to the consumer for their services. And if that happens, the availability of home loans is not going to be there. And so that is one part of it.

The other part is the procyclicality of this thing. In other words, one of the problems is that if this happens and the economy turns down the financial institutions have to reserve more. And if they reserve more it means they have to charge more, which means they have less ability to lend, which means you start spiraling downward.

And this is what happened with the mark-to-market. This is exactly the problem that the FASB folks caused and helped exacerbate the crash of 2008 because of the mark-to-market situation which they then had to pull that rule back because they didn't study the potential impacts.

And in this situation they haven't put they haven't studied the potential impacts either. They admit to me that they have not studied this to see once what could happen here.

So this is very, very concerning to me. I am hopeful that all of you will look into this. To me, it is going to have a dramatic impact on especially the groups that you are talking about here, the low- and moderate-income folks that we want to make sure they have the ability to have that American Dream: the home.

And if you can do a study, please send it to me. I would be more than happy to take it and run with it. I know the REALTOR's association, I have talked to some of your folks already. This is going to have a dramatic impact on your ability, Mr. Hicks, on yours as well, Mr. Nery.

This one regulation could be as impactful as any other regulation that is being proposed right now by anybody across the board if you think about what is going on. And the GSEs, you have a $5 trillion portfolio of 30-year loans? Imagine how much money is going to have to be reserved for that.

I am out of time, but thank you so much. And again, if you can send me your studies, I would sure appreciate it. Thank you.

Chairman CLAY. The gentleman from Missouri's time has expired.

The gentlewoman from Ohio, Mrs. Beatty, who is also the Chair of our Subcommittee on Diversity and Inclusion, is recognized for 5 minutes.

Mrs. BEATTY. Thank you very much, Chairman Clay.

Thank you also to Ranking Member Duffy and to the panel.

Before I get started, let me also echo my thanks and congratulations, Clinton, to you for all your years of service.

I want to start out by thanking you, as our chairwoman of Financial Services stated, for having a panel that is very diverse, not only in gender and race and ethnicity but their brilliance that they bring to the diversity of their experience in this very important issue.

For some 20 years, I worked as a consultant in housing, so I give you a personal thank you for helping and fighting for all those who benefit from your services.

Today is an exciting day for me, Mr. Chairman. One, I like that you said you are going to include pragmatic legislation in the work that we do.

Mr. Duffy, I am sorry he is not here, but I want to thank him for acknowledging and reminding us that some 50 years later we still have disparities, especially with African Americans.

So when we talk about funding and moving that needle, I am sure Mr. Duffy will be right there with you, Mr. Clay, in making sure that we fund and finance FHA and all of the housing programs.

But on the pragmatic side, let me share with you all today that included in today's hearing is my bill, the House Financial Literacy Act, H.R. 2162. To the panel, I am very pleased to hear you, Ms. Castro-Conroy, Mr. Hicks, and Mr. Nery talking about the value of education in making sure that we include legislation and programs that can be helpful.

Well, this bill will give first-time homeowners a 25 basic point reduction on their up-front mortgage insurance premiums if they take a HUD-approved housing counseling program. This bill will essentially lower the cost due at closing by reducing the current up-front mortgage insurance premium on a FHA loan of 1.75 to 1.5 percent.

So basically, if you were buying a home at $200,000, you would get a $500 reduction. If it was $300,000, you can do the math, $750; $400,000, $1,000. And here is what is so important about this and many of you have talked about first-time homeowners, who purchase a home.

If they have the counseling classes, if they have the support system, they are one-third less likely to default on their mortgages, which in the case of FHA leads to cost savings for the mutual mortgage insurance program.

Also, I think it is important to note that FHA's 2016 annual report to Congress found that in 2015, FHA was used for 47 percent of homes purchased by African Americans and 49 percent of purchases by Hispanic households. It also found that 82.1 percent of FHA purchase loans were for first-time homebuyers.

Now, all of you are probably very familiar with Section 2126 of the 2008, when Congress passed and the President signed, the Housing and Economic Recovery Act. Well, as you will be reminded, it authorized $25 million a year between 2009 and 2015.

So I would like to ask you all, do you support the fact of having education and counseling and that we should, of course, make sure that Congress should pass those dollars again. So I only have about 30 seconds.

Ms. Castro-Conroy, Mr. Hicks?

Mr. HICKS. Absolutely.

Ms. CASTRO-CONROY. Strongly support, yes.

Mrs. BEATTY. Thank you.

Ms. Bailey?

Ms. BAILEY. Yes.

Mrs. BEATTY. Mr. Griffith?

Mr. GRIFFITH. I can't endorse specific legislation, but I support education of borrowers.

Mrs. BEATTY. Ms. Poole?

Ms. POOLE. NAR absolutely supports this.

Mrs. BEATTY. Ms. McCargo?

Ms. MCCARGO. Absolutely. I think that the educational component is critical to the solving of these issues and housing counseling as well.

Mrs. BEATTY. Okay, thank you very much.

Mr. Chairman, I yield back.

Chairman CLAY. I thank the gentlewoman from Ohio.

And I recognize the gentleman from Michigan, Mr. Huizenga, for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman. And I have had a kind of a front row seat into some of these issues in my own career. I have been a licensed REALTOR in the past. I have had family members who have been licensed REALTORS literally since, well, my earliest memories.

And I thought it was the coolest thing when my uncle's beeper went off, and it was for those of you that have been in the industry, and Ms. Poole, you are nodding your head. You had, I think, two times that you could hear whatever that message was, right?

But it has been a problem, as has been pointed out by many of you, some of the inequities that have existed in housing. And I know, again, from being a licensed REALTOR and from having a family involved in construction, there are a number of barriers that have been in place.

Mr. Hicks and some of the others had noted some of those formal barriers and certainly historic barriers that we, in a modern society, look at and say, completely unacceptable.

Mr. HICKS. Yes.

Mr. HUIZENGA. Mr. Hicks, though, on page three of your testimony, I just wanted to kind of give you an opportunity to be a little more specific here. And I know you then continue on with some policy recommendations.

And I am going to quote you here, "Housing experts such as scholar Richard Rothstein find that segregated neighborhoods are not an accident, but the result of laws and policies passed by local, State, and Federal Governments that promote segregation and discriminatory practices."

Can you be more specific on what some of those local and State laws might be? And this goes back to some of the discussion that we have had in this committee a number of times, which are what are some of those cost barriers that are put up by local governments that, whether it is lot size, whether it is certain building requirements?

Mr. Nery, I see you nodding your head, too, but please either of you can jump in.

Ms. Poole?

Mr. HICKS. Well, when you start talking about cost barriers historically, is that what you are asking?

Mr. HUIZENGA. No, I am asking right now, what are State and local governments and expand upon that if you need to, on the Federal Government as well. But what are some of those barriers for that entry?

And Mr. Nery if you want to jump in?

Mr. NERY. I just wanted to clarify, are you speaking as to, maybe, some of the costs for affordable housing or building homes? Is that what we are discussing?

Mr. HUIZENGA. That is what I guess I am trying to get—

Mr. NERY. Okay.

Mr. HUIZENGA. Mr. Hicks to find out if that is what he meant—

Mr. NERY. Well, I will speak to that.

Mr. HUIZENGA. —by that. Yes?

Mr. NERY. Definitely one of the grave issues that we see across the country when you are talking about building affordable homes for first-time homebuyers is the fact that there is just exorbitant amounts of costs just to start really shovel to ground.

Our friends at the Home Builders would tell you that in the average municipality, the average builder is spending about $90,000 just in permits, in zoning, and what have you before they can actually construct a home.

Then if you add on top of that $120,000 it will take to actually build a property, you are talking a cost, an upfront cost of $220,000, $230,000. So you are probably going to have to sell in the $300,000 to $400,000 range.

That would not constitute a first-time homebuyer option, right? That is not going to be for somebody at an entry level. It is going be most likely a move-up buyer.

But again, those are just cost-prohibitive measures that exist across the country so we really need to have some Federal legislation that can work with a lot of the local municipalities to ensure that we can reduce some of that red tape, that we can reduce some of those zoning costs and building costs.

Mr. HUIZENGA. How does the Federal Government do that, though?

Mr. NERY. I think it really would be a question of putting together some sort of a body that would govern some of these zoning regulations that I think there would have to—

Mr. HUIZENGA. But we may have some 10th Amendment issues—

Mr. NERY. Right, right, right.

Mr. HUIZENGA. —in that.

Mr. NERY. Sure, but I think there would definitely be some standards that can be put into place for zoning departments, building departments for municipalities across the country. I think cities would adopt a lot of those regulations to try to create some uniformity.

But you also have issues right now just when you are talking about labor and when you are talking about building costs right now there has been a lot of stories written about the costs in lumber and costs in labor shortages so you have higher costs for builders as well.

So those are obviously ancillary issues that need to be dealt with as well. But I think there needs to be some sort of a uniform system across the country to try to reduce some of those upfront costs.

Mr. HUIZENGA. Ms. Poole, if—

Ms. POOLE. Yes, I would love to add to that. In addition to some of the zoning laws and some of the cost of building new construction, if grants are not there, a lot of times there are no affordable homes put in those developments.

Another piece that we have to consider is that when some new construction is being built there are deferred costs that are then pushed off to the homeowner so that the builder doesn't absorb those costs, things like front foot assessments, that in this case could total an additional $400 to $600 a year just in paying for the deferred charges of putting in public water and sewer.

So as they go through, you start thinking about all the costs that are then referred over to the homeowner and it all of a sudden disqualifies them possibly for a loan.

Mr. HUIZENGA. My time has expired. I am in the process of building new construction. I hear Mr. Nery. I have never been a part of any project, other than vacant land, that has put any kind of delayed sewer and water assessment on those. But maybe we can talk about that at a—

Ms. POOLE. I would love to talk to you about it.

Chairman CLAY. The gentleman from Michigan's time has expired.

I now recognize the gentleman from California, Mr. Vargas, for 5 minutes.

Mr. VARGAS. Thank you very much, Mr. Chairman. I appreciate what you are doing here today and especially the panel being here. I agree with Mr. Luetkemeyer completely, that it is still the American Dream to own a house. I still believe that.

It certainly was the case in my family. I know that once our family was able to buy a house, it really stabilized our finances. And it allowed my parents later on to help us with college costs, and so I am very appreciative of that.

I did want to ask some specific questions, however, with regard to DACA recipients since we are talking about dreams. It was the case in the past that HUD and FHA was not preventing DACA recipients from getting FHA loans.

Now, my understanding is that there is nothing in writing that prevents them from getting FHA loans but now that both FHA and HUD are verbally saying that they are not eligible. Who would like to comment on that if they know the information?

Ms. Bailey, it sounds like you have some information. Go ahead please.

Ms. BAILEY. Yes, thank you so much for the opportunity. We think that the practice has a very chilling effect on potential homeowners for an important subset of our nation's citizens and residents. And we think that it is important for HUD to really clarify its position and ensure that DACA recipients are eligible for FHA loans without legislation.

Mr. VARGAS. Mr. Nery, yes, sir?

Mr. NERY. I would echo Ms. Bailey's thoughts. DACA recipients really, under FHA guidelines when you are looking at them, the whole issue is legal status. And from NAHREP's perspective, it really is inappropriate for a government agency to be setting up immigration legislation.

And in my statement I mentioned that really is something for the judiciary to decide as opposed to have a body such as FHA really dictate that. So our feeling really is it is more of an administrative issue that is going on right now. Administration forcing that immigration question to be addressed through FHA which, again, is inappropriate in our eyes.

Mr. VARGAS. Well, we have, in fact, cases where there are individuals who have arrived in our country and undocumently when they were 3 years old. They have lived here their whole lives.

Mr. NERY. Absolutely.

Mr. VARGAS. They got married. They had kids. They have very stable incomes and they believe that everything is going to work out. They have saved for their down payment.

And then they go to the bank and the bank looks and all of a sudden they are denied because they receive verbal instructions from FHA that they don't qualify, even though their legal status is such that they should qualify and they did previously qualify.

Mr. NERY. Right.

Mr. VARGAS. Mr. Nery, you were going to comment?

Mr. NERY. No, I would agree with that. I have had personal experience with that with a number of clients that had they applied for a loan a year ago, 2 years ago, they would have easily received a loan. But now because of their DACA status they have been unable to obtain loans.

And these are folks and individuals for all intents and purposes you would say they are as American as apple pie because some of them have been here since they were born, right?

They were here. They just happened to be born in another country, but they have been here since they were 6 months old, a year old. So for all intents and purposes, they are American through and through.

Mr. VARGAS. Okay, thank you. You were going to say something, Ms. Bailey. Go ahead.

Ms. BAILEY. If I could hold up the study that I cited earlier by the UNC Center for Community Capital of Self-Help Credit Union's mortgage loan. Self-Help is one of the primary lenders to undocumented families across the nation. And again, when consumers are given safe and responsible loans, they perform well in those. So we know that these consumers can succeed. So again, HUD needs to really clarify its position.

Mr. VARGAS. Thank you. Well, I appreciate that. I have to say also with respect to affordable housing, I was on the San Diego City Council for many years. And it is interesting being on the other side of those fees because at the same time, it used to be in California that the State would pick up a lot of the infrastructure issues. They would pick up the roads, the schools, the sewer, the water.

And because of Prop 13, property values continued to grow but the assessment didn't except for 1 percent a year. So the amount of money that was coming into the government just wasn't there.

So that is why you put it on the new homeowner. They had to pay then upfront, all of those costs, and that does create a huge burden for new homes to be built.

And also, of course, the NIMBYism. Everyone loves density somewhere else, but not in their own community, which is too bad. I love to travel, and I travel quite extensively with my family.

One of the places we have traveled to is Vienna. It is one of the most dense cities in the world. It is also the most livable. And so I hope that we get over that notion that density is wrong and bad, especially in places like California where people want to live. The price is too darn high.

So again, I appreciate very much the work that you have done here. Again, I am someone who believes in homeownership. I know some people are saying that maybe it is not the best way to create wealth. It certainly has been historically, and it certainly has stabilized families.

And I think it is still the dream that we all aim for. And certainly, I hope that we can make it affordable for people. Again, thank you guys. God bless you.

And I thank you, Mr. Chairman. Thank you, sir.

Chairman CLAY. You are very welcome, Mr. Vargas.

I now recognize the gentlewoman from Michigan, Ms. Talib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman. I thank all of you so much for your incredible advocacy on this important issue in our country. A lot of folks are locked out of the traditional mortgage market. I think we can all agree to that, due to a number of factors that all of you have mentioned from institutional racism to, you know, I would like to wrap it up into access.

Access is so key. In the 13th Congressional District, many homes are under $50,000 where it is nearly impossible to get a traditional mortgage company or folks to finance. This has led to my district becoming ground zero for land contracts.

And I want to urge my colleagues, as I am working with Chairwoman Waters and her team on the Land Contract Homebuyers Protection Act, that I am hoping to provide eviction protections for buyers by allowing termination of those contracts only through foreclosure proceedings, similar to foreclosure proceedings, again giving them access to due process.

It seems like a great idea, land contracts. And I worked at nonprofit organizations where that is where we lean to when we couldn't get folks to traditional access to finance. And now it is becoming a thing. Many of the folks who are pushing predatory lending and so forth have gotten into the business of land contracts.

Many buyers, many of our residents don't realize that and there are repairs that are needed, hidden fees and interest and so forth, again, not fully disclosed to the homeowner. Later down the line, the seller forces the buyer to make the repairs that should have been made.

And if the resident doesn't make those repairs, they evict them, literally taking everything, their time, their energy, every single ounce of what was put into the home.

So based on your experience, Mr. Hicks, would you say that homes sold under land installment contracts are habitable condition to rent?

Mr. HICKS. Well, we totally discourage the use of land contracts and that is because I am from Georgia, and we believe in the owner getting title at time of closing.

Ms. TLAIB. Yes.

Mr. HICKS. And because of that we just discourage the use of it. And because, like I say, there is too much fraud that can occur in that type of transaction.

Ms. TLAIB. I agree.

Mr. Nery?

Mr. NERY. So I would say, as a practicing a real estate attorney, land contracts is something that I understand well. And when I first read about your bill, I was taken aback because, honestly, when I have been involved, I make sure I am pulling title in escrow and ensuring that there aren't any issues with liens or—

Ms. TLAIB. Yes. Can we—

Mr. NERY. —previous ownership—

Ms. TLAIB. The thing is, we have to get—

Mr. NERY. I can establish that.

Ms. TLAIB. —residents in front of you.

Mr. NERY. Correct, correct.

Ms. TLAIB. And that is what is happening is they are not.

Mr. NERY. The majority of people—

Ms. TLAIB. And I am an attorney myself.

Mr. HICKS. Right.

Ms. TLAIB. But these are the same. I mean, renters have more rights than—

Mr. NERY. Right.

Ms. TLAIB. —land contracts.

Mr. NERY. Right.

Ms. TLAIB. Some of these places can't even be rented out because of certain—

Mr. NERY. Absolutely.

Ms. TLAIB. —requirements for conditions like roofing and so forth. Many of these folks who are pushing the land contracts can't rent them out because of the condition of the home.

Mr. NERY. Right. No, I—

Ms. TLAIB. But I really have to reclaim my time.

Mr. NERY. Yes.

Ms. TLAIB. It is really, really important. In 2015, the Detroit News found that more land contracts than traditional mortgages have been filed with the Wayne County registrar in my district.

Ms. Bailey, compared to a traditional mortgage offered by financial institutions, how high are interest rates on land installments?

Ms. BAILEY. They are extremely high, and we know that these are not new practices, right? This is, again, reincarnating things that had been really problematic in places like Illinois. We know that those types of contracts cost consumers in the City of Chicago more than $500 million. So you are right to be concerned.

We think two things need to happen that are essential. Every contract should be recorded immediately. And then we also believe that the termination of the contract needs to be enforced through judicial foreclosure.

Ms. TLAIB. That is right.

Ms. BAILEY. That is really important. And then, we want to highlight that TILA already provides substantive protections around these transactions. So we don't really need to reincorporate that language in any of the bills.

Ms. TLAIB. Yes, thank you.

And, Ms. McCargo, why are companies allowed to get around regulations that address predatory lending, the Truth in Lending Act, and offer these products with outstanding property taxes and liens to consumers without letting the potential homeowners know?

Ms. MCCARGO. For me?

Ms. TLAIB. Yes, you go ahead.

Ms. MCCARGO. Thank you.

Ms. TLAIB. I am, like, where are you?

Ms. MCCARGO. Thank you for the question. So land contracts, we have done a tremendous amount of research on low-cost markets. There is an inadequate amount of financing available for the purchase of lower-cost properties.

And so we have looked at small-dollar access to lending, and I think that the workarounds in terms of, I shouldn't call them workarounds, the issues that you are describing are pervasive, predatory, and essentially inadequate.

And I think it is an issue that we need to spend more time on in terms of how to deal with land contracts. But I do think that the mortgage system, the finance system, in supporting properties in lower-cost markets needs a tremendous amount of modernization.

Small-dollar lending and the ability to actually finance anything that is frankly under $80,000 in communities like yours and many others around the country are completely insufficient and inadequate. And that there is an opportunity to look at how we can propel and advance small-dollar financing for more safe, consumer-friendly products to allow for affordable home buying at the lower end of the market.

Ms. TLAIB. And thank you.

And, just really quickly, Chairman Clay, I would like to submit a statement by the National Consumer Law Center that outlines the racist history of land contracts that I couldn't get a deeper dive into during my questioning.

Chairman CLAY. Without objection, it is so ordered.

The gentlewoman's time has expired.

I recognize the gentleman from Ohio, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ OF OHIO. I first want to thank the chairman for holding this hearing and thank all of the witnesses for your participation today. Let me start by saying that, like all my colleagues on this committee, I believe that for many Americans and for many of my constituents, homeownership is an integral part of achieving the American Dream.

Along with the pride and accomplishment of owning a home, homeownership encourages civic and community engagement, helps lead to better educational achievement, and also improves health outcomes. Based on the testimony today, it is clear that minority communities have a more difficult time achieving homeownership and that this is by no means an easy problem to address.

As you said in your testimony, Ms. Poole, there is no end all, be all solution. It is multifaceted. That being said, Ms. Poole and Mr. Nery, you both mentioned the issue of access to credit for many minority communities.

Ms. Poole, you specifically stated that for Hispanic households, more than a quarter are either credit invisible or have an unscored credit record.

Mr. Nery, you stated that millions of Hispanics pay their bills with cash which prevents individuals from gaining access to credit. So my first question is for Mr. Nery. You briefly mention in your testimony that alternative credit models are currently unavailable in the mortgage space.

We had the credit rating agencies in here earlier this session. I met with FICO the other day. I couldn't agree more. It is pretty clear that this is an industry, and I think, Ms. McCargo, you kind of were alluding to it. This is an industry in need of major innovation, and it is not happening. And I think that is primarily structural, frankly.

But, Ms. Poole, what are your recommendations for expanding access to credit for individuals who may be credit invisible in a more responsible way?

Ms. POOLE. Thank you for the question. One of the things that needs to happen is, as we look at alternative credit, is to recognize that everything doesn't fit in a box—

Mr. GONZALEZ OF OHIO. Absolutely.

Ms. POOLE. When we are looking at the multicultural individuals that we serve, what we are looking at is saying, there are credit vendors who report credit scores for positive and negative. But the positives of paying rent and paying utilities and things that they do, paying car insurance, only show up if they are delinquent. It never shows up as a positive.

If we could move towards, if anything, that one alternative piece and being able to say is there a way that all credit, no matter what it is that they are paying on a monthly basis and installments, be reported as current good credit.

Mr. GONZALEZ OF OHIO. Right.

And Mr. Nery?

Mr. NERY. Yes, NAHREP firmly would agree with that. There is a company, VantageScore, that already is successful in the automotive and the lending, small lending, personal loan, or their credit models are being implemented already for credit cards and automotive loans.

That company would be somebody that can certainly introduce an alternative credit model that can be utilized by the GSEs. They have been using the same model essentially for 20 years. If they adopted a new model, if they took that decision, made that decision themselves to implement new credit scoring models, I think you would see a drastic change.

Mr. GONZALEZ OF OHIO. My understanding is VantageScore is owned by the three credit bureaus. Do you know if that is accurate?

Mr. NERY. To my knowledge, that is not accurate.

Mr. GONZALEZ OF OHIO. I will have to look into that. I think when we met with some folks last week, they suggested that that was true. If it is true, I think we may need to find another vehicle.

Mr. NERY. Right.

Mr. GONZALEZ OF OHIO. But kind of next question more broadly, and again, this gets into the competition. I will open this question up to the entire panel, but more broadly speaking, do you all think there is adequate competition in the credit reporting industry? And maybe just go down the line, a simple yes or no.

Ms. MCCARGO. No.

Ms. BAILEY. No.

Mr. NERY. Absolutely not.

Mr. HICKS. No.

Ms. CASTRO-CONROY. No.

Ms. POOLE. No.

Mr. GRIFFITH. No opinion on that.

Mr. GONZALEZ OF OHIO. No opinion? Okay. Well, again, I thank you all for your time. I am as committed as anybody to making sure that there is more competition.

One of the promises of A.I. is that when you have robust datasets if they are opened up and people can innovate in a space that we can find those better predictors so that we can more accurately distribute credit into the marketplace. And I look forward to working with anybody on the committee who is committed to that fundamental mission.

So thank you, and I yield back.

Chairman CLAY. Okay. The gentleman from Ohio yields back.

I now recognize the gentleman from Florida, Mr. Lawson, for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman, and witnesses, welcome to the committee.

Mr. Hicks, I want this question to go to you. I want to make sure that I am on the right track and I am not out there in left field. I have been concerned a great deal about millennials who are coming out and would like to become homeowners.

And I have been working on what I call a rentals IRA which allows them to put money into an IRA account on a deferred basis that can only be used for a down payment on a house. But what I would like to know from your perspective or any anyone else's perspective is what is the limit of the amount that they should be able to put in those IRAs earning interest in order to be adequate for a down payment?

I will tell you the reason why. In about 1973 or 1974, I was purchasing a house through FHA. I think the interest rate was 21.5 percent, and they required that you had to put down 10 percent. And I was trying to find out how I am going to get the 10 percent.

So when you see all these rental units and everybody rent them and even housing, how they get out, and I think that has been my perspective. So judging from that if they can have this IRA that they can put money into and know that they can use it and I just wanted to see if anybody can respond to that. Okay.

Ms. MCCARGO. Did you have—

Mr. HICKS. That is a very interesting concept. In our down payment savings plan proposal what we are suggesting is as much as $500,000 could be accumulated in a tax savings plan. The reason why we say $500,000 is because that paints a broad brush of all Americans.

Certainly, $500,000 is not a large amount for very wealthy people buying $5 million and $6 million houses, but we are talking about a down payment savings plan where the wealthy could contribute that maybe to a family member.

So in a renter's IRA I do think that is a very unique concept because there are a lot of lease purchase programs that are out there that probably that type of a structure could be beneficial. And I think that that is an excellent idea. So I think you asked the amount. I would say about $500,000.

Mr. LAWSON. Okay.

Ms. MCCARGO. The rents in this country are incredibly high. We have been talking about the housing supply problem and so those constraints are really pushing up the issue on affordability.

Research that we recently have done has indicated that the average or median down payment for most home purchases in the last year is 5 percent. And there is still a belief out there that there is a need for a down payment of 20 percent, 10 percent.

There are a tremendous number of low down payment programs out there. Both Fannie Mae and Freddie Mac have introduced such programs that have allowed for as low as 3 percent down. The V.A. home lending is 0 down.

So I think it is really important to just note that part of the educational process and kind of demystifying is that the majority of people don't put down 20 percent; 5 percent is the median down payment amount in America today. And I think there is a lot of opportunity for down payment assistance programs to help meet or go support homebuyers in purchasing at that level.

Ms. BAILEY. And I would share that you are right. Many Americans are now paying more than 50 percent of their income in rental housing costs. So it is really difficult for them to be able to save for a down payment.

And we know that student loan debt, $1.7 trillion, is really delaying homeownership entry by many first-time homebuyers and many of those people will be families of color.

So other options that have been promoted have been promoted by people like Sandy Darity and others coming up with ideas around baby bonds to make sure that people have sufficient resources for entry into homeownership and money already reserved for entry into homeownership.

And because we got a question earlier about education and how education can really solve these issues, what we know is that students of color are disproportionately burdened with debt because of historical housing discrimination.

White families got access to homeownership because of Federal housing policy so they were able to build up home equity and then use that home equity across generations to support their family members. So your idea is definitely taking us in the right direction.

Mr. NERY. I think NAHREP would wholeheartedly agree that we should have something. If it is going to be use of an IRA it would be something that would be aligned with low down payment assistance programs.

So if we are talking about 3½ percent, simply because in the Latino space we are talking it is about 16 years before homeowners would be able to achieve a 20 percent down payment.

And we are challenged because of the fact that we are younger, at 29 years old, we live in large metro areas that are more expensive, and we also don't have intergenerational wealth.

So we are not inheriting money at the rates that non-Latino communities are doing. So it definitely would be a challenge for us. I would say something commensurate with the loan down payment programs that exist would be ideal.

Mr. LAWSON. Thank you. My time has run out, but I need you all to help as we move forward with this. Thank you.

Chairman CLAY. The gentleman from Florida yields back.

I now recognize the gentlewoman from New York, Mrs. Maloney, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets. She is recognized for 5 minutes.

Mrs. MALONEY. I thank the gentleman for calling this important hearing and for yielding me the time and I thank all of the panelists today.

I would like to ask Joseph Nery, we all know that homeownership is absolutely critical for wealth creation in our country. We also know that the financial crisis really caused havoc on the foundations of homeownership and disproportionately hurt minority homeowners and borrowers.

This led all of us to acknowledge the need for smart regulations and strong consumer protections. The ability to repay and qualified mortgage rules that went into effect a few years ago provide some of the vital consumer protections that we now know are necessary.

But when thinking about barriers to homeownership today, particularly for minorities, I have heard concerns that some creditworthy borrowers with non-traditional sources of income like individuals who are self-employed, farmers or gig workers have difficulty in verifying their income using documentation other than their W-2 and therefore they have more obstacles than anybody else in obtaining mortgages.

And with an increasing number of Americans making their living through alternative work arrangements, I would like to get your perspective. Have some of the income verification form requirements unnecessarily shut people out of the mortgage market and particularly affected minority borrowers? So your take on that, please?

Mr. NERY. I would say that NAHREP would agree that the current credit scoring models that exist have disproportionately affected a lot of minority consumers because, again, we have thin credit files or no credit really through the current models. Yet, we have made some strides and some improvements.

The GSEs have had HomeReady. They have had Home Possible and those programs have then started to take into account some of the different scoring or the different ways of establishing credit that Latinos have, again, being self-employed, having gig-economy, dealing in cash.

But there still needs to be more done on that front. I think a lot of the legislation as we are looking at either modernizing FHA, if we are looking at the continuation of the QM patch for the GSEs, we really have to make sure that that is one of the factors that is incorporated in there.

We have to ensure that whether it is through alternative credit scoring models or whether the existing models are modified, there has to be a mechanism which accounts for the way Latinos and minorities traditionally bank.

Because again, if we are talking about how we pay cash for credit card payments, for utility bills, for rental payments, that is not captured in the credit models that exist today which were really developed in the 1990s. So, they are outdated. We need to make sure that they become updated and they reflect the way the communities establish their credit and bank today.

Mrs. MALONEY. Well, could you elaborate and explain and maybe give examples of other types of documentation that non-traditionally employed individuals could use to build their credit score?

Mr. NERY. I would say one of the things when you are talking about the ability to repay for lenders that are employing some of these more traditional models, one of the things that they look at is they really look at banking accounts because they will see the deposits.

They will see that over time, there actually is money. There is sufficient money that comes in. And I will give you an example. Earlier, I had mentioned one of my clients who had a tree trimming business. If you were to look into his deposits and you were to look at his monthly statements you would see that there are sufficient funds to afford that mortgage payment.

The payments that he is receiving in cash, that his wife is receiving in cash, that the other family members were contributing to the bank account, that would be sufficient to cover the mortgage. But again, sometimes some of the more traditional models that are out there don't really look at deposits. They don't look at bank statements.

They really look at the W-2s. They look at the tax returns. So if you are looking simply at bank statements, I think that would be one thing that would be important. Even if you were looking at receipts for rental payments. If you are looking at monthly statements for credit cards, those I think are all indicators of the ability to repay.

Mrs. MALONEY. Do you think it would be a good idea to include all of those in the criteria that they could be looking at?

Mr. NERY. I think so. I think it is very important because, again, as we look at millennials, in the Latino space we are talking about 29 year olds, but if we look just at non-Latinos, if we look at millennials across the board there are so many folks that in that gig-economy if you are an Uber driver by day or if you are doing something else online by night, you are not receiving your traditional W-2.

Perhaps you are a 1099 person so you are not receiving that easily identifiable salary that is nine to five. Right now, you have young folks who are not working at companies for 30 years. They are moving every 3 years to a different company. They are creating their own jobs. So we have to be flexible.

We have to adjust with how a lot of our younger generation, the future of the country, really, how they are developing, how they are earning their income. So I think those are factors that have to be incorporated.

Mrs. MALONEY. I would like to follow up with you further, my time is almost up, because there has been legislation and proposals out that say you can use these other forms that include some of the things you said, yet organizations that advocate for these communities have been very much opposed to the use of it.

To me it seems like a practical good step forward, but I don't want to advocate or work on something that people who are most affected are against. And some of these organizations have been against it. I don't quite understand why. Maybe this is a further conversation we could have but thank you and all the panelists for being here. My time is over. Thank you.

Chairman CLAY. The gentlewoman's time has expired. Give me names on the other side.

What is his name?

VOICE. Brad Steil. Mr. Steil.

Chairman CLAY. Where is he from? Give me the State.

VOICE. Wisconsin.

Chairman CLAY. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Thank you, Mr. Chairman. Thank you for calling today's hearing on a really important topic. I was digging into some numbers in particular at the distinction between some of the different cities in the United States.

Seeing homeownership, in particular for African Americans in Milwaukee, and the disparity we see is between different cities, maybe higher in the south, Atlanta seemed to be significantly higher than, say, New York; Milwaukee is in between.

Looking at why that might be the case and what we can learn from the distinction between specific cities in the United States where it is statistically pretty significant variations.

I was wondering if maybe you, Ms. Poole, could comment as to what you have seen from that and then ask some of your colleagues on the panel to comment as well?

Ms. POOLE. The differences depend on where they come from, high-rent districts or high-cost areas versus median prices that we see every day. Some of it are barriers related to zoning issues that we talked about earlier and cause homeowners not to be able to cross those barriers.

In some cases, we know that the sophistication leads to barriers to homeownership that are higher in some areas than others purposely. Some are put in place to cause homeownership not to occur and especially for minorities.

So that would be one of the barriers when we are talking about fair housing and moving forward, and some of them are intentional.

Mr. STEIL. And so those local land use regulations that we are seeing have a statistically significant impact—

Ms. POOLE. Oh, absolutely.

Mr. STEIL. In your observation?

Ms. POOLE. Absolutely.

Mr. STEIL. Thank you.

Ms. BAILEY. And if—

Mr. STEIL. Ms. Bailey, please?

Ms. BAILEY. And if I may add, what we see from those local ordinances is that there is a preference for single family housing, and because of the history of discrimination, African Americans oftentimes were not allowed to live in those communities.

They were actually relegated to the industry areas and local jurisdictions. So all of those things combined with an inability to get access to safe and affordable loans over time has created regional disparities.

And we should just always note that African Americans and a lot of our history is rooted in the south so you see opportunities in those southern cities that might be different from when we migrated during the great migration up north because we lived in close proximity, quite frankly, to many of our southern white neighbors and attempted to do that when we migrated to the north.

But these local ordinances that were a response to our progress emerged that really denied that and created kind of barriers, even with highways around our communities that locked us in. And because of that, we have this persistent residential segregation.

Mr. STEIL. I appreciate that comment.

Mr. Hicks?

Mr. HICKS. The thing that hasn't been mentioned along with what Nikitra is saying is that we have to look at historical redlining maps that existed in certain cities across the country. And I think that that has a lot to do with how we see the level of homeownership disparities that exist in the nation.

Mr. STEIL. Thank you.

Maybe to just shift gears for a moment with my limited time, Mr. Griffith, if I can you a question? I have been looking at the Dodd-Frank Act and the mortgage lending standard getting tightened significantly following the economic downturn.

And we have seen, I think, a disproportionate impact maybe on the minority communities and lower-income Americans as a result of some of the regulations in the Dodd-Frank Act. Could you comment on what you think might have been some of the key problems in Dodd-Frank and what impact that has had in particular with minority communities and homeownership?

Mr. GRIFFITH. I thank you for your question. What we have been focused on at the Heritage Foundation are ways in which we can restore affordability to the market in general, not for just minorities but for everyone in general.

And we really do believe that as that footprint has grown substantially even in the wake of the crisis that this has fueled another increase in prices that is making it very difficult for minority communities, the middle class in general, and that the way long term to restore that affordability is to gradually diminish the size of the imprint.

And just one thing on that, if you look at the proportion of these, the loans that are guaranteed that are for cash-out refis, how does that actually help people build wealth long term? I think that is something that Congress should look at.

Mr. STEIL. Thank you very much. I appreciate everyone's time here.

I yield back.

Chairman CLAY. The gentleman yields back.

The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

I thank the witnesses for appearing as well.

And I thank Mr. Duffy for his engagement.

Mr. Chairman, I would like to ask a few questions of the witnesses with your consent and permission. Friends, if you believe that invidious discrimination has been a significant reason for the inability of African Americans to achieve wealth in this country, would you kindly extend a hand into the air.

Please let the record reflect that some persons have extended 2 hands—

[laughter]

—but that everyone extended hands into the air.

If you believe that invidious discrimination to this very day, as I speak to you now, as I say these words, if you believe that invidious discrimination is still a part of the obstacle to wealth-building for minorities in this country, extend a hand into the air.

Let the record reflect again that all have raised their hands. I am grateful that you have done this because we have been trying to build this record to let the world know that we still have discrimination. Regulations have to be dealt with, but our original sin was discrimination.

To be more specific, racism, a word that we don't like to hear in hearings like this, institutionalized racism. With this understanding, those of you who may know, are you familiar with something called testing such that you can ascertain whether or not discrimination exists?

If you are familiar with testing, would you kindly extend a hand into the air? All but one person, I believe. If you are not familiar with it, would you kindly extend your hand? Okay, one person. That is Mr. Griffith. Is that correct? Is that your name, sir?

Mr. GRIFFITH. That is correct.

Mr. GREEN. Okay, not familiar with testing. Those of you who are familiar with testing, is testing a valuable tool in determining whether or not invidious discrimination exists? If you believe that it is, extend your hand. All have extended hands. Let the record reflect such.

Now, given that testing is a valuable tool, would testing be a valuable tool in ascertaining whether or not invidious discrimination exists in lending by using testing, having persons go into lending institutions, banks and credit unions, and test them to see if they are engaging in invidious discrimination?

Do you think this is a tool that can be useful to help us ascertain whether or not invidious discrimination exists in lending? If so, raise your hand. All have raised their hands who are familiar with testing. Let the record so reflect.

Finally, on this question, I have a bill, H.R. 166, the Fair Lending for All Act. This bill would establish criminal penalties for invidious discrimination and would allow testing to determine whether it exists.

I think that it is time for us to move now a quantum leap forward. We have talked about this for years, how this discrimination exists in lending but now we can do something about it. We may have a Congress that will act.

If you think it would be beneficial to have this sort of testing and penalize persons for invidious discrimination, which is harmful discrimination, raise your hand please. All who agree that testing is helpful have raised their hands.

Moving to the next bill, H.R. 123, you have talked about credit. This bill would allow additional credit scoring, a pilot program such that people who pay their light bills, their gas bills, their water bills, their phone bills, and utilities—these things could be scored in an automated fashion.

This would help the people with the thin files that you have talked about. This would give people an opportunity who are paying rent to possibly buy a home for less than they are spending on rent.

If you believe in scoring light, gas, water, phone, and cable as additional scoring, not as a substitute for current scoring but in addition to it, kindly raise your hand. Okay.

Mr. Griffith, you don't think that that would be beneficial I take it? You didn't raise your hand. Is that correct?

Mr. GRIFFITH. It is a bit nuanced, but I don't believe that it should be forced congressionally.

Mr. GREEN. You don't think it should be forced.

Mr. GRIFFITH. Correct.

Mr. GREEN. I see. Well, you and I—

Chairman CLAY. The gentleman from Texas—

Mr. GREEN. We have a difference in opinion.

Chairman CLAY. I am going to ask you to wrap up.

Mr. GREEN. Yes, sir. I will. I want to thank the panel. All but Mr. Griffith indicated that this would be beneficial.

With this said, thank you for the time, Mr. Chairman. I will yield back the balance of my time and I ask unanimous consent that H.R. 123 and H.R. 148 be made a part of the record.

Chairman CLAY. Without objection, it is so ordered.

Mr. GREEN. Thank you.

Chairman CLAY. The gentlewoman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. Let me thank you and the ranking member for holding this important hearing. And I would like to take this opportunity to thank the distinguished panel.

Ms. Bailey, earlier this year I introduced H.R. 963, the Home Loan Quality Transparency Act of 2019, which reinstates Dodd-Frank's expanded HMDA reporting requirements that were stripped out of law last year as part of the passage of S. 2155.

Senator Cortez Masto has introduced companion legislation in the Senate. Can you talk about the importance of these expanded reporting requirements and how, without them, finding and prosecuting mortgage lenders and financial institutions for discriminatory lending practices will be far less effective?

Ms. BAILEY. Yes, thank you so much for the question. The Home Mortgage Disclosure Act data has brought a lot of transparency into the marketplace. Because of HMDA data, every year we know which lenders are serving which borrowers.

So we know that conventional lenders are not serving consumers of color and the service that they are provided is very minimal in comparison to the more than 70 percent of mortgages that they are giving to white homeowners.

The rollback took away that transparency that we need. We need the data. Part of the challenge that we have in the consumer advocacy and fair lending space is oftentimes we don't have the data, and that is one of the important things that HMDA has provided. And your legislation gives us the tools that we need to really strengthen and get back that data that is really foundational for consumers.

And then in terms of compliance, because I know a lot of what we heard during S. 2155, a lot of smaller lenders were saying that they were having difficulty with compliance, we felt like a lot of larger banks were really hiding behind those smaller lenders.

We do understand the burdens of complying with our laws and regulations. My organization is part of a small credit union administration organization in the country so we understand compliance costs. But for years, banks have consistently been able to comply with our nation's fair lending laws and do it in a way that has really allowed us to give credit to consumers. So your bill takes us back where we need to go.

Ms. VELAZQUEZ. Thank you. Ms. Bailey, last week the CFPB issued a notice of proposed rulemaking regarding changes to HMDA's reporting requirements as required by the passage of S. 2155. Can you explain any concerns you have with the CFPB's notice of proposed rulemaking?

Ms. BAILEY. Yes. We are concerned that they have put out this idea that we can either increase or decrease the thresholds, and it is around 50 closed-end mortgages.

Ms. VELAZQUEZ. Yes.

Ms. BAILEY. So it is, once again, going back and undoing the transparency opportunities that we need HMDA to continue to provide.

Ms. VELAZQUEZ. Thank you.

Ms. Poole, in your testimony you state the homeownership rate for African Americans, Hispanics, and Asian Americans remains at an unacceptably lower rate than that of white non-Hispanic Americans. I agree. What is the National Association of REALTORS doing to address discrimination in housing?

Ms. POOLE. I am glad that you asked that question because we are an organization which is evolving and moving forward, not revolving and staying in the past.

We are intentionally moving forward with programs to help our REALTOR members stay current on fair housing, to reduce any discrimination policies that might be happening locally for them. We are helping local and State associations to provide programs at no cost to them that they can filter down to their members.

We are working with a multicultural leadership across the country, and some are represented here today, and trying to find ways that we can work together to reduce a lot of the discriminatory practices that occur. Because in some cases we hear from each other some practices that we don't even know about.

We kind of thought that we were a solo and come to find out that individually, we are together. So we are working together to try to move our agenda forward and we are progressive in doing so.

Ms. VELAZQUEZ. Thank you.

I yield back.

Chairman CLAY. The gentlewoman from New York yields back.

I now recognize the gentleman from Missouri, Mr. Cleaver, who is also the Chair of our Subcommittee on National Security, International Development and Monetary Policy. He is recognized for 5 minutes.

Mr. CLEAVER. Thank you, Mr. Chairman. I may not take up the entire 5 minutes. Thank you for calling this hearing.

Mr. Griffith, I am not sure, I may have misunderstood you. Do you believe that there is such a thing as racial discrimination in housing?

Mr. GRIFFITH. Racial discrimination does occur. And when that does occur, the people perpetrating that should be prosecuted to the fullest extent of the law.

Mr. CLEAVER. Well, the only reason I am bringing this up is because Mr. Green raised four issues and your hand was the only one that didn't raise. I think one of them was about discrimination. And so I am a little, more than a little, concerned. I am still, even with your answer I am not sure I understand what you are suggesting?

Mr. GRIFFITH. Oh, yes, and thank you for the opportunity to clarify that. I was unfamiliar with the details regarding testing for discrimination, the random testing of entering institutions to actually determine whether or not the discrimination is occurring.

That is something that I am not actually fully apprised on and that is why my hand was not raised for that question, simply because I am not familiar with that practice in determining whether or not discrimination is occurring.

Mr. CLEAVER. Well, what practices are you familiar with?

Mr. GRIFFITH. That I am not aware of the different mechanisms in which people randomly enter in order to determine. I am just not aware of that.

I am aware, of course, of being able to report to the FHA through our civil system when discrimination is occurring. I think, of course, that is very helpful that we have that opportunity.

Mr. CLEAVER. And I am still getting a headache.

Ms. Bailey, will you—

Ms. BAILEY. Yes, thank you for this opportunity. I want to highlight a report that the National Fair Housing Alliance did recently. They conducted an in-depth investigation on how consumers are treated when they shop for auto loans, so I want to—

Mr. CLEAVER. I will yield.

Ms. BAILEY. —talk about it in the auto lending context. Mr. Green held a hearing last week on auto lending discrimination. The National Fair Housing Alliance found in that testing case, that in 62.5 percent of the cases, consumers of color received unfavorable treatment and more costly price options than the less-qualified white counterparts.

So if you were white and your credit wasn't as good, you received better credit. I would really refer our co-panelist to that study. We know that discrimination is real and ongoing.

Mr. CLEAVER. Yes. We always have a problem in solving a problem. If you don't think you can get cancer from cigarettes, there is no point in trying to stop people from smoking.

If you don't think there is discrimination, there is no point in trying to stop people from discriminating. And obviously, it is massive.

I would like to yield the balance of my time to Ms. Tlaib of Michigan.

Chairman CLAY. The gentlewoman from Michigan is recognized.

Ms. TLAIB. Thank you so much, and I wanted to actually allow Mr. Nery to finish. We were both very eager to hear what you have to say about land contracts. But before I do that, I do want the record to note that between the 1930s and the 1960s, contracts were used to redline and prevent minorities from being homeowners.

As you all know, 50 years later, we still allow for the land contract system to exist to hurt communities of color. And so it is really important that we allow it to happen but with safeguards.

And so, Mr. Nery, we are very curious about your response of, we know and I think we want access, because access is key.

Mr. NERY. Absolutely.

Ms. TLAIB. But this seems to be a predatory process, a redlining process that hurts predominantly blacks—

Mr. NERY. I would—

Ms. TLAIB. —in our country.

Mr. NERY. —wholeheartedly agree. I was just expressing as an attorney, that it surprised me because when I am involved, I make sure that those issues that we are concerned about don't occur. But I didn't imagine, I didn't think about in the majority of transactions people are obtaining land contracts consumer-to-consumer without having any of those protectionary measures.

I would say NAREB completely and wholeheartedly agrees that there has to be some uniformity. There has to be some standard to it because you have to, at a minimum, make sure that you have some sort of a memorandum of agreement that identifies that this contract is there.

You want to make sure that you have title and—

Ms. TLAIB. Oh, I know.

Mr. NERY. —that you can ensure that all of those protectionary measures are there for the consumers. You don't want someone to inherit any kind of liens or foreclosure or any kind of debts or other mortgages that exist.

So absolutely, I think there has to be a standard that is applied across the country for consumers to be protected because you have to make sure that although in some cases this may be the only option that people have for financing, you have to make sure that they are protected.

Ms. TLAIB. Thank you.

Lastly, Ms. Bailey, you said something really shocking and profound. I lost more black homeownership in the State of Michigan than anywhere in the country. But you said black homeownership is at the same rate today that it was in 1968. What is the rate now, since 1968 to 2019, the same rate?

Ms. BAILEY. Indeed, it is. Today, it is at 41.4 percent. And it is important to really help us understand, we had progress after the Fair Housing Act, however, the market shifted. Reverend Jackson says that when we get in the game and the rules are clear and the referees are fair, we win.

Black and Latino families have never been in a mortgage market that operated in that way. Instead, we have had dual systems where we are tracked to dangerous and risky mortgages and other financial services products that stop our ability to build wealth over time and pass on to future generations. Each of our generations continually have to start over again as opposed to building on legacies of families' opportunity.

Chairman CLAY. The gentlewoman's time has expired.

Did the gentleman from Florida have something to add?

Mr. LAWSON. Yes. Ms. Bailey, I just want to say you made reference to Rosewood?

Ms. BAILEY. Yes.

Mr. LAWSON. And the reason why I'm interested is that I am the one who did a bill in Florida.

Ms. BAILEY. Yes.

Mr. LAWSON. And that was in 1923 when African Americans had homes and all that kind of stuff before the massacre and everything took place, but it was interesting that you mentioned Rosewood. It just stimulated me when you mentioned something about it.

Ms. BAILEY. And if I may? People keep asking, why do we look back? Why do we look at yesterday? The only way we are going to learn the lessons of the past is by understanding what the facts present. And we have a chance today to make sure we do not pass on to our children the burdens of discrimination.

Chairman CLAY. The gentleman is welcome.

And I would like to thank our witnesses for their testimony today, as well as say that I am encouraged by the thoughtful questions and answers to this intractable issue of barriers to minority homeownership. But I am confident after hearing your testimony and your responses that we can find solutions to this issue.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And, thank you all.

This hearing is adjourned.

[Whereupon, at 12:17 p.m., the hearing was adjourned.]

A P P E N D I X

May 8, 2019

Testimony of Ms. Nikitra Bailey

Executive Vice President, Center for Responsible Lending

Before the United States House of Representatives

Committee on Financial Services

Subcommittee on Housing, Community Development, and Insurance

A Review of the State of and Barriers to Minority Homeownership

May 8, 2019

Good morning Chairman Clay, Ranking Member Duffy, and Members of the United States House Committee on Financial Services, Subcommittee on Housing, Community Development and Insurance. Thank you for the opportunity to testify regarding the state of and barriers to homeownership for families of color. I am Executive Vice President of the Center for Responsible Lending (CRL), a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest community development lenders headquartered in Durham, NC. Since 1980, Self-Help has provided over $7 billion in financing to 131,000 families, individuals and businesses under-served by traditional financial institutions. It helps drive economic development and strengthen communities by financing hundreds of homebuyers each year, as well as nonprofits, child care centers, community health facilities, public charter schools, and residential and commercial real estate projects. Through its credit union network, Self-Help's two credit unions serve over 130,000 people in North Carolina, California, Illinois, Florida, and Wisconsin and offers a full range of financial products and services. Learn more at www.self-help.org and www.self-helpfcu.org.

Homeownership is the primary way that most middle-class families build wealth and achieve economic stability. Wide access to credit is critical for building family wealth, closing the racial wealth gap, and for the housing market overall, which in turn, contributes significantly to our overall economy. Today, the opportunity to purchase, maintain and refinance a home has not reached significant portions of low-to-moderate income families and people of color. As a result, these families lag far behind wealthier and white communities that received a head start due to historical lending discrimination supported by our federal government's mortgage policies. Today's hearing is a good step towards acknowledging this history and presents the potential to create opportunities to address it, so that our nation can drive shared prosperity for all Americans.

My testimony today draws extensively from remarks delivered by CRL's President Michael Calhoun to the United States Senate Committee on Banking, Housing, and Urban Affairs on March 27, 2019.[1]

I. The Federal Housing Finance System Must Address Its Role in Fostering Racial Discrimination in the Mortgage Market and The Resulting Racial Wealth Gap

Prior to the Great Depression in 1929, the federal government promoted homeownership opportunity for white Americans only. During the Wilson Administration, in an appeal to white citizens Secretary of Commerce, Herbert Hoover, authorized pamphlets that instructed families on how to become homeowners, and in community forums promoting ways to avoid "racial strife" as one of the key benefits.[2] This became the foundation for federal housing policies created in the twentieth century in response to the Great Depression that explicitly discriminated against African-American, Latino, and other families of color by denying them access to federally-insured mortgage programs because of their race. These policies are a significant factor in why white families today have higher rates of homeownership and greater family wealth than families of color. These federal programs helped white

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[1] Chairman's Housing Reform Outline, Part 2, United States Senate Committee on Banking, Housing, and Urban Affairs, 116th Cong. (March 27, 2019) (Testimony of Mike Calhoun), available at https://www.banking.senate.gov/imo/media/doc/Calhoun%20Testimony%203-27-19.pdf.

[2] Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America, Livingston Publishing Corporation (2017), pp. 60-61.

families, mostly former immigrant families with European backgrounds, enter homeownership and build financial security, which helped to expand the American middle class. Policies and practices underlying these programs, such as denial of credit for borrowers buying in predominantly African-American and Latino neighborhoods and a refusal to allow African-Americans and Latinos to buy homes in white neighborhoods, granted whites the ability to build wealth through homeownership while denying equal opportunities for families of color to build similar home equity over the same period. As a result, whites amassed an economic advantage in the form of home equity over families of color that has been passed on to future generations through intergenerational wealth transfers. Today, disparities in homeownership are a key contributor to the ongoing racial wealth gap and home equity still plays a central role in shaping family wealth for the middle class.

These discriminatory policies were enshrined in the housing finance system starting in 1933 with the underwriting guidelines of the Home Owners Loan Corporation (HOLC) that allowed redlining of African-American and other communities of color, denying them access to mainstream banking services.[3] In FHA's 1936 Underwriting Manual, a multitude of provisions indicated that "inharmonious" racial groups should not live in the same communities.[4] The manual also recommended that "natural and artificially-established barriers will prove effective in protecting a neighborhood and the locations within it from adverse influences."[5] In other words, barriers such as highways were deemed a beneficial way to separate African-American and other families of co and white neighborhoods.

According to a report by Demos, if homeownership rates were the same for whites and people of color, we would see a decrease in the racial wealth gap by 31 percent for African-Americans and 28 percent for Latinos.[6] Instead, homeownership rates for African-Americans today are at the same level as in 1968 when the Fair Housing Act first passed. The current federal housing finance system was created with discriminatory federal housing policies as the foundation. Now it must offer an equitable solution forward.

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

[4] Federal Housing Administration, Underwriting Manual (1936), Excerpts, available at https://epress.trincoll.edu/ontheline2015/wp-content/uploads/sites/16/2015/03/1936FHA-Underwriting.pdf.

[5] *Id.*

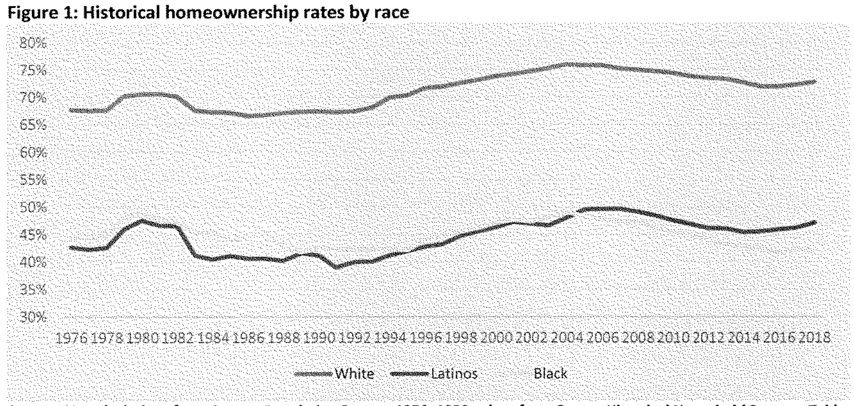
[6] Tanvi Misra, Why America's Racial Wealth Gap is Really a Homeownership Gap, Demos, March 12, 2015, available at http://www.demos.org/news/why-americas-racial-wealth-gap-really-homeownership-gap.

II. State of Homeownership for Communities of Color

A. The Great Recession Eroded Homeownership Gains and Exacerbated the Racial Wealth Gap

Leading up to the Great Recession, families of color were unfairly targeted with dangerous and toxic mortgages that led to a decline of $1 trillion in wealth for the families who lived near a home loan foreclosure, even if they did not actually experience a foreclosure themselves.[7] The Great Recession also wiped out thirty years of homeownership gains for African-American and Latino families (Figure 1). It exacerbated the already large racial homeownership gap, with black homeownership rates falling to levels that predate the passage of the Fair Housing Act more than 50 years ago.[8] The current homeownership rate for black families is only 41.1% and 47.4% for Latino families, as compared to 73.2% for white families.[9]

Figure 1: Historical homeownership rates by race



Source: CRL calculations from Current Population Survey. 1976–1993 values from Census Historical Household Surveys, Table HH-5. 1994-2018 values from Current Population Survey Quarterly Tables, Table H-16

The Great Recession also aggravated inequality in wealth distributions. According to the Pew Research Center, in 2012 whites had 13 times the wealth of African-Americans and ten times the wealth of

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[7] Debbie Gruenstein Bocian, et al., Collateral Damage: The Spillover Costs of Foreclosures (2012), available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/collateral-damage.pdf.

[8] Laurie Goodman, Alanna McCargo, and Jun Zhu, A Closer Look at the Fifteen-Year Drop in Black Homeownership, Urban Institute (Feb. 13, 2018) available at https://www.urban.org/urban-wire/closer-look-fifteen-year-dropblack-homeownership.

[9] U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, First Quarter 2019 (April 2019), available at https://www.census.gov/housing/hvs/files/currenthvspress.pdf.

nonwhite Hispanics.[10] If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth white families own today.[11] For the average Latino family, matching the wealth of white families could take 84 years.[12]

Evidence shows that a large number of borrowers of color were targeted and steered into toxic mortgages even when they qualified for safer and more responsible loans with cheaper costs.[13] Rather than remediate the damage done by subprime lending and its disproportionate impact on borrowers of color, lenders' overcorrections in the market have instead closed off lending options for these communities. Since the financial crisis, many lenders and the Government Sponsored Enterprise's (GSEs) have limited lending and increased prices for borrowers with lower credit scores and/or lower down payments. Borrowers of color, low and moderate-income families, and first-time homebuyers tend to have both lower FICO scores and fewer resources to put towards a down payment due, in part, to historical and ongoing discrimination.

This action is short-sighted and present real safety and soundness concerns for the overall economy since people of color will account for most new household formation going forward. Harvard's Joint Center for Housing Studies found that non-whites, especially Latinos, accounted for 60 percent of household growth from 1995-2015 and predicted that half of millennial households by 2035 would be non-white.[14] Serving these borrowers will be a significant factor in a well-functioning mortgage market as current homeowners seek to sell their homes.

B. Conventional Credit Remains Tight 10 Years After the Financial Crisis, Preventing Homeownership Opportunity for Working Families, Particularly Families of Color

The conventional market has tightened credit standards and shut out over 6 million creditworthy borrowers since 2009.[15] People of color and low- to moderate-income families continue to face challenges in accessing credit. Discrepancies for African-Americans and Latinos persist even as the mortgage market overall has nearly returned to pre-crisis lending volumes. Market indicators highlight how tight lending standards have become, especially for conventional mortgages. In 2016, only 3.1% of conventional loans were made to African-American borrowers, and only 5.8% were made to Hispanic

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[10] Rakesh Kochhar and Richard Fry, Wealth inequality has widened along racial, ethnic lines since end of Great Recession, Pew Research Center (2014), available at http://www.pewresearch.org/fact-tank/2014/12/12/racialwealth-gaps-great-recession/.
[11] Dedrick Asante-Muhammad, *et al.*, The Road To Zero Wealth: How The Racial Wealth Divide Is Hallowing Out America's Middle Class (2017), at 15, available at https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.
[12] *Id.*
[13] Rick Brooks and Ruth Simon Subprime Debacle Traps Even Very Credit-Worthy, Wall Street Journal, December 2007, available at https://www.wsj.com/articles/SB119662974358911035.
[14] Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017 (June 2017), available at http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.
[15] Laurie Goodman, Jun Zhu, and Bing Bai, Overly Tight Credit Killed 1.1 Million Mortgages in 2015, Urban Institute (Nov. 21, 2016), available at https://www.urban.org/urban-wire/overly-tight-credit-killed-11-million-mortgages2015 (stating that lenders would have issued 6.3 million additional mortgages between 2009 and 2015 if lending standards had been more reasonable).

white borrowers.[16] By contrast, non-Hispanic white borrowers received 70.2% of the conventional loans.[17] These trends persist despite banks reporting record profits.[18]

The average credit score for all new loan originations has fallen from its high of 750 in 2013 to stand at 732 in December of 2016. However, the average score remained about 33 points above the average score a decade before.[19] At the same time, market-level credit availability indices continue to show that lenders have a very low tolerance for taking reasonable risk for new loans.[20] Recent vintages of new mortgages (loans originated from 2011-2015) have had near zero rates of default.[21]

These tight credit standards are preventing homeownership opportunity for credit worthy borrowers of color and low- to moderate-income borrowers. Recent data released by Fannie Mae show that loans to low-income borrowers originated from 2010-2015 had a default rate of just 0.3 percent, approximately equal to that of loans to high-income borrowers originated from 2002-2004.[22] There is ample opportunity in the mortgage market to expand lending to borrowers while still offering responsible loans that borrowers can successfully repay.

III. Barriers to Homeownership for Families of Color

A. Discrimination

Seven days after the assassination of Dr. Martin Luther King, Jr., with much civil unrest across America, President Lyndon B. Johnson signed the federal Fair Housing Act on April 11, 1968.[23] At the legislation's signing, President Johnson stated that he was "delivering on the promise of a century" following President Abraham Lincoln's Emancipation Proclamation in 1863 that changed the legal status of enslaved Africans working against their will without compensation in the South to free.[24] Shortly after the Civil War ended, Congress passed the Civil Rights Act of 1866 that defined citizenship to include the

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[16] Center for Responsible Lending, New HMDA Data Show Despite Growing Market, African-Americans and Latinos Remain Underserved (2017), available at https://www.responsiblelending.org/research-publication/new-hmda-data-show-despite-growing-market-african-americans-and-latinos-remain.

[17] *Id.*

[18] FDIC-insured institutions reported aggregate net income of $59.1 billion in the fourth quarter of 2018, up $33.8 billion (133.4 percent) from a year earlier. https://www.fdic.gov/bank/analytical/quarterly/2019-vol13-1/fdic-v13n1-4q2018.pdf.

[19] Laurie Goodman *et.al.*, Housing Finance at a Glance: A Monthly Chartbook (March 2017), available at https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook-march-2017.

[20] *Id.*; Mortgage Bankers Association, Mortgage Credit Availability Index (2017), available at https://www.mba.org/newsresearch-and-resources/research-and-economics/single-familyresearch/mortgagecredit-availability-index.

[21] Laurie Goodman, Squeaky Clean Loans Lead to Near-Zero Borrower Defaults – And That is Not a Good Thing, Urban Institute (Aug. 31, 2016), available at https://www.urban.org/urban-wire/squeaky-clean-loans-lead-nearzero-borrower-defaults-and-not-good-thing.

[22] Fannie Mae 2016 Annual Housing Activities Report and Annual Mortgage Report, Chart at 19, available at https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/Fan_M_Goals/2017/Fannie-Mae-2016-AHAR-AMR-FINAL.pdf.

[23] Pub. L. 90–284, title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

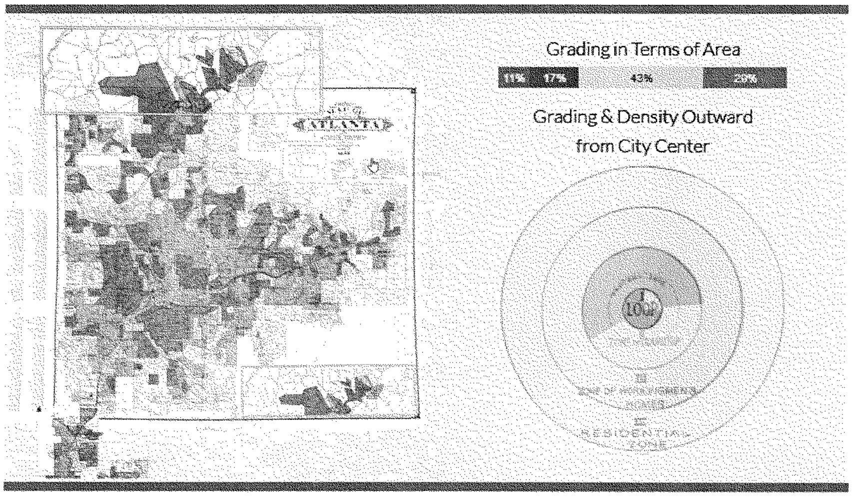
[24] Emancipation Proclamation, January 1, 1863; Presidential Proclamations, 1791-1991; Record Group 11; General Records of the United States Government; National Archives.

formerly enslaved Africans and granted them equal protection under law as citizens on the heels of the adoption of the Fourteenth Amendment to the United States Constitution.[25] Remarkably, this legislation was also the first federal legislation that guaranteed fair housing to all citizens and states that "[a]ny citizen has the same right that a white citizen has to make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real and personal property."[26] However, the 1866 law was limited in application as it only provided a private right of action to enforce. Thus, for 102 years until passage of the federal Fair Housing Act of 1968, discrimination in lending persisted helping to create America's racially segregated communities.

This lack of enforcement allowed the federal government to foster mortgage lending discrimination that is explained above in Section I. It did not curtail private discrimination in the mortgage lending ecosystem, including by private actors. As a result, residential segregation continues to exist with white Americans as winners in all facets of American life, including better life outcomes in wealth accumulation, housing, education, employment, and health. For example, see Figure below detailing the Homeowners Loan Corporation map of the Atlanta region.[27]

[25] Pub. L. 102-166, title I, § 101 (Nov. 21, 1991), 105 Stat. 1071.
[26] *Id.*
[27] Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., "Mapping Inequality," American Panorama, ed. Robert K. Nelson and Edward L. Ayers, accessed May 7, 2019, https://dsl.richmond.edu/panorama/redlining/#loc=12/33.7773/-84.3860&opacity=0.8&city=atlanta-ga&text=about.

Figure 2. Home Owners' Loan Corporation map of the Atlanta Region, 1938



Source: Mapping Inequality: Redlining in New Deal America

1. Racially Restrictive Zoning

As Jim Crow laws became a countervailing force to the inclusion offered by the Reconstruction Amendments and progress from fusion movements throughout the South and opportunity in the West, starting in 1880 laws emerged that expelled African-Americans from white communities.[28] For example, African-American settlers lived in every county in Montana by 1890.[29] However, by 1930, eleven of the state's fifty-six counties had been entirely cleared of African-American citizens.[30] This activity developed all across the United States, and in places where African-Americans populations were too large to be dispossessed, local zoning rules served as the instrument to facilitate segregation by race. Baltimore led the nation in enacting such ordinances, followed by Atlanta, Birmingham, Miami, Charleston, Dallas, Louisville, New Orleans, Oklahoma City, Richmond, St. Louis.[31] Racially restrictive zoning was eventually outlawed by the United States Supreme Court decision in *Buchanan v. Warley* in 1917.[32]

However, the Harding Administration's Secretary of Commerce, Hebert Hoover, established an Advisory Committee on Zoning that promoted racially homogeneous neighborhoods through a model zoning law

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[28] Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America, at 39-43, Liveright Publishing Corporation (2107).
[29] *Id.*
[30] *Id.*
[31] Rothstein, at 43-46.
[32] 245 U.S. 60 (1917).

to municipalities across the nation.[33] An administration official is on the record making the following statement, " in any housing developments which are to succeed,...racial division... have to be taken into account..."[34] This action aided the persistence of racial segregation in communities, including in places like Oklahoma in 1970 where a federal appeals court concluded that "[i]f proof of a civil rights violation depends on an open statement by an official of intent to discriminate, the Fourteenth Amendment offers little solace to those seeking its protection."[35]

Many of the today's single-family zoning requirements are rooted in racially restrictive zoning requirements that marry economic bias with racial bigotry and continue to bolster this discrimination. These requirements relegated families of color to industry areas in local jurisdictions, including those that contained liquor stores, bars, nightclubs, and prostitution.[36] Consequently, families of color are overwhelmingly concentrated near environmental hazardous materials including toxic waste despite calls from communities for protection. A 1991 report by the Environmental Protection Agency found that African-American communities have an inordinate amount of toxic waste facilities, and an executive order was issued to stop the practice without providing any rectifying actions.[37] In March 2018, EPA scientist again issued a report in the Journal of Public Health that showed that people of color are likely to live near polluters and more likely to breathe dangerous air pollution like soot.[38]

2. National Association of Real Estate Board's 1924 Code of Ethics Prohibition on Integration

In 1924, the National Association of Real Estate Boards Code of Ethics prohibited integration in Article 34 of Part III of the code of ethics.[39] This guiding document for all real estate professionals in the nation stated, "[a] [r]ealtor should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood."[40] While the Fair Housing Act of 1968 reaffirmed the Civil Rights Act of 1866's prohibition on discrimination in the purchase and selling of homes, the National Association of Realtors has yet to publicly account for its role in creating residential segregation.

3. Racially Restrictive Covenants

Starting in the early nineteenth century, deeds prohibited the resale of property to African-Americans, other families of color, and certain European immigrants such as Irish and Jewish families.[41] Initially, they were limited in enforcement because the contracts were between the seller and buyer, making it

[33] Rothstein, at 51.
[34] *Id.*
[35] *Id.* at 53.
[36] *Id.* at 50.
[37] *Id.* at 56.
[38] Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, Jennifer Richmond-Bryant, "Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status", *American Journal of Public Health* 108, no. 4 (April 1, 2018): pp. 480-485.
[39] National Association of Realtors, National Association Real Estate Boards Code of Ethics, June 1924, Part III, Article 34, available at https://www.nar.realtor/about-nar/history/1924-code-of-ethics.
[40] *Id.*
[41] Rothstein, at 77-83.

difficult for a neighbor to have legal standing to sue and evict African-American homebuyers.[42] However, over time these racial covenants evolved into broad contracts comprised of all the residents of a neighborhood.[43] Moreover, developers created community associations that required membership to purchase a home in a subdivisions and the associations' bylaws included a "whites-only" clause.[44] Further, local, state, and federal courts enforced racially restrictive covenants as private agreements, not as state action.[45] Other sectors of the federal government also enabled private actors in facilitation of racially restrictive covenants. The Hoover Administration recommended that all new neighborhoods include "appropriate restrictions" to benefit the developer by making homes more desirable to potential homebuyers and owners by protecting the property from "the deteriorating influence of undesirable neighbors."[46]

Racially restrictive covenants were not legally outlawed until the landmark United States Supreme Court decision in *Shelley v. Kraemer*[47], which held that the state action doctrine includes the enforcement of private contracts and that the Fourteenth Amendment's Equal Protection Clause prohibits racially restrictive covenants, and as such the covenants are unenforceable in court. However, their impact continues to be felt in segregated communities throughout the nation, including places like Ferguson, MO, and Baltimore, MD that experienced divestment, leading to a concentration of poverty and many other harms, including recent police-related killings of young African-American men.

4. Insurance Companies

Private insurance companies also furthered racial segregation despite being heavily regulated by state policy makers. In communities in the state of New York when an insurer sought to develop multifamily housing, the state's legislature amended the state's insurance code to permit projects that were "white-only".[48] In another instance, whole communities that had high African-American and Latino residents were cleared to make way for development that was abated with public dollars despite statements by the company leading the project that "Negroes and whites don't mix. If we brought them into this development...it would depress all of the surrounding property."[49]

5. Land Installment Contracts

Land installment contracts are predatory transactions that are designed to fail. These contracts exploit low-income would-be homeowners, especially in communities of color. The transaction also enables the seller to avoid responsibility for property upkeep while churning successive would-be homeowners through a property that the seller would not legally be able to rent to a tenant.[50] The buyer makes payments directly to the seller over a period of time, usually 30 years, and the seller promises to convey

[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.* at 82-83.
[47] 334 U.S. 1.
[48] Rothstein, at 62-63.
[49] Rothstein, at 106.
[50] See Jeremiah Battle, Jr., Sarah Mancini, Margot Saunders, and Odette Williamson, Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color (July 2016), available at https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html#key.

legal title to the home once the full purchase price is paid. If a borrower defaults at any time by missing a single payment, the seller can cancel the contract, evict the buyer immediately, and the seller can keep all payments. Land installment contracts are structurally unfair and deceptive, as they shift all of the burdens and obligations of homeownership to the buyer, yet do not provide any of the rights and protections of homeownership.

Between 1930 and the late 1960s, as African Americans were systemically excluded by the conventional market, these predatory transactions flourished. Residents of credit-starved communities of color, often in poor rural areas, were targeted for land contracts with high prices and harsh terms. Blacks in Northern cities also faced these harms in their pursuit of homeownership. For instance, in Chicago, Illinois, 85 percent of black homebuyers purchased their homes "on contract" from white sellers in the mid-20th century.[51] Estimates show that these black homebuyers had more than $500 million legal extorted from them from 1940-1970.[52] In more recent years, large investment firms with private equity backing, some of whom profited from the subprime lending that fueled the 2008 foreclosure crisis, are using these toxic transactions to profit off of a backlog of foreclosed homes. In 2015, Detroit had more land installment contracts than mortgage transactions.[53]

The buyers in these transactions are almost exclusively people of color: African American or Latino homebuyers.[54] Furthermore, marketing schemes appear to target African American and Spanish-speaking consumers. Companies advertise through signs in front of houses located in neighborhoods of color and rely on word-of-mouth referrals. It is clear that the same communities that were targeted by subprime lenders and drained of wealth in the foreclosure crisis are now being victimized again through land installment contract sales. Legislative or regulatory action is necessary to put an end to this predatory practice.

6. Denial of Loans by Private Banks with Federally Insured Deposits

Prior to passage of the federal Fair Housing Act, private banks engaged in mortgage lending discrimination while federal government deposit insurance programs guaranteed their deposits. This underwriting required extensive oversight of the private banks' lending policies and practices by federal financial regulators such as the Federal Reserve Bank (Fed), Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision, and various state banking agencies. These prudential regulators have all regularly reviewed financial records, including loan applications and denials to ensure the banks safety and soundness requirements are met. Moreover, in review the regulators condoned mortgage lending discrimination to families of color

[51] Megan Wright, Installment Housing Contracts: Presumptively Unconscionable, 18 Berkeley J. Afr.-Am. L. & Pol'y (2016), p. 5.
[52] Rebecca Burns, The Infamous Practice of Contract Selling is Back in Chicago, Reader News and Politics, March 2017, *available at* https://www.chicagoreader.com/chicago/contract-selling-redlining-housing-discrimination/Content?oid=25705647.
[53] Joel Kurth, "Land Contracts Trip Up Would-be Homeowners," *The Detroit News*, Feb. 29, 2016, available at http://www.detroitnews.com/story/news/local/detroit-city/2016/02/29/land-contracts-detroit-tax-foreclosure-joel-kurth/81081186/.
[54] *Id.* at 4.

despite being viewed by the United States Supreme Court viewing their federal charters as "[n]ational banks are instrumentalities of the federal government, created for a public purpose."[55]

Today, data from the Home Mortgage Disclosure Act continues to demonstrate extremely low levels of conventional mortgage loans to African-American and Latino families as outlined in Section II above. Further, the Center for Investigative Reporting Reveal report analyzed 31 million mortgage records and found that in 61 U.S. metro areas African-Americans and Latinos are more likely to be turned down for a loan than whites in conventional mortgage applications.[56]Washington, DC is the one metro area where all families are color – Native Americans, African-Americans, Latinos, and Asian Americans – are more likely to be denied loans than comparable white applicants.[57] Further, the Urban Institute reports as noted above that more than 6 million additional conventional mortgage loans could have been made since 2009, and CoreLogic estimates that 250,000 of those loans annually would have gone to borrowers of color.[58]

Today, the Department of Justice, Consumer Financial Protection Bureau, and Department of Housing and Urban Development continue to sue private banks for mortgage lending discrimination. The most recent case, KleinBank, was brought by the Trump Administration's Department of Justice.[59] The parties reached a settlement on claims that KleinBank failed to make loans available in communities of color in Minnesota from 2010-2015 based on race or national origin, and the bank agreed to invest resources in a loan subsidy fund and outreach in the impacted communities.[60]

7. Terrorism in Housing

As stated above, Jim Crow laws were designed to curtail the progress towards citizenship, including homeownership, that African-Americans started to achieve in the late 19th century. These laws were supported by state-sanctioned violence that many African-Americans endured as the result of the federal government withdrawing troops from the former Confederate states and lack of physical protection during the expansion of African-American citizens into the Northeast, Mid-West, and Western United States. African-Americans and other families of color were on the receiving end of outright terrorism by whites that wanted to return them to second class citizenship status. The emergence of the Ku Klux Klan in the late 1860s, early and mid 1920s, and again in the 1950s in response to the civil rights movement is evidence of this terrorism. During this time, African-Americans

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[55] Rothstein, at 109.
[56] Emmanuel Martinez and Aaron Glantz, How Reveal Identified Lending Disparities in Federal Mortgage Data, Center for Investigative Report, February 2018, available at https://s3-us-west-2.amazonaws.com/revealnews.org/uploads/lending_disparities_whitepaper_180214.pdf.
[57] *Id.*
[58] Laurie Goodman, Jun Zhu, and Bing Bai, Overly Tight Credit Killed 1.1 Million Mortgages in 2015, Urban Institute (Nov. 21, 2016), available at https://www.urban.org/urban-wire/overly-tight-credit-killed-11-million-mortgages2015 (stating that lenders would have issued 6.3 million additional mortgages between 2009 and 2015 if lending standards had been more reasonable); National Association of Real Estate Brokers, Much Left to Do For Homeownership, available at http://www.nareb.com/50-years-of-struggle-realizing-democracyinhousing-2/.
[59] https://www.justice.gov/opa/press-release/file/926566/download; Ben Lane, Minnesota's KleinBank reaches settlement with DOJ over redlining allegations, Housing Wire, May 2018, *available at* https://www.housingwire.com/articles/43317-minnesotas-kleinbank-reaches-settlement-with-doj-over-redlining-allegations.
[60] *Id.*

faced unlawful property confiscation and destruction. Outright massacres occurred in places like Tulsa, Oklahoma; Wilmington, North Carolina; Rosewood, Florida.[61]

Moreover, as the result of relegating African-Americans and other people of color to certain areas to live in cities and towns, those places were often neglected by authorities causing depressed property values. In an effort to survive, many families abandoned property and homes during the Great Migration in pursuit of physical safety. Those who escaped Southern violence ended up meeting it in Northern, Midwestern, and Westerns cities such as Cicero, Illinois; Springfield, Illinois; Richmond, CA, Levittown, NY, and Detroit, Michigan.[62] To date, no report has ever been produced quantifying the economic harms that families of color faced as a result of these actions. The United States Government Accountability Office (GAO) should produce a report calculating the economic harms.

An outcome of this violence is the emergence of predatory lending targeted at communities of color, as families of color were forced to utilize desperate tactics to purchase homes all across the nation and those families that already owned homes refinanced with sketchy lenders who targeted them in an effort to meet their financial needs.

B. Predatory Mortgage Lending

Divestment from the federal government and private actors in communities of color created a two-tiered financial services system where cheaper, safer, and mainstream credit is available to wealthier borrowers who are mostly white. Low-to-moderate income neighborhoods and communities of color are left to fringe financial services providers that often seek to extract hard-earned savings and thwart wealth building opportunities. Starting in the late 1990s predatory mortgage lending reemerged as a forceful threat to many of the homeownership gains by African-Americans and Latinos created since the passage of the federal Fair Housing Act (FHA),[63] Equal Credit Opportunity Act (ECOA),[64] Home Mortgage Disclosure Act (HMDA),[65] and Community Reinvestment Act (CRA).[66] These abusive loans were able to steadily grow due to significant deregulation changes in banking law starting with the Depository Institution and Deregulatory and Monetary Control Act of 1980 (DIDMCA)[67] and the Alternative Mortgage Transactions Parity Act of 1982 (AMPTA).[68] Two waves of predatory mortgage lending emerged: 1) equity stripping and 2) exploding adjustable rate mortgages, that ultimately led the nation to the brink of disaster as the result of risky lending that produced unnecessary foreclosures.

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[61] See Sam Howe Verhovek, 75 Years Later, Tulsa Confronts Its Race Riot, New York Times (May 31, 1996), *available at* https://www.nytimes.com/1996/05/31/us/75-years-later-tulsa-confronts-its-race-riot.html?mtrref=undefined&gwh=67BCC61CA332F3F246F26BEDAA199D70&gwt=pay; Adrienne LaFrance and Vann R. NewKirk II, The Lost History of an American Coup D'État, Republicans and Democrats in North Carolina are locked in a battle over which party inherits the shame of Jim Crow, The Atlantic, August 2017, *available at* https://www.theatlantic.com/politics/archive/2017/08/wilmington-massacre/536457/; Jessica Glenza, Rosewood massacre a harrowing tale of racism and the road toward reparations, The Guardian, *available at* https://www.theguardian.com/us-news/2016/jan/03/rosewood-florida-massacre-racial-violence-reparations.

[62] Rothstein, at 139-152.

[63] 42 U.S.C. § 3601 *et seq*.

[64] 15 U.S.C. § 1691 *et seq*.

[65] 12 U.S.C. § 2801 *et seq*.

[66] 42 U.S.C. § 5301 *et seq*.

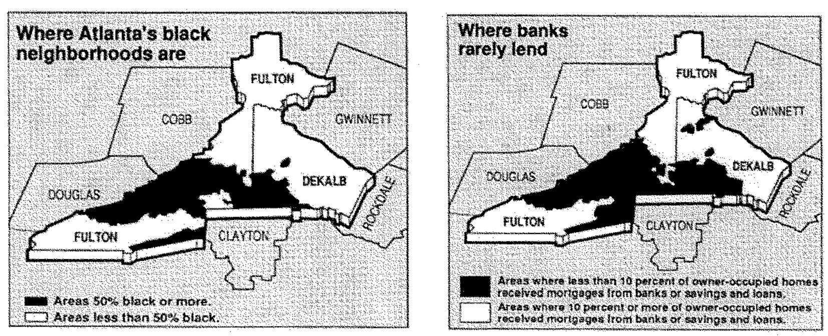
[67] Pub. L. 96-221 (Mar. 31, 1980).

[68] Title VIII of Pub. L. 97-320 (Oct. 15, 1982).

1. **Equity stripping**

The reincarnation of predatory mortgage lending initially emerged as mortgage broker driven equity stripping loans. During this time, banks increasingly started to rely on third-party originators to lower their fixed costs and expand operations into new markets without hiring new loan officers, acquiring office space, or investing in consumer marketing. These practices often targeted older-American homeowners who were "house rich, but cash poor" and became known as reverse redlining because they sprouted up in communities where there was limited activity by regulated depository institutions, which left vacuums for non-depository institutions who were barely regulated to thrive. During this time, African-American and Latino communities were bombarded with advertisements for "access to credit," and often the brokers found the borrowers as opposed to borrowers shopping for loans by using court house data on housing values as research for lender marketing campaigns. Lenders made these loans without regard to the suitability for borrowers and included provisions such as single premium mortgage insurance premiums, prepayment penalties, yield spread premiums and other fee extraction mechanisms that often siphoned out significant portions of borrowers' home equity at closing. Moreover, the loan documents made contesting the harms a challenge as they included mandatory arbitration provisions and assignee liability clauses. These practices initially sprouted up in communities such as Atlanta, Georgia; Cleveland, Ohio; and Detroit, Michigan and were detailed extensively in the Atlanta region by the award-winning investigative reporting of the Atlanta Journal Constitution.[69]

Figure 3. The Color of Money, Home Mortgage Lending Practices Discrimination Against Blacks



Source: 1980 US Bureau of the Census figures and Federal Financial Institutions Examination Council figures for 1981-86, compiled by the Atlanta Journal and the Atlanta Constitution

Groundbreaking research by the Center for Responsible showed that predatory lending including mortgage loans costs consumers $9.1 billion dollars annually in 2001.[70] This research was followed with research on mortgage lending that showed that African-American and Latino families disproportionately received subprime loans at a greater rate than whites and that borrower characteristics did not explain

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70 Eric Stein, Quantifying the Economic Cost of Predatory Lending, Coalition for Responsible Lending (July 25, 2011), available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/the-economic-cost-of-predatory-lending-2001.PDF.

the differences in lending.[71] Many of these borrowers qualified for credit on better terms but were steered into subprime loans because brokers received extra compensation for placing them in loans with higher costs.[72]

North Carolina led the nation in responding with a strong law to rein in predatory mortgage lending, and many other states passed legislation designed to curb the wealth stripping.[73] Borrowers, state regulators, consumer advocates, and civil rights organizations repeatedly raised concerns about abuses in the subprime market and pointed to evidence demonstrating the destructive consequences of such practices. As early as 2000, groups were not only urging Congress to support new measures to prevent predatory practices but were calling on the Federal Reserve to act under its existing regulatory authority to "prohibit unfair or deceptive mortgage lending practices and to address abusive refinance practices." However, it was not until July 2008 that the Federal Reserve implemented any rules to ban some abusive, unfair, or deceptive practices; this was some fourteen years after Congress had given the Federal Reserve the authority to do so, and almost two years since the start of the foreclosure crisis.

These developments occurred when African-Americans and Latinos experienced record gains in homeownership opportunity. By 2004, the homeownership rate for African-American and Latino families was close to fifty percent.[74] Without adequate protections, families of color faced continued market abuses that decreased their homeownership rates, and ultimately became widespread and ended up leading the entire national economy off a cliff.

2. Exploding Adjustable Rate Mortgages

The second wave of predatory mortgage lending, exploding adjustable rate mortgages, grew out of increased profitability in mortgage loans backed by Wall Street Investments. Broker driven lending continued to define the mortgage market and by 2005, at the height of the housing boom, half of all mortgage originations and 71% of subprime originations were brokered.[75] These loans were predicated on the ability of serial refinances as Wall Street financial companies began issuing their own mortgage-backed securities (called private label securities) and selling these directly to investors. Unlike Fannie Mae and Freddie Mac, private companies did not have to limit their loan purchases to those meeting the standards set by the GSE regulators. As a result, the growth in the private-label securities market was heavily driven by subprime loans, which the GSEs were not allowed to purchase directly. Between 1995 and 2005, the volume of private-label securities backed by subprime loans increased from $18 billion to

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

[72] Rothstein, at 111.

[73] Center for Responsible Lending, SB 1149 North Carolina's Predatory Mortgage Lending Law, available at https://www.responsiblelending.org/research-publication/north-carolina-s-predatory-mortgage-lending-law-main-page.

[74] Richard Fry and Anna Brown, In a Recovering Market, Homeownership Rates Are Down Sharply for Blacks, Young Adults, Pew Research Center, December 2016, *available at* https://www.pewsocialtrends.org/2016/12/15/in-a-recovering-market-homeownership-rates-are-down-sharply-for-blacks-young-adults/.

[75] Center for Responsible Lending, The State of Lending: Mortgages (Dec. 12, 2012), available at https://www.responsiblelending.org/sites/default/files/uploads/3-mortgages.pdf; Mortgage Bankers Association (2006), Residential mortgage originations (Table 1, MBA Research Data Notes).

$465 billion. Meanwhile, the private-label market for "Alt–A" loans, virtually nonexistent in 1995, reached $334 billion by 2005.[76]

This lending was fueled by an explosion of products pushed by mortgage brokers and lenders that artificially lowered the initial monthly payments on mortgages. It started with interest-only loans, and then expanded into teaser payments and negative amortization loans, with the borrower being evaluated only on the ability to make the initial starting payment, and often without documentation to even establish that. These loans greatly lowered initial mortgage payments, but this structure only worked when mortgages could be refinanced before full amortizing payments came due. The ability to refinance depended on continued, unsustainable home appreciation. Eventually, home price growth slowed, and the delinquencies and foreclosures started to pile up. Home prices then plunged dramatically, pulling the entire economy into a deep recession.

Researchers at the Center for Responsible Lending issued a report that analyzed more than six million subprime mortgages made from 1998 through the third quarter of 2006 and predicted that 2.2 million subprime household would lose their homes or already lost their homes costing $164 billion in home equity.[77] Further, African-Americans and Latino families would bear the brunt of those foreclosures.[78]

Once again, Congress and the prudential regulators failed to act. By the time they did, the entire national economy was in the Great Recession. More than 8 million homes ended up being foreclosed,[79] 8.7 million jobs lost,[80] and over 500 community banks shuttered.[81] Even those not directly hit were harmed: an estimated 95 million households lost home equity because of neighbors' foreclosures.[82] The Financial Crisis Inquiry Commission determined that the housing crisis that led to the Great Recession was totally avoidable and primarily the result of lax regulation and excessive risk taking by Wall Street Firms.[83]

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[76] CRL calculations of FDIC data on agency and non-agency MBS issuance.
[77] Ellen Schloemer, Wei Li, Keith Ernst, and Kathleen Keest, Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners, Center for Responsible Lending (Dec. 2006), available at https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf.
[78] *Id.*
[79] Michael Calhoun, Lessons from the Financial Crisis: The Central Importance of a Sustainable, Affordable and Inclusive Housing Market, Brookings Institution (Sept. 5, 2018), available at https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/#footref-3.
[80] Center on Budget and Policy Priorities, Chart Book: The Legacy of the Great Recession (July 10, 2018), available at https://www.cbpp.org/research/economy/chart-book-the-legacy-of-the-great-recession.
[81] Michelle Park Lazette, The Crisis, the Fallout, the Change: The Great Recession in Retrospect, Federal Reserve Bank of Cleveland (Dec. 8, 2017), available at https://www.clevelandfed.org/newsroom-and-events/multimedia-storytelling/recession-retrospective.aspx.
[82] Center for Responsible Lending, Collateral Damage, The Spillover Costs of Foreclosure (October 2012), available at http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf.
[83] The Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at 27 (January 2011), available at https://www.gpo.gov/fdsys/pkg/GPOFCIC/pdf/GPO-FCIC.pdf.

C. Mortgage Pricing Determines Who Can Get a Mortgage and Pricing Fairness should be Improved, Not Exacerbated

Following the mortgage crisis of 2008 and the trauma of bank bailouts and GSE conservatorship, FHFA and the GSEs instituted loan level price adjustments (LLPAs) to offset risk from borrowers with lower credit profiles and smaller down payments, despite compelling evidence that when provided with safe and affordable mortgage loans, these borrowers perform well. These increased fees disproportionately impact potential homebuyers of color and low-to-moderate income families, whose ability to save for down payments and credit profiles have been negatively impacted by discrimination and lack of opportunity in the mortgage market.[84]

Underwriting structures determine if borrowers are creditworthy, but pricing structures have a significant impact on whether a creditworthy borrower can afford a mortgage. Differential pricing creates an additional barrier to mortgage credit by increasing the price, sometimes significantly, for some borrowers relative to others. There is evidence of price acting as a barrier even in today's mortgage market. For example, although Fannie Mae's guidelines allow the GSEs to purchase loans with credit scores down to 620 and loan-to-value (LTV) ratios of up to 97 percent, very few loans purchased by the GSEs have these characteristics. One reason is that excessive risk-based pricing by both the GSEs and private mortgage insurers add significantly to the cost of loans for borrowers with lower scores and less wealth for a down payment. For example, the combination of loan-level price adjustments (LLPAs) and mortgage insurance (MI) premiums adds over 300 basis points to the cost of a mortgage for a borrower with a credit score of 620 and an LTV of 97 percent.[85]

Rural borrowers, new emerging households, LMI borrowers and borrowers of color all face obstacles to receiving competitive and affordable mortgage loans in this context. Current statutory provisions governing the GSEs include important measures to further service of these markets: the mandate to serve the broad market, even at a lower rate of return; affordable housing goals; the duty to serve under-reached markets; and the affordable housing funds. These were all included in or reaffirmed by the Housing and Economic Recovery Act of 2008, which made critical reforms to the housing finance system, and passed with strong bipartisan support. These bipartisan compromises, worked out over nearly a decade, must be preserved and expanded in order to meet the needs of the current and future mortgage market, which will include large proportions of these borrowers.

Equally important, credit risk transfers must continue to be done by the GSEs through mechanisms that do not price these borrowers or small lenders out of the market. This means credit risk transfers must be executed through reinsurance structures that permit pooling of loans and risk, and not through deeper upfront risk transfers. Unfortunately, recent proposals for legislative housing finance reform

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[84] *See* A Failure to Act: How a Decade without GSE Reform Has Once Again Put Taxpayers at Risk, Hearings before the Committee on Financial Services, 115th Cong. (Testimony of Nikitra Bailey), at 18-22, available at https://docs.house.gov/meetings/BA/BA00/20180906/108660/HHRG-115-BA00-Wstate-BaileyN-20180906.pdf.

[85] 350/4+225=312.5 basis points. Fannie's Mae's LLPA for this combination of credit score and LTV is a one-time fee of 350 basis points (see page 2, https://www.fanniemae.com/content/pricing/llpa-matrix.pdf). We assumed a LLPA multiple of 4 to convert this upfront fee to an ongoing cost comparable to the MI premium. Borrower paid MI from Genworth for this combination of credit score and LTV is a continuing fee of 225 basis points. See https://mortgageinsurance.genworth.com/pdfs/Rates/11370775.Monthly_Natl.FIXED.0616.pdf.

share a common feature that undermines this pricing approach. Deep upfront credit risk transferred to private capital would incentivize actors to segment, rather than pool, credit risk and prices. Segmented pricing puts mortgage credit out of reach for too many credit worthy borrowers by making mortgage debt more expensive.

D. There is Not Adequate Supply of Affordable Homes Available for Purchase

Following the housing crash, the single-family construction market has been slow to recover.[86] While new home construction immediately prior to the crisis was at unsustainably high levels, the construction market effectively collapsed and is only now beginning to approach normal production levels. In fact, today's rate of production on new home starts overall is below the rate they were in the 1960s when America's population was much smaller.[87] Usually, housing, which is 20% of the total economy, leads the economy out of the recession. In this case, it was a drag on the overall economic recovery. Since enough homes are not being built, housing prices are rising, and homeownership is less affordable for working families (Figure 4).

Providing sustainable credit for home lending is only half of the equation of a healthy housing market: there also must be an adequate supply of housing to be financed. In the starter home market, as discussed above, there has been a major shortage of homes. Structural obstacles prevent the shortage from being corrected, particularly in growing markets, and several factors depress the number of affordable modest homes. The largest factor is the unmet need for additional new homes to keep up with the growing number of households and the natural obsolescence of homes no longer being usable. Overall, the housing construction market recovered very slowly from the recession, with volumes only now approaching normal levels that predated the housing boom and crisis.

However, builders are focusing on larger homes that are more profitable. Indeed, average new home sizes continue to grow to record levels. First, this reflects the substantial fixed costs in developing and building a new house, which proportionately is a greater burden on smaller homes.[88] Second, it has been challenging for builders to secure land and permits for new construction, and especially for higher-density construction (Figure 5). This has led California to enact new limits on the power of local communities to block additional housing. Further efforts are needed to encourage and facilitate new construction to meet the increasing demand for affordable houses. Most of this reform must occur at the state and local level.

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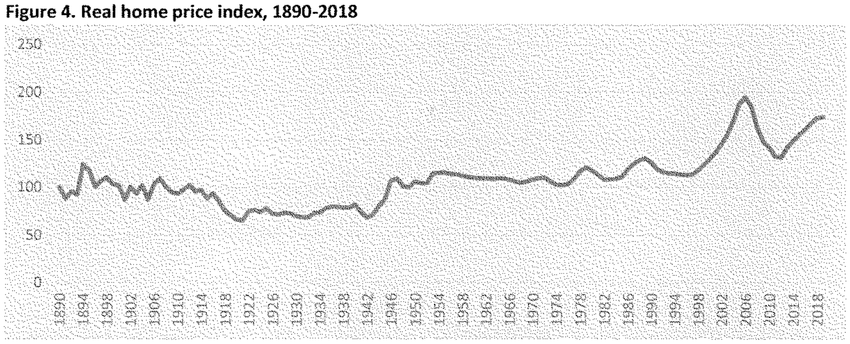
[86] Michael Neal, Residential Construction Down in June, Eye on Housing, National Association of Homebuilders (July 18, 2018), available at http://eyeonhousing.org/2018/07/residential-construction-down-in-june/?utm_campaign=EOE2018&_ga=2.126940237.1759872631.1535413976-631253769.1535413976.

[87] Peter Coy, America Isn't Building Enough New Housing, Bloomberg Businessweek, February 11, 2019, available at https://www.bloomberg.com/news/articles/2019-02-11/america-s-housing-market-isn-t-building-enough-new-homes.

[88] Ashok Chaluvadi, National Association of Home Builders, Builder Materials Prices and Labor Access Top Challenges for 2018 (Jan. 16, 2018), available at http://eyeonhousing.org/2018/01/building-materials-prices-and-labor-access-top-challenges-for-2018/; Carmel Ford, Cost of Constructing a Home, National Association of Home Builders (Dec. 1, 2017), available at http://www.nahbclassic.org/generic.aspx?genericContentID=260013/.

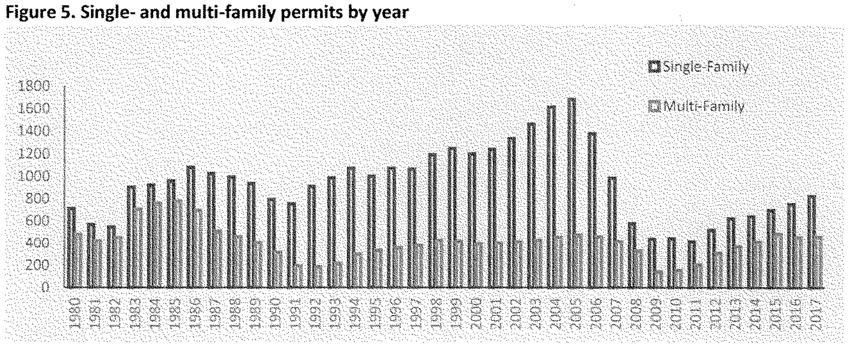
A second factor, discussed below, that reduces the supply of modest homes for sale is the substantial number of – often modest – homes pulled out of the ownership market through bulk distressed loan sales by FHA and the GSEs.[89] While crisis-era pressures may have justified these measures to more quickly restore the financial stability of these entities, today these public interest entities should recycle properties back into the ownership market to both preserve that market and the communities where the houses are located.

Figure 4. Real home price index, 1890-2018



Source: Shiller, Robert J. Irrational Exuberance. Princeton, N.J. :Princeton University Press, 2005 (data updated by author in 2019)

Figure 5. Single- and multi-family permits by year



Source: CRL tabulation of Census Bureau's Building Permits Survey

E. Distressed Asset Sales Undermine Working Families' Ability to Purchase Starter Homes

The market for more modestly priced starter homes for first-time homebuyers is especially tight. One factor aggravating this scarcity of modest homes is the distressed asset sales begun by FHA and the GSEs

[89] Oscar Perry Abello, HUD Has Blight-Fighting Power in Its Back Pocket, Next City (Mar. 6, 2017), available at https://nextcity.org/features/view/hud-troubled-mortgage-auctions-foreclosure-blight.

during the crisis. These entities accrued large numbers of loans facing foreclosure. Rather than selling them individually as a local bank would do, they auctioned them off in large pools. While this helped FHA and the GSEs increase their reserves and capital more quickly, hedge funds – the largest buyers of these pools – converted many of the ultimately foreclosed loans into rental properties. This reduced the supply of modest homes for purchase by individuals and altered the character of neighborhoods where the percentage of homeowners declined. The sale of these distressed pools has continued, and hedge funds have announced plans to expand their conversion programs.[90] This, along with other factors limiting new starter home construction, including labor and materials shortages and increased costs of both, created a shortage of these starter homes and a substantial barrier to families trying to enter homeownership.[91] Instead of bulk sales to investors, more needs to be done with these properties to ensure that families can purchase them to help preserve access to homeownership in low-to-moderate income communities as opposed to only providing rental as an option for working families.

F. Down Payment Requirements

Removing regulator flexibility in establishing down payments in housing finance reform and mandating down payments would unnecessarily restrict access to credit for lower-wealth families. As an initial matter, these mandates overlook the fact that borrowers must also save for closing costs – roughly 3 percent of the loan amount – on top of any down payment required. And, the mandates would increase the number of years that borrowers would need to save for a down payment. An analysis by the Center for Responsible Lending demonstrates that it would take the typical family 17 years to save for a 10 percent down payment and 11 years to save for a 5 percent down payment. This time frame is greatly expanded for African-American and Latino borrowers. Considering that many of these households have limited wealth, down payment mandates could significantly reduce the number of future first-time homebuyers.[92] This reduced pool of buyers could lead to lower home prices, more difficulty selling an existing home, and even some existing borrowers defaulting on their mortgage.

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[90] Julia Gordon, The Dark Side of Single-Family Rental, ShelterForce (July 30, 2018), available at https://shelterforce.org/2018/07/30/the-dark-side-of-single-family-rental/. Others have argued that these sales are beneficial in that the buyers have fewer restrictions on the loan modifications they can offer. Laurie Goodman and Dan Magder, Selling HUD's Nonperforming Loans: A Win-Win for Borrowers, Investors and HUD, Urban Institute (January 2016), available at https://www.urban.org/sites/default/files/publication/76626/2000568-Selling-HUD-s-Nonperforming-Loans-A-Win-Win-for-Borrowers-Investors-and-HUD.pdf. A better approach is reform of the HUD foreclosure process; substantial improvements have been implemented in the GSE process.

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

[92] *See* The State of the Nation's Housing, Joint Center for Housing Studies, at 3 (2013) (stating that "[m]inorities—and particularly younger adults—will also contribute significantly to household growth in 2013–23, accounting for seven out of ten net new households. An important implication of this trend is that minorities will make up an ever-larger share of potential first-time homebuyers. But these households have relatively few resources to draw on to make down payments. For example, among renters aged 25-34 in 2010, the median net wealth was only $1,400 for blacks and $4,400 for Hispanics, compared with $6,500 for whites. Even higher-income minority renters have relatively little net wealth, with both blacks and Hispanics in the top income quartile having less than half the average net wealth of whites. Proposed limits on low-down payment mortgages would thus pose a substantial obstacle for many of tomorrow's potential homebuyers.").

Not only is there a huge cost to legislatively mandating down payments, but there is also a limited benefit in terms of reducing default rates. When looking at loans that already meet the product requirements for a Qualified Mortgage, a UNC Center for Community Capital and CRL study shows that these requirements cut the overall default rate by almost half compared with loans that did not.[93] Layering on a down payment requirement on top of these protections produces a marginal benefit.[94] This makes sense, because risky product features and poor lending practices caused the crisis by pushing borrowers into default, and the Dodd-Frank Act reforms address these abuses. The Qualified Mortgage and Ability-to-Repay reforms restrict risky features such as high fees, interest-only payments, prepayment penalties, yield-spread premiums paid to mortgage brokers, lack of escrows for taxes and insurance for higher-priced mortgage loans, teaser rates that spiked to unaffordable levels even with constant interest rates and outlawing no-doc loans. These reforms address the unaffordable and abusive loan products that caused the crisis.[95]

Maintaining down payment flexibility has allowed the FHFA to permit Fannie Mae and Freddie Mac the product innovation needed to create loans with a 97% loan-to-value ratio helping many first-time home buyers to become homeowners, including millennials.[96]

G. Credit Score Models

Today's credit score models "bake in" mortgage discrimination. Historic racial discrimination created pervasive and long-lasting consequences, including a dual credit market.[97] In the dual market, white and wealthier borrowers have access to mainstream credit while people of color and low-income families are limited to fringe financial services providers. Prior to the enactment of the nation's anti-discrimination laws, government and private industry explicitly penalized borrowers for their race and ethnicity by unfairly using those characteristics as a factor to assess risk. People of color and homes in neighborhoods that were predominantly communities of color were deemed as riskier simply because they were nonwhite. These policies created situations where many families and communities of color

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[93] Roberto G. Quercia, Lei Ding, Carolina Reid, Balancing Risk and Access: Underwriting Standards for Qualified Residential Mortgages, Center for Responsible Lending and UNC Center for Community Capital (Revised March 5, 2012), available at http://www.responsiblelending.org/mortgage-lending/researchanalysis/Underwriting-Standards-for-QualifiedResidential-Mortgages.pdf (stating that "[l]oans consistent with the QM product features—which include both prime and subprime loans—have fared extremely well, with just 5.8 percent of loans either 90+ days delinquent, in the foreclosure process, or foreclosed upon as of February 2011. In comparison, the default rate for prime conventional loans in our sample was 7.7 percent, nearly two percentage points higher...[T]he rates for the subprime and Alt-A market segments [were] 32.3 and 22.3 percent, respectively.").

[94] *Id.* at 18.

[95] *See* Debbie Gruenstein Bocian, Wei Li, Carolina Reid, and Roberto G. Quercia, Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures, Center for Responsible Lending and UNC Center for Community Capital (November 2011), available at http://www.responsiblelending.org/mortgagelending/research-analysis/LostGround-2011.pdf).

[96] *See* Jung Choi, Jun Zhu, Laurie Goodman, Bhargavi Ganesh, and Sarah Strochak, Millennial Homeownership: Why Is It So Low, and How Can We Increase It?, Urban Institute (Jan. 2019), available at https://www.urban.org/sites/default/files/publication/98729/2019_01_11_millennial_homeownership_finalizedv2.pdf.

[97] Lisa Rice and Deidre Swesnick, Discriminatory Effects of Credit Scoring on Communities of Color, National Fair Housing Alliance (2012), available at https://nationalfairhousing.org/wp-content/uploads/2017/04/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf.

were excluded from mainstream affordable credit based on now-protected characteristics, including race and national origin. This exclusion had generational impacts that still contribute to a racial wealth gap today.

Moreover, as credit scoring systems developed through the 1990s, they penalized borrowers who had anything other than mainstream credit. Because many of the factors that make up credit scoring systems rely on a dual credit market and its inherent racial discrimination, credit scoring contributes to the self-perpetuating cycle of restricted access to safe and affordable credit that has a dramatic disparate impact on communities of color.

Unfortunately, despite some improvements, current credit scoring models disadvantage borrowers of color and do not adequately serve today's credit market. These models disqualify many first-time homebuyers with thinner credit files – disproportionately people of color who are likely to constitute a significant share of future potential homeowners. The estimates vary, but the CFPB estimates that 26 million Americans are "credit invisible," meaning they have no file with the major credit bureaus, and 19 million are "non-scoreable" because their credit file is too thin or stale to generate a reliable score from the credit bureaus.[98] These consumers are disproportionately African-American, Latino, low-income, or young adults. Expanding the use of alternative credit scoring models is a critical element to reverse declines in homeownership, particularly for low- and moderate-income communities and communities of color.

H. Student Loans

The interplay between student loan payments and other major life investments and responsibilities is well documented. Research from the National Association of Realtors shows that the usual student loan borrower delays the purchase of their first home by an average of seven years because of student loan debt.[99]

The results of historic and current segregation in higher education, as well as the existing racial wealth gap, makes the burden of student loan debt particularly heavy for African-American and Latino communities. Families of color are more likely to need to borrow for higher education, are likely to have less income with which to pay it, and typically have less of a cushion to withstand future financial shocks, thus contributing to a higher likelihood of delinquency and default on student loan debt. Today, nearly half of Black graduates owe more on their undergraduate student loan after four years than they did at graduation, compared to 17% of white graduates.[100]

Even a degree is no shield from racial disparities: Black bachelor's degree graduates default at five times the rate of white bachelor's degree graduates, and are more likely to default than whites who never

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[98] CFPB, Data Point: Credit Invisibles (May 2015), available at https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf (figures are from 2010 Census).
[99] National Association of Realtors, Student Loan Debt and Housing Report, Oct. 2017, https://www.nar.realtor/research-and-statistics/research-reports/student-loan-debt-and-housing-report.
[100] Brookings Institute, Black-white disparity in student loan debt more than triples after graduation, Oct. 2016, available at https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-aftergraduation/.

finish a degree.[101] Latino bachelor's degree graduates' default at twice the rate of their white peers.[102] In fact, recent research shows that, rather than helping communities of color build wealth, a college education deepens the wealth gap.[103] For example, young African-Americans take on 85% more student debt than their white counterparts for their education and that difference in indebtedness increases by almost 7% per year after leaving school.[104]

Moreover, women graduate, on average, with $2,700 more in student loan debt than men, and because of the gender pay gap, they earn about 26% less, so paying off their debt takes significantly longer. This is especially true for women of color. African-American women graduate with almost 50% more student debt than white and Latina women at 4-year institutions.[105] Approximately 57% of African-American women and 42% of Latina women who were repaying student loans reported that they had been unable to meet essential expenses within the past year compared to 34% of all women.[106]

As a result of their need to borrow more, alongside targeting and financial deception by for-profit institutions and often abusive servicers, a disproportionate percentage of students of color and the majority of black students are unable to pay student debt and will default.[107] This derails their financial and personal lives and subjects them to harsh collection practices than can keep them from achieving the wealth gains promised by a college education. Meanwhile, their debt keeps growing due to unlimited interest accrual and no statute of limitations on student debt. Unless bold, new actions are taken, a generation will be trapped in debt undertaken to try to advance their lives. This has serious implications for the housing market as well. As noted above, the market for new homeownership will be predominately borrowers of color, and long-term student loan debt threatens to shrink the available pool of buyers.

IV. Policy Solutions

As detailed above, America's affordable housing crisis has had a massive and disproportionate impact on communities of color. This crisis deserves a federal response equal to the problem. Instead, in recent years, programs designed to create housing opportunities or assistance have been challenged every budget year. Now is not the time for retreat, now is the time for bold action. We must ensure that every American has the opportunity to live in safe, decent, and affordable housing and double down on our nation's commitment to making all communities places of opportunity. Substantial expansion of existing programs and new initiatives must be considered and implemented. These include:

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[101] Judith Scott-Clayton, The looming student loan default crisis is worse than we thought, Brookings Institution (Jan, 10, 2018), available at https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf.
[102] *Id.*
[103] Houle and Addo, Racial Disparities in Student Debt and Reproduction of the Reproduction of the Fragile Black Middle Class, *Sociology of Race and Ethnicity 1-16* (2018).
[104] *Id.*
[105] American Association of University Women, Women's Student Debt Crisis in the United States, May 2018, available at https://www.aauw.org/research/deeper-in-debt/.
[106] *Id.*
[107] Judith Scott-Clayton, The looming student loan default crisis is worse than we thought, Brookings Institution (Jan, 10, 2018), available at https://www.brookings.edu/wp-content/uploads/2018/01/scott-clayton-report.pdf.

A. Providing Down Payment Assistance for Homeownership Reentry by Families Wrongfully Harmed by the Subprime Lending Crisis

Communities of color lost trillions of dollars during the foreclosure crisis, and evidence shows that many of those borrowers were steered into toxic mortgages even when they qualified for safer and more responsible loans with cheaper costs.[108] Further, the spillover impact of the crisis hurt people in communities of color who did not actually experience foreclosure but happened to live in proximity to foreclosure. CRL estimates this cost to African-American and Latino communities to total $1 trillion.[109]

CRL's research shows that instead of being a boom to homeownership, subprime lending produced a reduction of 1 million homeowners, including 85,000 African-Americans and Latinos.[110] Examining the data further, shows that between 1998 and 2006 only 1.4 million first-time homeowners purchased their home with a subprime loan[111] CRL research shows that most of subprime lending occurred to borrowers who refinanced a primary residence, and that borrowers of color were disproportionately impacted by foreclosure and loss their homes at a greater rate than white borrowers.[112] The disparities in foreclosure held true even after controlling for differences in income between whites and people of color.[113] Upper-income African-American borrowers received subprime loans at 2.7 times a greater rate than upper-income white borrowers.[114] Moreover, upper-income African-American women were 5 times and upper-income Latinas were nearly 4 times more likely to receive a subprime loan than an upper-income white male.[115] The scale of this down payment assistance program must match the huge harm inflicted on these families and communities.

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

[109] Center for Responsible Lending, Collateral Damage, The Spillover Costs of Foreclosure, October 2012, available at http://www.responsiblelending.org/mortgage-lending/research-analysis/collateral-damage.pdf.

[110] Center for Responsible Lending, Subprime Lending: A Net Drain on Homeownership, March 2007, available at https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/Net-Drain-in-Home-Ownership.pdf. CRL derived data on subprime loans used for home purchase versus refinance from a proprietary database for 1998- 2004, and from SMR Research Corp and Inside Mortgage Finance for 2005-2006. The specific percentages by year are shown in the chart below. Totals may not add to 100% because a small percentage of loans in the database are listed as "other purpose."

	1998	1999	2000	2001	2002	2003	2004	2005	2006
% Subprime Refinance	67.2	66.9	60.4	64.8	67.1	67.9	60.5	60.0	56.0
% Subprime Purchase	30.5	31.6	38.5	35.2	32.8	32.1	39.5	40.0	44.0

[111] *Id.*

[112] Center for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, June 2010, available at https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf.

[113] *Id.*

[114] The Opportunity Agenda, Subprime Lending: A Threat to Opportunity in America, available at, https://www.issuelab.org/resources/145/145.pdf?download=true.

[115] Consumer Federation of America, Women are Prime Targets for Subprime Lending: Women are Disproportionately Represented in High-Cost Mortgage Market, December 2006, available at, https://consumerfed.org/pdfs/WomenPrimeTargetsStudy120606.pdf.

B. Providing Down Payment Assistance for First Time Homebuyers With Lower Wealth and/or Credit Scores in Recognition of the Federal Government's Historic Role in Fostering Mortgage Lending Discrimination, an Effort That Will Start Addressing the Resulting Racial Wealth Gap

Seven out of ten future homebuyers will be borrowers of color.[116] A well-functioning housing finance system requires that these borrowers have access. Looking forward, the housing market is increasingly comprised of more families without as much intergenerational wealth. Households of color – especially Latino families – account for the largest growth in households today,[117] making it increasingly important that they are served. Serving these borrowers is important for other Americans as well. These are the borrowers that many older Americans will need to sell their homes to ensure a successful retirement.

C. Requiring National Banks to Ensure that 10% of Their QM Mortgage Lending and Small Business Lending Occurs in Their Communities Where at Least 20% of the Population Has Experienced Poverty for the Last 30 years in Exchange for FDIC Insurance or to Have Their Loans Sold to the GSEs or Ginnie Mae

This idea stems from Rep. Jim Clyburn's 10-20-30 plan that was part of the American Recovery and Reinvestment Act of 2009.[118] According to the American Community Survey estimates for 2012-2016, there are 392 of these counties across the United States.[119] Moreover, the recent creation of Opportunity Zones presents another pathway to achieve this goal. Opportunity Zones are set to become the biggest economic development program in the country. It is estimated that there could be up to $2.2 trillion invested in Opportunity Zones.[120] However, policymakers must take extreme care that the program does not simply become a boon to investors or accelerate patterns of displacement for low-income areas and neighborhoods of color. One way to achieve this goal is to include CDFIs in the process and require investment through CDFIs as many are already serving the void in lending by mainstream banks in underserved communities.

D. Requiring the U.S. Commission on Civil Rights to Investigate the Impact of Lending Discrimination on Families of Color and Have the GAO Conduct a Study on the Cost of Discrimination to Families of Color

Throughout this testimony, the federal government's role in furthering housing discrimination within the mortgage market has been described. Now is the appropriate time to fully investigate the impact of those discriminatory practices on the ability of families of color to build wealth through homeownership in an equitable manner with whites. The U.S. Commission on Civil Rights should convene hearings to probe and complete an official record of this discrimination similar to work done by the Financial Crisis Inquiry Commission following the Housing Crash of 2008. Once an official record is completed, Congress

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[116] Joint Center for Housing Studies of Harvard University, State of the Nation's Housing 2017 (June 2017), available at http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf.
[117] *Id.*
[118] American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 111th Cong. (Feb. 17, 2009).
[119] https://www.everycrsreport.com/reports/R45100.html#_Toc506295929.
[120] Lori Chatman, Opportunity Zones: What They Are, Why They Matter, Affordable Housing Finance (Feb. 26, 2018), available at https://www.housingfinance.com/news/opportunity-zones-what-they-are-why-they-matter_o.

should request that the Government Accountability Office issue a report on the economic impact of the discrimination and offer legislative action that directly addresses this discrimination.

E. Strengthening and Fully Enforcing the Nation's Fair Lending Laws

Since 2006, 561,472 victims of housing discrimination filed complaints with federal agencies charged with protecting them.[121] Segregation continues to hamper our nation's ability to ensure that all Americans live in communities of opportunity. These circumstances called for the Department of Housing and Urban Development (HUD) to issue its long overdue, and statutorily established, Affirmatively Furthering Fair Housing Rule, requiring local communities to develop plans to alleviate segregation. The rule was issued in 2015 after years of development and review. In August 2018, HUD announced that it is revisiting this rule, and there are even calls to repeal it.[122] But weakening the rule would be a major step backward and would delay community unification and equity.

Similarly, there are calls to hobble or even repeal the use of disparate impact analysis and enforcement in lending.[123] This analysis provides that when a practice produces a disparate negative impact on groups, it should continue only if there is a business need for the practice and an alternative approach is unavailable. Continuing this approach is especially important given the exponential growth occurring in the use of artificial intelligence in decision making, including loan eligibility. Machine learning holds much promise, but it also can bring in discriminatory and unnecessary factors with research showing that Latinx and African-Americans pay $250-$500 million in extra interest in fintech lending because algorithms shifted and not removed discrimination.[124]
Disparate impact analysis encourages creative approaches that both increase effectiveness and inclusiveness. This process and the value of disparate impact analysis was recently pointed out, and endorsed by, the largest personal loan company in the country, Lending Club, in its responses to requests for input by the CFPB.[125]

Additionally, there is concern that CFPB will weaken the Home Mortgage Disclosure Act. HMDA requires depository institutions to publicly disclose information about home mortgages. It is an essential tool to identify and address mortgage lending discrimination. CFPB recently released a proposed rule that would increase the HMDA reporting threshold for mortgages, which means that some smaller lenders

[121] Shanti Abedin *et. al.*, Making Every Neighborhood A Place of Opportunity 2018 Fair Housing Trends Report, National Fair Housing Alliance, April 2018, p. 13, available at https://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report_4-30-18.pdf.
[122] Affirmatively Furthering Fair Housing: Streamlining and Enhancements, 83 Fed. Reg. 159 (August 16, 2018), available at https://www.federalregister.gov/documents/2018/08/16/2018-17671/affirmatively-furthering-fair-housing-streamlining-and-enhancements.
[123] The Supreme Court recently held that disparate impact claims are cognizable under the Fair Housing Act. *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project*, 135 S.Ct. 2507 (2015).
[124] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace, Consumer-Lending Discrimination in the Era of FinTech, University of California at Berkeley (Oct. 2018), available at https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.
[125] Comment of Lending Club on CFPB Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, Maintain Disparate Impact Policy (June 23, 2018), available at https://www.regulations.gov/document?D=CFPB-2018-0012-0075.

may not have to report at all.[126] CFPB also announced an advanced notice of proposed rulemaking that would solicit feedback on the costs and benefits of collecting and reporting the data points in the 2015 HMDA rule.[127] Additionally, earlier this year CFPB announced it would no longer host or maintain the HMDA Explorer, a vital and user-friendly tool to provide a clear view of the mortgage market and who it serves. It is essential that CFPB replace the data access tool and ensure no gap in accessibility occurs between the release of the 2018 HMDA data and the launch of a replacement to HMDA Explorer.

Furthermore, FHFA must require that all users of the Common Securitization Platform adhere to the nation's fair lending laws and the GSEs' chartered duty-to-serve public interest mandates. The GSEs should also be required to insert fair housing protections into the eligibility guidelines of all of its affordable housing programs including the Low-Income Housing Tax Credit, State Housing Finance Agency, and other programs. This would include an affirmative obligation to build housing in accordance with the accessibility requirements required by fair housing laws as well as an affirmative obligation to further fair housing.

Taking care to reach rapidly-growing markets of borrowers of color when structuring business practices is good business. And it is a false choice that inclusiveness is incompatible with growth and efficiency.

F. Eliminating Loan Level Price Adjustments

Following the mortgage crisis of 2008, which was found to be caused by Wall Street's appetite for excessive profits, market overcorrections emerged that led to excessive pricing of risk in the system. FHFA instituted LLPAs to offset risk from borrowers with lower credit profiles and smaller down payments, despite compelling evidence that when provided with safe and affordable mortgage loans, these borrowers perform well. Further, these increased fees disproportionately impact potential homebuyers of color and low-to-moderate income families whose ability to save for down payments and credit profiles have been negatively impacted by discrimination and lack of opportunity in the mortgage market.[128] The distribution of GSE capital costs also must be more equitably distributed so that lower wealth households do not disproportionately bear the cost of insuring against another systemic market failure. To this end, utility regulation would help ensure that the GSEs fulfill their public interest mandates. It would also appropriately focus the GSEs' activities and prevent incentives to maximize revenues by serving the most lucrative borrowers and lenders.

G. Reforming and Modernizing FHA

FHA lending played a critical role following the housing crash of 2008. During the recession, as credit standards tightened in the conventional market, the FHA took on a much broader role than it had previously. This was a necessary countercyclical influence in the fallout from the era of subprime

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[126] CFPB Proposes Changes to HMDA Rules (May 2, 2019), available at https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-changes-hmda-rules/; Ben Lane, CFPB proposes new HMDA rules, HousingWire (May 2, 2019), available at https://www.housingwire.com/articles/48953-cfpb-proposes-new-hmda-rules.

[127] *Id.*

[128] For a more detailed discussion of how discrimination contributes to lower credit scores for borrowers of color, see Racial Justice Project of the National Consumer Law Center, Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination (May 2016), available at https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

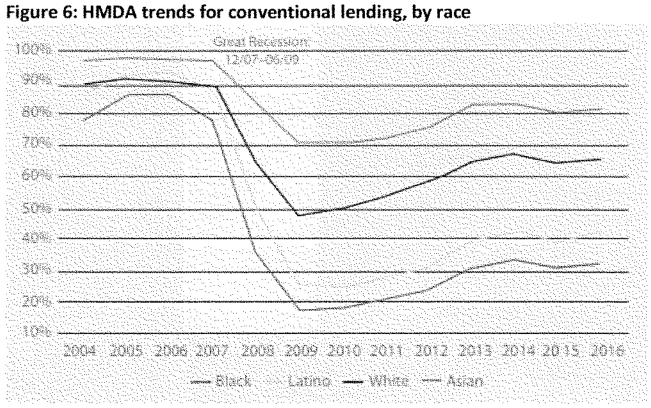
mortgages, but it marked changes within both markets. While FHA has historically provided access to credit to lower-income borrowers and first-time homebuyers, it has emerged and remained the mortgage credit source for over 40% of the low-income home purchase market.

As historically FHA-reliant low- and moderate-income borrowers continue to rely on FHA lending for access to purchase mortgage credit, there are similar FHA lending patterns among borrowers of color. In 2006, Black, Asian, Latino, and white borrowers each received more than 85% of their purchase loans from the conventional market. By 2009, conventional lending market share among Black borrowers had declined dramatically, with Black borrowers receiving just 18.2% of their loans from the conventional market—less than half the rate of conventional lending to white borrowers. While the 2006 conventional market included some of the most problematic subprime loans, this cannot explain the post-recession difference in conventional lending between white borrowers and borrowers of color (Figure 5).

As conventional lending to borrowers of color steeply declined between 2006 and 2009, the FHA share of lending to borrowers of color increased and remains high. FHA has become the primary source of mortgage credit for borrowers of color, including upper-income borrowers who could be well served by conventional lenders (Figure 6). Compared to conventional loans FHA loans can be costlier over the life of the loan, particularly due to the life of the loan premium and lender overlays on FHA loans. Further, increasingly, lenders have also been less willing to make these loans. There is an urgent need for federal regulators to better enforce fair lending requirements to ensure a more robust conventional mortgage market that serves borrowers of color.

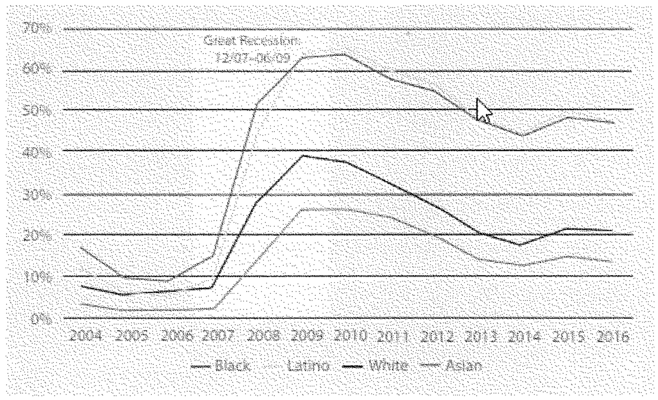
While FHA should not be the only source of mortgage credit for borrowers of color, it does provide a large share of first-time home purchase loans. Thus, FHA is critical and deserve ongoing federal support, and reductions in funding would significantly impact affordable lending. The FHA program must be adequately funded and modernized to ensure its viability.

Figure 6: HMDA trends for conventional lending, by race



Source: CRL calculations of 2004–2016 HMDA purchase loan data

Figure 7: FHA share of all purchase loans by race/ethnicity category, by year, 2004-2016



Source: CRL calculations of 2004–2016 HMDA purchase loan data

1. Technology Funding and Quality Control

Two important and interrelated FHA reforms include reform of the False Claims Act and increased technology funding. There is a recognized need to clarify what types of errors can trigger liability under the False Claims Act. The statute imposes treble damages against anyone who submits a false claim to the government, including FHA insurance payments. Because these treble penalties can cost a far greater amount than the loan itself, this has the potential to decrease the appetite for making FHA insured loans that have only a modest risk of defaulting. This has led to lenders imposing credit overlays on FHA's standards, and contributed to many larger lenders withdrawing from FHA lending entirely. FHA attempted to address the False Claims Act ambiguity by tying loan defects to remedies, but this effort was not implemented due to inadequate funding.

Although FHA received technology funding in the 2019 budget bill, a sustained source of funding is necessary to address desperately needed technology upgrades. FHA's book of business is performing strongly, but this growth has paradoxically worsened FHA's basic operations. Under FHA's authorizing statute, the entirety of FHA's revenue is sent to the Mutual Mortgage Insurance Fund (MMIF) and cannot be used for FHA's operations, even if that funding could significantly improve operational or program efficiency. As a result, FHA's business success has left it stretched to have enough resources to manage its loans. FHA needs increased resources to exercise a reasonable quality control system.

2. FHA Should Eliminate the Life of Loan Premium

Furthermore, FHA should reduce its premiums and eliminate the life of loan premium. As many lower-wealth borrowers and borrowers of color are unable to access the conventional credit market today, high FHA premiums may be keeping many borrowers out of the market entirely, not just shifting from one credit channel to another. According to an analysis from the National Association of Realtors, nearly

400,000 creditworthy borrowers were priced out of the housing market in 2013 due to high FHA premiums.[129]

FHA-insured mortgages require two types of mortgage insurance: upfront mortgage insurance and annual mortgage insurance. The upfront MI premium is currently 175 basis points, or 1.75% of the base loan amount, and it may be rolled into the loan.[130] The annual MI premium is included in a borrower's monthly mortgage payment and varies depending on the loan amount and down payment.[131] Effective July 3, 2013, a borrower who puts down less than 10% can no longer cancel the premium after the loan-to-value reaches 78% or less.[132] Borrowers with a 10% down payment must pay a MI premium for 11 years, while all other borrowers must pay a MI premium for the entire mortgage term.

The increases in the annual premium (*i.e.*, life of loan premium) have had the most significant impact on loan affordability. Between 2011–2014, the annual insurance premiums increased by nearly 150%, while its upfront fees rose by 75%.[133] In January 2015, via executive action, the Obama administration directed FHA to reduce its annual MI premiums by 50 basis points, from 1.35% to 0.85%.[134] Despite this move, the Mutual Mortgage Insurance Fund (MMIF) reached its congressionally mandated 2% threshold in 2015, ahead of schedule.[135] At the beginning of January 2017, FHA reduced the annual MI premium from 0.85% to 0.60%. However, in the Trump administration's first act, moments after the inauguration, this premium cut was reversed.[136] CRL urges FHA to reinstate the previous policy of only requiring borrowers to pay premiums until the outstanding principal balance reaches 78% of the original home value.

Additionally, CRL supports the proposal that first-time homebuyers that complete a HUD-approved housing counseling program could receive a discount on the MI premium. FHA has noted that first-time

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[129] National Association of Realtors, Audit Shows FHA Fund is Healthy, Time to Lower Mortgage Insurance Premiums, Say Realtors (Nov. 17, 2014), available at https://www.nar.realtor/newsroom/audit-shows-fha-fund-is-healthy-time-to-lowermortgage-insurance-premiums-say-realtors. See also Bing Bai, Jun Zhu, and Laurie Goodman, FHA: Time to Stop Overcharging Today's Borrowers for Yesterday's Mistakes, Urban Institute (Jan. 6, 2015), available at https://www.urban.org/urban-wire/fha-time-stop-overcharging-todays-borrowers-yesterdays-mistakes.

[130] See Chart, HUD Mortgagee Letter 2017-07, Suspension of Mortgagee Letter 2017-01 Reduction of FHA Annual Mortgage Insurance Premium Rates (Jan. 20, 2017), at 3-4, available at https://www.hud.gov/sites/documents/17-07ML.pdf.

[131] *Id.*

[132] HUD Mortgagee Letter 2013-04, Revision of FHA Policies Concerning Cancellation of the Annual Mortgage Insurance Premium and Increase to the Annual MIP (Jan. 31, 2013), available at https://www.hud.gov/sites/documents/13-04ML.pdf.

[133] John Griffith, As the FHA's Finances Continue to Improve, It's Time to Focus on Access, Enterprise Community Partners, Inc. (Nov. 18, 2014), available at https://www.enterprisecommunity.org/blog/2014/11/fhas-finances-continue-improve-its-time-focus-access.

[134] Trey Garrison, It's official: Obama to direct FHA to cut mortgage insurance premiums, HousingWire, Jan. 7, 2015, available at https://www.housingwire.com/articles/32533-its-official-obama-to-direct-fha-to-cut-mortgage-insurance-premiums.

[135] The MMIF capital ratio was 0.41% in 2014 and reached 2.07% in 2015. Ben Lane, FHA business explodes: Reaches capital mandate for first time since 2008, HousingWire, Nov. 16, 2015, available at https://www.housingwire.com/articles/35614-fha-business-explodes-reaches-capital-mandate-for-first-time-since-2008.

[136] HUD Mortgagee Letter 2017-07, Suspension of Mortgagee Letter 2017-01 Reduction of FHA Annual Mortgage Insurance Premium Rates (Jan. 20, 2017), available at https://www.hud.gov/sites/documents/17-07ML.PDF.

home buyers who partake in counseling experience a 30% reduction in default and serious delinquencies as compared to first-time buyers who do not partake in counseling.[137]

3. DACA

Numerous news outlets have reported that HUD appears to no longer consider recipients of Deferred Action for Childhood Arrivals (DACA) as eligible for FHA loans.[138] In response to Congressional letters and other inquiries, HUD stated it had not changed its formal policy. However, it appears HUD has at least made an informal policy change to interpret its regulations and guidance differently and to now deny DACA recipients. This has had a chilling effect on potential FHA borrowers as well as lenders. HUD must clarify its position and ensure that DACA recipients are eligible for FHA loans without question.

H. Strengthening the Community Reinvestment Act

Following passage of the Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1974, Congress passed the Community Reinvestment Act (CRA) in response to discriminatory redlining practices that excluded certain communities from the financial marketplace. A primary goal of CRA was to stop neighborhood level lending discrimination that was not targeted at individual borrowers, but that denied credit to whole communities. A key CRA principle is that banks should lend in the areas in which they do business but should not be allowed to cherry-pick some areas over others while enjoying the benefits of a banking charter, deposit insurance, and other public support. By requiring banks to address the credit needs of the communities where they take deposits, the CRA has played a crucial role in making credit available to communities of color and increasing investment in low- and moderate-income neighborhoods for over 40 years. The CRA continues to be an important tool for fostering access to credit for these communities today. Since 1996, banks have increased their small business and community development lending by an additional $2 trillion to meet their CRA requirements.[139]

CRA requirements must remain robust so that banks lend to borrowers and small businesses in the communities where they are located to ensure that the benefits they have from a bank charter are equitably shared. Relaxing CRA requirements could lead to a 10-20% reduction in lending for LMI communities and a total loss up to $105 billion in loans over a five years period.[140] Ultimately, this loss would be terrible for the overall economy, which benefits from the investment in LMI communities and consumption by LMI customers. Furthermore, if the bar for compliance is lowered, there would be a severe reduction in lending for the communities that continue to remain underserved by the banking sector despite reports of record profits.

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[137] Federal Housing Administration (FHA): Homeowners Armed With Knowledge (HAWK) for New Homebuyers, 79 Fed. Reg. 27896 (May 15, 2014), available at https://www.federalregister.gov/documents/2014/05/15/2014-11152/federal-housing-administration-fha-homeowners-armed-with-knowledge-hawk-for-new-homebuyers.
[138] Ben Lane, Dreamers denied: Evidence mounts FHA is not backing DACA mortgages, HousingWire (March 21, 2019), available at https://www.housingwire.com/articles/48492-dreamers-denied-evidence-mounts-fha-is-not-backing-daca-mortgages.
[139] National Community Reinvestment Coalition, Forecast: Banking Rule Changes Could Reduce Lending in Poor Neighborhoods by $105 Billion (Sept. 6, 2018), available at https://ncrc.org/forecast-banking-rule-changes-could-reduce-lending-in-poor-neighborhoods-by-105-billion/.
[140] *Id.*

V. Conclusion

Present-day homeownership disparities did not occur by happenstance. In fact, the housing finance system is operating exactly how it was designed. As detailed above, today's homeownership rate gap between whites and people of color is in large part due to historic federal housing policy choices that created a "state-sponsored system of segregation."[141] These policy choices deliberately excluded people of color from being able to build wealth through homeownership. Today African Americans have the same rate of homeownership as they did in 1968 when Congress enacted the Fair Housing Act. Congress must address the federal government's role in perpetuating mortgage discrimination. The families stymied by the millstone of racism deserve a chance to succeed. Bold new ideas are needed to create equity in mortgage lending and ensure that all credit worthy borrowers have access to the safe and affordable mortgage loans they deserve.

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

Housing Initiative Partnership, Inc.

30 YEARS of Housing Security | Financial Stability | Community Success

Testimony of Carmen Castro

Managing Housing Counselor, Housing Initiative Partnership

Before the U.S. House Financial Services Committee

Subcommittee on Housing, Community Development and Insurance

A Review of the State of and Barriers to Minority Homeownership

May 8, 2019

Chairman Clay, Ranking Member Duffy, and members of the committee:

Thank you for the opportunity to testify today. My name is Carmen Castro, and I am the Managing Housing Counselor at Housing Initiative Partnership. We are a non-profit affordable housing developer and HUD-approved Housing Counseling Agency located in Prince George's County and Montgomery County, Maryland. Our Housing Counselors have provided direct counseling, education and advocacy to over 20,000 households over the past 20 years to help them enter homeownership, avoid foreclosure, secure affordable rental housing and strengthen their personal finances.

It is a privilege for me to have this opportunity to share the experiences of our housing counselors and the households with whom they work. Housing counselors are impartial advisors to low-and-moderate income households, exploring all aspects of their finances and financial decisions, with the goal of helping households successfully navigate today's complex housing realities. Housing counselors are often the only persons to whom low-and-moderate income households have revealed their private financial habits. Counselors take a deep look at client's monthly bank statements, spending habits, debts, credit reports, employment history, income, and housing dreams and goals. The counselor uses this personal information to help their client make informed decisions to secure safe and affordable housing.

Housing counselors at Housing Initiative Partnership have witnessed first-hand the barriers minority communities confront in their quest for sustainable homeownership. Our agency has the privilege of working in two very different communities. Prince George's County, Maryland is one of the most affluent majority African American communities in the country. The county is 64% African American, 19% Hispanic, and 13% White, with an average household income of $81,000. Neighboring Montgomery County ranks as the country's 25th most diverse county: 33% of the population in the county is foreign born; of those, 38% came from Latin America, 36% from Asia, 15% from Africa, 10% from Europe, 1% from North America, and less than 1% from the Pacific Islands.

Despite the distinct profiles of these counties, and the very distinct histories of African American households as compared with immigrant households, the minority households our counselors work with in both counties confront similar homeownership challenges. The two primary challenges to securing homeownership are the lack of generational wealth and its repercussions, and the shortage of affordable housing.

Most of the African American and immigrant populations we work with do not have parents, grandparents or great-grandparents that benefitted from the federal programs and consumer protections that allowed white families to build generational wealth. With regard to building wealth through homeownership, African Americans in generations past were intentionally excluded from access to mortgage programs through red-lining and other discriminatory lending practices. Foreign-born immigrant households lack family wealth, having frequently arrived in the US with little savings after fleeing economic hardship in their home countries.

During the early days of the foreclosure crisis, our agency saw first-hand the way in which the housing market exploited these minority households that lacked generational wealth. In 2008, the year of the housing collapse, our office was inundated with calls for assistance. We worked with 569 defaulting households in 2008, double that number in 2009, and triple that number (1,538 households) by 2010. A vastly disproportionate percentage – **98%** – of those defaulting homeowners were minority households. On average during the crisis, the homeowners with whom we worked were 63% Black or African-American, 31% Hispanic, and 4% Asian. To a person, our clients presented their counselors with the most toxic loan documents we had ever seen. Among the predatory features included in our clients' loans were high fees, interest-only payments, prepayment penalties, and teaser rates that spiked to double digits within the first two years.

We now know that minority populations were specifically targeted for the most dangerous predatory loans during the housing bubble. We know that lenders created these predatory products to be easily accessible specifically to these populations that had been historically excluded from access to credit.

The result? The African-American and immigrant households we worked with watched as their hard fought financial gains and accumulation of equity slipped through their hands like sand, draining their wealth away at an alarming and devastating rate. One example is an African-American family who sought our foreclosure prevention services in 2008. They had a solid income – the mother worked full-time for the federal government and the father had a job with UPS. They had saved $9,000 for a downpayment, and purchased a home for $300,000, with what turned out to be a predatory loan with large balloon payment, and an interest rate that spiked to 15% by the time we met with them in 2008. A housing counselor helped him negotiate a loan workout that reduced the interest rate to 4% for the life of the loan. That positive outcome was overshadowed by an unfortunate financial legacy of the housing bust: they were saddled with negative equity in the amount of $110,000.

Not only have homeowners like the above African-American family lost their savings and good credit, but also their home values have not recovered to the pre-recession value. In Bowie, Maryland, for example, as many as 1 in 5 homeowners are underwater on their mortgages, and many of these homeowners are still as much as $50,000 to $100,000 underwater. These underwater homeowners choose to stay in their homes despite the financial burden of negative equity for many reasons: family stability, schools, connection to their home and neighborhood, and lack of other affordable rental housing options.

Homeownership plays a central role in shaping family wealth for the middle class. The minority households that have been both historically excluded from access to credit, and then exploited by predatory lenders in the housing bubble, deserve large-scale responsive policies that will redress the harms caused by exclusive and predatory practices, and create access to sustainable homeownership.

On the purchase side, many minority households we work with have sufficient employment income to enter homeownership, but living in the high cost DC area rental market has strained their ability to save for a down payment and pay down debts – both of which are required to qualify for a mortgage. One of our client's experiences illustrates these challenges. Her family emigrated from the Republic of Congo in 1995 and she began working as a nursing assistant, and her husband later secured work at an auto shop. When she met with a counselor in 2016, her gross household income was $6,000 a month but her credit was low due to the high cost of living in Montgomery County. She worked steadily with a housing counselor for over two years, often meeting monthly, to adhere to a very strict budget in order to pay down credit card debt and accrue $12,000 in savings. In July 2018, she qualified for an FHA loan to purchase a $320,000 townhouse in Frederick, Maryland. The FHA loan included $5,000 of downpayment and closing cost assistance. While this product allowed her to access homeownership, it comes at a high cost. She was provided a higher than market interest rate, and required to pay high mortgage insurance fees. Between the upfront mortgage insurance premium and the $218 monthly mortgage insurance payments, she will pay an additional $89,000 over the life of her mortgage loan.

The advantages of current mortgage products designed for low wealth moderate-income purchasers are often offset by high fees. The availability of safe affordable loan products without these increased often-prohibitive fees (mortgage insurance premiums, lifelong mortgage insurance, higher interest rates) are needed to provide the on-ramp for households of color so that they can accrue the benefits of homeownership. We would like to see federal loan products provide low-wealth mortgage borrowers safe and sustainable mortgages without the accompanying fees.

Finally, any federal response to increase homeownership for low-wealth minority communities should include housing counseling. Research has consistently demonstrated that loans made to borrowers who have received pre-purchase counseling perform better than loans made to comparable borrowers who did not receive pre-purchase counseling.[1] A 2013 study looked at 75,000 mortgages and found that borrowers who received pre-purchase counseling and education were more than 30% less likely to become seriously delinquent than similar borrowers who did not receive pre-purchase counseling and education.[2]

In conclusion, we hope Congress will improve access to sustainable homeownership for the minority communities we work with by creating lower cost loan products for low-wealth families, and embedding housing counseling into the purchase process.

[1] *See, e.g.*, Neil S. Mayer & Kenneth Temkin, *Pre-Purchase Counseling Impacts on Mortgage Performance: Empirical Analysis of NeighborWorks America's Experience* (p. iii) (March 7, 2013); Marvin M. Smith et al., *The Effectiveness of Pre-Purchase Homeownership Counseling and Financial Management Skills* (April 2014).
[2] Mayer & Temkin, *supra* note 1.

The Heritage Foundation

CONGRESSIONAL TESTIMONY

Closing the Gap in Wealth Creation with Economic Opportunity

Testimony before
The Subcommittee on Housing, Community Development, and Insurance

United States House of Representatives

May 8, 2019

Joel Griffith
Research Fellow, Financial Regulations
The Heritage Foundation

My name is Joel Griffith. I am a Research Fellow in Financial Regulations at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Efforts to expand home ownership through government programs or policies are often well-intentioned. However, good intentions are an insufficient basis for public policy. Directing resources to the housing sector through government subsidies, guarantees, and mandates may temporarily increase home ownership rates, dramatically increase home prices, and financially benefit select special interests. However, this negatively impacts affordability for all—including minorities—and distorts economic growth.

Furthermore, a focus on simply expanding home ownership fails to recognize that home ownership may be indicative of the financial health of a family; but extending a borrower credit through use of a government guarantee does not suddenly improve a borrower's financial health, enhance his skillset, or expand his economic opportunities. In other words, home ownership results from financial health, a profitable skillset, and economic opportunity.These desirable conditions are not created by virtue of owning a home.

Closing the gap in wealth accumulation—and multiplying the opportunities to create such wealth—requires an approach different from government subsidies, guarantees, and mandates. Congress can—and should—make housing more affordable, and diminish risk, by *shrinking* the federal role in housing finance. State and local governments should eliminate artificial barriers to affordability and economic growth. To better equip the next generation to prosper, parents should be enabled to select alternatives to underperforming public schools.

Home ownership can help families build household wealth over time. For many, a personal residence represents the primary or even the majority of a family's financial assets. Nationally, owner's equity in real estate reached a record $15.2 trillion in 2018.[1]

However, data show the heavy government involvement in the home finance sector failed to substantially increase homeownership; instead, it yielded a short-term and unsustainable increase in home ownership rates. Robust homeownership was established in the U.S. long before the government became heavily involved in the housing market. From 1949 to 1968 (the year that Fannie Mae was allowed to purchase non-government-insured mortgages), government-backed mortgages never accounted for more than 6 percent of the market in any given year.[2] Yet the homeownership rate was 64 percent in 1968, virtually identical to what it is now after decades of heavy government involvement in housing finance.

Home ownership for blacks grew from 35 percent in 1950, to 42 percent in 1970, and to 44 percent in 1980. By 1990, black home ownership had actually declined slightly to 43 percent despite a decade of secondary mortgage market expansion.[3] In 2019, the black home ownership rate is back to 1970 levels—at 41 percent.[4]

Just how large was the expansion of government influence in the housing finance market? From 1990 to 2003, Fannie and Freddie went from holding 5 percent of the nation's mortgages ($136 billion) to more than 20 percent ($1.6 trillion).[5] Investors who purchased Fannie and Freddie's bonds and mortgage-backed securities (MBSs) ultimately provided funds for people to finance homes, and these bondholders and MBS investors enjoyed implicit government backing. It was common knowledge that taxpayers would make good on promised cash flows if either Fannie or Freddie were to ever fail financially. This feature led to riskier lending than would have taken place without such guarantees because it allowed investors to ignore the true financial risks of those underlying mortgages and securities.[6]

GSEs dominated the mortgage market in the years leading into the crisis. Trillions of dollars of credit flowed to those with lower credit scores, minimal income documentation, less-stable employment history, and scant down payments.[7] This helped produce a doubling in overall home prices from 1998 to 2006. The collapse and financial misery which followed hurt many of the intended beneficiaries of these government mandates, subsidies, and guarantees. The fact that homeownership rates for blacks (and for the nation as a whole) are nearly unchanged now compared with 1990 indicates additional leverage should not be relied upon to increase the rate of ownership. Rather than recognize this reality, congressional inaction has expanded the government's role in the wake of the prior financial

[1] Board of Governors of the Federal Reserve System (US), Households; Owners' Equity in Real Estate, Level [OEHRENWBSHNO], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/OEHRENWBSHNO, May 6, 2019.

[2] Norbert J. Michel and John Ligon, "GSE Reform: The Economic Effects of Eliminating a Government Guarantee in Housing Finance," Heritage Foundation Backgrounder No. 2877, February 7, 2014, p. 6, https://www.heritage.org/housing/report/gse-reform-the-economic-effects-eliminating-government-guarantee-housing-finance.

[3] U.S. Census Bureau, Historical Census of Housing Tables Ownership Rates, https://www.census.gov/hhes/www/housing/census/historic/ownrate.html.

[4] U.S. Census Bureau, Homeownership Rate for the United States: Black or African American Alone [BOAAAHORUSQ156N], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/BOAAAHORUSQ156N, May 6, 2019.

[5] Ibid.

[6] The Congressional Budget Office (CBO) advises that "the unpriced implicit guarantee, which reduced interest rates for mortgage borrowers, helped cause more of the economy's capital to be invested in housing than might otherwise have been the case." Congressional Budget Office, Transitioning to Alternative Structures for Housing Finance: An Update, August 2018, p. 7, https://www.cbo.gov/system/files?file=2018-08/54218-GSEupdate.pdf.

[7] "[B]y the middle of 2007, there were approximately 27 million subprime and Alt-A mortgages in the U.S. financial system—half of all mortgages outstanding—with an aggregate value of over $4.5 trillion." Peter J. Wallison, "Dissent from the Majority Report of the Financial Crises Inquiry Commission," American Enterprise Institute, January 14, 2011, p. 9, http://www.aei.org/wp-content/uploads/2011/01/Wallisondissent.pdf.

crisis, leading once again to higher home prices and increased taxpayer risk.

The continued government guarantees and subsidies in the wake of the housing market collapse have dangerously propped up housing prices as capital flowed back into the housing market. After bottoming out 27 percent below the peak, home prices have spiked 54 percent since 2012, more than quadruple the rate of inflation.[8] Adjusted for inflation, residential property prices in the United States by the middle of 2018 had reached the levels of 2004—as the prior bubble neared its 2006 climax.[9]

The home-price-to-income ratio now stands at more than 3.5 (nearing the 4.0 peak in 2006), significantly higher than the historic norm of around 2.8.[10] The decline in 30-year fixed interest rates from an average of 6.6 percent at the prior peak to a low of just 3.88 percent as the recovery began masked the impact of the rising home costs on affordability. Indeed, with mortgage rates now exceeding 4.6 percent, affordability concerns are beginning to surface again. Mortgage payments on median-priced homes as a percentage of income bottomed out at just 12.4 percent in late 2012 as interest rates dropped and home prices sank. This mortgage-payment-to-income ratio is now nearing 18 percent—the highest level since 2008.[11] A return to 6.6 percent 30-year fixed mortgage rates (still below the historical average) would increase a mortgage payment by 25 percent even with no increase in home prices.

Inducing a continued misallocation of capital to the housing sector through subsidies and government guarantees of MBSs will perpetuate inflated prices, deprive other sectors of needed financial resources, and place the burden of catastrophic risk on the federal taxpayer. It is difficult to argue that these policies improve the status quo for anyone other than the lenders, securitizers, and MBS investors who will gain additional federal protections.

Federal Housing Reforms: Several basic federal housing reforms would substantially diminish the negative consequences of the current system.[12] Based on The Taxpayer Protection Housing Finance Plan, a proposal authored by American Enterprise scholar Ed Pinto and other contributors, these policy changes include the following:

- Eliminate the geographic price differentials for conforming loan limits.
- Narrow the GSEs' focus to the financing of primary homes. This change involves eliminating support for second homes, vacation homes, investment properties, and cash-out refinancing. In particular, subsidizing cash-out refinances impedes the likelihood of middle class families accumulating net worth.
- Begin a broader reduction in conforming loan limits over five to 10 years.

As it stands now, approximately 90 percent of GSE volume is devoted to refinances, investor purchases, lower loan-to-value (LTV) loans, and pricier homes purchased by higher income earners.[13] In other words, the current system—itself an

[8] S&P Dow Jones Indices LLC, S&P/Case-Shiller U.S. National Home Price Index [CSUSHPINSA], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CSUSHPINSA. The Case-Shiller Home Price Index is an index that tracks home prices given a constant level of quality. See S&P Dow Jones Indices, "Real Estate: S&P CoreLogic Case-Shiller Home Price Indices," https://us.spindices.com/index-family/real-estate/sp-corelogic-case-shiller.

[9] Board of Governors of the Federal Reserve System, Federal Reserve Bank of St. Louis, Series QUSR628BIS, https://fred.stlouisfed.org.

[10] Zillow Research, "Data: Definitions–Other Metrics," second-to-last bullet point: "Mortgage Affordability, Rental Affordability, Price-to-Income Ratio, and Household Income are calculated as a part of Zillow's quarterly Affordability Indices." https://www.zillow.com/research/data/(accessed December 13, 2018).

[11] Ibid.

[12] Peter J. Wallison and Edward J. Pinto, eds., "The Taxpayer Protection Housing Finance Plan: Gradually Winding Down Fannie Mae and Freddie Mac and Improving the FHA," American Enterprise Institute, January 2018, p. 21, https://www.aei.org/wp-content/uploads/2018/02/Taxpayer-and-Home-Buyer-Protection-Housing-Finance-Plan-1.26.18.pdf.

[13] Peter J. Wallison and Edward J. Pinto, eds., "The Taxpayer Protection Housing Finance Plan: Gradually Winding Down

extension of the failed GSE framework—does little to broadly support homeownership.

Enacting these reforms will enhance housing affordability (particularly for first-time home buyers), diminish systemic and taxpayer risk, and result in less personal debt and more personal savings.

Zoning and Regulations. State and local governments should eliminate artificial barriers to affordability and economic growth. Federal housing reform cannot fully mitigate the suppression of opportunity by these misguided local policies. Regulations are costly to businesses and individuals, they lower real incomes, reduce entrepreneurship, exacerbate income inequality, and increase the price of consumer goods. Requirements for unionized labor, minimum wages, occupational licensing, and zoning restrictions are just a few examples. A strong measurable relationship exists between increases in regulatory restrictions and increases in poverty.[14] Regulatory costs are regressive, harming lower-income Americans the most forcing businesses that cannot compete to prematurely automate operations or become more selective in hiring.[15]

The unintended consequences of high regulatory burdens are often hard to see as they fall on those least equipped to navigate the bureaucracy. Reducing and streamlining labor, zoning, and business restrictions could go a long way toward increasing opportunity and prosperity in the minority communities disproportionately affected by these burdens.

Education Choice. Failing schools contribute to a relative lack of education, marketable skills, and other forms of human capital, which directly impacts earnings capacity. To better equip the next generation to prosper, parents should be enabled to select educational alternatives for their children. Many of the underperforming public schools are located in economically deprived areas with a disproportionately large minority population.[16]

Elevated numbers of students drop out before graduation; many graduates lack proficiency in basic reading, writing, math and specialized skills.[17] The government granted education monopoly fails millions of students who are subsequently unable to effectively compete in the labor market. Education choice options that allow students and parents to choose the best school for them, have been shown to help the poorest students attain better outcomes over government assigned schools.[18]

Over time, the opportunity gap between minorities and the rest of the nation will close due to enhanced educational quality. This will translate into greater income and wealth accumulation.

Conclusion: Optimally, Congress will work to make housing more affordable by gradually removing federal guarantees and subsidies and eliminating federal mandates. The economy will further benefit as

Fannie Mae and Freddie Mac and Improving the FHA," American Enterprise Institute, January 2018, pp. 12 and 13, https://www.aei.org/wp-content/uploads/2018/02/Taxpayer-and-Home-Buyer-Protection-Housing-Finance-Plan-1.26.18.pdf (accessed December 13, 2018).

[14] Dustin Chambers, Patrick A. McLaughlin, and Laura Stanley, "Regulation and Poverty: An Empirical Examination of the Relationship between the Incidence of Federal Regulation and the Occurrence of Poverty across the States," Mercatus *Working Paper*, April 2018, https://www.mercatus.org/system/files/chambers-regulation-poverty-mercatus-working-paper-v1.pdf.

[15] Janna E. Johnson and Morris M. Kleiner, "Is Occupational Licensing a Barrier to Interstate Migration?," National Bureau of Economic Research *Working Paper* No. 24107, December 2017, https://www.nber.org/papers/w24107.

[16] Duncombe, Chris. "Unequal Opportunities: Fewer Resources, Worse Outcomes for Students in Schools with Concentrated Poverty," Commonwealth Institute, October 26, 2017, https://www.thecommonwealthinstitute.org/2017/10/26/unequal-opportunities-fewer-resources-worse-outcomes-for-students-in-schools-with-concentrated-poverty/.

[17] *The Condition of Education 2018*, National Center for Education Statistics, U.S. Department of Education, 2018, p. 4, https://nces.ed.gov/programs/coe/pdf/coe_cnb.pdf.

[18] Jason Bedrick and Lindsey M. Burke, "The Next Step in School Choice," National Affairs, Winter 2015, https://www.nationalaffairs.com/publications/detail/the-next-step-in-school-choice.

the artificially large flow of capital to the housing market is allocated to other sectors. State and local governments share a responsibility to eliminate artificial barriers to housing affordability and economic growth. In order to expand the capacity to accumulate wealth and have access to economic opportunity, states should pursue policies expanding educational choice. Far too many children are trapped in schools inadequately equipping them to succeed. These steps to diminish government interference in housing finance and to unlock human potential will expand economic opportunities for all.

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U.S. House Committee on Financial Services
Subcommittee on Housing, Community Development and Insurance Hearing:
"A Review of the State of and Barriers to Minority Homeownership."

May 8, 2019

Testimony by Jeffrey Hicks
President of the National Association of Real Estate Brokers

Chairman Clay, Ranking Member Duffy and Distinguished Members of this Committee, thank you for holding this hearing, and for giving me the opportunity to testify about the important issue of minority homeownership in America.

My name is Jeffrey Hicks, from Atlanta, Georgia, and I am the National President of the National Association of Real Estate Brokers (NAREB). Founded in 1947, NAREB is the oldest predominately Black real estate trade association in America. The primary mission is reflected in NAREB's motto, ***Democracy in Housing***. For 72 years the association has worked to ensure that all Americans have equal access to homeownership opportunities in urban, suburban and rural communities throughout the United States and equal opportunity in the real estate profession for Black Americans. I am honored to be here today to provide our perspectives on what NAREB believes to be the Barriers to Minority Homeownership in the United States.

BACKGROUND

Annually, NAREB publishes the State of Housing in Black America Report (SHIBA). **The 2018 edition examined the need for federal policies to address and to bolster the rate of Black American homeownership since previous federal policies discriminated against Blacks which helped to create a disparity in Black American homeownership which lags a whopping 30% behind that of White Americans.** Jim Carr, Coleman A. Young Endowed Chair of Urban Affairs at Wayne State University and senior writer of the 2018 SHIBA Report writes, *"Federal housing regulators and agencies have aggressively pursued lending practices and policies that make access to homeownership more challenging for Black Americans."* It is against this backdrop that I give my testimony.

Our nation has a very complicated and checkered history with providing equal and equitable access to homeownership to Black Americans. At the end of World War II, when Black Americans sacrificed their lives for the cause of freedom, dignity and human rights, the United States federal government created an economic divide between Blacks and Whites. *"Black veterans and their families were denied the multi-generational, enriching impact of home ownership and economic security that the G.I. Bill conferred on a majority of white veterans, their children, and their grandchildren."* Unequal implementation of the G.I. Bill, along with federal government policies and practices at the Federal Housing Administration (FHA) including the redlining of Black neighborhoods were leveled against Black veterans. But at the same time financing the construction of suburbs restricted to Whites-only and providing subsidized mortgage financing for Whites-only set the stage for today's wealth and homeownership gap statistics.

In 2015, NAREB launched the "Two Million New Black Homeowners in Five Years Program (2MN5)" with the goal of creating two million new Black American homeowners over five years' time. As NAREB has implemented this program, it has become painfully clear that in order to meet this objective we must have reforms to the public policies and private practices that address the structural and systemic discrimination embedded in the housing finance system. Together with Congress, we must overcome the discrimination that continues to limit Black homeownership.

The homeownership rate for Black Americans is lower today than before the passage of the Fair Housing Act of 1968...**41.1% Black vs. 73.2% White**, U.S. Census data for First Quarter 2019. The reason for this "dismal reality," as stated in NAREB's most recent SHIBA report, is "that Blacks have never enjoyed equal and equitable access to mainstream mortgage credit. Rather, Black families attempting to become homeowners have largely been trapped in a vicious cycle of predatory mortgage schemes or by an absolute denial of access to home loans."

Access to mortgage credit is the largest gatekeeper to the American Dream of homeownership. Since the Great Depression or for the last 80 plus years, the U.S. government and its quasi-government agencies and enterprises have created winners and losers for those that want to become homeowners. For Black people, the path to homeownership is often filled with racial and discriminatory barriers, both individual and institutional.

Again, as stated in the 2018 edition of the SHIBA Report, "The Federal Housing Finance Agency (FHFA) continues to support Fannie Mae's and Freddie Mac's reliance on an outdated credit-scoring model and their practice of charging fees that far exceed reasonable prospective losses resulting from loans insured by the agencies." The SHIBA Report also notes that based on the current credit models used by Fannie Mae and Freddie Mac which are based upon 2017 Home Mortgage Disclosure Act data, Black applicants, overall denial rates for home-purchase loans at 18 percent were more than double those of non-Hispanic White applicants at 9 percent.

NAREB continues to make access to affordable and sustainable home loans a high priority on our advocacy agenda. In fact, the last three NAREB State of Housing in Black America Reports, highlighted the promise of newer credit scoring models to expand mortgage-credit access to borrowers who are potentially shut out by the outdated credit models used by FHFA, Fannie Mae and Freddie Mac. When Congress passed legislation to increase competition for scores, it represented a positive and bold step forward for the mortgage and real estate industries, and potential Black homeowners.

Our annual State of Housing in Black America report has repeatedly noted that homeownership rate among Blacks has been declining from its high of nearly 50 percent in 2004 to just above 41 percent today. Sadly, that rate is largely unchanged from the Black homeownership rate in 1968. It is testament to the impact of federal policy and racial bias. Discrimination throughout the homebuying process, as well as cutbacks in government support for homeownership is taking a toll on potential Black homebuyers, even as our unemployment rate improves.

The reality is that the Fair Housing Act of 1968 had cracks and flaws that were and are being easily exploited. Even with many amendments over the years, the law is not stemming discrimination in the housing market. The National Fair Housing Alliance estimates that more than four million instances of housing discrimination take place each year, and only a handful are ever challenged. Housing experts, such as scholar Richard Rothstein, find that segregated neighborhoods are not an accident, but the result of laws and policies passed by local, state and federal governments that promote segregation and discriminatory practices. These practices continue to restrict families of color from certain communities and neighborhoods.

It is not just lending practices and modern versions of redlining that are threats to minority homebuyers. Government policies are also of grave concern. At some point, Congress will consider legislation to reform the housing finance industry, and some of the proposals already aired – covered bonds, higher down payments, prepayment penalties, elimination of the 30-year mortgage and payment for government guarantees – would limit homeownership to the wealthy and the privileged, as it was before the 1930s. Homeownership for Blacks and working families would drift even further away and become unattainable for many people.

Buying a home is one of the few vehicles that working families and people of color have used to accumulate wealth and create financial security. Equity built up in homes over the decades allowed many Blacks to comfortably retire, pay for college educations for their children and start new businesses. On average, home prices appreciate annually about 3.6 percent, allowing owners to build equity. **Homeownership has also been linked to higher academic achievement for children, safer neighborhoods and better health outcomes**.

For these reasons, NAREB has adopted three policy principles and practices that can work to increase homeownership among minorities.

NAREB Policy Recommendations to Increase Black Homeownership

1. **Promoting Homeownership as a High Priority for Public Policymakers:**
   - NAREB calls for the passage of The **American Dream Down Payment Savings Plan**, a proposal with bipartisan support that would function, from a tax perspective, like the 529 College Savings Plan. Potential homebuyers would be allowed to save in an authorized account, where the savings could grow and be removed for the specified purpose of a tax-free down payment for purchasing a home.
   - Preservation of an affordable 30-year fixed-rate mortgage
   - Support for Mortgage Interest Deduction

2. **Loan Level Equality**: The absence of hereditary or arbitrary class distinctions, biases or privileges in the mortgage origination process:
   - Same approval rates
   - Same pricing
   - Same terms offered for similarly situated borrowers
   - Eliminate neighborhood, zip code, or census tract price adjustments
   - Eliminate Loan Level Price Adjustments (LLPAs)
   - FHA Down Payment Assistance and underwriting changes of 2019 (rollback)

Our nation needs a fairer mortgage and underwriting process. When borrowers meet a minimum threshold for approval, then all interest rates and costs must be the same for everyone. We must have loan level equality -- the same approval rates, pricing and terms for similar borrowers without adjustments for neighborhoods, zip codes or census tracts. We must stop lenders and secondary markets from cherry picking and charging more for applicants of color, making their costs prohibitively higher.

3. **Non-Bank Financial Institutions Should Have an Accountability Structure:**

- Examine their lending practices to ensure fair, equitable, and non-discriminatory origination, pricing, and terms. This would also include greater accountability and modernization of the Community Reinvestment Act to eliminate loopholes that limit access to mortgage credit to existing and potential Black homeowners.

- There is a growing concern about the lack of regulations for non-deposit mortgage lenders. While these entities are the growing force, now more than 50 percent of all mortgage originations, yet there is very little federal regulatory accountability. Thus, there are no requirements of the Community Reinvestment Act or data collection under the Home Mortgage Disclosure Act. On the one hand, they have expanded lending to underserved populations, but they do so without examination or review of their lending patterns, pricing practices or approval and denial rates. We are concerned about this lack of accountability, and what it could mean in the future with a slower economy.

IN SUMMARY

NAREB believes these policy changes can help boost homeownership, not only for Black Americans, but also for all Americans, and allow more working families the opportunity to achieve the American Dream of homeownership. We must make homeownership a priority again!

Over my 26-year career, I've experienced the joy when a family walks through the front door for the first time as a homeowner, the pride that emboldens them and the opportunities homeownership creates. I have also experienced the pain and sorrow, when prospective minority homebuyers have played by the rules, had decent credit, good salaries, strong work history and their mortgage application was denied or priced out of what they could afford.

This shouldn't be happening in our America.

Black Americans are experiencing housing discrimination that is limiting financial growth, fueling the wealth gap and robbing them of financial security. Far too many people of color are missing out on the American Dream of homeownership. One of the few pathways to prosperity is being denied for too many Black families. This must change.

In addition to the adoption of NAREB's policy agenda, we need lawmakers, policymakers, local officials, homebuilders and the housing finance industry to promote homeownership. I fear the value of homeownership is being lost on our young people and will be lost on future generations. We need to vigorously renew the importance of homeownership to all families, regardless of their race or ethnicity. And, we need to promote the positive effects on local and national economies and communities across the country. We need for families to reject the false narrative that renting is better than homebuying. We must restore the nation's faith and commitment to homeownership so we can envision and experience a better America.

Homeownership must remain the American Dream so future generations can flourish.

Our great nation will never achieve its promise of a truly integrated and equitable society until the barriers to minority homeownership and economic justice are torn down. That will require an honest, concerted and consistent effort by the U.S. Congress, the White House, the courts, local officials, state and federal housing and agencies, and housing industry to make homeownership a priority again.

Today, on behalf of NAREB, I am issuing a Call to Action to Congress to address and remedy key public policy issues and practices perpetuated by federal government actors that stymie Black homeownership rates. NAREB will continue to be the conscience of the real estate industry forever promoting ***Democracy in Housing.***

Thank you.

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Statement of

Alanna McCargo*

Vice President for Housing Finance Policy, Urban Institute

before the

Subcommittee on Housing, Community Development, and Insurance,

Committee on Financial Services,

United States House of Representatives

A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP

May 8, 2019

* The views expressed are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

I thank my colleagues at the Urban Institute who have been integral to the research referenced here and to Sheryl Pardo and Ellen Seidman, who helped prepare and provide insights for this testimony.

500 L'Enfant Plaza SW
Washington, DC 20024
urban.org

Chair Lacy Clay, Ranking Member Duffy, Chairwoman Waters, Ranking Member McHenry, and members of the subcommittee, thank you very much for the opportunity to testify today. My name is Alanna McCargo, and I am the vice president of the Housing Finance Policy Center, or HFPC, at the nonprofit Urban Institute, a leading research organization dedicated to developing evidence-based nonpartisan insights that improve people's lives and strengthen communities. The Housing Finance Policy Center provides timely, impartial data and analysis on how the housing finance system affects households, communities, and the broader economy.

I have seen how the housing market operates from many vantage points, having spent more than 20 years of my career in financial services and housing finance policy. I was at Fannie Mae 2002 to 2012, a period that included Fannie Mae's entry into conservatorship and the subsequent housing market boom, bust, and recovery. My comments today focus on the critical role of homeownership access, affordability, and sustainability for communities of color and the critical role that owning property plays in creating an economic base for communities of color, helping them build wealth and economic mobility. I will focus on black homeownership in many of my remarks, as the state of black homeownership in America today is alarming and in urgent need of attention and HFPC has been conducting research over the past several years to elevate and share data to inform action on the racial homeownership gaps that persist.

The views I express today are my own and should not be attributed to the Urban Institute, its trustees, or its funders.

President Lyndon B. Johnson founded the Urban Institute in 1968 to focus on the problems of America's cities and their people and to inform social and economic policy interventions that would help fight the War on Poverty. That same year, Congress passed the Fair Housing Act, making housing discrimination against blacks and other protected groups illegal. President Johnson and other backers of the law understood the role housing plays in American life, a role it still holds today. Despite the passage of the Fair Housing Act, many systems and practices built up over time continue to maintain unjust and discriminatory biases that exclude and inhibit families of color from owning homes and accessing financial markets and products on a level playing field.

A significant racial and ethnic homeownership gap persists in our country: the homeownership rates of blacks, Hispanics, and other communities of color are 30, 25, and 16 points, respectively, lower than the rate for whites. These gaps are large by every measure, and they are worse than the gaps that existed when private race-based discrimination was legal. We have not simply failed to make progress; we are losing ground. And we cannot continue to go backward.

Wealth disparities exist between racial lines and between homeowners and renters. Homeowners have significantly more wealth than renters. But black and Hispanic homeowners still have significantly less wealth than white homeowners. Even when simply comparing home equity, the differences are stark: black homeowners have less than half the median equity of white homeowners.

The returns on homeownership are not just financial, of course. Homeownership provides a stable place to live and an inflation hedge because mortgage costs are generally fixed while rents tend to rise.

So how do we ensure more people of color and lower- and middle-income households can participate in the benefits and wealth accumulation that homeownership can offer? A group of stakeholders recently convened by the Urban Institute spent time analyzing the data and identifying the evidence-based actions likely to reduce racial homeownership gap. I describe the details of that work in the second half of my testimony.

The face of our nation is changing, profoundly and literally. As communities of color increase in size, their experiences will increasingly come to define the housing market. In this way, understanding the current state of and barriers to homeownership for a more diverse population offers a picture of what may be to come in our country's housing market and, ultimately, our economy.

By 2044,[1] no race or ethnic group will represent more than 50 percent of the population. What's more, the overwhelming majority of new households formed from 2010 to 2030 will be nonwhite.[2] The overwhelming majority of new homeowners will, accordingly, also be nonwhite, and more than half will be Hispanic. If current trends persist, the homeownership rate will decline significantly in 2030 to 61.3 percent overall, with whites at 70 percent, blacks at 40 percent, and Hispanics at 48 percent.

As these projections and other evidence shows, we are on a dangerous trajectory that will not result in an equitable future for all Americans. Given the pluralistic and more diverse and multicultural future, this could mean a future where homeownership declines overall nationwide. A steep decline in homeownership would also mean declines in personal household wealth, family stability, and the economic prosperity of individual neighborhoods and in the economic health of the nation.

I am often asked, given the recent history of homeownership outcomes for many communities of color, if homeownership is still a good choice. I believe firmly that it absolutely is and that we have seen and experienced how homeownership and housing wealth have enabled white families throughout history. Those same benefits do not accrue as readily to minority families. But they can and they should, so we need to fix the system. We have to remember the history of our housing markets and the role that the federal government played in creating segregated neighborhoods and advancing explicit policies for white families to help them purchase homes through FHA programs and other policy-based actions that directly excluded benefits to households of color.[3]

Fortunately, changes are within the ability of this body and state and local governments. Evidence has clearly helped us recognize the deep housing affordability challenges that are plaguing low-income and middle-class families of all racial and ethnic backgrounds. Ensuring greater access and affordability to our housing finance system, expanding options to help families move safely from renting to homeownership, and making sure existing minority homeowners can maintain their homes and preserve housing-related wealth are critical components of building racial wealth equity in our society and future.

My testimony initially lays out the state of minority homeownership, then offers evidence about why homeownership remains such a powerful wealth-building tool. I conclude by offering data about the current

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[1] Sandra Colby and Jennifer Ortman, *Projections of the Size and Composition of the US Population: 2014 to 2060* (Washington, DC: United States Census Bureau, 2015).

[2] Laurie Goodman, Rolf Pendall, and Jun Zhu, *Headship and Homeownership: What Does the Future Hold?* (Washington, DC: Urban Institute, 2015).

[3] In his recent video documentary Segregated by Design, based on his book, *The Color of Law,* Richard Rothstein eloquently recounts the historical role and intentional policies that brought great wealth to white families through homeownership and further disparity and loss to black families.

barriers to minority homeownership and several evidence-based ideas about ways to overcome these barriers.

The State of Minority Homeownership

As of 2017, the homeownership rate of the four racial and ethnic categories tracked by the census showed significant differences in homeownership rates among these groups. The biggest gap—30 points—is between the white and black homeownership rates of 72 and 42 percent, respectively, followed by a 25-point gap between whites and Hispanics and a 15-point gap between whites and others, a group composed primarily of Asian Americans and Pacific Islanders.

Patterns in Homeownership Rates by Race and Ethnicity

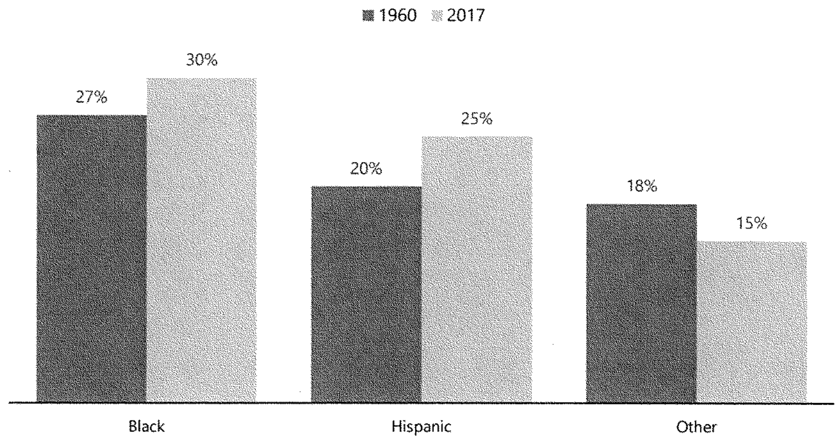
	Rates (%)			Changes (percentage points)		
	2001	2006	2017	2001–06	2006–17	2001–17
White	72.3	73.9	71.9	1.6	-2.0	-0.4
Black	45.8	46.6	41.8	0.8	-4.8	-4.0
Hispanic	45.4	49.3	47.3	3.9	-2.0	1.9
Other	53.3	58.3	56.9	5.0	-1.4	3.6
All	65.8	67.3	63.9	1.5	-3.4	-1.9

Source: Urban Institute calculations of the American Community Survey.
Note: "Other" primarily includes Asian Americans and Pacific Islanders.

Little Progress in 50 Years

Looking at the rates in a historical context reveals that the gap between minorities and non-Hispanic white families in the US today is bigger than it was before the Fair Housing Act was passed. The gains made in the first three decades after 1968 were more than erased after 2000 as forces within and beyond the housing market aligned to reduce the minority homeownership rate and strip tremendous wealth from communities of color.

Homeownership Rate Gap between Whites and People of Color, 1960 and 2017



Source: Urban Institute calculations of the American Community Survey.
Note: "Other" primarily includes Asian Americans and Pacific Islanders.

Many minority homebuyers bought homes at the peak of the bubble[4] at higher rates than whites and Asians and were disproportionately the victims of predators who offered subprime loans, even to those who qualified for prime loans.[5] This issue didn't just affect those buying new homes; existing minority homeowners were targeted for predatory refinancing products that ultimately stripped equity and affordability, and they lost their homes to foreclosure as a result[6].

At the same time, black families have not experienced as rapid a recovery as their white counterparts. As a result, the black homeownership rate has seen the most dramatic drop of any racial or ethnic group, declining 5 percent compared with a 1 percent decline for white families and increases for Hispanic and other families.

The racial homeownership gap that persists has an enormously negative impact on the wealth of families of color, who tend to have disproportionate shares of their total net worth invested in their homes and to have fewer alternative savings and investments.

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[4] Bing Bai, Bhargavi Ganesh, and Aaron Williams, "*An interactive view of the housing boom and bust*," Urban Institute, last updated June 2018.

[5] Sumit Agarwal and Douglas D. Evanoff. "Loan Product Steering in Mortgage Market," January 21, 2013. Available at SSRN: https://ssrn.com/abstract=2204400.

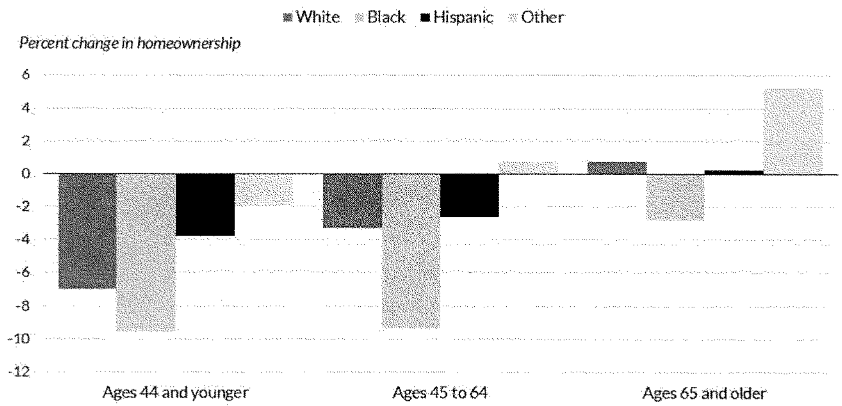
[6] Laurie Goodman, "Using homes as ATMs, not homebuying fervor, was more to blame for the housing crisis," *Urban Wire,* Urban Institute, May 10, 2017, https://www.urban.org/urban-wire/using-homes-atms-not-homebuying-fervor-was-more-blame-housing-crisis.

Laurie Goodman and Jun Zhu, *What Fueled the Financial Crisis?* (Washington, DC: Urban Institute, 2018).

Middle-Aged Black Homeowners Hit Hardest

Of great concern is the severe disparity in homeownership by age. The cohort of Americans that has lost the most ground relative to other racial and ethnic groups is middle-aged black homeowners ages 45 to 64. Having lost their homes during the 2008 crisis, these black households find themselves unable to move back into homeownership; in addition, they have experienced a huge blow to their personal balance sheet and wealth that will be difficult to recover as they approach retirement age. Homeownership for middle-aged black families declined 9 percent from 2001 to 2016, compared with 3 percent for middle-aged white and Hispanic families.

Changes in the Homeownership Rate by Age and Race or Ethnicity, 2001–16

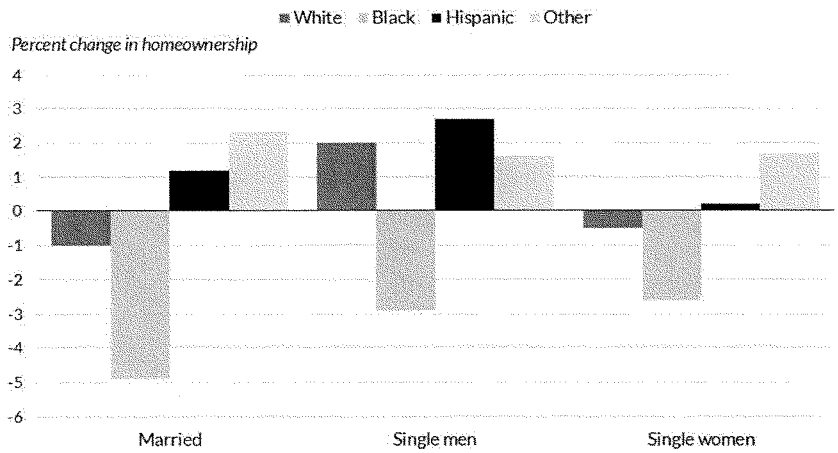


Source: American Community Survey. URBAN INSTITUTE

Married black households—traditionally the group most likely to own homes—lost more ground than single-headed black households. These trends will affect retirement prospects[7] for black Americans and their ability to pass wealth to the next generation.

[7] Rodney Brooks, "Declining Black Homeownership Has Big Retirement Implications," *Forbes,* May 10, 2017, https://www.forbes.com/sites/nextavenue/2017/05/10/declining-black-homeownership-has-big-retirement-implications/#794ef7a8e90c/.

Changes in the Homeownership Rate by Family Structure and Race or Ethnicity, 2001–16



Source: American Community Survey.

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An Unprecedented Generational Retrocession

The history of homeownership by generation is particularly troubling. This view shows that the prospects for black homeownership have gone from hopeful to pessimistic in only 15 years.

About half of black people born in the last 10 years of the baby boom (1956–65) were homeowners by the time they turned 50. The early Gen Xers (born 1966–75) had a higher homeownership rate in 2000 (when they were in their late 20s and early 30s) than the late boomers had enjoyed in 1990. But the financial and housing crisis slowed early Gen Xers' transition into homeownership from 2000 to 2010 (when they were in their 30s and early 40s) and caused more of this generation to lose their homes than to become owners after 2010. This retrocession is unprecedented for any other generation or age group.

The picture only gets worse for younger black generations. Those born from 1976 to 1985—late Gen Xers and early millennials—have barely begun their homeownership transition, but they're getting an even slower start than either of the two older cohorts.

Minority Homeownership and Millennials

The Housing Finance Policy Center has published studies on the homeownership patterns of the 75 million millennials who, at 21 to 37 years old, have just entered peak household formation years but are becoming homeowners later in life and at lower rates than previous generations. The homeownership rate of millennials between the ages of 25 and 34 was 37 percent in 2015,[8] approximately 8 percentage points lower than the homeownership rate of Gen Xers and baby boomers at the same age. If the homeownership rate for millennials had stayed the same as previous generations, about 3.4 million more millennials would be homeowners today.

Homeownership among Baby Boomers, Gen Xers, and Millennials in 2015

Generation	Years born	Age	Population	Current homeownership (%)	Homeownership at age 25–34 (%)
Millennials	1981–97	18–34	75,170,263	32.2%	37.0%
Gen Xers	1965–80	35–50	66,441,487	60.4%	45.4%
Baby boomers	1946–64	51–69	74,649,971	75.0%	45.0%

Sources: 1990 and 2000 Decennial Censuses and the 2015 American Community Survey.

This research established that delayed marriage had the most significant impact on millennial homeownership followed by the increasing diversity of millennials. In other words, the lower homeownership rates of communities of color means that an increasingly diverse population will have lower overall homeownership rates, if current trends continue. We also noted with concern in our study that if these trends were left unchecked, greater wealth disparities were likely to emerge among white, black, and Hispanic millennials.

Despite the low homeownership rate, a recent study by Freddie Mac finds that about 33 percent of millennials are mortgage ready, based on credit scores and debt-to-income ratios. Over 90 percent of these young adults can afford homes in the metropolitan statistical area (MSA) they live in when the house prices for the market are considered.[9] Though smaller shares of black and Hispanic millennials are mortgage ready (20 and 29 percent), significant numbers—over 1.7 million black and 4.6 million Hispanic millennials in the 31 largest MSAs—could become homeowners.[10]

The Geographic Contours of the Homeownership Rate Gap

The drop in black homeownership has not been uniform. Some regions have wider gaps than others, but no cities have closed the gap. I have mapped this in the 100 cities with the largest number of black households.[11]

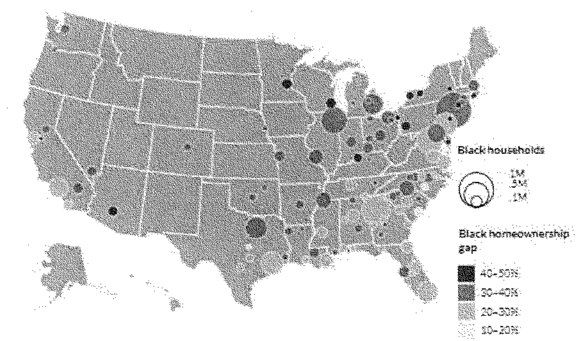
[8] Jung Hyun Choi, Jun Zhu, Laurie Goodman, Bhargavi Ganesh, and Sarah Strochak. *Millennial Homeownership: Why Is It So Low, and How Can We Increase It?* (Washington, DC: Urban Institute, 2018).

[9] "Industry Insight: Expanding Homeownership to the Millennial Market," Freddie Mac, accessed April 19, 2019, http://www.freddiemac.com/singlefamily/community_lenders/news/20170622_expanding_homeownership.html.

[10] Laurie Goodman and Sarah Strochak, "More than 19 million millennials in 31 US cities are ready to become homeowners," *Urban Wire*, Urban Institute, September 26, 2018, https://www.urban.org/urban-wire/more-19-million-millennials-31-us-cities-are-ready-become-homeowners

[11] Alanna McCargo and Sarah Strochak, "Mapping the black homeownership gap," *Urban Wire*, Urban Institute, February 26, 2018, https://www.urban.org/urban-wire/mapping-black-homeownership-gap.

The dots' color represents the disparity's magnitude, and the dots' size is scaled to the number of black households in the MSA.



Source: American Community Survey.

Not one of the 100 cities with the largest black populations has a black homeownership rate close to the white homeownership rate. Even in places where black households are the majority, like Albany, Georgia, the gap persists. In general, the gaps are smaller in the South and the West. Northeastern and Midwestern cities have the widest homeownership gaps between black and white residents. Four of the five metropolitan areas with the largest number of black households—Atlanta, Chicago, New York City, Philadelphia, and Washington, DC—are in this region. The two cities with the biggest gaps—Minneapolis, Minnesota, at 50 percent and Albany, New York, at 49 percent—are also in this region. Of the 100 cities we reviewed, northern cities tend to have larger gaps than cities in the South and on the West Coast.

Similar trends exist for Hispanic population in these places. Of the 100 cities with the largest number of Hispanic households, only one city, El Paso, TX, has a higher Hispanic homeownership rate than white homeownership rate. The cities with the largest gaps are clustered in the Northeast, while the Southwest has much smaller disparities.

Widest and Smallest Hispanic Homeownership Gaps

		White homeownership rate	Hispanic homeownership rate	Hispanic homeownership gap
	Widest gaps			
1	Springfield, MA	74.1%	24.5%	49.6%
2	Worcester, MA-CT	70.8%	23.7%	47.1%
3	Hartford-West Hartford-East Hartford, CT	75.8%	30.4%	45.4%
4	Rochester, NY	73.7%	30.8%	42.9%
5	Providence-Warwick, RI-MA	66.3%	24.6%	41.7%
	Smallest gaps			

96	Albuquerque, NM	73.1%	65.6%	7.5%
97	Las Cruces, NM	64.9%	58.4%	6.5%
98	Laredo, TX	70.1%	64.1%	6.0%
99	Santa Fe, NM	71.9%	69.5%	2.3%
100	El Paso, TX	57.6%	62.0%	-4.3%

Source: American Community Survey.
Note: Data as of 2016.

Homeownership: Still the Best Way to Build Wealth in the US

An important threshold question for this conversation is whether homeownership is truly the valuable wealth-building tool for families for which it is often credited. I believe that the preponderance of the evidence shows that it is, but also note that the benefits do not seem to accrue as readily to minority families as they do to white families.

Homeowners have significantly more wealth than renters. In 2016, the median homeowner had a net worth of $231,42—more than 40 times the median net worth of renters, which stood at just $5,202. But black and Hispanic homeowners still have significantly less wealth than white homeowners. The median net worth for black and Hispanic homeowners was $98,910 and $105,200 respectively, compared to $276,680 for white homeowners. Even when comparing home equity, the differences are stark: black homeowners had a median home equity of $56,000, less than half the $113,000 median for white homeowners.

The returns on homeownership are not just financial, of course. Homeownership provides a stable place to live and an inflation hedge because mortgage costs are generally fixed while rents tend to rise with inflation. Many studies have shown that, on average, those who bought homes before the crisis built more wealth than similarly situated renters, even taking into account the wealth effects of those who could not sustain homeownership during the crisis.

Homeownership is not the panacea for all financial ills, but the financial returns on homeownership have been more beneficial than renting for most homeowners and will likely remain so if current patterns continue. This has been true for generations of white families who have benefited from homeownership and equity building, generational transfers of wealth, and greater net worth overall and should be more accessible and equitable as a wealth building tool for households of color.

Recently, my colleague Laurie Goodman wrote an extensive research paper[12] published in the *Journal of Economic Perspectives* where she and Columbia Business School Professor Christopher Mayer showed that homeownership remains highly beneficial for most families, offering both financial gains and a way to build wealth.

Homeownership is especially beneficial for those who expect to own their home for long enough to overcome the sizable transactions costs and the cyclical volatility of home prices. It provides stability in the

[12] Laurie Goodman and Christopher Mayer. 2018. Homeownership and the American Dream. *Journal of Economic Perspectives.* 31 (1): 31–58. Available at https://www.urban.org/sites/default/files/publication/96221/homeownership_and_the_american_dream_0.pdf

form of often-fixed monthly payments and is a powerful mechanism for forced savings that comes with paying the mortgage each month.

Communities of Color Have Not Accrued the Same Gains from Homeownership

Even when minority families do achieve homeownership, they don't reap the same benefits as white families. Our recent research shows, for example, that the inflation-adjusted average housing wealth at age 60 or 61 for white households in 2015 was $124,000, compared with $54,000 for black households, a 57 percent gap.[13] We have identified three reasons for the difference in benefits achieved from homeownership between black and white families:

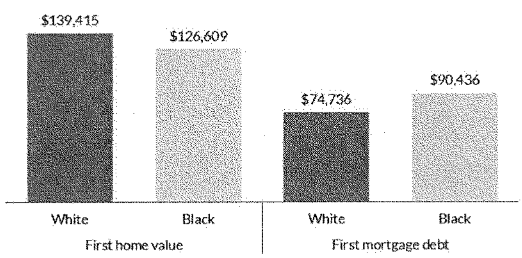
- Black homebuyers buy less expensive first homes with more debt than white homebuyers.
- Black households buy homes later in life than white households
- Black homeowners are less likely to sustain their homeownership than white homeowners

BLACK HOMEBUYERS BUY LESS EXPENSIVE FIRST HOMES WITH MORE DEBT THAN WHITE HOMEBUYERS.

The average first home purchased by black homebuyers is valued at $127,000, compared with $139,000 for white homebuyers. Yet black homebuyers, on average, have higher mortgage debt ($90,000) than white homebuyers ($75,000). Surprisingly and notably, the difference in mortgage debt ($15,000) is larger than the difference in the home value ($12,000).

The higher mortgage debt relative to the house value suggests that black households fall behind in their journey to building future wealth at the initial purchase. Higher mortgage debt not only lowers current and future wealth but could also be a barrier to moving and realizing housing wealth gains.

Value of First Home and First Mortgage Debt



Source: Urban Institute calculation using the Panel Study of Income Dynamics.

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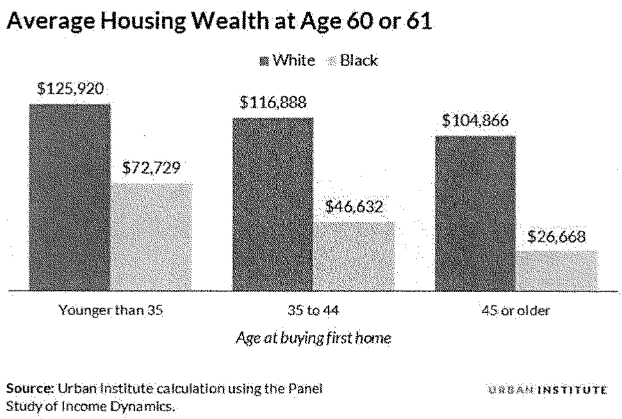
[13] Jung Hyun Choi, Alanna McCargo, and Laurie Goodman, "Three differences between black and white homeownership that add to the housing wealth gap," *Urban Wire,* Urban Institute, February 28, 2019, https://www.urban.org/urban-wire/three-differences-between-black-and-white-homeownership-add-housing-wealth-gap.

BLACK HOUSEHOLDS ARE MORE LIKELY TO BUY HOMES LATER IN LIFE

Our previous research makes it clear that buying a home at a younger age leads to greater wealth in retirement[14]. Eighty-seven percent of white homeowners bought their first homes before age 35, compared with only 53 percent of black homeowners. Not only are black households less likely to buy their homes young, 18 percent of them never own a home before turning 60 or 61.

Delaying homeownership affects future housing wealth. For both black and white households, those who bought their homes before age 35 have the greatest return on housing at age 60 or 61. Because a greater proportion of black homebuyers buy their first homes later in life, their future housing wealth is stunted. But the black households who did buy their homes in the same age bucket as white households still have substantially lower housing wealth than white households at age 60 or 61. This suggests that the age of buying does not fully explain the black-white housing wealth gap.

BLACK HOMEOWNERS ARE LESS LIKELY TO SUSTAIN THEIR HOMEOWNERSHIP



The number of black homeowners who transition to rental housing before turning 60 or 61 is substantially higher than white homeowners. For example, of the households who purchased their first home after age 44, 34 percent of black homeowner households switched to rental housing, while only 9 percent of white households did so. This suggests that black households are less likely to sustain their homeownership after first buying, which aggravates their future wealth-building potential.

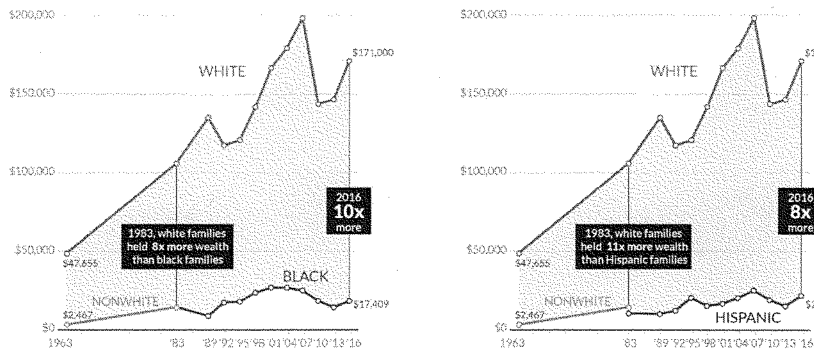
We found that black households who sustained their homeownership had more than $23,500 higher housing wealth at ages 60 and 61 than black households who moved from owning to renting during their lives. Although this amount does not close the housing wealth gap, it suggests that another crucial factor in narrowing the wealth disparity is sustaining homeownership.

[14] Jung Hyun Choi and Laurie Goodman, "Buy young, earn more: Buying a house before age 35 gives homeowners more bang for their buck," *Urban Wire*, Urban Institute, November 8, 2018, https://www.urban.org/urban-wire/buy-young-earn-more-buying-house-age-35-gives-homeowners-more-bang-their-buck.

The Widening Racial Wealth Gap Makes Expanding Access to This Wealth-Building Tool Critical

The wealth gap in our country is growing, both between races and ethnicities and between owners and renters.

Median Family Wealth by Race/Ethnicity, 1963–2016



Source: Urban Institute calculations from Survey of Financial Characteristics of Consumers 1962 (December 31), Survey of Changes in Family Finances 1963, and Survey of Consumer Finances 1983–2016.

Notes: 2016 dollars. No comparable data are available between 1963 and 1983. Black/Hispanic distinction within nonwhite population available only in 1983 and later.

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In 2016, the median wealth of white families was 10 times greater than the net wealth of black families and 8 times greater than Hispanic families.[15]

Our latest research on millennial homeownership[16] quantifies how parental homeownership influences their children's homeownership, a factor which contributes to the wealth gap. We show that the children of homeowners are more likely to be homeowners than the children of renters by 7 to 8 percentage points, all else being equal.

The homeownership rate for young adults also increases linearly with increases in parental wealth. A 10 percent increase in parental wealth increases a young adult's likelihood of owning a home by 0.15 to 0.20 percentage points. Only 14 percent of millennials whose parents have a net worth below $10,000 are homeowners, but 36 percent of millennials whose parents have $300,000 or more in net worth are homeowners.

[15] Signe-Mary McKernan, Caroline Ratcliffe, C. Eugene Steuerle, Caleb Quakenbush, and Emma Kalish, "Nine Charts about Wealth Inequality in America (Updated)," Urban Institute, October 5, 2017, http://apps.urban.org/features/wealth-inequality-charts/.

[16] Jung Hyon Choi, Jun Zhu, and Laurie Goodman, "Is homeownership inherited? A tale of three millennials," *Urban Wire*, Urban Institute, August 2, 2018, https://www.urban.org/urban-wire/homeownership-inherited-tale-three-millennials.

We don't know exactly why homeownership is an inherited trait. Do children of homeowners just learn about the importance of owning a home from their parents, or do they get real financial support and advice from their parents or both? Whatever the connection, we have established that the difference in parental homeownership and wealth explains 12 to 13 percent of the 24-percentage point homeownership gap between black and white young adults.[17]

Narrowing the racial gap in the homeownership rates will be critical to narrowing the racial wealth gap in this country for the next generation.

Solutions for Racial Homeownership Gap

The Urban Institute has been researching and convening stakeholders concerned about the persistent racial homeownership gap to determine steps from moving from research to action. A group of stakeholders concerned about this persistent homeownership gap convened a roundtable planning discussion with Urban Institute's Housing Finance Policy Center in November 2018. The discussion sought to identify actions which, evidence has shown, are likely to reduce the racial homeownership gap and also covered the need to break down the barriers and solutions across racial lines as interventions and the priority of each may differ. It has also led to additional research publications on addressing the racial homeownership gap.

Several themes emerged from the roundtable, first and foremost is the need to **promote an equitable and accessible housing finance system.**

Promoting an Equitable and Accessible Housing Finance System

I believe that the current US housing finance system needs to be reformed to serve all people and markets more equitably. Credit access has tightened following the financial crisis. The median credit score for purchase mortgages in March 2019 was 732, significantly higher than the median of 692 in 2000, a period of reasonable lending standards.[18] Because minorities are more likely to have lower credit scores or thin or no credit files because of historical structural barriers in accessing banking and credit products, mortgage credit has become more difficult for minority households to obtain.[19]

SAFELY EXPAND ACCESS TO CREDIT

There are millions of creditworthy families stuck renting because of the difficulty of getting a mortgage loan. You cannot buy a property in most places in America without a mortgage given the higher cost of housing. According to HFPC research based on Home Mortgage Disclosure Act data, it was so hard to get a mortgage between 2009 and 2015 that lenders failed to make 6.3 million mortgages because of overly tight credit[20]. If

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[17] Jung Hyon Choi and Laurie Goodman, "What explains the gap between black and white young adults?" *Urban Wire*, Urban Institute, November 20, 2018, https://www.urban.org/urban-wire/what-explains-homeownership-gap-between-black-and-white-young-adults.

[18] Housing Finance Policy Center, Housing Finance at a Glance: A Monthly Chartbook (Washington, DC: Urban Institute, April 2019).

[19] Lariece M Brown and Jaya Day. 2019. Role of Credit Attributes in Explaining Homeownership Gap in the Post-Crisis Period, 2012-2016. Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3327483

[20] Laurie Goodman, Jun Zhu, and Taz George. The Impact of Tight Credit Standards on 2009-13 Lending. (Washington DC: Urban Institute, 2015).

lending standards had been more reasonable based on periods of safer products, at least this many more mortgages could have been made. Black and Hispanic households have been disproportionately affected by overly tight mortgage lending standards—and they constitute a surprisingly large share of the 6.3 million loans that were not originated because of tight credit during the 2009 to 2015 period[21]. Loans to black and Hispanic borrowers declined by 50 percent and 38 percent respectively, compared with a decline of 31 percent for white borrowers. Loans to Asian borrowers increased 8 percent. Our research suggests that tight credit is not just an issue for the health of the overall economy but also affects racial and ethnic groups significantly. Very restricted lending standards leave us with the unfortunate reality that large shares of low- and moderate-credit black and Hispanic households may remain outside the credit box until policymakers take action to expand it. Our Housing Credit Availability Index, published quarterly by HFPC, continues to show that there is still plenty of room to safely expand the credit box and to lend to millions more minority families across all channels, GSEs, and government[22].

UPDATE CREDIT SCORING SYSTEMS

It is worth noting that lending disparities, residential segregation, and discrimination does influence credit score disparities by race that persist today, pointing to deeper systemic considerations.[23] While credit decisions are increasingly being made by computer algorithms, there is a well-documented tendency[24] for these systems to disadvantage black households. In the current credit system, payments such as rent, cell phone, and utility payments are not incorporated in traditional credit score models used for mortgage underwriting. Including rental payment history in credit scoring models or into the underwriting process in a more standard way could help more black households access to credit without increasing the default probability.[25]

New credit scoring also needs to address the racial biases embedded in the existing system. Recent studies show that black borrowers were more likely to be given high-cost mortgages during the housing market boom[26] and both traditional and nontraditional (fintech) lenders are charging higher interest rates for the black population with financial records similar to those of whites.[27] If financial institutions do not serve all communities in the market, inequities will continue.

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[21] Laurie Goodman, Jun Zhu, and Taz George, "Tight credit has hurt minority borrowers the most," *Urban Wire*, Urban Institute, April 7, 2015, https://www.urban.org/urban-wire/tight-credit-has-hurt-minority-borrowers-most.

[22] HFPC's Housing Credit Availability Index is available at https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-credit-availability-index

[23] Gregory Squires. 2017. The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act. New York, NY. Routledge.

[24] CFPB Office of Research. *Data Point: Credit Invisibles*. (Washington, DC: Consumer Financial Protection Bureau, 2015).

[25] Laurie Goodman and Jun Zhu, "Rental pay history should be used to assess the creditworthiness of mortgage borrowers," *Urban Wire*, Urban Institute, April 17, 2018, https://www.urban.org/urban-wire/rental-pay-history-should-be-used-assess-creditworthiness-mortgage-borrowers

[26] Patrick Bayer, Fernando Ferreira, and Stephen L. Ross. 2017. "What Drives the Racial and Ethnic Differences in High-Cost Mortgages? The Role of High-Risk Lenders." *Review of Financial Studies* 31 (1): 175–205. https://academic.oup.com/rfs/article/31/1/175/3782656

[27] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace. 2018. Consumer-Lending Discrimination in the Era of FinTech. *UC Berkeley Public Law Research Paper.* https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf

MODERNIZE UNDERWRITING STANDARDS AND MODELS

Underwriting models need to be updated to recognize changes in households and job employment trends. This isn't simply an exercise in tightening up credit standards but rather fully reexamining how credit is evaluated; default models, credit scoring, and volatile measures like debt to income (DTI) ratios being used as blunt measures of creditworthiness need to be reviewed. With the massive data and technological advancements happening in and around the housing market, it is critical that underwriting measures keep pace, and that systems are re-tooled as we build out our knowledge and understanding of what works. Today's homebuyers are far more diverse, earning income in different ways, living in different household arrangements and going about the homebuying experience in a completely different way thanks to technology. It is past time that we improve methods of assessing credit worthiness and evolve to meet prospective homebuyers where they are.

The government-sponsored enterprises (GSEs) are exploring some ideas in this area, such as considering income of nonborrower household members. Similar initiatives need to be undertaken recognizing income variability, and recognizing that freelance, part-time, and self-employment work are increasingly important sources of incomes for individuals and families. Removal of certain thresholds and caps in underwriting standards would help address some of these issues and would improve accessibility to sustainable mortgages for creditworthy people. Reevaluating the right levels for debt to income, considering credit scoring alternatives, including different forms of credit history, determining what the right level of savings and assets needs to be are all in need of review. These are ways in which underwriting and underlying systems and models to evaluate consumers can be modernized to meet the needs of current and future consumers.

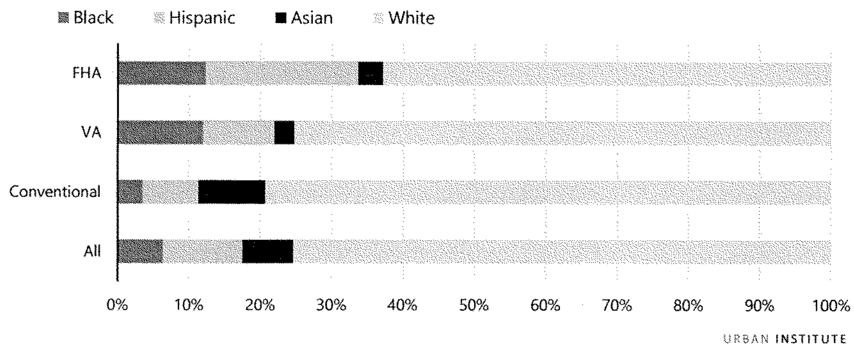
MODERNIZE FHA

The federal government housing programs, notably FHA and VA insurance programs, are the primary channels supporting access to mortgages for black and Hispanic families. It is critical that conversations about housing finance reform are comprehensive and include the reforms and investments needed in these critical government insurance programs as well as changes needed to improve the conventional mortgage market's service to communities and people of color.

In today's disjointed structure, FHA and government programs are operating one way and GSEs are operating differently, and they are serving minority and first-time homebuyers differently and less efficiently as a result. The United States cannot rely on the private mortgage market alone to keep the housing finance system robust for first-time homebuyers or seniors who want to downsize or age in place. The FHA, as well as the US Department of Agriculture and the US Department of Veterans Affairs, are particularly critical for the first-time homebuyers, minority borrowers, military families, and lower-income borrowers with limited capital to put towards down payment. These programs offer low down payment structures that remove a critical barrier to entry for many families and extend reach to lower- and middle-income homebuyers.

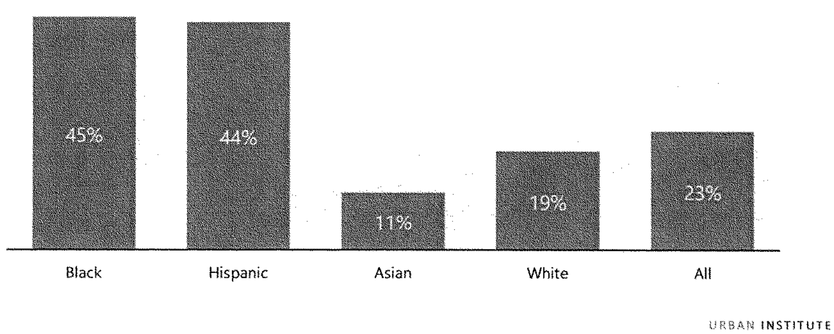
Continued investments in technology modernization and increased staff capacity for the homeownership programs at FHA require a plan and appropriations to manage a complex effort to improve the agency and its ability to effectively serve more underserved consumers and work efficiently with lenders to ensure FHA reach is funneling to all communities through financial institutions in those communities as well as nonbank lending institutions that serve these communities. GSEs should place significant emphasis on strengthening access to conventional lending for minorities as well as scaling all efforts on Duty to Serve to bring more liquidity and lending to underserved markets, and considering specifically including historically segregated and undervalued markets.

Share of Purchase Loans by Channel and Race or Ethnicity



Source: Home Mortgage Disclosure Act records.
Notes: FHA = Federal Housing Authority, VA = US Department of Veterans Affairs. Includes 2017 purchase originations.

Share of Purchase Loans That Are FHA-Insured by Race or Ethnicity



Source: Home Mortgage Disclosure Act records.
Note: Includes 2017 purchase originations.

IMPROVE DOWN PAYMENT ASSISTANCE PROGRAMS

Securing enough cash for closing and a down payment is another barrier to homeownership. More than half of renters view a down payment as the major obstacle to buying a home.[28] Also, many are unaware[29] of available low down payment mortgage options, or of the vast number of down payment assistance programs available locally. Increasing the visibility of and access to down payment programs will be especially beneficial to young black home buyers, who are less likely to receive parental support than white young adults.[30] Designing and implementing down payment and savings programs, making them easy to access through counseling, real estate, and lending professionals, and enhancing overall awareness of the available state, city, county, and federal programs would help black households and renters who could be first-time buyers access homeownership. New ideas that ensure priority and focus on funneling down payment capital to historically redlined communities will help ensure that needed capital and support is made available in the places and to the people who need it the most.

CREATE A ROBUST SMALL-DOLLAR MORTGAGE MARKET

Our research on lending in low-cost housing markets in the US shows that more needs to be done to improve access to small-dollar mortgage loans for properties at the low end[31]. Although there is significant focus on the high cost markets and affordability, there remains swaths of affordable properties at the low end that are not able to be purchased by owner-occupants because they are not able to buy in cash and cannot access traditional mortgage market for purchase. In 2015, there were over 630,000 home sales recorded under $70,000. Only one in four of those sales was mortgaged. Allthough housing prices have surpassed the 2006 peak, many homes in low-cost markets are sold for less than $70,000. In these markets, many of which include large black renter populations, expanding access to small-dollar mortgage loans could be a solution to help more black households gain greater access to affordable and sustainable homeownership. Expanded access to micromortgage financing could help in markets with affordable housing stock in stable neighborhoods in places like Cleveland, Pittsburgh, Rochester, and St. Louis. Micromortgage financing programs can assist renters with a transition to homeownership or help existing homeowners with renovation and repair financing to upgrade or modify their home in order to sustain homeownership.

Additional areas of priority have emerged from a roundtable convening and new Urban Institute research that will also help reduce the racial homeownership gap:

- tackling housing supply constraints and affordability
- focusing on sustainable homeownership and preservation
- accelerating outreach and counseling for renters and mortgage-ready millennials
- advancing policy solutions at the local level

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[28] Laurie Goodman, Alanna McCargo, Bing Bai, Edward Golding, and Sarah Strochak. *Barriers to Accessing Homeownership: Down Payment, Credit, and Affordability*, (Washington, DC: Urban Institute, 2018).

[29] Fannie Mae, "What Do Consumers Know About the Mortgage Qualification Criteria? " December 2015. Available at http://www.fanniemae.com/resources/file/research/housingsurvey/pdf/consumer-study-121015.pdf

[30] Kerwin Kofi Charles and Erik Hurst. 2002. The Transition to Home Ownership and the Black-White Wealth Gap. *The Review of Economics and Statistics.* 84 (2): 281–297.

[31] Alanna McCargo, Bing Bai, Taz George, and Sarah Strochak. *Small-Dollar Mortgages for Single-Family Residential Properties*. (Washington, DC: Urban Institute, 2018).

Tackle Housing Supply Constraints and Affordability

Over the next decade, an additional 13–16 million new households will be formed, the US population will get older and have different housing needs, and the housing needs of people of color will increase rapidly. This leads to increases in home prices and rents, a trend that will continue for the foreseeable future, absent significant policy changes.

Between 2010 and 2030, household growth will be reasonably robust; and, notably, the overwhelming majority of that growth will be nonwhite: 77 percent between 2010 and 2020, and 88 percent between 2020 and 2030 By 2030, Hispanic families will account for 56 percent of new homeowners. Households headed by someone age 65 or older will also expand dramatically, by nearly 20 million between 2010 and 2030.[32]

High land and labor costs have constrained the construction of new housing, and have significantly driven up house prices over the past decade. The number of new housing starts in 2018 is below that of the 1960s when the total US population was only about 55 percent of what it is today.[33] In 2018, while 993,000 new households were created, only 823,000 new housing units were completed, creating a shortage of 171,000 units.

Not only is housing inventory low, but the specific types and costs of homes that are in demand and the types and costs of homes that are being built are not well matched. As building costs increase, a greater portion of construction occurs at the higher end of the market, which does little to relieve constraints on housing supply at the lower end of the market, and may result in price increases in gentrifying neighborhoods. This makes it even more difficult for low-income black homeowners, who often have lower incomes and fewer assets than their white counterparts, to find an affordable home.

Acknowledging the severity of the problem, some cities have taken bold actions to reform zoning and land use regulations. For example, Minneapolis recently eliminated all single-family zoning and allowed triplexes to be built in any part of the city[34]. Factory built housing production, like manufactured and modular housing, can also be a solution to the homeownership affordability and supply problem[35]. Contrary to the common perception, recent research highlights that some manufactured homes appreciate at similar rates to site-built homes[36]. Manufactured housing has changed over the years and could be an affordable solution for helping blacks get on the path to homeownership.

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[32] Laurie Goodman, Rolf Pendall, and Jun Zhu. *Headship and Homeownership: What Does the Future Hold?* (Washington, DC: Urban Institute, 2015).

[33] Jung Hyun Choi, Laurie Goodman, and Bing Bai, "Four ways today's high home prices affect the larger economy," *Urban Wire,* Urban Institute, October 11, 2018, https://www.urban.org/urban-wire/four-ways-todays-high-home-prices-affect-larger-economy.

[34] "Next50 Housing," Urban Institute, accessed April 24, 2019, https://next50.urban.org/question/housing#produce-more-housing-more-cheaply.

[35] Laurie Goodman, Edward Golding, Alanna McCargo, and Bhargavi Ganesh, "Manufactured homes could ease the affordable housing crisis. So why are so few being made?" Urban Wire (blog), Urban Institute, January 29, 2018, https://www.urban.org/urban-wire/manufactured-homes-could-ease-affordable-housing-crisis-so-why-are-so-few-being-made.

[36] Laurie Goodman, Edward Golding, Bing Bai, and Sarah Strochak, "New evidence shows manufactured homes appreciate as well as site-built homes," Urban Wire (blog), Urban Institute, September 13, 2018, https://www.urban.org/urban-wire/new-evidence-shows-manufactured-homes-appreciate-well-site-built-homes.

Focus on Sustainable Homeownership and Preservation

Addressing the net losses in homeownership rates for minorities holistically requires both creating new minority homeowners and sustaining existing homeowners. Not only do communities of color have lower homeownership rates than whites, but they are also less likely to sustain their homeownership. For example, our research[37] shows that among the households who bought their first homes after age 44, only 9 percent of white households switched to rental housing compared to 34 percent of black households. A substantially greater share of the black population experienced foreclosures following the 2007 housing market crisis.[38].

Failing to sustain homeownership directly impacts future wealth. The homeowners who were not able to sustain their homeownership had significantly lower wealth[39] near retirement age. Helping homeowners access and maintain homeownership can also reduce wealth inequality for future generations, as shown by our integrational homeownership research discussed above.

Research shows that post-purchase counseling and third party representation significantly lower a homeowner's likelihood of losing their home.[40] Promoting healthy mortgage servicing[41] relationships and loss mitigation options is another effective strategy, particularly in situations where natural disasters pose a risk to sustainability. Developing a measure for evaluating the risk of foreclosure could also lead to early interventions to prevent foreclosure and substantial wealth losses.

Additional work is needed in developing tools and programs to support cost-burdened homeowners[42]—including minority seniors or long-time homeowners—who live in volatile neighborhoods with a risk of increasing taxes and insurance costs or in homes that are aging and need significant renovations or repair but lack the financial capacity to do so. These rising costs could increase the risk of losing a home or being displaced.

In addition, ensuring that mortgage servicing and foreclosure mitigation programs direct assistance to vulnerable homeowners who are experiencing qualified hardships is a key part of sustainability. Programs

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[37] Jung Hyun Choi, Alanna McCargo, and Laurie Goodman, "Three differences between black and white homeownership that add to the housing wealth gap," *Urban Wire*, Urban Institute, February 28, 2019, https://www.urban.org/urban-wire/three-differences-between-black-and-white-homeownership-add-housing-wealth-gap.

[38] Debbie Gruenstein Bocian, Wei Li, and Keith Ernst. *Foreclosures by Race and Ethnicity: The Demographics of a Crisis*. (Washington, DC: Center for Responsible Lending, 2010).

[39] Jung Hyun Choi, Alanna McCargo, and Laurie Goodman, "Three differences between black and white homeownership that add to the housing wealth gap," *Urban Wire*, Urban Institute, February 28, 2019, https://www.urban.org/urban-wire/three-differences-between-black-and-white-homeownership-add-housing-wealth-gap.

[40] Corianne Payton Scally, Camille H. Anoll, Jung Hyun Choi, Patrick Spauster, Leah Hendey, Diane K. Levy, and Bing Bai. *Responding to a Crisis: The National Foreclosure Mitigation Counseling Program, 2008–2018*. (Washington, DC: Urban Institute, 2019).

[41] "What Is Mortgage Servicing?" the Urban Institute, accessed April 24, 2019, https://www.urban.org/policy-centers/housing-finance-policy-center/projects/mortgage-servicing-collaborative/help-me-understand-mortgage-servicing/what-mortgage-servicing.

[42] Laurie Goodman, and Bhargavi Ganesh, "Low-income homeowners are as burdened by housing costs as renters," Urban Wire (blog), Urban Institute, June 14, 2017, https://www.urban.org/urban-wire/low-income-homeowners-are-burdened-housing-costs-renters.

could be designed as an add-on to unemployment benefits, a tax credit, or an insurance or savings program provided through the mortgage process to help keep people in their homes.

As housing markets heat up and gentrify, minority households are facing a greater risk of displacement in many communities across the country. Although empirical results are mixed due to data limitation and methodological challenges, several existing studies[43] find that extensive gentrification is happening in major cities and blacks, especially those who are less educated, are especially vulnerable to displacement could help local policymakers and community leaders take timely actions to prevent blacks—both owners and renters—from losing their homes.[44] Knowing displacement triggers, and creating tools to identify and get ahead of them, will go a long way to helping enable and sustain homeownership among blacks, and is of concern particularly for the black senior population, which has seen a steady decline in homeownership rates overall.

Accelerate Outreach and Counseling for Renters and Mortgage-Ready Millennials

As discussed above, millennials have significantly lower homeownership rates compared to young baby boomers and Gen Xers at the same age yet nearly 6.3 million minority millennials are mortgage-ready in the nation's 31 largest MSAs. Reaching out to this population will be critical to reducing racial homeownership gaps in the future. Assuming that most mortgage-ready black millennials are renters today, outreach that educates and counsels the upside of homeownership to current renters should be a key part of the strategy. Because blacks are significantly less likely to buy a home at an earlier age than whites,[45] the housing wealth gap will widen by retirement age if this trend continues. Helping black renters gain access and understanding of homeownership tools at an earlier age by providing incentives such as a first-time homebuyer tax credit, or significant down payment assistance would provide blacks greater opportunity to build future housing wealth.

Advance Policy Solutions at the Local Level

As noted above, the size and details of the racial homeownership gaps differ substantially across the country. And while federal interventions can influence state and local actions, the biggest impact will come through locally developed and targeted solutions. Black households are likely to face different barriers to accessing homeownership across geographies due to the differences in local policies and institutions both now and in the past, as well as housing and labor market conditions and demographic compositions. Focusing on the local level is critical.

Aiming to improve and increase the use and reach of products like the FHA 203K renovation program, or expanding access to GSEs for purchase and renovation programs, particularly in black communities or highly distressed zip codes, could help with improving and maintaining local communities and home values. Some

[43] Miriam Zuk, Ariel H. Bierbaum, Karen Chapple, Karolina Gorska, Anastasia Loukaitou-Sideris, Paul Ong, and Trevor Thomas. 2015. Gentrification, Displacement and the Role of Public Investment: A Literature Review. *Federal Reserve Bank of San Francisco Working Paper.* https://www.frbsf.org/community-development/publications/working-papers/2015/august/gentrification-displacement-role-of-public-investment/

[44] "Next50 Housing," Urban Institute, accessed April 24, 2019, https://next50.urban.org/question/housing#produce-more-housing-more-cheaply.

[45] Jung Hyun Choi, Alanna McCargo, and Laurie Goodman, "Three differences between black and white homeownership that add to the housing wealth gap," *Urban Wire,* Urban Institute, February 28, 2019, https://www.urban.org/urban-wire/three-differences-between-black-and-white-homeownership-add-housing-wealth-gap.

cities are experimenting with ways to make additional programs available through housing trust funds, or tax incentive programs to address these issues directly at the neighborhood level.

Important Update on Data Transparency and Standardization

The ability for the Urban Institute, or any policy and economic research organization, to understand the state of the mortgage market, how the system is servicing consumers and how programs are serving the American public have been enhanced over the past four decades, as more data about the housing market has moved into the public domain. Data made available under the Home Mortgage Disclosure Act (HMDA) and the Community Reinvestment Act, and public data released by the GSEs and the FHA in recent years, including data on new credit risk transfer structures, offer a transparent comprehensive view of the housing market and communities across America. Urban Institute's Housing Finance Policy Center has developed important tools that offer evidence of lending progress across the country. That is possible because of transparency of government and public datasets such as these.

Greater transparency into the housing market is needed to support evidence-based policymaking. Much of the critical data, especially portfolio performance data and servicing data remains in private hands and is available only at substantial cost, if at all. Additionally, the GSEs, the FHA, and the VA could make more data available to the public as part of their missions. Continuing to improve this data, and gain as much participation as possible in reporting would help Congress, regulators, market participants, and the public better understand the housing market and helps ensure evidence is available to support changes in law, new regulations, and industry practices that facilitate a housing finance system that is affordable, accessible, and stable. I highly encourage caution and extreme care as the CFPB examines changes to HMDA data reporting.

Conclusion

The overall decline in homeownership threatens to exacerbate racial inequality for decades to come. If recent trends continue, black people born between 1965 and 1975 will likely become part of the first generation since those born before 1900 to reach retirement age with more renters than homeowners among their community.

The period since the housing crisis began has been a tragic chapter for communities of color as they lost ground in their access to the wealth building, security, and the sense of belonging offered by homeownership. We must take action to avoid further decline. Reforms to access and affordability across the housing system are needed that provide more affordable rental housing and more plentiful and secure access to homeownership.

These reforms need to go beyond housing to include safe and healthy neighborhoods, high-quality education, measures to build and protect financial health, fair credit scoring, and access to good jobs and affordable health care. These influences will affect whether today's youngest generations will be homeowners by the time they retire.

Testimony of
Joseph Nery
National Association of Hispanic Real Estate Professionals
(NAHREP)

Subcommittee on Housing, Community Development and Insurance
Committee on Financial Services
U.S. House of Representatives

Hearing on:
"A Review of the State of and Barriers to Minority Homeownership"
Wednesday, May 8, 2019

Good morning Chairman Clay, Ranking Member Duffy, and distinguished members of the Subcommittee on Housing, Community Development and Insurance. My name is Joseph Nery, and I am here representing the National Association of Hispanic Real Estate Professionals (NAHREP) as a past President of the organization, and as an 18-year veteran of the housing industry where I serve a predominantly Latino market as a real estate attorney. [1]

Thank you for the opportunity to testify before you today on the state of minority homeownership and to evaluate existing barriers that hinder homeownership growth among communities of color. As we consider our nation's demographic and economic trends, it is undeniable that the future of the U.S. economy will rest on the shoulders of traditionally underserved communities. We hope this hearing will serve to develop a shared understanding that the fate of the overall U.S housing market is contingent upon the ability of communities of color to access homeownership.

Homeownership has long been considered the gateway to the middle class and one of the primary conduits to wealth creation for American families. This rings particularly true for Latino families, when 39 percent of Hispanic wealth is derived from home equity.[2] Just as the future of the housing market is intrinsic to the success of minority populations, so too is the health of the overall economy tied to the housing market, which contributes close to 15 percent of the United States GDP.[3]

I) NAHREP's Position in the Market

Our organization is one of the largest Latino business organizations in the country, with over 30,000 members and more than 80 local chapters. The passion behind our growing membership revolves around one primary mission—advancing sustainable Hispanic homeownership—because we believe homeownership has a unique ability to uplift families, create strong communities, and stimulate a prosperous national economy for all Americans. Homeownership continues to be one of the best solutions to the persistent racial wealth gap between non-Hispanic White and Black and Latino families. Communities with higher homeownership rates report lower crime, lower poverty rates, higher civic engagement, and children of homeowners do better in school, experience fewer behavior problems, and are more likely to grow up to become homeowners themselves.[4]

In the wake of the 2008 housing crisis, the impact of subprime lending and an under-regulated mortgage market devastated the financial system as we knew it. While the impact of the housing crisis was felt throughout the nation, Hispanic families and other families of color were disproportionately impacted. Many fell victim to subprime lending, purchasing homes at the peak of the market that later went

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[1] The terms "Hispanic and Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to people of Mexican, Puerto Rican, Cuban, Central American, South American, Dominican, Spanish decent and decent from other Spanish-Speaking countries.

[2] The Federal Reserve. (2018, May). Report on the Economic Well-Being of the U.S. Households in 2017. Retrieved from https://www.federalreserve.gov/publications/report-economic-well-being-us-households.htm.

[3] Dietz, R. (2019, April 26). Housing Affordability Reducing Housing Share of GDP. Retrieved from https://eyeonhousing.org/2019/04/housing-affordability-reducing-housing-share-of-gdp/.

[4] Haurin, D., Parcel, T. L, and Haurin, R. J. (2001, October). The Impact of Homeownership on Child Outcomes. Retrieved from https://www.jchs.harvard.edu/sites/default/files/liho01-14.pdf

underwater. This, coupled with a lack of asset diversification in non-housing investment vehicles, caused many Latino families to lose their life's savings.[5]

In response to the Great Recession, NAHREP amended its mission for the first, and only, time in its history by adding the concept of "sustainable" to our mission of advancing Hispanic homeownership. The need for strong legislative and regulatory oversight within the mortgage industry is critical to avoid repeating the mistakes of the past. But some of today's regulatory structure excludes otherwise credit worthy families who do not fit neatly into today's underwriting criteria. We firmly believe every individual who desires to become a homeowner and can sustain a mortgage should be granted access to a piece of the American Dream. That is not the case today.

II) The State of Minority Homeownership

Annually, NAHREP produces the State of Hispanic Homeownership Report, a publication that tracks how Hispanics are faring with respect to homeownership attainment and other economic indicators. Hispanics have increased their rate of homeownership for the past four consecutive years.[6] In 2018, Hispanics achieved a net gain of 362,000 homeowners, the largest net gain for the population since 2005. And, over the past decade, Hispanics have accounted for 62.7 percent of the net U.S. homeownership growth in total.[7]

Despite this remarkable growth, homeownership rates among Latinos and other minority populations have yet to return to their pre-crisis levels and fall far below those of their non-Hispanic White counterparts. At the end of 2018, the Hispanic homeownership rate was 47.1 percent, compared to 73 percent for the non-Hispanic White population and 64.4 percent for the general population. Additionally, the 2018 Hispanic homeownership rate was over two and half percentage points lower than its peak in 2007.[8] While Hispanic homeownership trends are positive, they should be much higher.

Minority household wealth dropped precipitously because of lending practices preceding the last economic crisis, and, consequently, these households are similarly impacted by their wealth disparity relative to non-Hispanic White households. Today more than ever, broad access to affordable credit, low down payment mortgage products, and sufficient affordable housing stock will be imperative to closing the wealth gap and to making the American Dream a reality for all Americans.

Hispanics are projected to account for more than half of all new potential homeowners over the next several years and for 56 percent of all new homeowners by 2030.[9] Hispanics are also the fastest growing native-born U.S. population, accounting for more than half of the nation's population growth since the

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[5] Limón, N. (2019, April 10). 2019 State of Hispanic Wealth Report. Hispanic Wealth Project. Retrieved from http://hispanicwealthproject.org/downloads/2019-SHWR-Annual-Report.pdf
[6] Calderon, M. (2019, April 9). 2019 State of Hispanic Homeownership Report. NAHREP. Retrieved from https://nahrep.org/downloads/2018-state-of-hispanic-homeownership-report.pdf
[7] U.S. Census Bureau. (2019, February 28). Current Population Survey/Housing Vacancy Survey. Available from https://www.census.gov/housing/hvs/data/index.html
[8] U.S. Census Bureau. (2019, February 28). Current Population Survey/Housing Vacancy Survey. Available from https://www.census.gov/housing/hvs/data/index.html
[9] Goodman, L., Pendall, R., and Zhu, J. (2015, June). Headship and Homeownership: What does the Future Hold? Retrieved from https://www.urban.org/sites/default/files/2000257-headshipand-homeownership-what-does-the-future-hold.pdf

year 2000.[10] And, at a median age of 29, Hispanics are just entering their prime home buying years, further increasing homeownership potential for decades to come. These trends underscore an important reality: Hispanics are driving homeownership growth in America. If the mortgage market fails to support those potential new homeowners along their home buying journey, the nation will bear the adverse economic consequences. To put things into perspective, if population projections come to bear and homeownership rates across ethnic groups remain consistent with current rates, it would mean that the national homeownership rate would decline by nearly 10 percentage points over the next forty years to 55 percent.[11] The last time the U.S. homeownership rate was that low was in the years immediately following World War II.

III) Structural Barriers to Minority Homeownership Growth: Unique Latino Challenges

Despite the Hispanic role in driving housing demand for decades to come, the current mortgage market is not set up to serve the unique characteristics of Latinos well. Many of today's potential Hispanic homeowners are credit worthy and have sufficient household income to support a mortgage. But, because they are more likely to be self-employed, earn non-W2 wages, utilize pooled resources within a multigenerational household, and pay for household expenses in cash rather than credit, they are more likely to be denied a mortgage loan. Today's mortgage structure and regulations rely too heavily upon easily documented W2 income and do not sufficiently recognize the entrepreneurial practices so prevalent in the Hispanic community. Because of this, lenders consistently fail to accurately assess the risk and repayment capacity of many otherwise credit worthy Hispanic borrowers.

A) Prevalence of Non-W2 borrowers

People of color are more likely to be self-employed or work non-traditional, "non-W2" jobs than the general population. Of note, while the number of businesses in the U.S. declined in the years following the financial crisis, the number of Latino-owned businesses grew by nearly 50 percent.[12] Additionally, Hispanics and African Americans are more likely to participate in the gig economy, with 31 percent and 27 percent reporting nontraditional earnings, respectively.[13] However, mortgage underwriting rules

[10] U.S. Census Bureau. (2001 - 2018). DP-1: Profile of General Demographic Characteristics: 2000 and PEPASR6H: Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2017. Available from https://www.census.gov/data/datasets/2017/demo/popest/nation-detail.html
[11] Zandi, M. (2019, May 2). Moody's Analytics economist calculations using U.S. Census projections of population shares and Current Population Survey/Housing Vacancy Survey.
[12] Stanford Latino Entrepreneurship Initiative (2017). State of Latino Entrepreneurship. Stanford Graduate School of Business. Retrieved from https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/report-slei-state-latino-entrepreneurship-2017.pdf
[13] Edison Research. (2018, December). The Gig Economy. Marketplace-Edison Research Poll 2018. Retrieved from https://www.edisonresearch.com/americans-and-the-gig-economy/

remain notoriously challenging for those who don't earn their income through a traditional paycheck from a full-time employer.

B) Multi-Generational Households and Non-Borrower Income Access

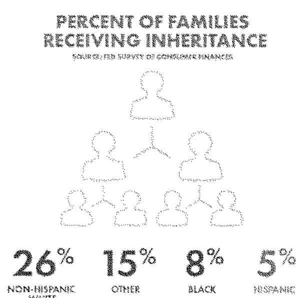
In 2016, 27 percent of the Hispanic population and 26 percent of the Black population lived in multi-generational households, compared to the general population at 20 percent and the non-Hispanic White population at 16 percent.[14] However, mortgage underwriting rules do not allow for any flexibility based on individual family circumstances or the overall financial contributions of members of the household.

C) Lower Levels of Reliance on Credit

Hispanics, on average, rely more readily on cash than credit to pay for expenses, making their ability to demonstrate credit worthiness difficult by traditional credit scoring models. Millions of Hispanics pay rent, utilities, and cell phone bills with cash, in full and on time, but this pattern does not impact the factors contributing to the credit score. In 2015, the Consumer Financial Protection Bureau (CFPB) published a study finding that 26 million Americans are "credit invisible" and 19 million Americans have "unscoreable" credit files, including those who are deemed to have insufficient information and are deemed to have a "thin credit file."[15] Latinos are almost twice as likely to be "credit invisible" or have "unscoreable" files than their non-Hispanic White counterparts. Yet, mortgage underwriting relies heavily on traditional credit scoring models to assess future credit worthiness. Alternative credit scoring models are currently unavailable in the mortgage space, despite their wide acceptance in the credit card, personal loan, and automotive lending spaces.

D) Challenges in Saving for a Down Payment

The challenges in saving for a down payment are a significant barrier to homeownership for Latino buyers. Several factors make saving difficult in today's economy: Hispanics are younger than the general population, are concentrated in high-cost metro areas and fall behind other demographics in the transfer of intergenerational wealth. According to the Survey of Consumer Finances, only 5 percent of Latinos reported receiving an inheritance, the lowest rate out of all demographics.[16]

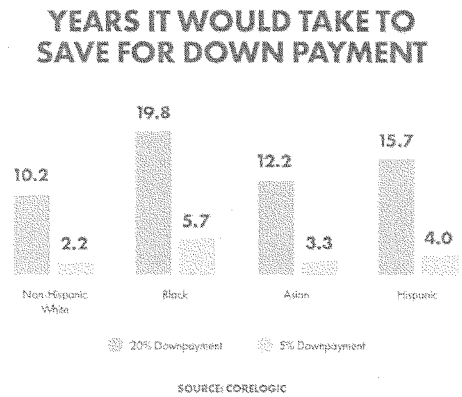


The predominant form of wealth accumulation for Latino families is homeownership and much of the equity that would have been accrued in the last 20 years was wiped

[14] Cohn, D. and Passel, J. (2018, April 5). A record 64 million Americans live in multigenerational households. Pew Research Center. Retrieved from https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/
[15] The CFPB Office of Research. (2015, May). Data Point: Credit Invisibles. Consumer Financial Protection Bureau. Retrieved from https://files.consumerfinance.gov/f/201505_cfpb_data-point-credit-invisibles.pdf
[16] The Federal Reserve. (2017, October 31). Survey of Consumer Finances. Available from https://www.federalreserve.gov/econres/scfindex.htm

out by the Great Recession. The wealth gap between Latinos and non-Hispanic Whites is close to $150,400, coincidently also the value of a home in some geographic areas of the U.S.[17]

To add perspective to many conversations occurring today about low down payment loans, consider that it would take an average Hispanic homebuyer nearly 16 years to save for a 20 percent down payment, compared to just slightly over ten years for the typical non-Hispanic White homebuyer.[18] This is why low 3.5-5 percent down payment options are so important to Hispanic families. The time value of lost equity would stunt the economic growth of another generation unless we protect these low down payment options.



IV) Actionable Legislative and Regulatory Policy Changes to Increase Minority Homeownership

Federal policies, whether legislative or regulatory, must be clear, consistent, and coordinated to ensure sustainable homeownership for all credit worthy individuals. To that end, NAHREP offers these actionable federal policy solutions to remove barriers for prospective Latino homebuyers:

A) Underwriting Guidelines Should Accommodate the Unique Needs of Hispanic Households: Extend the "QM patch" Until it is Replaced by an Alternative that Better Measures a Consumer's Repayment Capacity.

A key feature of the *Wall Street Reform and Consumer Protection Act of* 2010 (Pub. L. 111-203) are provisions requiring the borrower's ability to repay the loan to be assessed prior to the loan consummation. Significantly, the implementing rules written by the CFPB created a legal safe harbor for lenders who followed traditional, safe, and known underwriting standards and products, known as the "Qualified Mortgage Rule." The brightline Qualified Mortgage (QM) designation is now the predominant

[17] The Federal Reserve. (2017, October 31). Survey of Consumer Finances. Available from https://www.federalreserve.gov/econres/scfindex.htm
[18] McLaughlin, R. (2019, February 21). CoreLogic economist calculations using CoreLogic House Price Index and U.S. Census Bureau Current Population Survey.

form of mortgage finance available. It includes a 43 percent debt-to-income ratio (DTI). During the transition to full implementation, each of the Government Sponsored Enterprises (GSEs), Federal Housing Administration (FHA), Veteran's Affairs (VA), and the U.S. Department of Agriculture (USDA) were granted temporary authority to designate loans that meet their underwriting requirements as bearing QM status. FHA, VA, and USDA finalized rules and no longer use the temporary authority. The GSEs still use their temporary authority to designate loans qualifying for their guarantee as bearing QM status, we call this the "GSE QM Patch." This authority will expire the sooner of the end of conservatorship or January 2021. Were the "GSE QM Patch" to expire without further address, Latino borrowers would be disproportionately impacted. Furthermore, current guidelines make it difficult for self-employed and gig economy workers to gain access to home loan financing.

The expiration of the "GSE QM Patch" would mean that FHA would be the only remaining QM option for working class Latinos, and QM is the only dependable source of lending in the market today. This is problematic because oftentimes FHA loans can be more expensive for borrowers. Furthermore, limiting consumer choices can create market distortions that disadvantage private capital and interfere with the competitive nature of the market for these loans. At least for the full period of conservatorship, access to conventional loans should not be made unavailable to credit worthy Latino borrowers based on the application of the 43 DTI ratio alone.

The Urban Institute, also providing testimony here today, calculates that in 2017, about one in five GSE-backed mortgages originated in 2017 had a DTI ratio over 43 percent, and approximately one in two FHA or VA mortgages had a DTI ratio over 43 percent.[19] Hispanics are 38 percent more likely to have a high DTI loan, the most likely of any demographic.[20]

Additionally, whether the "QM patch" expires or not, FHFA policy alone determines the ability of the GSEs to accept loans that exceed the 43 percent DTI threshold. Specifically, the May 2013 lender letter from the FHFA to the GSEs granting the DTI expansion could easily be revoked or significantly altered by other recommendations about risk-based pricing for this cohort of loans.[21] We urge Congress, FHFA, and the CFPB to coordinate on ensuring lending options for low-to-moderate wealth Latino borrowers when it comes to mortgage credit access in the conventional market.

Furthermore, we support the Ability-to-Repay provision, and we do not want to see a return to irresponsibly-loose underwriting standards. The difficulty today, however, is that the underwriting guidelines for the calculation and verification of a borrower's income and debt provided by the CFPB in "Appendix Q" of the rulemaking are essentially an outdated and—in some places—internally inconsistent version of prior-FHA policy. Income and debt of a borrower must be calculated per the relatively limited provisions and monthly debt payments, including the new house payment, and must

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[19] Kaul, K. and Goodman, L. (2018, August). What, If Anything, Should Replace the QM GSE Patch? Urban Institute. Retrieved from https://www.urban.org/sites/default/files/publication/98949/qualified_mortgage_rule_0.pdf

[20] Goodman, L. (2019, March 25). New Data Confirm the Urgency of Addressing the Expiration of the GSE Patch. Urban Institute. Retrieved from https://www.urban.org/urban-wire/new-data-confirm-urgency-addressing-expiration-gse-patch

[21] Federal Housing Finance Agency. (2013, May 6). FHFA Limiting Fannie Mae and Freddie Mac Loan Purchases to "Qualified Mortgages." Retrieved from https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Limiting-Fannie-Mae-and-Freddie-MacLoan-Purchases-to-Qualified-Mortgages.aspx

stay under 43 percent of the borrower's monthly income. Self-employed borrowers and gig economy workers who have multiple part-time jobs, struggle under these requirements.

The General QM category simply must become more robust, current, and sophisticated before it can support the weight of the mortgage market. As a Committee, we urge you to support efforts to better understand and to more clearly define QM standards in order to accomplish a more flexible view of how debt and income are determined and as only one of the significant factors in determining QM status.

One statutory or regulatory option is to eliminate the DTI calculation (not its evaluation) and rely instead upon the higher-cost mortgage rules for presumptive and rebuttable presumption compliance thresholds. Roughly stated, the APOR + 150 basis points would dictate the new QM status rather than the 43 percent DTI in a new risk-based pricing model.

A second alternative is for Congress to expressly delegate QM standard setting to an independent body charged with evaluating credit access and consumer protections regularly and make flexible adjustments that are clearly communicated to the market.

Either option is preferable to the constraining and strenuous regulatory ambiguities found in today's Appendix Q.

B) Preserve and Protect Affordable Access to Low Down Payment Mortgages

Taxpayer support for mortgage lending should guarantee broad access to credit for all credit worthy borrowers, with a particular sensitivity toward the needs of first-time homebuyers and communities underserved by the private sector. Access to credit needs to be consistently available in all geographic areas and throughout the ebbs and flows of the economic cycle.

Hispanic families, not unlike other families of color and most first-time homebuyers, are heavily reliant on low down payment products as a means to achieve homeownership, whether provided through FHA guarantees or through private mortgage insurance.

C) Support FHA Program Improvements

Hispanic borrowers are more than twice as likely (42.8 percent) to have an FHA loan than non-Hispanics (20.6 percent),[22] yet the agency is understaffed, underfunded, and operating within the constraints of outdated technology and computer systems. As a result, the housing market is doing a disservice to the changing face of America's homeowners. Congress must prioritize efforts to fund FHA's much needed modernization efforts and no federal housing finance policy should be devoid of a plan for how to do so.

NAHREP would support direct budget authority for the FHA, rather than through the U.S. Department of Housing and Urban Development (HUD), along with granting the FHA the ability to retain a portion of its insurance revenues in order to increase spending on staffing and modernization efforts. This would give the FHA more effective operational and risk management capabilities.

Additionally, we urge further clarification of FHA lender liability under the False Claims Act (FCA). There is still too much uncertainty about what types of lender errors can trigger liability, which can result in penalties several times the loan amount. As a result, many of the largest lenders have chosen to

[22] Polygon Research. (2018, March). Hispanic Access to Mortgage Finance-Role of Gender and Ethnicity. Insights based 5-year analysis of 2013-2017 HMDA data.

abandon FHA lending altogether, further limiting credit options for communities of color with lower credit scores.

D) Housing Finance Reform Must Ensure Access to Credit to Underserved Segments of the Population that the Private Market Fails to Serve in an Affordable and Sustainable Fashion

Any conversations around housing finance reform should be done in a coordinated fashion across all Federal housing agencies. The expiration of the "QM Patch," the end of conservatorship for the GSEs and the ability for FHA to continue to serve low-to-moderate wealth and underserved borrowers are all interconnected.

Any housing finance reform proposal should have a clear commitment to serve low- to-moderate wealth borrowers, fully funding programs that serve underserved communities such as the Housing Trust Fund and the Capital Magnet Fund and sets clear goals and strategies for how to meet those commitments. The following are key principles that must guide any future GSE reform conversations to ensure the protection and expansion of access to credit for underserved communities:

A clear commitment to serve low- to moderate-wealth borrowers: Any new system must include a strong duty-to-serve mandate that incentivizes serving all segments of the population. We support fully funded programs that serve underserved communities, such as the Housing Trust Fund and the Capital Magnet Fund, and the establishment of clear goals and strategies for how to meet those commitments.

Ensure broad credit access and encourage innovation: Any new system that replaces the GSEs should broaden current levels of access for credit worthy borrowers and should encourage innovation around credit access.

Enforceable mechanisms must exist to ensure affordable housing goals are met: Any new system should include enforceable mechanisms by the Federal Housing Finance Agency (FHFA) tied to the government guarantee that ensure the enterprises or their replacement serve the entire market.

Equitable secondary market access: Any new system must secure a liquid, deep, and economic efficient secondary market that services the entire nation on roughly the same terms.

Protects affordable mortgage financing: Protects the 30-year fixed rate, fully pre-payable mortgage, and overall access to affordable, long term mortgage financing for a wide range of credit worthy borrowers.

E) Secure Access to Government Sponsored Loans for DACA borrowers

We saw an increased rate of denials last year for DACA recipients applying for FHA loans based on the Administration's interpretation of existing guidelines. This practice sets a dangerous precedent. FHA should not get ahead of the Judiciary to decide immigration law. Unilateral determinations on whether "legal residency" suffices to establish "legal status" verges on arbitrary delineations and are inconsistent with other policies for legal immigrants, even those with non-permanent visas. These practices appear to be unfairly targeting otherwise eligible applicants for political purposes, and it has no place in mortgage policy. NAHREP urges the Committee to ensure equitable treatment of DACA recipients in the financial sector by protecting their ability to secure government sponsored mortgages and thereby continue contributing to the U.S. economy.

F) Promote diversity in the housing workforce

NAHREP estimates that 40 percent of all real estate transactions utilize the Spanish language at some point in the transaction and that as much as 25 percent of transactions occur entirely in Spanish. Yet, current estimates indicate 13 percent of credit counselors and loan officers and 10.8 percent of real estate agents are Hispanic.[23] With Latinos accounting for most of the net gains in U.S. homeownership, the lack of a sufficient number of culturally competent professionals within the real estate and housing finance sectors makes an already complex transaction more complicated and exacerbates the mortgage underwriting challenges that exist today. NAHREP urges the House Financial Services Subcommittee on Diversity and Inclusion to take on the issue of diversifying the housing workforce. A diverse lending community stimulates increased homeownership rates for minority borrowers.

G) Increase the housing inventory stock of affordable homes

Finally, we would be remiss if we did not mention the need to increase the housing inventory stock of affordable, owner-occupied housing, quite possibly the biggest barrier to minority homeownership today. Even as Hispanics overcome access to credit issues, finding a home to purchase has never been more difficult. Today, the U.S. is experiencing record-level housing inventory shortages and, as a result, is driving up prices of existing homes for sale. In 2018, nationwide there were 10 percent fewer homes on the market than the prior year, and, in places where home values are appreciating the fastest, there were up to 40 percent fewer available homes to purchase.[24] The housing supply shortage is most acute in markets with high concentrations of Hispanics, exacerbating challenges in homeownership attainment. For one, foreclosed homes should go to first-time homebuyers, not investors. NAHREP commends the GSEs and HUD for piloting a program that offers a "first-look" to foreclosed homes to non-profits in order to increase the likelihood that these homes will go to first-time homebuyers or low- to moderate-income renters. Furthermore, any Congressional infrastructure bill should include stipulations incentivizing transit-based development to increase the supply of the much needed stock of affordable homes for sale.

Conclusion

The wealth gap between people of color and non-Hispanic White populations cannot be denied. Homeownership is one of the most important means of bridging the wealth gap, and it is our goal at NAHREP to ensure financial policies reflect the needs of all segments of the U.S. population.

While we are proud to see a resilient Latino population consistently increasing its rate of homeownership for the past four years, there is still more work to be done to ensure the long-term prosperity of underserved communities and the overall U.S. economy. A failure to address the issues

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[23] Bureau of Labor Statistics from the Current Population Survey, Table 11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity (2018 version).

[24] Zillow. (2018, January 18). Inventory Shortage at Crisis Levels in Nation's Hottest Housing Markets. Retrieved from http://zillow.mediaroom.com/2018-01-18-Inventory-Shortage-at-Crisis-Levels-in-Nations-Hottest-Housing-Markets

raised today can result in a significant shrinking of the housing market and, as a result, the entire U.S. economy. Now is not the time to curtail access to the very products that have catapulted so many working class Americans into the middle class. We are at a crossroads to rethink our housing finance structure to ensure that it adequately serves the changing face of America's aspiring homeowner.

NATIONAL ASSOCIATION *of* REALTORS®

REALTOR®

500 New Jersey Avenue, N.W.
Washington, DC 20001-2020
202.383.1194 Fax 202.383.7580
https://www.NAR.REALTOR/POLITICAL-ADVOCACY/FEDERAL-ADVOCACY

John Smaby
2019 President
Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP
William E. Malkasian
Chief Advocacy Officer/Senior Vice President

Shannon McGahn
Senior Vice President Government Affairs

HEARING BEFORE THE

HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

ENTITLED

"A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP"

TESTIMONY OF

JOANNE POOLE

ON BEHALF OF

THE NATIONAL ASSOCIATION OF REALTORS®

MAY 8, 2019

Introduction

Good morning Chairman Clay, Ranking Member Duffy and members of the Subcommittee; my name is JoAnne Poole. I am a REALTOR® in Baltimore, Maryland, with 33 years of experience servicing the people of Anne Arundel County, Prince George's County, Baltimore City and Baltimore County. I have also been active in the National Association of REALTORS® (NAR) for over twenty years, serving as its Vice President, Chair of the Federal Housing Policy Committee and currently as the 2020 Chair of the REALTORS® Multicultural Real Estate Leadership Advisory Group. In 2005, I served as President of the Maryland REALTORS®, and in 2018 I was awarded NAR's Distinguished Service Award.

On behalf of NAR's 1.3 million members, I want to thank you for the opportunity to testify today to present NAR's concerns surrounding the state of and barriers to minority homeownership. NAR is America's largest trade association, and its members – America's REALTORS® – are involved in all aspects of the residential and commercial real estate industries.

In addition to my work with NAR, I am also a Realtist, which means I am a member of the National Association of Real Estate Brokers (NAREB). I am proud to sit here today alongside NAREB President, Jeffrey Hicks, in recognition of the historic and leading role NAREB plays in highlighting the critical issues the committee has convened today to discuss.

Value of Homeownership

To many people in this country, homeownership is synonymous with the American Dream.

Homeownership provides for stable communities, increases civic participation and builds self-worth, self-esteem and student test scores. According to their 1999 article in *The Journal of Housing Economics*, Boehm and Schlottmann state that children of homeowners have even been shown to earn more as adults.

However, housing affordability problems across the nation threaten this dream for countless families and potential home buyers, while the lack of housing supply is only adding to the problem. NAR data shows that in the last 6 years, home prices have increased 44%, while housing inventory has decreased by 13%.

Although these are national problems, many proposed or potential solutions must be locally based and consider the input of local community experts.

NAR strongly supports the production of affordable housing units for both rental and purchase purposes, along with efforts to increase the supply of entry-level homes. We also urge states and municipalities to adopt zoning laws, building codes and other policies that encourage free market production of affordable housing units.

Unacceptably Low Rate for Minorities

The homeownership rate for African Americans, Hispanics and Asian Americans remains at an unacceptably lower rate than that of white non-Hispanic Americans. The U.S. Census Bureau reports the following homeownership rates for the first quarter of 2019:

United States	White not Hispanic	Black	Asian, Pacific Islander	Hispanic of any race
64.2%	73.2%	41.1%	56.9%	47.4%

Percentage homeowners

Amongst all of this data, one figure stands out as the most troubling; African American homeownership rates have reverted back to pre-Fair Housing Act numbers. Fifty years of programs designed to expand homeownership and open doors that were previously closed by discrimination have often been ineffective. Even more disturbingly, the programs that were successful have largely seen their gains reversed or eliminated entirely.

All communities suffered in the financial crisis of 2007 and 2008, but none was hit harder than the African American community. These homeownership rate disparities are all unacceptable, but the persistent low rate for African Americans merits a priority in our efforts to increase minority homeownership.

Last year, the National Association of REALTORS®, in commemorating the 50th Anniversary of the Fair Housing Act, published "Fair Housing at 50," a report designed to examine the successes and failures of the Fair Housing Act from 1968 to 2018. That report is attached to this testimony, and we request that it be entered into the record of this hearing.

Our neighborhoods and communities have a direct impact on our quality of life, including our health, education and access to economic opportunities. When housing and neighborhood options are limited for or denied to minority populations, access to jobs, transportation and high performing schools are all limited as well.

A deeper look into inequality in America shows that our wealth gap is primarily a housing wealth gap. Lower homeownership rates leave an impact on minority communities that can last generations, and also leave fewer opportunities for a family to accumulate wealth. In fact, African Americans lost nearly $200 billion in wealth between 2009 and 2012, largely due to homeownership losses.

There are various reasons why we see low homeownership rates persist among minority communities, many of which have been documented both in academic studies and in newspaper reports. It is our belief, however, that these enduring low figures are rooted in historical actions by our government and the real estate community. In particular, we bring attention to zoning, restrictive covenants and Federal Housing Administration (FHA) underwriting guidelines that have created the housing patterns we continue to face today. Zoning was first used to segregate neighborhoods, but when the U.S. Supreme Court outlawed racial zoning in 1917 many communities replaced these practices with zoning policies that separated single family housing from multifamily housing units.

In the 1930's, the FHA incorporated the Home Owners' Loan Corporation racial classification of neighborhood risk into its underwriting criteria. FHA then encouraged or required the use of restrictive covenants to maintain racial segregation.

While it is clear that the real estate industry was once – but is no longer – a part of this practice, the federal government has yet to undo the effects of its policies from more than 50 years ago. If we overlay metropolitan housing demographic patterns today with the lines drawn by the Home Owners Loan Corporation and FHA, we see that those divisions clearly still exist.

We commend efforts by the U.S. Department of Housing and Urban Development (HUD), under both the previous and current administrations, to encourage local governments to analyze and examine past decisions that have fostered residential segregation while working to find local solutions to those divisions. Secretary Ben Carson recently signaled that HUD is looking to encourage cities to remove zoning and other barriers to affordable housing, as many studies have shown that regulatory burdens significantly add to the cost of new housing in many cities.

There is No Single Solution

It is tempting to look toward a few easily identifiable – and correctable – reasons that explain why we continue to face the situation we do today. One or two policy changes or new federal programs, however, will never be sufficient enough to address this ingrained, nationwide problem. Addressing such a complex challenge will take a comprehensive national effort that simultaneously addresses various factors and societal realities before we can collectively determine which additional actions should follow.

The National Association of REALTORS® recently joined with National Association of Real Estate Brokers and the Urban Institute, convening a planning roundtable to identify research and data designed to improve African American homeownership rates. From this meeting, a five-point framework emerged and continues to be developed. Within each priority are a number of specific activities, policy needs and programs. Periodically checking in with each other, we can better understand what activities are underway nationally and locally, how well they are working, and what adjustments may be needed.

These priorities are:

- Advancing local policy solutions
- Tackling housing supply constraints and affordability
- Promoting an equitable and accessible housing finance system
- Engaging with mortgage-ready millennials and renters
- Focusing on sustainable homeownership and preservation

Local Solutions Needed

Just as at the national level, it is essential that local communities address the low rate of minority homeownership. Community, government and housing industry leaders should assess why the disparities in homeownership exist and work together to apply the principles outlined above. For example, local and state governments can make significant changes in fees, renovation requirements and regulations to encourage more affordable housing options.

Impact fees and permitting requirements often create additional hurdles to homebuilding. Reforming land use and zoning regulations to allow for mixed uses and higher densities, including smaller lots for single-family homes, and more allowance for attached homes and multifamily development can help increase supply. Amendments to rehabilitation codes can be designed to help keep people in their homes. These solutions will work best when they are developed with the participation of local community experts

Real Estate Market of Tomorrow

If America is to remain a nation of homeowners going forward, we must address the persistent barriers that minorities face. Our nation is much more diverse than it was even 30 years ago, and that diversity will continue to increase in the years and decades ahead. About two-thirds of people forming households today include someone who is African American, Hispanic or Asian American. Our future homebuyer represents this diversity. It is imperative that we take action now to end the disparities in homeownership rates and work to make sure our next generation will be a generation of homeowners.

Again, thank you for the opportunity to address you today. We will continue to work with this subcommittee and the Administration on a series of policy initiatives that can be part of a national effort to increase minority homeownership. We appreciate the progress that has been made on these issues, but the low rates we see are the result of decades of policies and practices. Outcomes will not be changed without a focused, long-term, national effort where local, state and federal government entities, along with the housing industry and consumers, come together to support our shared goals to reduce and eliminate these dangerous and enduring racial disparities.

Appendix

FAIR HOUSING AT 50

May 2018

Expanding Access to Opportunity

Lisa Sturtevant & Associates, LLC

NATIONAL ASSOCIATION of REALTORS®

fair housing at 50

EXPANDING ACCESS TO OPPORTUNITY

EXECUTIVE SUMMARY

Fair housing benefits everyone. On the 50th anniversary of the Fair Housing Act, the National Association of REALTORS® is reflecting on the progress made—and the work that still needs to be done—to end discrimination in housing markets and to promote housing opportunity for all. This framing paper and recommendations for action include a synthesis of recent research on housing and neighborhood opportunity, as well as analysis of results from REALTOR® focus groups on the topic of fair housing and housing discrimination. It is clear that the National Association of REALTORS®, local REALTOR® associations and REALTOR® members across the country have the opportunity and responsibility to increase efforts to support diversity and inclusivity in the real estate market.

Background

The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status and disability.[i] Since the Act's passage, there has been significant progress in reducing discrimination based on these factors when it comes to renting, buying and financing a home. However, our nation's long history of both explicit and implicit racial bias has led to persistent inequalities in access to housing in high-quality neighborhoods with good access to employment options, transportation and high-performing schools. The majority of communities around the country remain highly racially segregated and African American, Hispanic and other minority residents are less likely to be homeowners and more likely to live in neighborhoods with higher poverty rates, lower property values and fewer amenities and services.

Why We Care

Where people live has a direct impact on the quality of their health, education and access to economic opportunities. Even as explicit discrimination has become less common in housing market transactions, persistent racial and economic segregation resulting from implicit discrimination and from supposedly "race-neutral" policies remain a challenge throughout the country. When minority households have their housing and neighborhood options limited, they have less access to homeownership, high-performing schools, high-quality services and amenities, jobs and transportation.

But the benefits associated with expanding housing opportunities extend beyond individual families. There is a substantial body of research that has documented the benefits of access to homeownership and to high-opportunity neighborhoods to the broader community and economy.[ii] Residential segregation not only negatively impacts residents today, it also impacts future generations in those communities. Furthermore, the REALTOR® community has a business advantage when more people have access to homeownership and when there is more investment in neighborhoods that have been historically and serially disadvantaged by public policy and private activities.

Opportunities for Action

The National Association of REALTORS® should continue its commitment to increasing the inclusiveness of NAR membership and leadership. In addition, NAR should remain dedicated to education and advocacy to help ensure that homeownership and housing and neighborhood options are not limited to someone because of race, ethnicity or any other factor prohibited by the NAR Code of Ethics and the Fair Housing Act.

The recommendations for action for NAR, local REALTOR® associations and individual REALTOR® members focus on increasing access to housing opportunity beyond the individual homebuying or renting transaction and emphasize the importance of working within the REALTOR® community, as well as at the local, state and national levels.

Recommendations for Promoting Fair Housing and Expanding Access to Housing Opportunity

1. Increase Diversity in Leadership and Representation at NAR and Within Local Associations
2. Promote Awareness About Fair Housing Issues
3. Support State and Local Efforts to Expand Housing Options
4. Advocate for National Strategies Aimed at Promoting Housing Opportunities Introduction

INTRODUCTION

The Fair Housing Act was enacted into law in 1968 and prohibited discrimination in the housing market based on race, color, religion and national origin. In 1974, sex was added as a protected class and in 1988, the Act was further amended to prohibit discrimination based on disability and family status. Understanding of fair housing rights has evolved over the years and NAR now advocates to expand protections based on sexual orientation and gender identity.

Since the passage of the Fair Housing Act, there has been significant progress in reducing discrimination in real estate transactions. However, on the 50th anniversary of the adoption of the Fair Housing Act, the nation's long history of explicit and implicit racial discrimination has sustained and exacerbated wealth and income gaps based on race and ethnicity. Differential opportunities to homeownership and to high-opportunity neighborhoods is a fundamental reason for persistent economic inequalities in the nation.

Promoting and advocating fair housing is critical to NAR's ability to serve its customers, clients and the community. Fair housing is integral to the ethical commitment of NAR members, as outlined in the NAR Code of Ethics. On the 50th anniversary of the Fair Housing Act, NAR is committed to going even further to advocate for inclusive communities free from discrimination. Part of this advocacy is internal, by continuing to encourage diversity and inclusivity among NAR membership and leadership. Supporting education and dialogue within the REALTOR® community will also be an important component of NAR's efforts. But there are additional ways in which not only NAR, but also the local associations and individual REALTORS® can encourage and support activities that connect families to homeownership and bring investment to neighborhoods.

Fair housing benefits all of us. Individuals, families and children all have better outcomes when they have access to stable, affordable housing in high-opportunity neighborhoods. Local economies are stronger when there is a diversity of housing options affordable to all residents. REALTORS® themselves benefit from expanded business opportunities and larger market opportunities.

WHAT IS THE FAIR HOUSING ACT?

Overview

The Fair Housing Act (or Title VIII of the Civil Rights Act of 1968) as amended in 1974 and 1988, prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status and disability.[iii] The passage of the Fair Housing Act built on and expanded the provisions of earlier civil rights legislation, and expressly banned many of the public and private actions that had evolved over decades primarily to deny African Americans access to housing.[iv]

In addition to outlawing explicit discriminatory practices, the Fair Housing Act specifies that "[a]ll executive departments and agencies shall administer their programs and activities relating to housing and urban development...in a manner affirmatively to further" fair housing opportunities.[v] As such, the Fair Housing Act was written not only to right the wrongs of decades of explicit discrimination, but also to actively promote ways to open up housing options and neighborhoods to those who had been denied access in the past.

In the 1960s, many across the country—including NAR—did not support passage of the Fair Housing Act. However, NAR's commitment to fair housing for all has evolved over the decades. In 1975, NAR adopted an agreement with the U.S. Department of Housing and Urban Development (HUD) to promote fair housing, educate members regarding their rights and obligations under the Fair Housing Act, develop and recommend fair housing procedures for members and participate in community-based fair housing activities. In 1985, NAR supported a pilot program of government funding of testing of fair housing complaints. In 1988, NAR backed expanding the Fair Housing Act to prohibit discrimination based on familial status and disability.[vi] In 2010 and 2014, the NAR Code of Ethics was expanded to bar discrimination based on sexual orientation and gender identity. NAR's positions have evolved over time in part as a recognition of the growing diversity within the real estate profession and the growing importance NAR members place on inclusivity and diversity.

Current Status of Fair Housing in the U.S.

While overt discrimination in housing market transactions has declined significantly, five decades after the passage of the Fair Housing Act, implicit housing discrimination continues to be a problem.[vii] According to a review of fair housing studies that were conducted in 1989, 2000 and 2012[viii], denial of information about available housing to minority individuals (i.e. "door slamming") has declined considerably over time. Compared to whites, net rates of "door slamming" among minority homebuyers and renters dropped to essentially zero, meaning that in 2012, African American, Hispanic and Asian homebuyers and renters were told about just as many available units as were whites.

Researchers conclude, however, that "although the most blatant forms of discrimination have decreased, other forms of differential treatment are persistent and some have increased in incidence." In particular, measures of racial/ethnic steering have increased significantly since 1999 for African American homebuyers and modest increases in steering have been documented for Hispanic homebuyers. What this means is that compared to whites with similar housing needs, minority prospective homebuyers are less likely to be shown homes in neighborhoods with a high proportion of white residents. In addition, the research review indicates that real estate professionals continue to make more positive comments about white neighborhoods and more negative comments about black neighborhoods when working with a white potential homebuyer or renter than they do when talking with an African American potential homebuyer.[ix]

ASSESSING PROGRESS ON FAIR HOUSING

STEERING
Racial/ethnic steering refers to the practice among real estate professionals to guide prospective home buyers towards or away from certain neighborhoods based on their race or ethnicity.

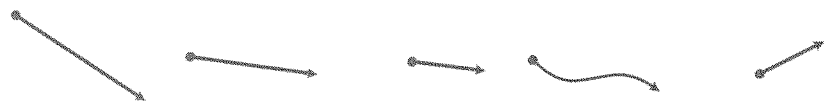
SEGREGATION
Segregation that exists as a result of specific laws or legally recognized practices is called *de jure* segregation. *De facto* segregation occurs not as a result of specific laws but through other voluntary actions taken by individuals and organizations.

BIAS
Explicit bias involves attitudes and beliefs that people hold about a person or a group on a conscious level. These biases—and the expressions of explicit bias (e.g. discrimination, hate speech)—often arise as the result of a perceived threat. *Implicit* bias, by contrast, refers to attitudes or stereotypes that shape people's actions and decisions in an unconscious manner.

FIGURE 1

Generalized Summary of Trends in Housing Discrimination

White tester told about advertised unit but minority tester was not (door slamming)	White tester inspected more units than minority tester	White tester offered financial help that minority tester was not offered	White tester received courtesies that minority tester did not receive	White testers steered to white neighborhoods and minority testers steered to less white neighborhoods
1977 to 2012	1977 to 2012	1989 to 2012	1977 to 2012	1989 to 2012
Decrease	Decrease	Decrease	Mixed results	Increase



Source: Crawford (2017), p. 8
Estimates of HMPS 1977 are from Wienk et al. (1979, tables 2 and 25); estimates of HDS 1989 and HDS 2000 (except for the Asian minority group) are from Turner et al. (2002, exhibits 3-1, 3-2, 3-11, 3-12, 3-14, 3-17, 3-18, and 3-20); Asian estimates of HDS 2000 and estimates of HDS 2012 are from Turner et al. (2013, exhibit V-1 and V-2).

In focus groups with real estate professionals around the country[x], there was fairly broad consensus that while explicit discrimination in the housing market was uncommon, subtle forms of racially discriminatory practices still exist. In particular, many African American participants in the focus groups felt strongly that discrimination was still a problem and provided detailed examples of practices that resulted in discrimination in real estate transactions. Most Hispanic, Asian and white participants in the focus groups generally felt that intentional racially discriminatory practices were mostly a thing of the past but many also described more subtle forms of steering.

Therefore, while institutional segregation ("*de jure*" segregation) largely may be a thing of the past, implicit forms of discrimination ("*de facto*" segregation) continue to create barriers to accessing housing opportunity. Differential treatment based on economic status can also have a discriminatory impact when differences in educational attainment, labor force participation, incomes and credit have been reinforced over decades through sanctioned private and public discriminatory behavior. Some of the focus group participants—particularly white, Asian and Hispanic participants—felt that current racial segregation and access to different neighborhoods was a result of different economic situations of homebuyers, rather than the race of homebuyers. However, the long legacy of *de jure* segregation has helped to create and sustain the large disparities in the economic situations of whites and African Americans (and, to a lesser extent, Hispanics and Asians) in the U.S.[xi]

> *I went to show a property to one of my clients. And one of the questions that the agent asked is, "Are you sure you can afford this neighborhood?" And I looked at her and was like, "Did she really just say that?"*
>
> - Focus Group Participant

FOCUS GROUPS

In the second half of 2017, the National Association of REALTORS® conducted focus groups with members of five real estate groups to better understand real estate professionals' knowledge and attitudes about the Fair Housing Act and to get input on how NAR can best continue to promote inclusion and diversity and to advocate for housing opportunity.

Most of these focus groups were conducted at annual conference meetings, which means that the groups consisted of real estate professionals who are highly engaged with the hosting organization and the real estate profession. In addition, most of the participants in these focus groups work in the most active and most expensive urban real estate markets in the country. For the most part, these focus groups were conducted during a positive active real estate market and that upbeat mood influenced the discussion somewhat.

The focus groups with 10 to 15 real estate professionals each were facilitated by Joe Goode, President of American Strategies, a national research organization that conducts focus groups, online and telephone surveys and data analysis. Focus groups are designed to afford the moderator the opportunity to explore issues and questions with in-depth conversations among participants but are not designed to be representative of the broad real estate community.

WHAT ARE THE TRENDS IN ACCESS TO OPPORTUNITY?

As we talk about the Fair Housing Act in 2018, the dialogue has shifted from explicit discriminatory practices to the disparate outcomes in terms of access to homeownership and neighborhoods of opportunity. Racial disparities in the U.S. are both caused by and contribute to on-going residential segregation, and to differences in the ability to buy a home and to live in healthy communities that have access to good schools and employment options and convenient services and amenities. The cyclical relationship between where one lives and his or her economic situation has been self-reinforcing over the decades.

There are several measures that vividly depict the persistent impacts of racial disparities in the U.S. which are tied to the ability to access homeownership and high-quality neighborhoods:

Homeownership Rates Remain Lower for African American and Hispanic Households Compared to Whites

In 2017, the homeownership rate for white, non-Hispanic households was 72.3 percent. By comparison, the homeownership rates for African American and Hispanic households were 41.6 and 46.2 percent, respectively. The homeownership rate among Asian and Native Hawaiian/Pacific Islander households was 57.2 percent in 2017.

Homeownership among African American households has continued to decline since the recession (although holding steady between 2016 and 2017). In fact, African American homeownership rates remain at near 50-year lows.[xii]

The homeownership rate among Hispanic households has increased somewhat since 2014. Incomes and educational attainment levels among Hispanics have increased. In addition, Hispanics are forming households at a faster pace than any other racial/ethnic group. It is estimated that since 2010, Hispanic households have accounted for 60 percent of the growth in the number of homeowners in the U.S.[xiii]

Homeownership rates among households who are Asian, Native Hawaiian or Other Pacific Islander also remain substantially below the rates for white households. These lower homeownership rates persist even as Asian households, on average, have relatively high credit scores, high incomes and high levels of educational attainment.[xiv]

A key factor related to differential homeownership rates relates to varying credit scores among households of different races. African American and Hispanic households tend to have lower credit scores than do white households. Since credit scores are used by lenders to determine whether a household can borrow money and what interest rate it will pay, these lower credit scores put African Americans and Hispanics at a disadvantage when it comes to buying a home.

Credit history was reported as the reason for 28 percent of denied mortgage applications among African Americans, compared with 22 percent among whites. Even higher-income African American households are disproportionately denied a mortgage as a result of credit history.[xv] The credit challenge is acute for Hispanic households, as well. More than a quarter of Hispanic households are "credit invisible" or have an unscored credit record, preventing access to mortgage credit financing.[xvi]

Credit scores are calculated by applying a mathematical formula to household data compiled by the three major credit bureaus. This data includes information about any prior mortgage, car loans and credit cards, and some other payment information. Usually missing from credit score calculations is information on utility, telecom and rent payments. When these data are included in credit scoring models, they typically reflect negative activity, since this information is usually not reported unless an individual misses or falls behind on a payment. There is seldom a record of consistent on-time utility, telecom and rent payments to serve as an input to credit score calculations.[xvii]

Recent research from the Urban Institute demonstrates how the current method of calculating credit scores is a factor in perpetuating racial disparities in wealth and economic security.[xviii] The National Association of Real Estate Brokers and the National Association of Hispanic Real Estate Professionals, among others, have suggested that the use of alternative credit scoring models could expand mortgage lending significantly to both African American and Hispanic households.[xix] Alternative credit scoring models incorporate additional data and payment history, including data that would help support the credit scoring for households with "thin" credit files. By one estimate, the use of alternative, predictive credit scoring models could bring more than 115,000 African Americans into the mortgage market in one year alone.[xx] NAR is actively seeking the acceptance of alternative credit scoring models by HUD and the Federal Housing Finance Agency.

Homeownership and the resulting equity a homeowner builds up is the primary way in which most Americans accumulate wealth. Largely as a result of lower homeownership rates, minority households in the U.S. have significantly lower levels of wealth than do white households. In fact, the median wealth of white, non-Hispanic households is *more than 14 times greater* than the median wealth of African American households in the U.S. Wealth among white households is *about 11 times greater* than that for Hispanic households. (The median wealth level for Asian households is similar to white households.)

FIGURE 2

Select Socioeconomic Characteristics by Race/Ethnicity (U.S.)

Race/Ethnicity	Educational Attainment (age 25+) (2016)[1]		Unemployment Rate (4th quarter 2017)[2]	Median Household Income (2016)[1]	Homeownership Rate (2017)[3]
	Pct. with H.S. diploma	Pct. with BA/BS			
White	92.5%	35.0%	3.4%	$63,155	72.3%
African American	85.2%	20.9%	7.0%	$38,555	41.6%
Hispanic	67.1%	15.3%	4.7%	$46,882	46.2%
Asian	86.6%	53.2%	2.8%	$80,720	57.2%

Sources: [1]U.S. Census Bureau 2016 American Community Survey; [2] U.S. Bureau of Labor Statistics, E-16 Unemployment Rates by Age, Sex, Race and Hispanic or Latino Ethnicity; [3]U.S. Census Bureau Current Population Survey/Housing Vacancy Survey

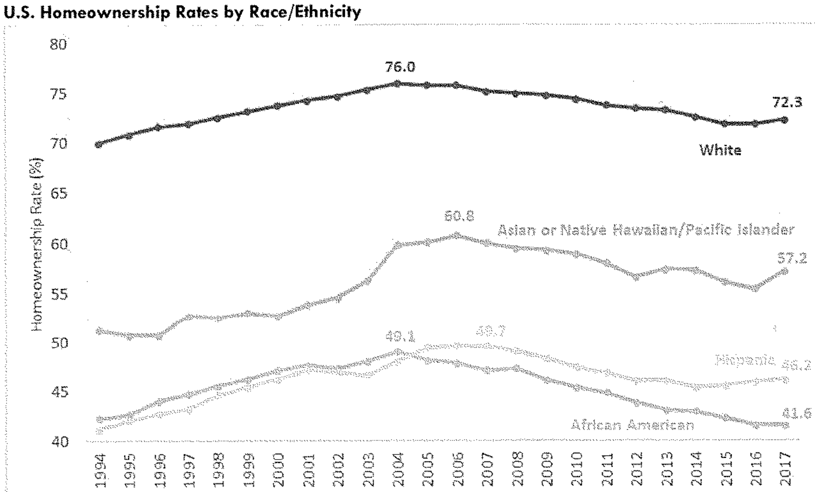
The wealth gap in the U.S. primarily is a housing wealth gap. Non-white households are significantly less likely to have positive home equity. Among those who do have equity in a home, median housing wealth for African American and Hispanic homeowners is about half the level of white homeowners.[xxi]

Lower homeownership rates have impacts for racial minorities that can last generations. Lower homeownership rates mean less opportunity for a family to accumulate wealth. Lower family wealth means fewer resources to help subsequent generations pay for college, start a business—or to become homeowners themselves. Then the cycle continues.

> *I have a big issue with that term "if you qualify." What does that mean?...If you qualify is saying a whole lot. It's saying, well, [did] your past generation, do your parents, do your grandparents understand insurance policies and estate planning and carrying on generational wealth? Probably not, so that's a big if. That's where the problem is.*
>
> \- Focus Group Participant

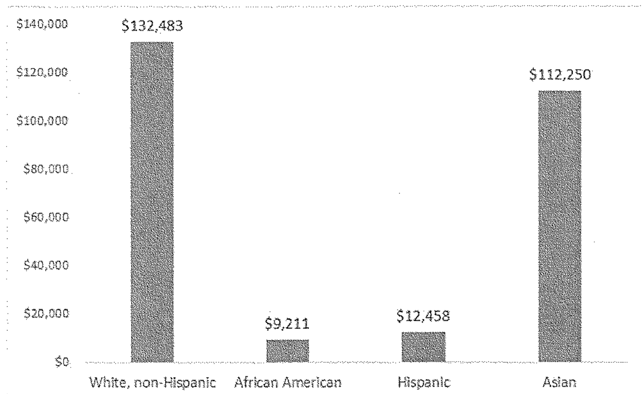
FIGURE 3

U.S. Homeownership Rates by Race/Ethnicity



Source: U.S. Census Bureau, Current Population Survey/Housing Vacancy Survey

FIGURE 4
Median Net Wealth by Race/Ethnicity, 2013



Source: U.S. Census Bureau, Survey of Income and Program Participation, 2014 Panel, Wave 1

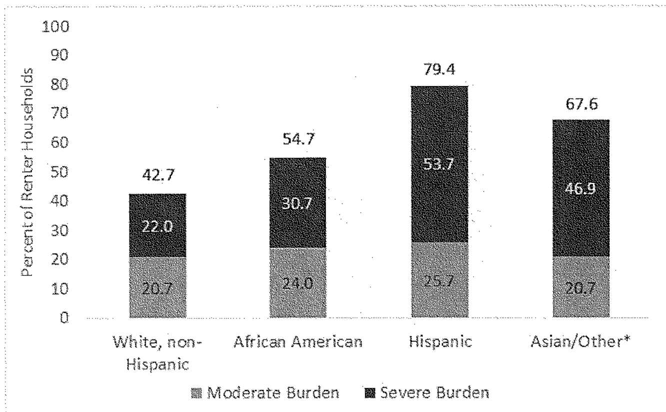
African American and Hispanic Renters are More Likely Than White Renters to be Cost Burdened

Compared to whites, African American, Hispanic and Asian households are much more likely to rent than to own their homes. In addition, African American and Hispanic renters spend a higher share of their incomes on housing costs than do white renters. In 2016, 42.7 percent of white renters were cost burdened, spending 30 percent or more of their income on housing costs. By comparison, the rates of cost burden were 54.7 percent and 53.7 percent for African American and Hispanic renters, respectively. About 47 percent of Asian or Pacific Islander renters were cost burdened. [xxii]

Rates of cost burden for renters vary across the country. In some of the nation's highest cost areas, African American and Hispanic renters face tremendous challenges finding housing they can afford. A shortage of new residential construction is a primary cause of this rental affordability challenge.[xxiii] Therefore, an increase in the supply of new rental housing is critically important for addressing renter cost burden, generally, and the cost burden faced by minority renters, in particular.

There are significant implications of spending a disproportionately high share of household income on rent. Severely cost burdened renters have less money for food and health care compared to other households who find affordable housing. Less spending on these necessities can have devastating impacts on health and well-being, particularly among those living on very low incomes.[xxiv]

FIGURE 5
Renter Cost Burden by Race/Ethnicity, 2016



Source: Joint Center for Housing Studies tabulations of 2016 American Community Survey 1-year data. Online http://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race *Asian/Other includes Native Hawaiian and Other Pacific Islander, Native American, and multiracial renters.

In addition, renters—particularly those who are cost burdened—have a difficult time building up a credit history and bolstering their credit score. More than half of renters have a credit score that is too low to qualify for most mortgages.[xxv] Finally, cost burdened renter households have a hard time saving for a down payment and therefore face additional obstacles to homeownership.[xxvi]

Displacement of Minority Households

Residential displacement is part of the history and legacy of housing discrimination in the U.S. Historically, federally-sanctioned efforts were instrumental in displacing minority residents from urban neighborhoods. For example, under the federal urban renewal program that was instituted as part of the federal Housing Act of 1949, the government cleared large areas of land in urban neighborhoods for redevelopment for "higher" uses, which resulted in the displacement of an estimated one million people, mostly people of color.[xxvii] The development of the federal highway system in the 1950s also had the impact of destroying many African American communities and forcing significant displacement among African American residents.[xxviii]

> *It's bigger than just 'you can't live somewhere.' ...This also incorporates how people might want to live where you live, right? And the means to sustain the housing there, to bring resources that could be used to bring that porch up to code so that that family stays there. So if there were public resources or a way for folks to get that money--and make those things happen instead of having somebody swoop in and steal it.*
>
> - Focus Group Participant

More recently, "market-based" displacement associated with new investment and population growth has resulted in similar pressures in some urban, predominantly minority neighborhoods. Investments in historically underinvested neighborhoods often comes along with the movement of higher-income, often white residents into urban, often predominantly minority neighborhoods. The term "gentrification" is typically thought of in negative terms; however, investment and population growth in underserved communities, is not, by itself, a negative. But gentrification can cause displacement if new higher-income residents are able to bid up homes prices and rents in a neighborhood and when new investment in residential construction targets the newly arrived demographic. Public investment that supports gentrification can mean that public resources are used to attract new residents, sometimes at the expense of existing, long-term minority residents. These residents are not able to accrue the benefits of the improvements and additional amenities and services in their neighborhoods. Even if residents own their home, they may see property taxes increase to an amount not sustainable for long term residence.

Investing in neighborhoods can improve amenities, public safety and property values. However, It has been difficult for many to find a balance that provides that lower-income, often minority residents, are not priced out and are able to benefit from improved neighborhoods.[xxix]

Racial and Economic Segregation in the U.S. Remains Very Common

Racial and economic segregation remains a pervasive challenge across the country. Neighborhoods throughout the U.S. have long been separated along racial lines, with divisions that date back to the legacy of slavery and Jim Crow laws. Despite the adoption of the Fair Housing Act in 1968, racial and economic segregation still defines most urban areas. Whites tend to live in neighborhoods with low shares of minority residents, while African American and Hispanic residents tend to live in neighborhoods with high shares of minorities.[xxx]

Attitudes about segregation and integration have improved since the 1960s, but there is still a substantial share of people who believe individuals should be able to take actions to ensure that they do not live in a neighborhood with someone of a different race. Whites express increasing "tolerance" of African American neighbors; however, there remains a strong preference among white prospective homebuyers—particularly those with children—to live in majority white neighborhoods. Remarkably, according to recent research, a significant share of whites (28 percent) still believe that homeowners should be allowed to refuse to sell a home to an African American.[xxxi]

MEASURING RACIAL SEGREGATION

The *index of dissimilarity* is a measure researchers use to evaluate levels of segregation. This index compares the distribution of African American residents across neighborhoods in a metropolitan area with the distribution of white residents. The index measures the percent of African American residents that would need to change neighborhoods to be distributed in the same way white residents are distributed throughout the metropolitan area. Higher levels of the index of dissimilarity mean more segregation.

By some objective measures, there have been modest declines in levels of racial segregation. In 45 of the 52 largest metropolitan areas in the U.S., racial segregation as measured by the *index of dissimilarity* declined between 2000 and 2010-2014.[xxxii] Researchers have suggested that these small declines in segregation have resulted from population shifts of both African American and white residents, as well as the growth and dispersion of the Hispanic and Asian populations.[xxxiii] Despite improvements, there remain substantial racial inequalities and segregation in most places across the country.

Over time, legally-sanctioned discrimination in housing markets has been replaced by so-called "race-neutral" policies that have had the effect of excluding racial minorities from housing and neighborhood options. Redlining and racially restrictive covenants limited housing options of African Americans in earlier decades, but today local land use decisions and zoning regulations often play a role in dictating where racial minorities—and particularly African Americans and Hispanics—can live.[xxxiv]

Zoning is the regulatory tool local communities use to dictate the type, amount and locations of development activity. Exclusionary zoning policies, including requirements for large lot sizes and large housing unit sizes, make it difficult for lower-income households, including minority households, to live in certain communities.[xxxv]

At the same time, some federal and local housing programs are designed in such a way that they promote the construction of new lower-cost housing not in areas of opportunity but rather in distressed neighborhoods where there is already a concentration of lower-income and minority residents. These patterns are being increasingly challenged in court and in the public arena as there is better understanding of the role neighborhood plays in supporting individual and family well-being.[xxxvi]

Persistent racial and economic segregation resulting from implicit discrimination and/or from supposedly "race-neutral" policies, such as exclusionary zoning, indicates that there is still work to be done to achieve the goals of the Fair Housing Act and to promote access to high-opportunity neighborhoods.

> "*We still have people who randomly still ask me to this day, and I'm shocked, "I don't want to live in an X neighborhood." I don't want to live in a neighborhood with black people or too many Hispanics. I'm shocked by this. Half the time, I don't think they don't realize that I'm a minority. And they say it, like blatantly say it.*"
>
> - Focus Group Participant

WHY IS FAIR HOUSING AND ACCESS TO HOUSING OPPORTUNITY IMPORTANT?

NAR has affirmed that "where people live has a direct impact on the quality of their health, education, and access to economic opportunities."[xxxvii] A considerable body of research has documented the ways in which homeownership, housing affordability and neighborhood quality impact individuals, families and communities. When minority households have their housing and neighborhood options limited, they have less access to high-performing schools, high-quality services and amenities, jobs and transportation. These impacts extend beyond the individuals and families themselves to the larger community.

Benefits to Individuals and Families

Research consistently demonstrates that access to stable, decent and affordable housing promotes positive outcomes for families, including better educational outcomes for children and better physical and mental health outcomes for people of all ages.[xxxviii] In addition, the prospects for upward economic mobility and self-sufficiency are strongly correlated with the availability of affordable housing that is connected to jobs, transit and other amenities and services.[xxxix]

Homeownership, in particular, is an important factor in promoting housing stability and supporting family well-being. There is research that demonstrates a relationship between saving for a down payment and school performance. Specifically, children in families who purchased a home with a down payment are significantly less likely to drop out of school than are other children.[xl] Recent studies also have documented that the wealth building effect of homeownership is associated with a greater sense of control among homeowners in a stable housing market, which leads to positive mental and physical health outcomes.[xli]

Benefits to Communities

A wide range of housing types at all price and rent levels helps build thriving, diverse and engaged communities. When all residents—regardless of race, cultural background, income, age or disability status—are able to access a community's opportunities and services, everyone benefits. Stable neighborhoods have less crime.[xlii] Homeowners are more actively engaged in the community and are more likely to participate in civic and neighborhood groups.[xliii] In addition, there is some evidence that homeownership programs may result in increased property values near subsidized housing and can, under the right circumstances, draw other non-housing investment to a community.[xliv]

While having access to affordable housing in high-quality neighborhoods is important for the well-being of individuals and families, the benefits extend beyond the families themselves. For example, children who live in stable, affordable housing in good neighborhoods do better in school. But it turns out that schools and students overall do better when lower-income and minority students have access to housing opportunities. Research has demonstrated that white students who attend schools that are racially and ethnically diverse exhibit better learning outcomes, have better social and psychological outcomes and experience long-term benefits from school diversity compared to white students in predominantly white schools.[xlv]

In addition, it has been documented that a sufficient supply of housing with homes that are affordable to households all along the income spectrum is critical to supporting sustainable, long-term local economic growth. Increasing housing options that allow people to live near where they work reduces commute times and traffic congestion and can serve as a catalyst for successful transit options. Successful transit requires a concentration of people to operate efficiently and having more housing concentrated near transit creates a ready pool of potential transit users. Having a sufficient supply of housing affordable for all workers is increasingly important to the ability of businesses to attract and retain workers. Quality of life issues—including housing costs and availability—are critical drivers of business decisions about where to locate or expand.[xlvi]

Expanding access to homeownership and promoting racial and economic integration is increasingly being seen as an important local and regional economic development strategy. Research conducted in 2015 demonstrated that U.S. regions that were most economically integrated—that is, had neighborhoods where higher-income and lower-income households were able to live side by side—were more economically resilient and bounced back from the economic recession better than regions that had more segregated neighborhoods.[xlvii]

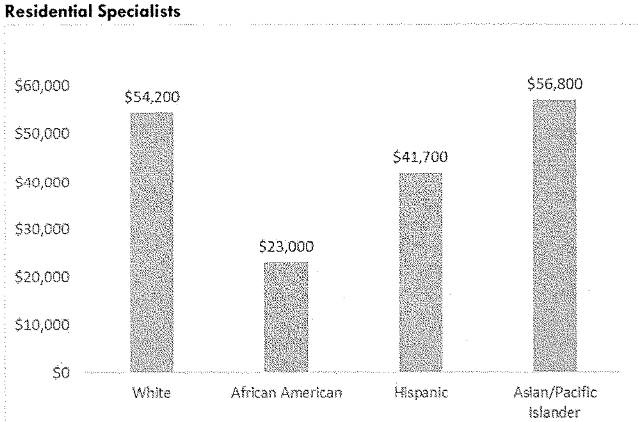
Benefits to REALTORS®

In addition to being good for communities and local economies, expanding housing opportunities through neighborhood investment and connecting households to neighborhoods of opportunity is also good for the business of REALTORS® themselves.

By many measures, African American and Hispanic REALTORS® do not fare as well as white REALTORS®. Non-white REALTORS®—and African Americans, in particular—earn significantly lower compensation than white REALTORS® even after accounting for differences in age and experience. According to a 2017 report from NAR's Research Group, among residential specialists, the median gross income of African American REALTORS® is less than half that of white and Asian/Pacific Islander REALTORS®.[xlviii]

FIGURE 6

Median Gross Income by Race/Ethnicity, 2017
Residential Specialists



Source: Choosing a Career in Real Estate: A Perspective on Gender, Race, and Ethnicity. Washington DC: National Association of Realtors® Research Group.

Overall, the typical residential REALTOR® had a median sales volume of $1.87 million in 2016; for African Americans, the median was just $500,000. The primary driver in differences in sales volume is the median home value of properties sold. In 2016, the average value of a home sold by an African American REALTOR® was $188,600, compared to $286,800 for whites, $432,400 for Asians and $257,400 for Hispanics.[xlix]

Investments in neighborhoods that increase homeownership opportunities for African Americans and other minority households will be a benefit to all REALTORS®. About 85 percent of all residential and dual real estate specialists operate in an area where there is a presence of two or more races; 73 percent work in communities that are either "somewhat" or "highly" mixed between several races and ethnicities.[l] As a result, almost all REALTORS® stand to benefit from expanding homeownership to historically underserved groups, making investments to improve neighborhoods and helping to connect all prospective homebuyers with housing options in areas that are well-connected to high-quality amenities and services.

> *"If more minorities are applying for FHA loans to buy a condo and a homeowner wants to keep minorities out of the complex, then he or she can just say, "My complex is not FHA approved." And therefore, they eliminated the likelihood of the complex becoming more racially diverse."*
>
> \- Focus Group Participant

OPPORTUNITIES FOR ACTION

The National Association of REALTORS® is committed to education and advocacy to ensure that housing and neighborhood options are not limited to someone because of his or her race or ethnicity. In addition, NAR remains dedicated to promoting inclusion and diversity throughout the real estate community.

With extensive input from REALTOR® focus group participants, the following are four recommendations for how NAR, local associations and individual REALTORS® can continue to work to advocate for fair housing and support housing opportunity:

1. Increase Diversity in Leadership and Representation at NAR and Within Local Associations

By facilitating and supporting joint collaborations between local chapters of multicultural real estate organizations and local REALTOR® associations, NAR can promote increased diversity and inclusion in the leadership of local real estate organizations. Associations can recruit into leadership training programs members from groups that have traditionally been underrepresented in their leadership. In addition, local REALTOR® associations can include an emphasis on diversity their grassroots political activities.

2. Promote Awareness About Fair Housing Issues

As an important action to build momentum, NAR should continue to state publicly that challenges of housing discrimination and access to housing choices remain even 50 years after the passage of the Fair Housing Act. Among its membership, NAR can include greater education and information about the current state of residential segregation and economic disparities and the lasting impacts of racial discrimination. Externally, NAR members can be active partners with other organizations committed to educating the general public about fair housing and access to opportunity.

3. Support State and Local Efforts to Expand Housing Options

Local REALTOR® associations can collaborate with other organizations to support specific referenda, policy recommendations and residential projects that support the mission of NAR and promote fair housing and housing opportunity. NAR can work with multicultural real estate organizations, including at the state and local level, to examine the relationships between fair housing and school quality, healthy communities and economic opportunities, and determine how REALTORS® can inclusively serve all communities.

4. Advocate for National Strategies Aimed at Promoting Housing Opportunities

NAR has long been an important voice on national housing policy issues. On this 50th anniversary of the Fair Housing Act, NAR should continue its leadership role in advocating for policies that expand housing opportunities, reduce disparities in access to homeownership and address persistent economic inequalities. Fair housing and housing opportunity are at the heart of many of the federal issues that NAR works on. For example, supporting an Alternative Credit Score policy is one important way to help open up homeownership to those who remain unfairly on the sidelines.

In addition, NAR can continue to be a strong proponent for expanding fair housing protections, as it was in 1988 when it supported the addition of familial status and disability as protected classes under the Fair Housing Act. NAR continues to champion equal housing opportunity by seeking and supporting legislation to expand the Fair Housing Act to prohibit discrimination based on sexual orientation and gender identity.

CONCLUSION

Fifty years after the passage of the Fair Housing Act, there have been dramatic declines in levels of explicit housing market discrimination. However, implicit forms of discrimination and persistent inequalities in access to homeownership and housing opportunity still exist. It is important for all members of the REALTOR® community to understand the legacy of discrimination and the implications of racial and economic segregation. The National Association of REALTORS®, local associations and individual REALTORS® have an important responsibility for being at the forefront of expanding education and awareness of fair housing issues both within the REALTOR® community as well as more broadly. Only with this commitment will it be possible to continue to address current and past discrimination and help promote housing opportunity for all.

ENDNOTES

[i] U.S. Department of Housing and Urban Development. Undated. Fair Housing Laws and Presidential Executive Orders. Online https://www.hud.gov/program_offices/fair_housing_equal_opp/FHLaws
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ABOUT THE AUTHOR

Lisa Sturtevant, PhD is president and founder of Lisa Sturtevant & Associates, LLC. She has been involved in research and analysis on local economic, demographic and housing market conditions for more than 20 years. She leads housing needs assessments and strategic planning projects for local communities through the country. In addition, she conducts special studies on housing issues for local and national organizations.

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UNIDOSUS
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The State of, and Barriers to, Latino Homeownership

Submitted to

House Financial Services Committee
Subcommittee on Housing, Community Development, and Insurance

Submitted by

UnidosUS
Raul Yzaguirre Building
1126 16th Street NW, Suite 600
Washington, DC 20036-4845

May 15, 2019

Introduction

UnidosUS, formerly the National Council of La Raza, is the largest national Hispanic* civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for low-and moderate-income Latino families so that they can achieve economic stability and build wealth. In this capacity, UnidosUS, with its network of nearly 300 Affiliates—local, community-based organizations in 35 states, the District of Columbia, and Puerto Rico—provides education, health care, housing counseling, workforce development, and financial coaching programs to millions of citizens and immigrants in the United States annually.

For almost three decades, UnidosUS has conducted research and analysis and has testified before Congress on issues related to improving the financial well-being of Latinos; including strengthening the Community Reinvestment Act and the Home Ownership and Equity Protection Act (HOEPA), supporting strong fair housing and fair lending laws, creating a fair and equitable credit scoring system, increasing access to financial services for low-income families, and promoting homeownership in the Latino community.

In addition, the UnidosUS Wealth and Housing Alliance (UWHA) is the nation's largest network of community-based organizations working to empower Latino wealth-building through homeownership. The UWHA develops effective programs that blend research, advocacy, and direct housing and financial counseling. The UWHA is a housing counseling intermediary approved by the Department of Housing and Urban Development (HUD) and trains hundreds of housing counselors emphasizing individual and culturally competent counseling. Established in 1997, the UWHA includes 50 independent community-based organizations, that supports more than 60,000 families a year.

This statement provides a brief history of Latinos' access to homeownership and identifies three barriers the community currently faces in accessing homeownership.

Background

Latinos, Blacks, new immigrants, and other underserved groups have long been shut out of access to safe and affordable homeownership opportunities. Beginning in 1934, the Federal Housing Administration (FHA) ranked "races" and "nationalities" with respect to their perceived level of desirability in the lending and real estate markets. FHA's chart, summarized below, lists White Anglo-Saxons at the top of the list and Latinos and Blacks at the bottom.[1]

1. *English, Germans, Scotch, Irish, Scandinavians*
2. *North Italians*
3. *Bohemians or Czechs*
4. *Poles*

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* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

5. *Lithuanians*
6. *Greeks*
7. *Russians, Jews (lower class)*
8. *South Italians*
9. *Negroes*
10. *Mexicans*

Following World War II, these practices continued to influence federal housing policy and how credit was extended to purchase a home, in a process known as redlining.[2] This process allowed White families to take advantage of government-guaranteed home loans, while Latinos, Blacks, and other people of color, were largely excluded from the opportunity to obtain these mortgages. This resulted in residential segregation and disinvestment in communities of color where banks refused to lend money for homes in inner cities, and Latinos and Blacks were excluded from suburban areas. These policies were largely eliminated following the enactment of the Fair Housing Act of 1968 and the Equal Credit Opportunity Act of 1974, but some discriminatory practices in lending continued.

Unfortunately, in the lead up to the financial crisis of 2007—Latinos, like Blacks and other Americans—were disproportionately steered into high-cost mortgage loans. Even when Latino homebuyers had good credit, they were 30% more likely to receive financing options that were high-cost and predatory. As a result, millions of families lost their homes to foreclosure,[3] and Latino homeownership decreased by 4.1% between 2007 and 2014,[4] falling from 49.9% in 2007 to a 10-year low of 45% in 2014.[5] Since 2014, Latino homeownership has rebounded two percentage points, reaching 47.2% in 2017.

Even though the Latino homeownership rate has been on the rise, Latinos continue to experience setbacks in the housing market. Persisent disparities still exist in the mortgage market, and while mortgages to Latinos have increased overall, eligible Latino borrowers still face credit barriers and growing challenges in their ability to afford a home in their community.

Barriers to Latino Homeownership

Latinos represent a growing and influential population in the housing market, as demonstrated by sustained growth in Latino households and Latino homeownership. Despite recent gains, continued low Latino homeownership rates and persistent homeownership disparities have the potential to dampen the future prospects of the nation's housing market. This section addresses three barriers to Latino homeownship: access to credit, down payment assistance, and rising housing costs.

Access to Credit

Credit in the United States has been traditionally extended based on a credit score. While this score is intended to be an impartial measure of a person's creditworthiness, it can reinforce discriminatory and unfair disparities, including access to homeownership. Credit scores reflect historic wealth; those with more wealth are likely to have better credit history and a positive credit score because they can pay their bills on time and are better equipped to weather financial setbacks or emergencies.

Because the credit information of Latinos and other communities of color are not adequately captured and more accurately scored, they tend to have lower credit scores than their White counterparts. In 2013, the Urban Institute found that in 2013, only 41% of Latinos and 33% of Black consumers had a FICO score of 750 or higher, while more than 64% of Whites had a score of 750 or higher.[6] Latinos continue to face challenges in accessing safe credit products, in part because they are inadequately captured by traditional credit reporting systems. For example, 30% of Black and Hispanic consumers are credit invisible or are unscoreable, compared to 17% of Whites.

To ensure that Latinos' credit information is adequately captured and more accurately scored, the lenders, credit scoring agencies, and secondary market mortgage investors should expand its use of non-traditional credit information and adopt new credit scoring models that incorporates alternative data, in their mortgage underwriting systems. For example, Fannie Mae and Freddie Mac should finalize and implement their proposed rule which contemplated alternative credit scoring models in their underwriting and risk-based pricing frameworks.

Down Payment Assistance

One of the primary barriers confronting most of today's prospective homebuyers is the ability to accumulate sufficient savings to make a down payment. According to several industry studies, saving for a down payment was ranked as the most difficult step in the home buying process.[7]

Programs that have coupled down payment assistance or low down payment requirements with appropriately designed loan products have proven to be of great assistance to first-time homebuyers. For example, in 2010, the HUD Neighborhood Stabilization Program cited down payment assistance as a crucial approach to stimulating homeownership within low-and moderate-income communities.[8] UnidosUS surveys of the Financial Services Advisory Council, a group of 10 UnidosUS Affiliates serving more than 50,000 Latinos annually, noted that down payment assistance is a critically important tool in their Latino communities.[9]

To help Latinos and low-wealth communities overcome a historical gap in savings, the housing finance system should promote and adopt innovative loan programs that promote safe and affordable products that do not require a large down payment. These should include low down payment mortgage programs and programs that pair down payment assistance with safe, affordable loan products and integrate housing counseling. By offering viable pathways to overcome a lack of adequate savings, down payment assistance programs can create opportunities for more American families to successfully enter into homeownership with equity.

Rising Housing Costs

Many Latino homebuyers struggle to find a home at a price they can afford. The supply of existing single-family homes for sale, especially more modestly-priced homes, is low. For example, even in moderately sized, moderately priced, and fast-growing metros such as Boise, Idaho; Charlotte, North Carolina; Des Moines, Iowa; and Durham, North Carolina, 65% of existing homes for sale were at the upper end of the market.[10] And, in five of the 10 most unaffordable metro areas by home price to income ratio, Latinos make up between 20 to 35% of households.[11]

Greater federal investment is needed to help close the gap between stagnating incomes and rising housing costs, and to increase affordable housing stock. For example, investments in the Federal Housing Trust Fund and HOME Investment Partnerships can help boost affordable housing construction. In addition, re-introducing a refundable first-time homebuyer tax credit and removing caps on Fannie Mae and Freddie Mac's conforming loan limits can help families with modest incomes afford financing in high cost areas.

Conclusion

Latinos face persisting disparities in access to affordable homeownership. Greater access and affordability in the nation's housing market is needed to close homeownership gaps and put Latinos back on a path to building equity and wealth.

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Chenoa fund

Testimony Submitted for the Record

House Financial Services Housing and Insurance Subcommittee Hearing:

A Review of the State of and Barriers to Minority Homeownership

By The
Cedar Band of Paiutes'
CBC Mortgage Agency
(the "Chenoa Fund")

May 8, 2019

Chairman Cleaver, Ranking Member Duffy, and Members of the Subcommittee, the Chenoa Fund is very pleased to submit testimony for the record for the hearing on addressing the important issue of examining the barriers to minority homeownership.

Unfortunately, today's minority populations still have a much lower homeownership rate than non-minority populations. The homeownership rate in the African-American community, for example, is the lowest it has been since 1968. Additionally, the Federal Reserve found that the average net worth of a homeowner was \$195,400 – 36 times that of the average renter, with a net worth of \$5,400.

Homeownership is a clear, critical factor in narrowing the racial divide in our country.
The Chenoa Fund, an American Indian-owned national housing finance agency, has been working steadily since its inception in 2013, to responsibly expand homeownership opportunities to minorities, low- to moderate-income, and first-time home buyers through its down payment assistance programs. Fully 54% of Chenoa's borrowers are minority borrowers; over 60% are low- to moderate-income borrowers; and nearly all of their customers are first-time homebuyers. In stark contrast to the Chenoa Fund's mission to assist minority and first-time homebuyers, the Department of Housing and Urban Development is advocating curtailing down payment assistance programs provided by Governmental Entities – i.e., national, state and local housing finance agencies. In the case of down payment assistance programs provided by national housing finance agencies that are owned by American Indian tribes (e.g., the Chenoa Fund[1]), HUD 's recently released Mortgagee Letter (ML) 2019-06, *Downpayment Assistance and Operating in a Governmental Capacity* (Mortgagee Letter), limits those agencies' activities to providing down payment assistance to only to those tribal organization's enrolled members and/or only to tribal members living on their respective reservations.[2]

Bishop Harry Jackson, senior pastor of the Hope Christian Church, Beltsville, Maryland, spoke eloquently on the impact of HUD's ill-advised Mortgagee Letter:

> *Many racial challenges facing this country stem from our massive disparity in wealth. White households enjoy 12 times the net worth of African American households, a disturbing gap that grows wider by the day. While nearly three out of four whites own homes, the African American homeownership rate is 41 percent – the lowest it has been since 1968.*
>
> *A primary reason for this disparity is that unlike many whites, African Americans typically lack intergenerational wealth to assist their children with the most important purchase of their lives, buying a home. As a result, government policies that hinder effective programs*

[1] The CBC Mortgage Agency ("CBCMA" – i.e., the "Chenoa Fund), is a wholly-owned subsidiary of the Cedar Band Corporation, which a wholly-owned Section 17 corporation of the Cedar Band of Paiutes. The Cedar Band of Paiutes is located in Southern Utah. The net profits from the Chenoa Fund are used to support the Cedar Band of Paiutes' essential governmental functions as well as social programs such as senior and youth programs; stipends to its senior members over the age of 62; and economic development. (See attachment.)

[2] Among many other flaws, HUD's policy initiative illustrates a complete lack of understanding of American Indian organizations and the laws governing them, their members, how they operate and, very importantly, the capabilities of American Indians to operate a successful down payment program. HUD's policy agenda appears to embody a belief that American Indian organizations are incapable of running a housing finance agency well. Given its strong record of performance, the Chenoa Fund, which is 100%-owned by the Cedar Band of Paiutes, is very obviously proving that HUD's underlying bias against American Indian organizations is wrong.

> *like down payment assistance perpetuate a system that is leaving many African Americans in a permanent, renting underclass.*[3]

While HUD's Mortgagee Letter has been stayed for 90 days, if it is allowed to go into effect, it will not only put federally-chartered Native American down payment assistance housing finance agencies out of business, it will also jeopardize all down payment assistance programs offered by all governmental entities.

The impact of HUD's Mortgagee Letter is very discriminatory, harms consumers, especially minority consumers, and will not result in improving the financial solvency of the FHA Mutual Mortgage Insurance Fund (MMIF).

HUD is particularly focused on Native American-owned housing finance agencies that are federally-chartered by the Bureau of Indian Affairs because it mistakenly believes that governmental entities, operating on a national scale, pose a risk to the MMIF. Just because these housing finance agencies operate *nationally*, as a result of their federal charter, does not mean they pose a risk to the MMIF. HUD has absolutely no data to support this ill-founded conclusion.

HUD should withdraw its Mortgagee Letter. In its stead, HUD needs to put in place a system where it would monitor each governmental entity's performance and pricing – a "Neighborhood Watch" program, which can be done very easily by simply changing the data that is entered into HUD's existing system. This change would bring needed pricing and performance transparency to loans in this market segment while enabling HUD and each governmental entity to better-manage their programs. This transparent system would also benefit mortgage consumers using these programs.

Below are summary points reviewing HUD's ill-advised Mortgagee Letter, but attached is a complete statement that fully reviews the issues surrounding HUD's misguided attempts to regulate government DPA and an appropriate alternative that avoids harmful impact on the consumers who most need our assistance.

1. **HUD's Policy Initiative Has A Discriminatory Impact**

Under the FHA rules, borrowers must make a down payment of 3.5% towards to the purchase of their home if they intend to get an FHA-insured mortgage. Borrowers who do not have a 3.5% down payment or who would prefer to save their down payment so that they have a financial "cushion" once they buy their home, can get down payment assistance from:

- Relatives
- Governmental entities (i.e., national, state and local housing finance agencies)
- Non-for-profit organizations

Seller-funded down payment assistance is strictly forbidden by federal statute and HUD's regulations, so seller-funded FHA-insured down payment assisted loans have not been available since July 2008 when legislation was enacted that made these loans illegal (Pub.L. 110–289).

[3] https://www.uhousi.com/blog-1/hud-s-new-rule-crushes-the-american-dream-and-threatens-african-american-economic-empowerment

According to HUD's statistics in its published reports, down payment assistance provided by:

- "Relatives" represents approximately 16% of the FHA book of business
- "Governmental Entities" represent approximately 7% of the FHA book of business

Also, according to HUD's statistics, the default rates for the FHA-insured mortgage with down payment assistance provided by "Relatives" is very similar to the default rates for FHA-insured mortgage with down payment assistance provided "Governmental Entities": approximately 4.91% vs. 5.12%, respectively.

The vast majority of borrowers receiving down payment assistance from the "Relatives" group are fortunate enough to come from families that accrued intergenerational wealth and whose relatives have the financial ability to provide their children (or relatives) with a down payment towards the purchase of the borrower's home.

Of course, most low- to moderate-income and minority borrowers do not come from families who have had the ability to accumulate intergenerational wealth; those borrowers absolutely need the down payment assistance programs offered by governmental entities.

HUD, despite the fact that the down payment assistance provided by "Governmental Entities" is only approximately 6% of FHA's book of business and its default performance is almost identical to the default record of the "Relatives" group, is focused on limiting the down payment assistance provided by governmental entities – the source of down payment for most low- to moderate-income and minority borrowers. To make matters worse, HUD is so limiting national Native American down payment assistance programs that they will effectively be shut down. Today, 25% of the down payment assistance provided by "Governmental Entities," as a group, are loans made to minorities. In the case of the Chenoa Fund, **54% of their down payment assistance is made to minorities.**

2. **HUD's Policy Initiative is Financially Unsound**

Currently, HUD only collects performance and pricing data for "Governmental Entities" as a group. HUD does not collect performance and pricing data for each individual governmental entity (or Housing Finance Agency). As a result, HUD is not able to discern the performance and pricing of FHA-insured mortgages with down payment assistance from any individual governmental entity. HUD has simply *assumed* that the down payment-assisted loans provided by national American Indian-owned down payment assistance lenders – and more specifically, the Chenoa Fund – has higher default rates and that their loans had higher interest rates than other governmental entities.

Since HUD does not have any performance and pricing data for any individual governmental entity (Housing Finance Authority), Chenoa Fund asked Moody's Analytics to pull their loans from the Ginnie Mae loan pools and analyze their performance. Moody's Analytics data showed that the loans that were assisted by the Chenoa Fund performed better that the loans assisted by "Government Entities," as a group.

Moreover, the Chenoa Fund prepared a pricing study of all of their loans compared to the pricing of the loans assisted by all of the other governmental entities last fall. They found that the

Chenoa loans, on average, were priced more competitively than the loans assisted other governmental entities.[4] If HUD believes that specific governmental entities pose excessive risk to the MMIF or that certain government entities are charging consumers too high of an interest rate, then Chenoa is clearly not the source of the problem.

In order to be able to better manage the MMIF, HUD needs to begin to collect and make publicly available the performance and pricing data on each individual governmental entity. This can be implemented very easily and would not require any systems changes. A more granular level of data would not only help HUD better manage the MMIF, but it would also help each governmental entities better manage their programs.

In addition, the pricing and performance data should be transparent and made publicly available, as HUD does with the Neighborhood Watch Program for first mortgage lenders. By setting up a Neighborhood Watch Program for governmental entities, defaults can be managed and reduced and pricing can be kept in check.

3. The Mortgagee Letter Violates the Fair Housing Act by Requiring Lenders to Consider Race in Deciding Whether to Provide Down Payment Assistance

In 2014, HUD brought enforcement action against a lender alleging violations of sections 804(b) and 805(a) of the Fair Housing Act because the lender allegedly subjected the borrowers to discrimination on the basis of race where the lender considered the location of the property, which was within the boundaries of a American Indian reservation, in denying the loan. *See* U.S. Department of Housing and Urban Development, Title VIII Conciliation Agreement, FHEO Title VIII Case No. 08-13-0299-8. HUD settled a second, similar case with similar facts in 2018. The Mortgagee Letter **requires** tribal lenders to consider the location of the property on a Native American reservation, since it effectively limits such lenders to providing down payment assistance within the geographic bounds of the reservation, and thus requires lenders to consider the very factor that HUD found discriminatory in 2014.

Moreover, the Mortgagee Letter **requires** tribal lenders to even more directly consider the race of the borrower, as such lenders may only provide down payment assistance outside the geographic bounds of the reservation if the borrower is an enrolled member of the tribe. This means that where a borrower is seeking down payment assistance on a property outside the bounds of a reservation, the provider ***must*** request and consider the borrower's race in order to determine whether it can make the loan.

Significantly, the Mortgagee Letter prohibits lenders from providing down payment assistance to members of a different tribe unless that members' property is located on the down payment assistance provider's tribal land. Therefore, not only must down payment assistance providers consider race directly, but they must also consider the exact tribe of the borrower.

[4] The Moody's Analytics data on the performance of the Chenoa Fund's loans, as well as the results of the October 2018 pricing study, were provided to HUD on November 27, 2017, in a letter sent by former HUD General Counsel Michael Flynn, now a partner and head of the Financial Institutions practice at Goodwin Procter, LLP.

4. **HUD's Policy Initiative Reduces Innovation; Could Result in Monopoly Pricing, Harming Mortgage Borrowers, Particularly Minority Borrowers**

HUD's position that governmental entities be limited to operating within their individual geographic areas would create regulatory monopolies across the country, reducing innovation in the down payment assistance space. This would be very damaging to consumers who would be denied the benefit of options and innovations that would result in higher costs to borrowers and less benefit.

The Chenoa Fund also brings efficiencies to this space. Last year alone, the 1300 plus government housing finance agencies made over 90,000 changes to their programs. The Chenoa Fund can offer one set of program requirements that participating lenders can implement across their lending platforms. These efficiencies ultimately save consumers money.

5. **HUD's Policy Initiative is Contrary to the United States Government's 85-year Policy of American Indian Self-Governance and Self-Determination**

Beginning in 1934, the U.S. Government firmly established a policy of self-determination and self-governance towards Native American tribes. The policy has been to allow the Native American tribal organizations to establish businesses and operate them without geographic or demographic limitation in order to provide for themselves. HUD's proposal to "put the Indians back on the reservation" is a very significant change in the current Federal Indian policy, and would set a terrible precedent. Moreover, HUD has failed to comply with Executive Order 13175 and HUD's own policy, which require that each Federal Government agency engage in tribal consultation *before* they make policy change that would impact an American Indian tribe.

Governmental Entities' Down Payment Assistance Programs:

HUD's Misguided Attempts to Regulate Down Payment Assistance
and
An Appropriate Alternative Solution

Respectfully Submitted By:

The Cedar Band of Paiutes'
CBC Mortgage Agency
(the "Chenoa Fund")

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Section One: Executive Summary

CBC Mortgage Agency ("CBCMA") is the Cedar Band of Paiutes' ("Cedar Band") housing finance agency. The Cedar Band formed CBCMA in 2013. Without any outside investment, the Cedar Band spent several years to organically build CBCMA's financial capacity and operational expertise, and painstakingly developed and cultivated key industry relationships. This approach, though slow and difficult at times, allowed CBCMA to safely grow into the mature housing finance agency it is today.

The Cedar Band's principal concern has always been that CBCMA operate its nationwide program in compliance with Department of Housing and Urban Development ("HUD") guidelines and that the borrower's it assists are capable of sustaining homeownership. For this reason, CBCMA, from its very first loan, has had each FHA loan that it purchases receive a second underwriting review to ensure that it is underwritten to FHA standards. CBCMA is very careful to ensure that each borrower receives the protection of every federal and state mortgage regulation and receive appropriate disclosures. In addition, borrowers with FICO scores between 620 and 639 must complete one-on-one pre-purchase education and counseling and all borrowers receive 12 months of counseling from a HUD approved counseling agency following their home purchase to help them successfully transition to homeownership.

In an effort to terminate governmental down payment assistance ("DPA") programs that operate on a nationwide basis, on April 18th, HUD issued Mortgagee Letter 19-06 (the "Mortgagee Letter"), which attempts to limit tribal sovereignty. It literally puts American Indians' interests back on the reservation.

Hundreds of CBCMA borrowers were adversely impacted by the sudden changes HUD implemented in the Mortgagee Letter. Particularly hard hit were minority borrowers. Over half of the borrowers that CBCMA assists are minorities, whose families lack the intergenerational wealth to assist them with a down payment.

CBCMA sued HUD on April 22nd and obtained a 90 day stay to the Mortgagee Letter while the suit proceeds. HUD did not follow proper procedures for adopting the changes that it is attempting to implement in the Mortgagee Letter, nor does it have the statutory authority to make these changes.

CBCMA is seeking support to convince HUD to withdraw the Mortgagee Letter. HUD is attempting to limit DPA from nationwide governmental entities based on incorrect assumptions, and without any data whatsoever that shows DPA provided on a nationwide basis poses a risk to the FHA Mutual Mortgage Insurance Fund ("MMIF"). If HUD were properly managing DPA, the MMIF could be protected while providing more DPA to minority and other borrowers. HUD can make a single, simple change to the way it collects data in order to provide proper oversite to governmental DPA providers.

Gathering proper data on the individual government programs would also follow the directive in the recently released "Memorandum on Federal Housing Reform", issued March 27, 2019 (the "Memo") that HUD "[assess] the risks and benefits associated with providing assistance to first-time home buyers, including down-payment assistance." In addition, by providing a "monitored marketplace," HUD can comply with another directive from the Memo, which is that HUD "[reduce] taxpayer exposure through improved risk management and program and product design."

HUD is attempting to make the case that nationwide DPA programs, as a general matter, are too risky because of HUD's past experience with another type of nationwide DPA, seller-funded down payment assistance ("SFDPA"), which has been illegal since 2008.

Non-profits providing SFDPA operated on a nationwide basis. The FHA first mortgages for which a non-profit provided this seller-funded DPA performed poorly for reasons completely unrelated to where the DPA provider was located. CBCMA does not provide SFDPA, and its programs have nothing in common with the programs of non-profits that provided SFDPA except that CBCMA also operates on a nationwide basis. This nationwide operation is apparently sufficient for HUD to target CBCMA. Based on its experience with nationwide SFDPA providers, HUD has assumed that nationwide operation of a DPA program will somehow put the MMIF at risk for the simple reason that is offered nationwide. At the same time, HUD ignores the fact that most governmental entities that provide DPA locally have major portions of their programs operated by national companies.

HUD persists in its erroneous assumption that nationwide programs are risky because HUD has a significant blind spot: HUD does not record which governmental program is providing assistance on any specific FHA loan, so it cannot tell which programs are performing well and which are not. To compensate for its lack of data, HUD has decided to regulate based on analogy—if nationwide SFDPA programs were bad, nationwide governmental DPA programs must also be bad.

HUD best protects the MMIF by collecting information identifying the specific governmental entity providing the down payment (which is does not currently do) so that it can monitor which government programs are performing well and which are not. Good management of the risk of its DPA programs will require that HUD change the data that originators enter into a single field on the mortgage form. If HUD can identify poorly performing DPA programs, it can protect the MMIF by imposing standard credit underwriting restrictions on these programs, if that is even necessary. Restricting governmental entities to specific jurisdictions, as HUD does in the Mortgagee Letter, does absolutely nothing to lower defaults on FHA mortgages and creates regulatory monopolies, the effect of which is stifling to innovation, allows monopoly pricing to consumers, and protects market share of poorly performing programs.

Even though CBCMA has provided HUD with data that shows its program outperforms the average governmental entity providing DPA, HUD continues to pursue avenues of dramatically limiting CBCMA's program, possibly demonstrating a bias against American Indian operations, or an erroneous belief that local governmental entities will do what is in the best interest of the MMIF because they are politically accountable.

In 2017, HUD was reportedly intending to impose the restrictions on tribal DPA programs. CBCMA approached HUD in early 2018, contending that such changes would require a rule making. Subsequently, HUD published an ANPRM in both the 2018 Spring (the "Spring ANPR") and Fall regulatory agendas announcing such rulemaking, but never actually advanced a rulemaking, suddenly and without notice changing course and instead issuing the Mortgagee Letter.

HUD may also be seeking a legislative change that to restrict CBCMA's operations to its reservation or to assisting only members of the Cedar Band. The Administration's FY 2020 Budget sent to Congress on March 14, 2019, included the following:

> ***Downpayment Assistance from Government Entities (Sec. 203(b)(9)(c) of the National Housing Act 12 USC 1709).*** *. . . FHA and industry participants continue to evaluate how such financial benefit should be interpreted when applied towards government entities that are providing such assistance.* ***Furthermore, questions have arisen around the geographic and legal boundaries surrounding the ability of these entities to provide such assistance.***

Of the families assisted by the Cedar Band's DPA program, more than half are minorities, so the program is instrumental in mitigating the racial wealth gap. And terminating the Cedar Band's program by limiting it to the reservation has broad implications that are extremely detrimental to American Indian interests generally. If HUD will simply implement good management procedures, both of the above interests can be preserved while still protecting the MMIF.

HUD should withdraw the Mortgagee Letter because:

- The Mortgagee Letter is completely ineffective in that it does nothing to protect the MMIF.
- HUD's premise that nationwide DPA programs are a risk to the MMIF is not based on data—HUD is regulating by analogy.
- CBCMA has provided HUD with data that shows that its nationwide DPA program is outperforming the average government DPA program based on HUD published data.
- HUD can collect government entity specific data by changing the information that is required to be entered into a single field at origination of the FHA mortgage.
- The Mortgagee Letter has a discriminatory impact on minority borrowers. ***CBCMA is instrumental in bridging the racial wealth gap. It provides 54% of its DPA to minorities, including 20% to African Americans and 30% to Hispanics.***
- There are effective methods for managing government provided DPA, which include providing proper oversight and standards for government DPA programs as well as DPA provided by relatives.
- HUD does not have the statutory authority to implement the changes it seeks in the Mortgagee Letter.

- The Mortgagee Letter attempts to implement substantive rule-making outside of the procedures required by the Administrative Procedures Act.
- HUD has failed to consult with the Cedar Band or any tribal organization in spite of the Administration's and HUD's specific policies requiring tribal consultation.
- HUD's unsubstantiated bias against nationwide programs is caused by its bad experience with seller-funded down payment assistance, which has nothing in common with the DPA provided by governmental entities today, including CBCMA.
- The data HUD provided in its 2018 Annual Report to Congress, published on November 15, 2018 (the "Annual Report") to raise concerns about government provided DPA does not comport with HUD's monthly published data, which does not seem to demonstrate governmental DPA performs significantly worse than DPA from relatives.
- CBCMA does not violate the intent of section 203(9)(a)(C) of the National Housing Act, nor increase costs without benefits to borrowers, as HUD implies in its Annual Report.
- HUD is subsidizing the losses caused by its reverse mortgage products by sacrificing down payment assistance to the most underserved populations in its forward market products.
- HUD's policy proposal is in direct contradiction to the U.S. Government's 85-year policy towards American Indian tribes and does not take into account tribal interests in operating Section 17 corporations on a national (or international) basis to provide for their self-sufficiency self-determination.

Section Two: Mortgagee Letter 2019-06

The Mortgagee Letter Impermissibly Limits Sovereign Immunity of Indian Nations

HUD does not have the statutory authority to establish the rules contained in the Mortgagee Letter, and it infringed Cedar Band's due process right to fair notice. Most importantly, the Mortgagee Letter encroaches on tribal sovereignty. Deeming tribal activities to be non-governmental is tantamount to deeming tribes to have waived sovereign immunity and tax exempt status with respect to those activities. HUD, however, has no authority to create such a limitation. "To abrogate tribal immunity, Congress must 'unequivocally' express that purpose." C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411, 418 (2001). Congress has not unequivocally abrogated tribal sovereign immunity in this context.

A determination by a federal agency that an American Indian tribe or its instrumentality which is organized under the Indian Reorganization Act of 1934 is not acting in a governmental capacity unless it is operating on the reservation or working with tribal members undermines various powers and authorities of tribes and their instrumentalities. In 1934, the Federal Government embraced a policy of self-determination and self-governance toward American Indian tribes. Under this policy, American Indian tribal organizations have been encouraged to establish revenue generating operations, without geographic limitations, in order to provide for themselves. The new policy unveiled by HUD contradicts this long-standing federal policy and sets a damaging precedent of limiting tribes' governmental capacity to the reservation. Such a limitation would inhibit tribes' ability to leverage their sovereignty, which for many tribes is their principal asset.

Most importantly, limiting tribal operations to the reservation will do nothing to limit defaults on FHA mortgages, and CBCMA has offered to HUD meaningful ways for HUD to protect the MMIF and better serve the borrowers it was created to serve.

The Mortgagee Letter Violates the Administrative Procedures Acct

The Mortgagee Letter is the result of an improper process and violates federal law. HUD released the letter without prior notice, without soliciting comment, without consulting with affected American Indian tribes and bands, and without gaining the approval of necessary executive branch officials, including the President. HUD's Mortgagee Letter purports to be an informal "guidance" document that merely "clarifies" existing law governing the provision of DPA. In fact, the Mortgagee Letter represents a radical shift in longstanding HUD policy that effectively outlaws CBCMA's business, and the issuance of the Mortgagee Letter violated the Administrative Procedures Act, 5 U.S.C. § 500 et seq (the "APA").

The Mortgagee Letter violates the Fair Housing Act by requiring lenders to consider race in deciding whether to provide down payment assistance

HUD did not have statutory authority to issue the Mortgagee Letter because it forces lenders to potentially violate the Fair Housing Act by requiring lenders to consider race in deciding whether to provide DPA. In 2014, HUD brought enforcement action against a lender alleging violations of sections 804(b) and 805(a) of the Fair Housing Act because the lender allegedly subjected the borrowers to discrimination on the basis of race where the lender considered the location of the property, which was within the boundaries of a American Indian reservation, in denying the loan. *See* U.S. Department of Housing and Urban Development, Title VIII Conciliation

Agreement, FHEO Title VIII Case No. 08-13-0299-8. HUD settled a second, similar case with similar facts in 2018.

The Mortgagee Letter **requires** tribal lenders to consider the location of the property on a American Indian reservation, since it effectively limits such lenders to providing down payment assistance within the geographic bounds of the reservation, and thus requires lenders to consider the very factor that HUD found discriminatory in 2014.

Moreover, the Mortgagee Letter **requires** tribal lenders to even more directly consider the race of the borrower, as such lenders may only provide down payment assistance outside the geographic bounds of the reservation if the borrower is an enrolled member of the tribe. This means that where a borrower is seeking down payment assistance on a property outside the bounds of a reservation, the provider ***must*** request and consider the borrower's race in order to determine whether it can make the loan.

In addition, the Mortgagee Letter prohibits lenders from providing down payment assistance to members of a different tribe unless that members' property is located on the down payment assistance provider's tribal land. Therefore, not only must down payment assistance providers consider race directly, but they must also consider the exact tribe of the borrower.

For more information on the Mortgagee Letter, and how it violates the law, visit www.chenoafund.org/complaint and www.chenoaofund.org/memo.

Section Three: HUD's Maligning of Nationwide DPAs

In its Annual Report to Congress, HUD states a key premise: certain governmental entities are now operating DPA programs on a nationwide basis in a manner that puts the MMIF at an unreasonable risk..[1] But HUD is attempting to make the case that governmental entities that operate on a nationwide basis pose a risk to the MMIF not with data, but by analogy. HUD seeks to compare nationwide DPA provided by CBCMA to the nationwide SFDPA programs, which were banned by Congress in 2008.

Nationwide Seller-Funded Down Payment Assistance

To understand HUD's bias against nationwide programs, it is essential to understand the history of the now banned SFDPA. HUD guidelines require that a borrower provide a 3.5% down payment to qualify for an FHA insured mortgage. If a borrower does not have those funds, their down payment can come from relatives, non-profits and governmental entities. It is the Cedar Band's status as a governmental entity that qualifies it to provide DPA under HUD guidelines. Sellers have always been prohibited from providing DPA. But in the early 2000's, a practice came to prominence, of which HUD was aware and allowed to exist for a time, whereby a seller contributed funds to a non-profit, which would then provide a down payment for the borrower to purchase the seller's property.

When a seller was asked to contribute to a non-profit for a borrower's down payment, the seller would increase the purchase price of the home to account for this cost. During this period, lenders communicated directly with appraisers (this was prior to the housing crisis and Dodd-Frank, which tightened rules on appraisals). Lenders would routinely contact the appraiser and let them know the value that was needed to make the transaction work, and appraisers were fully

[1] Annual Report at 92.

aware that if they did not find that value, the lender could call another appraiser the next time an appraisal was needed. Sellers, appraisers and lenders worked together in this manner with the result being that the price of the home was inflated. Ultimately, HUD realized that when SFDPA was used, the purchase price of the home was inflated, such that HUD would effectively end up with a 100% loan-to-value first mortgage instead of what was required at the time: a 97% loan-to-value mortgage.

In addition to the problem of home price overvaluation, and even more important to how the underlying FHA mortgages performed, non-profits did not have any vested interest in the underlying FHA mortgage. The vast majority of the non-profits did not impose any credit restrictions or provide important borrower support services, such as education or counseling. This contributed to borrowers with very questionable credit obtaining DPA and receiving an FHA mortgage. Unlike these non-profits, CBCMA purchases the FHA first mortgage and, therefore, has a significant interest in the FHA loan's performance. CBCMA has credit standards and borrower support services, such as mandatory pre-purchase education for borrowers with credit scores between 620 and 639, and 12 months of post purchase counseling for every borrower that CBCMA assists. In addition, borrowers with lower income qualify for a forgivable second mortgage loan that provides borrowers with an earned equity interest to encourage them to prioritize their FHA first mortgages over their other obligations. Under this program, qualifying low- to moderate-income borrowers can receive a forgivable second mortgage, with no payment and no interest due. The second mortgage is forgivable after 36 consecutive on-time payments on the *FHA first mortgage*. This feature gives the most at-risk borrowers an immediate sense of "skin in the game."

Congress Banned SFDPA

Since HUD collected specific data for each non-profit organization by requiring that originators enter the non-profit's EIN into HUD's system when the FHA first mortgage was originated, HUD was able to determine, based on this data, that FHA loans assisted by non-profits funded by sellers were defaulting at an unacceptably high rate. Based on this data, HUD determined the practice of SFDPA posed an unreasonable risk to the MMIF.

It so happens that Brian Montgomery, the current FHA Commissioner and Acting Deputy Secretary of HUD, was also the FHA Commissioner at the time of SFDPA, and he led the effort to ban the practice. In summary, HUD promulgated a rule banning SFDPA, justified by its non-profit specific performance data. This rule was overturned in court, however, when HUD failed to follow appropriate APA standards. When rule-making failed, HUD turned to Congress to outlaw SFDPA, which it did in 2008 when the Home Equity Recovery Act of 2008 (HERA; PL 110-289) was enacted (*see* section 203(b)(9)(C)). While HUD was able to get Congress to fix one problem with DPA, HUD failed to properly manage DPA programs. HUD failed to provide sufficient oversight and monitoring of the DPA provided by governmental entities by properly tracking which governmental entity provided the DPA on any FHA loan. It appears HUD is making the same mistake now by issuing the Mortgagee Letter to effect changes in a way that again violates the APA and by going to Congress to ask for more clarity on Section 203(b)(9)(C), while again completely avoiding proper management and oversight of government DPA programs by properly tracking them. HUD needs to properly manage DPA, rather than taking actions that are extremely damaging to tribal interests and minority borrowers that are based on erroneous assumptions and that will not, in any way, improve the risk management of the MMIF, or even lower the risk to the MMIF.

Nationwide Programs Do Not Pose a Risk to the MMIF

The non-profits that provided SFDPA operated on a nationwide basis. So, in response to CBCMA offering DPA on a nationwide basis, some at HUD conjure up images of SFDPA and propagate the myth that nationwide DPA providers, as a rule, are a risk to the MMIF. Why is HUD claiming nationwide DPA programs like CBCMA pose an unacceptable risk to the MMIF, even though CBCMA provides its down payment assistance in a manner exactly similar to all of the other governmental entities providing secondary financing, while at the same time providing more borrower support than many other governmental entities? The answer to this question can be found in large measure by understanding how HUD tracks data on governmental entities. Unlike how it tracks non-profits' data, HUD does not require the originator to enter the EIN or taxpayer identification number of a governmental entity into HUD's system. HUD requires only that the originator indicate that the DPA was provided by a "governmental entity".

So when HUD looks at its group of FHA loans that were assisted by governmental entities and sees mortgage loans that are not performing well, it *incorrectly assumes*, "These must be the loans from CBCMA, because everyone knows that nationwide programs 'increase costs, but not benefits, to the borrower and put the MMIF at an unreasonable risk!'".[2] HUD then looks at this same group of loans and sees loans that have high interest rates and again *incorrectly assumes*, "These must be the loans from CBCMA, because everyone knows that nationwide programs 'generate benefits for the provider that do not appear to comport with the intent of the 'prohibited source' provision!'".[3]

The important point to understand is that HUD's claims regarding nationwide governmental DPA programs are not based on data, but solely on HUD's bias against such programs stemming from a bad experience with nationwide SFDPA programs prior to 2008, even though nationwide programs like CBCMA operate similar to all other governmental programs and not at all like the SFDPA programs that existed prior to 2008. Although HUD quotes statistics in the Annual Report to give the impression that its premise that nationwide DPA programs are an unacceptably risky is data driven, the truth is that HUD does not know how the FHA mortgages assisted by individual governmental entities perform, and therefore cannot determine if any subset of governmental entities, i.e. those operating on a nationwide basis, create additional risk to the MMIF.

This lack of data also makes it impossible for HUD to support its claim in the Annual Report that practices HUD asserts violate the intent of section 203(b)(9)(C) of the HERA[4] create undue risk to the MMIF. HUD is simply unable to identify which governmental programs might be operating inappropriately, which is why it states that certain programs "'***appear***' to increase costs, but not benefits, to the borrower and put the MMIF at an unreasonable risk".[5] The truth is that HUD is just guessing.

Local Housing Finance Authorities Have A Significant Nationwide Component

It is also important to understand that supposedly local governmental entities have a very significant nationwide component to their DPA programs. According to the HUD Office of Inspector General, there are a large number of governmental entities that, while offering DPA locally, have national providers that are performing critical functions, such as pricing FHA mortgage interest rates, purchasing and selling the FHA mortgages (in many cases the

[2] Annual Report at 92.
[3] *Id.* at 92.
[4] Amending the National Housing Act section 203(b)(9)(C).
[5] Annual Report at 92 (emphasis added).

governmental entity does not purchase the FHA mortgage itself, allowing the national provider to do so), and servicing the FHA mortgages (together these services are "Secondary Market Activities").[6] Some state, county and city housing finance programs are almost completely run by nationwide providers of these Secondary Market Activities ("Nationwide Providers"), with the governmental entity merely lending its name to the process. These Nationwide Providers are responsible for setting the interest rates on the FHA mortgages assisted by the governmental programs, while at the same time making significant profits performing Secondary Market Activities that are paid for by the increased interest rates.

If HUD is going to continue to assert that nationwide programs are inherently problematic, HUD needs to recognize the very significant nationwide component of supposedly local governmental DPA programs.

HUD also needs to understand that by limiting governmental entities to working within a certain geographic area, they are creating regulatory monopolies that will allow these Nationwide Providers significant pricing power when it comes to setting the interest rates on the FHA mortgages in governmental entity DPA programs. Doing so will, in fact, lead to a greater problem with governmental DPA providers increasing the costs, but not the benefits to borrowers.

Chenoa Fund Does Not Violate the Intent of the "Prohibited Source" Provision

In its Annual Report, HUD claims that nationwide programs generate benefits for the provider that do not appear to comport with the intent of the "prohibited source" provision.[7] The truth is that Chenoa Fund[8] is not providing benefits that violate the letter or spirit of "prohibited source" provision found in Section 203(b)(9)(C). Section 203(b)(9)(C) reflects almost the exact language that HUD tried to implement using a rulemaking process. In its rulemaking, HUD said the following of the intent behind the prohibited source provision of Section 203(b)(9)(C).

> *The situations that cause FHA concern are primarily those in which the fund is replenished after loan closing by the seller who provides a 'charitable donation' and, in some cases, pays a 'service fee' to the organization from the proceeds of the sale of the house and does so only if the homebuyer is using the charitable organization's downpayment assistance program. In these cases, there is a clear quid pro quo between the homebuyer's purchase of the property and the seller's 'contribution' or payment to the charitable organization. This is also true if the contribution to the charitable organization comes from an entity other than the seller that has an expectation of being reimbursed by the seller. Often, these contributions function as an inducement to purchase the home.*
>
> *FHA's **primary** concern with these transactions is that the sales price is often increased to ensure that the seller's net proceeds are not diminished, and such increase in sales price is often to the detriment of the borrower and FHA.*[9]
>
> *The use of the term 'financially benefits' in this proposed rule is intended to capture, for example, real estate agents or real estate brokers who would benefit from the sale of the home to the mortgagor.*[10]

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[6] *See, HUD Office of Inspector General, Audit Report Number: 2015-LA-1005, July 9, 2015. See also, HUD Office of Inspector General, Audit Report Number: 2015-LA-1009, September 30, 2015.*
[7] Annual Report at 92.
[8] Other nationwide programs include Neighborworks, which is a federally chartered entity that provides DPA, and the Federal Home Loan Banks, which provide significant funding for DPA in large geographic areas.
[9] Standards for Mortgagor's Investment In Mortgaged Property; Proposed Rule, 72 Fed. Reg. 27049, May 11, 2007.
[10] 72 Fed. Reg. 27050.

Clearly, the intent of HUD in its rulemaking and Congress in legislating Section 203(b)(9)(C) was to eliminate SFDPA,.[11] which caused the inflation of the sales price of the FHA insured property by allowing parties that benefit directly from the purchase and sale of the FHA financed property, such as sellers, title companies, realtors and builders to fund the DPA.

CBCMA is not an interested party to the purchase or sale of the FHA financed property and it does not receive any reimbursement from any party that financially benefits from this transaction.

Chenoa Fund Increases Benefits and Lowers Costs to Borrowers

CBCMA conducted a survey in October of 2018 of interest rates charged by state housing finance authorities that offer DPA through secondary financing on terms similar to those offered by CBCMA. It found that the interest rates on the FHA loans assisted by CBCMA were lower than the rates charged on the majority of government programs surveyed. So, CBCMA's nationwide DPA program is neither an "unreasonable risk to the MMIF" nor do its programs "increase costs but not benefits to the borrowers" as HUD claims..[12]

Governmental Entities Lack Complete Performance Data

Originating lenders work with borrowers to provide them with FHA mortgage loans. Their loan officers meet with the borrowers, complete loan applications, and walk the borrowers through the lending process. HUD tracks each mortgage loan that these lenders originate and has created a useful system called the Neighborhood Watch. The system is fully transparent and anyone can go onto this system and find the default rate of all of the mortgages that a lender has originated in the last two years. HUD compares a lender's default rates with those of its peers and with the national average. If an originating lender's loans have a compare ratio of 150%, it means that its loans are defaulting at 1.5 times the average, and HUD will place this lender on its 'watch' list. If an originating lender's loans have a compare ratio of 200%, or twice the average rate of default, HUD may suspend that lender's ability to originate FHA mortgages. In many ways, this is a superb monitoring system.

Unfortunately, because of the way most governmental entities operate, their ability to determine their own performance is mixed. Governmental entities generally do not originate the FHA mortgage loans for which they provide DPA, so their performance data will not show up in the Neighborhood Watch system. This can make it difficult for a governmental entity to determine

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[11] The title to the amendment to Section 203(b)(9) is "CASH INVESTMENT REQUIREMENT AND PROHIBITION OF SELLER-FUNDED DOWNPAYMENT ASSISTANCE. In a statement supporting the amendment to section 203(b)(9)(C), Senator Dodd explained that "this bill eliminates the seller-funded downpayment assistance program." *See*, 154 Cong. Rec. S6354-S6356 (July 7, 2008). The changes to Section 203(b)(9)(C) were summarized for the records as follows:

> *(Sec. 113) Increases from 3% to 3.5% of the appraised value of a property the mortgagor's required cash (or equivalent) investment (downpayment). Prohibits any funds for such cash investment from: (1) the seller or any other person or entity benefiting financially from the transaction (seller-funded downpayment assistance); or (2) any third party or entity reimbursed by any of such parties. (See, BILL SUMMARY: H.R. 3221 — 110th Congress (2007-2008))*

and

> *FHA Modernization Act of 2008 - Amends the National Housing Act (NHA) to: (1) revise requirements for the maximum principal loan obligation eligible for mortgage insurance, as well as the cash investment requirement; and (2) prohibit seller-funded downpayment assistance. (See, BILL SUMMARY: S. 2734 — 110th Congress (2007-2008))*

[12] See Annual Report at 92.

the performance of the FHA loans for which it provides DPA once those loans are sold or placed in securities.

CBCMA Outperforms the Average Governmental Entity

CBCMA, knowing that HUD did not have data on its loan performance, and that HUD was simply assuming its loans were the ones that were not performing well or were overpriced, engaged Moody's Analytics at significant expense to CBCMA. CBCMA provided Moody's Analytics with sufficient loan level information to enable it to go to the Ginnie Mae securities and find CBCMA's loans and report on their performance. This data revealed that CBCMA assisted FHA loans outperformed the general pool of government assisted FHA loans. CBCMA's August 2018 performance data shows that CBCMA loans outperformed the averages of government assisted FHA loans as reported by HUD in its August 2018 FHA Single Family Loans Performance Trend Credit Risk Report. CBCMA's compare ratio with its peer government DPA providers was well below 100 for every category, including the Seriously Delinquent (SDQ) loan percentages..[13]

Days Delinquent	% Of All CBCMA FHA Mortgages	% of All Governmental Entities	CBCMA Compare Ratio
30	4.41%	5.47%	80.7
60	1.39%	1.94%	71.4
90	1.54%	2.89%	53.4
120+	1.61%		
Foreclosure		1.04%	
Bankruptcy		1.07%	
Claims	0.02%		
Total of SDQ	3.18%	5.00%	63.6

This data demonstrates that limiting CBCMA's area of operation would not protect the Federal Government from substantial loss. Given that CBCMA appears to be performing on par or better than most other government DPA programs, there is no justification for limiting CBCMA's area of operations, or for allowing lesser performing agencies to have a monopoly in their selected areas of operation. CBCMA provided HUD with this Data..[14]

[13] The total of seriously delinquent ("SDQ") loans for All Governmental Entities is the sum of the percentages of 90+ days late, plus foreclosures and bankruptcies. The total SDQ for CBCMA is the sum of the percentages of 90 and 120+ day delinquency of CBCMA first mortgages, plus claims made.

[14] CBCMA's pricing and performance data was included in a letter sent to HUD by Michael Flynn, Partner, Goodwin Procter, on November 27, 2019.

HUD Attempts to Obtain Performance Data on Governmental Entities

After CBCMA provided HUD with its performance data, HUD asked the National Council of State Housing Agencies ("NCSHA") for performance data from its member state housing finance authorities. As described above, it is difficult for some governmental entities to produce a complete picture of their performance data. Some of the more sophisticated agencies that use a master servicer may have data readily available. There are over 1300 governmental entities across the country that provide DPA..[15] Many of these 1300 governmental programs may have no direct access to performance data and may only have investor report cards, which don't tend to show a clear picture of the government entities entire portfolio over time. The data HUD will be able to get directly from NCHSA for governmental entities may be incomplete and will likely only be from the more sophisticated and presumably better-run programs. More importantly, HUD should not be in the position of asking the governmental entities it is responsible for monitoring to cobble together their performance data to give to HUD. This is just bad management.

HUD Clearly Intends to Limit the Operations of American Indian DPA Programs

Although HUD is now using the generic term "nationwide" to describe the DPA programs that it is targeting.[16], HUD has significant history with attempting to limit American Indian housing authorities to their reservation. HUD staff has on numerous occasions told industry participants that down payment from CBCMA could only be utilized on the Cedar Band reservation, with Cedar Band members, or is otherwise limited geographically.

For example, in May 2017 an FAQ on HUD's Knowledgebase was updated. It indicated that tribes could only provide assistance to their members or on their reservations. When the FAQ was challenged as being unsupported by HUD guidelines, it was almost immediately taken off of the Knowledge Base. As another example, in August 2017, the Mortgage Credit Branch Chief, Santa Ana Homeownership Center, spoke at an underwriter's training in Phoenix, Arizona. It was reported to us by those in attendance that she and others had stated that Chenoa Fund would not long be authorized to provide down payment assistance nationwide, indicating a mortgagee letter was pending to address the issue of its nationwide operations. Sources at HUD confirmed that such a mortgagee letter did exist.

In addition, the Spring ANPR specifically referenced tribes, the Annual Report describes the need to limit "nationwide" programs, and the HUD submitted detailed 2020 budget papers state, "Furthermore, questions have arisen around the **geographic and legal boundaries surrounding the ability of these entities to provide such assistance.**"

HUD's Bias Against American Indian DPA Programs

HUD has CBCMA's performance data showing that its nationwide program does not pose a risk to the MMIF. HUD also has no data showing that any nationwide programs pose a risk to the MMIF. Yet, HUD still seems determined to target programs based simply on their nationwide operations. But not all such programs it appears. As described above, HUD does not seem to be bothered by the significant nationwide components of local housing authorities, including the fact that the pricing of the FHA first mortgage interest rate is largely determined by Nationwide

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[15] "Barriers to Accessing Homeownership Down Payment, Credit, and Affordability", September 2018, Urban Institute, Housing Policy Finance Center, at 24; https://www.urban.org/sites/default/files/publication/99028/barriers_to_accessing_homeownership_2018_4.pdf (Last viewed May 4, 2019).

[16] Annual Report at 92.

Providers. Nor is HUD interested enough in the performance and pricing of FHA mortgages assisted by government DPA providers to take even simple steps to monitor these programs, like collecting entity specific data on government DPA providers. It would seem that HUD's bias against nationwide government DPA providers is limited to nationwide providers that are also American Indian.

Political Accountability is Not a Substitute for Monitoring and Good Risk Management Practices

HUD's bias against nationwide governmental entities may also be caused by a questionable notion that governmental entities that are aiding borrowers in their political jurisdiction will not provide DPA to borrowers that will default at high rates and will not charge borrowers excessive interest on their first mortgages. This notion is not a basis for HUD abdicating its oversight responsibility of government DPA programs to the very entities that should be the subjects of such oversight. First, housing finance agencies are not politically accountable to the borrowers they serve except very indirectly. Second, the pricing of the FHA mortgages for many programs is set by National Providers. Third, the purpose of housing finance agencies, and the mindset of those who operate them, is to help disadvantaged or underserved populations in their communities with their housing needs. For example, if they can help 10 families purchase a home, and 9 of those 10 become long-term successful homeowners, these successful families can enjoy all of the financial, social and emotional benefits of homeownership. The housing finance authority has helped provide stability to its community, moved families off of the rental rolls to make room for more, and eased the pressure on shelter housing. This is a good day for these programs.

But 10% of these families end up back on the rental rolls. A 10% claim rate would be a disaster for the MMIF. It is just bad policy for HUD to cede its responsibilities to governmental entities and rely on them to ensure the safety and soundness of the MMIF. It is *HUD's* duty and obligation to protect the MMIF, and it should provide sufficient oversight and monitoring of governmental entities to assure that the MMIF is, in fact, protected. Turning over the responsibility for the protection of the MMIF to local governmental entities with the hope that they do the right thing is an absurd management approach by HUD.

What Does the Data in the Annual Report Really Show About Government DPAs?

In its Annual Report, HUD points to data in Table B-17: *Data Table for Exhibit I-19: Serious Delinquency Rate of FHA Purchase Mortgages by Downpayment Assistance (DPA) Type as of September 30, 2018*, which is reproduced on the following page.

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Table B-17

Endorsement Fiscal Year	Seriously Delinquent Rate of FHA Endorsed Purchase Mortgages			
	Source of Downpayment Assistance			No Downpayment Assistance
	Government	Non-Government/ Non-Relative	Eligible Family member	
2011	12.67	9.34	7.6	5.2
2012	10.11	8.79	6.39	4.48
2013	8.22	6.03	5.52	4.18
2014	7.37	5.05	5.68	4.3
2015	6.01	4.53	5.53	3.99
2016	4.29	4.06	4.62	3.16
2017	3.12	3.08	3.47	2.21
2018	0.74	0.69	0.7	0.43

NOTE: SDQ Rate is the percentage of FHA-insured mortgages where the borrower is 90 or more days delinquent, including mortgages in foreclosure and bankruptcy.

SOURCE: US Department of HUD/FHA, October 2018.

HUD points to the data in Table B-17 to demonstrate that DPA from governmental entities is a problem because over time, as the FHA mortgage loans age, the rate of default for FHA loans that received DPA from governmental entities increases more than loans with DPA assistance from relatives or loans with no DPA. HUD's logic that governmental entity assisted mortgages perform worse over time because of DPA is questionable at best.

First, according to the table, governmental DPA performed on par with DPA from relatives in 2016-2018, even outperforming DPA from relatives in 2016 and 2017. Second, it is not until 2014 that loans assisted by governmental DPA really begin to perform significantly worse. DPA is used to give borrowers an immediate vested interest in the home, sometimes referred to as "skin in the game." Loans originated in 2014 or earlier, however, are four or more years old from the date of purchase of the home. After four or more years, the effectiveness of a down payment as a loss mitigation tool has been significantly eroded because the borrower has made four years of payments, has earned equity in the home, and integrated into the community.

After four years, the cause of the increased rate of default likely has nothing to do with the DPA, but is most likely attributable to the characteristics of the borrowers being assisted. For example, perhaps governmental entities were more lax in their credit standards for loans originated in 2011-2014. An explanation for the increasing rate of default in earlier years could also be changes in the pool composition over time. For example, FHA mortgages with government DPA typically have higher interest rates, so borrowers with better credit and finances can refinance quickly. The pools of loans from earlier years are left with less credit-worthy, riskier borrowers, which default at higher rates, significantly skewing the rate of default in earlier years. HUD provides more complete data in its 2019 first quarter report to Congress, which appears to demonstrate this effect. The report shows the "share" of government provided DPA dramatically declining in years 2011-2014.[17] One thing that can be said with certainty, however, is that CBCMA did not contribute to the higher default rates in years 2011-2014, as CBCMA was not providing DPA during these years.

FHA Single Family Loan Performance Trends Credit Risk Report

The data in Table B-17 of the Annual Report needs to be reconciled with the performance data that HUD publishes each month in its *FHA Single Family Loan Performance Trends Credit Risk Report*. These reports have shown a fairly consistent default rate over time for FHA loans with DPA. The most recent available report at the time of this writing is for January 2019 (the "January Report").[18] The relevant table from the January Report is reproduced below. It shows the Seriously Delinquent Rates (90 days late or in bankruptcy or foreclosure) for FHA loans where the DPA was provided by government programs or relatives or loans without DPA are 5.12%, 4.91% and 3.73% respectively. Note that the default rates of FHA loans assisted by relatives are not materially lower than those assisted by governmental entities, a point which is addressed below.

HUD Should Reconcile the Difference in Data on DPA.

HUD should provide clarification between the data published in the Annual Report and that published in the January Report by answering the following questions:

- How is the data in Table B-17 of the Annual Report, which shows much higher delinquency rates for government assisted FHA loans than for loans assisted by relatives in earlier years (2011-2015) squared with the data in the January Report that shows a negligible difference between the overall default rates of these same loan types over HUD's entire portfolio?
- Based on the data in the January Report, which shows nearly identical rates of default between governmental entity and relative provided DPA, why is HUD not concerned about DPA provided by relatives, or is it that there really is just not a problem with DPA from governmental entities in the first place?

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[17] See, Exhibit A-10, FHA Single-Family Mutual Mortgage Insurance Fund Programs, Quarterly Report to Congress, FY 2019 Q1, delivered March 29, 2019; https://www.hud.gov/sites/dfiles/Housing/documents/MMIQtrlyQ12019.pdf
[18] See https://www.hud.gov/sites/dfiles/Housing/documents/FHALPT_Jan2019.pdf (last viewed April 8, 2019).

Table from the January Report

Down Payment Assistance (DPA) Type		Rates in Percent of Active Loan Counts						
		All Past Due[b]	30 Day	60 Day	90+ Day	In Foreclosure	In Bankruptcy	Seriously Delinquency Rate[c]
All Sources of Funds	8,112,026	10.91	5.00	1.74	2.26	1.03	0.88	4.16
Government	6.91	13.21	5.88	2.22	2.98	1.02	1.11	5.12
Relative	16.16	13.50	6.29	2.28	2.91	1.08	0.92	4.91
Other	2.10	19.21	8.13	3.23	4.09	1.73	1.98	7.79
Seller Funded	0.58	29.93	10.99	4.59	6.75	3.75	3.60	14.11
No DPA	74.25	9.75	4.50	1.51	1.96	0.97	0.80	3.73

IIF = insurance in force.

[a] For each subpanel, the loan shares add to 100%. However, in some of the subpanels, the total loans in the analysis do not add to 100% of IIF. For example, the IIF shares for refinance loans add to 100% of refinance loans. Streamline refinance loans are not included in the Credit Score Range analysis; the IIF shares in that panel, add to 100% of fully-underwritten loans.

[b] Includes all loans 30 or more days past due, including those in bankruptcy or foreclosure.

[c] Includes all loans 90 days past due plus all in-bankruptcy and in-foreclosure cases.

Government Programs Tend to Assist Disadvantaged Borrowers

The differences in the performance of FHA loans that receive DPA from governmental entities versus FHA loans that receive DPA from relatives may have little to do with questionable practices by government DPA providers. It may not be programmatic at all, but rather the simple fact that government DPA helps an entirely different set of people. Those who are helped by relatives are the beneficiaries of intergenerational wealth, while those that are helped by governmental entities are typically underserved borrowers who come from disadvantaged backgrounds. It is not a simple coincidence that approximately 54% of families that CBCMA assists are minorities, including about 20% that are African American and about 30% that are Hispanic. Families that CBCMA assists do not typically come from generations of homeowners. Some are the first homeowners in their families, and many are lower income.

Should HUD Be Subsidizing the Reverse Mortgage Program with the Forward Mortgage Program?

A careful reading of the Annual Report shows the Home Equity Conversion Mortgage ("HECM") program for wealthier homeowners is a much more significant risk to the MMIF than is DPA from any source. Page nine of the Annual Report shows that the HECM program has a negative capital ratio of over 18%, while the single-family insurance capital ratio is a positive 3.93%, up from 3.33% a year earlier.

In 2016, the FHA published its intent to reduce the mortgage insurance premium on single family homes. The move was opposed by the incoming Administration, and officials ultimately declined to reduce the premium, citing concerns about the health of the MMIF. To this day, FHA homebuyers are paying higher insurance premiums due to the poor performance of the HECM program.

In essence, minorities are being shut out of the market while the government subsidizes the wealthier, home-owning class. Research shows that minorities typically lack the access to wealth enjoyed by white households. Federal policy should seek to increase homeownership in these minority communities, including allowing responsible government entities to provide down payment assistance, just as wealthier white families do for their relatives. Any efforts to limit access to government DPA hurts those most in need and perpetuates wealth, social and educational inequalities along racial lines.

It is troubling that FHA apparently intends to shore up the MMIF by limiting programs that provide down payment help to those seeking to buy single-family homes by restricting the ability of government entities to determine where and who they can help. It appears HUD is sacrificing the interests of minorities in order to prop up the HECM program.

HUD Should Choose to Promote Good Housing Policy

Based on the performance data received from Moody's Analytics, CBCMA's nationwide program is neither posing an unreasonable risk to the MMIF nor is it increasing costs but not benefits to the borrowers it serves, as HUD claims in its Annual Report. So, HUD has a choice:

> ***Option One:*** HUD can continue to insist, contrary to CBCMA's data and without any data of its own, that nationwide DPA programs are the cause of the problems with FHA loans assisted by governmental entities, and continue to advocate to put "Indians back on the reservation," disproportionately harming minorities and increasing the racial wealth gap, while at the same time creating a regulatory monopoly of each governmental entity DPA program, with all of the associated lack of innovation and competitive pricing safeguards. Of course, as discussed above, Secondary Market Providers would stand to benefit from having local governmental programs have a regulatory monopoly because this would allow these nationwide companies to have even more pricing power when they set the interest rate on the FHA first mortgage; or
>
> ***Option Two:*** HUD can simply start making good housing policy by tracking the data on individual governmental entities and creating a monitored marketplace. By doing this, HUD would address the nationwide component of local governmental DPA programs. HUD would also very shortly find out if there are really any governmental entities that actually are posing an unacceptable risk to the MMIF or pricing the interest rates too high on their first mortgages. HUD could then either work with these governmental entities to improve their programs or simply impose credit underwriting standards on them.

CBCMA urges HUD to shine a light on the performance of individual governmental entities because it is confident that this will show that its nationwide programs are not a threat to the MMIF and are a great value to the borrowers it serves.

Section Four: Proper Regulation of Governmental Entity DPA: The Monitored Marketplace

HUD can take steps to monitor and improve how DPA programs operated by governmental entities perform to ensure that they operate in a manner that will not put the MMIF at unreasonable risk. HUD's interest in protecting the MMIF and the interests of the borrowers HUD is tasked with assisting are best served by the creation of a monitored marketplace for governmental entities. Several elements are needed for a monitored marketplace: (1) data on individual governmental entities, (2) reporting and monitoring of FHA first mortgage performance, (3) minimum performance standards for the FHA first mortgages, and (4) sufficient market participants.

Data on Individual Governmental Entities

HUD should require that for every FHA loan that receives DPA from a governmental entity, originators must enter an EIN or similar unique identifier in the FHA system. Presumably, originators could use the same field that they use when they enter the EIN for non-profits that provide DPA or simply use the field in which they now enter "governmental entity", so ideally there should be no modification necessary to HUD's systems. Not only could HUD then track performance data, it could also determine if any programs are charging interest rates on the FHA first mortgage that are above the average rates charged by similar government programs.

Reporting and Monitoring of Performance

Once HUD begins to match individual governmental entities with the FHA first mortgage for which they provide the down payment, HUD can create a reporting system for governmental entities similar to Neighborhood Watch..[19] Governmental entities will then be able to have accurate performance information for their programs as well as their performance relative to their peers. This will allow governmental entities to more easily identify deficiencies in their programs and better track the effects of remedial measures they may elect to take. HUD then will be able to provide lenders with minimum performance standards and, more importantly, identify which governmental entities are meeting those standards and which are not.

Uniform Minimum Performance Standards

HUD currently has the data to determine the range of credit score or debt-to-income ("DTI") ratio at which borrowers receiving DPA begin to default at levels that HUD believes will pose a threat to the MMIF. From this data, HUD could determine the credit characteristics of a successful DPA loan and establish uniform credit standards for borrowers receiving DPA, possibly including minimum credit score and maximum DTI. It could do this for DPA from both relatives and governments.

While this may work for DPA from relatives, however, setting uniform credit standards does not allow governmental programs the flexibility to experiment within their programs to find ways to responsibly assist more underserved borrowers.

As an alternative to setting uniform credit standards, HUD could establish a program loan performance standard. Once HUD begins to identify which governmental entity is providing

[19] Originating lenders work with borrowers to provide them with FHA mortgage loans. Their loan officers meet with the borrowers, complete an application, and walk the borrowers through the lending process. HUD tracks each mortgage loan that these lenders originate and has created a useful system called the Neighborhood Watch. The system is fully transparent and anyone can go onto this system and find the default rate of all of the mortgages that a lender has originated in the last two years. HUD compares a lender's default rates with those of its peers and with the national average. If an originating lender's loans have a compare ratio of 150%, it means that its loans are defaulting at 1.5 times the average, and HUD will place this lender on its 'watch' list. If an originating lender's loans have a compare ratio of 200%, or twice the average rate of default, HUD may suspend that lender's ability to originate FHA mortgages. In many ways, this is a superb monitoring system.

Unfortunately, because of the way most governmental entities operate, their ability to determine their own performance is mixed. Governmental entities generally do not originate the FHA mortgage loans for which they provide DPA, so their performance data will not show up in the Neighborhood Watch system. This can make it difficult for a governmental entity to determine the performance of the FHA loans for which it provides DPA once those loans are sold or placed in securities.

DPA for an FHA first mortgage, HUD can set uniform performance standards using compare ratios similar to Neighborhood Watch. HUD could apply the same standards to governmental entities in comparison to other governmental entities that it applies when it compares performance of originators. If a governmental entity has a compare ratio to its peer governmental entities of 150 or higher, it is placed on a 'watch' list, while a compare ratio of 200 or higher could subject the entity to a determination by HUD that mandatory credit underwriting standards will be required on all FHA mortgages receiving DPA from that governmental entity.

By creating a Neighborhood Watch-type monitoring of government DPA programs, HUD would not need to mandate credit standards for borrowers receiving DPA from governmental entities. Allowing governmental entities to simply meet loan performance standards would permit them to determine how to meet those standards, whether that is by credit requirements like credit score minimums and DTI maximums for borrowers receiving DPA, or increasing borrower support services such as pre-purchase education, post-purchase counseling, or some other form of down payment substitute.[20] Most importantly, it would give governmental entities the opportunity to try alternative innovative practices to better assist underserved borrowers.

This type of monitoring and reporting will almost certainly lead to improvement in the overall delinquency and default rates of FHA mortgages where the borrower receives DPA from a governmental entity. Governmental entities will have accurate performance information for their programs as well as their performance relative to their peers. Performance measured improves, and performance measured and reported improves more rapidly. Once this data is available, HUD could then better assess what if any credit standards it may need to impose in order to assure that the performance of down payment assisted mortgages does not present a substantial risk of loss to the Federal Government.

Sufficient Market Participants

As noted, HUD asserts, without supporting data, that there are programs that "appear to increase costs, but not benefits, to the borrower."[21] If this is true, then presumably these programs are in areas where there are not enough alternatives for borrowers who need a down payment. Overpriced products occur where providers can increase costs but not benefits of its products, and is the inevitable result of a monopoly such as the regulatory monopolies created by the Mortgage Letter. What is needed is more alternatives for borrowers to obtain DPA, which will insure that governmental entities are pricing their programs at the nominal market rate, are efficient, and innovate in ways to improve their services to borrowers and provide greater benefits.

HUD Should Not Be Picking Winners and Losers in the Marketplace

Unfortunately, it appears HUD is wanting to eliminate nationwide programs, which does nothing to protect the MMIF and will decrease borrowers' alternatives for DPA. Not all governmental entity programs are created equally. While some have robust programs that generally meet the needs of borrowers, others have underdeveloped programs that do not. HUD's fostering preselected geographic monopolies will not produce effective and fairly priced DPA programs for borrowers, but allowing borrowers increased options for DPA that are measured and monitored by HUD can do so. Allowing nationwide DPA providers is a way to ensure that there is price competition, which helps to address the concern that the interest rates that governmental entities

[20] See the 2017 HUD report entitled "*Literature Review: The Credit-Enhancing Functions of Downpayment and Downpayment Substitutes*".
[21] Annual Report.

are charging on the FHA first mortgages are too high, and DPA programs are increasing costs by not benefits to borrowers.

Other Forms Of Down Payment Assistance

The Annual Report notes that DPA is a significant portion of HUD's portfolio. HUD should look at how DPA is being provided by governmental entities, but HUD should look at all forms of DPA. For example, the delinquency rate for FHA mortgages that receive DPA from governmental entities is on par with that of FHA mortgages that receive DPA from relatives, and is substantially lower than loans that received DPA from "other" sources.[22] But DPA from governmental entities makes up only 26.7% of all DPA provided, while DPA from relatives accounts for 62.7% of all DPA. If HUD is genuinely concerned about DPA performance, it should create minimum credit standards for borrowers to qualify for DPA from relatives.

If DPA is responsibly provided within a certain credit box, or to credit challenged borrowers with the proper down payment substitutes, the amount of DPA that is provided will naturally be limited to a certain portion of HUD's portfolio, but more importantly, whatever amount is provided will not be a detriment to the MMIF.

Section Five: HUD's Lack of Consultation with Tribes

The impact of the Mortgagee Letter is not isolated to the Cedar Band, and without proper tribal consultation, the full impact to all of the 573 different tribes will not be realized. HUD has failed to provide consultation to the Cedar Band in spite of the fact that the actions they have implemented have significant detrimental effects on tribal sovereignty, economic development efforts, and on the Cedar Band's over-all well-being. HUD has failed to follow federal policy on consultation with American Indian tribes as set forth in Executive Order 13174, "*Consultation and Coordination With Indian Tribal Governments*" (the "EO"), which provides that federal agencies shall not make regulations or policy statements or take actions that have substantial direct effects on one or more Indian tribes and that impose substantial direct compliance costs, unless the agency, prior to the promulgation of the regulation, complies with the consultation provisions of the EO. We submitted written comments requesting HUD follow its own Government-to-Government Tribal Consultation Policy.[23], which requires consultation on proposed policies that have tribal implications, before such policies are drafted, in order to facilitate greater tribal participation in development of the proposed policies.

HUD's Policy Initiative Contradicts the United States Government's 85-year American Indian Policy of Self-Governance and Self-Determination

Beginning in 1934, the U.S. Government had a policy of self-determination and self-governance towards American Indian tribes. The policy is to allow American Indian tribal organizations to establish businesses and operate them, without geographic or demographic limitation, in order to provide for themselves.

HUD's proposal to "put Indians back on the reservation" is a very significant change to the U.S. Government's American Indian policy, and would set a terrible precedent and potentially threaten the viability of other American Indian businesses. Other industries that might want to eliminate

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[22] FHA Single Family Loan Performance Trends, Credit Risk Report, December 2018. https://www.hud.gov/sites/dfiles/Housing/documents/FHALPT_Dec2018.pdf

[23] *Tribal Government-to-Government Consultation Policy*, 81 Fed. Reg. 40893, 40894 (June 23, 2016).

competition from American Indian businesses might use this precedent to get other government agencies to limit the geographic areas in which American Indian businesses could operate or populations those American Indian businesses serve. Moreover, it does not appear that HUD, in formulating its policy proposal, consulted the Bureau of Indian Affairs. As noted above, HUD has failed, thus far, to engage in tribal consultation.

Section Six: The Cedar Bands Compliance with HUD Guidelines.

HUD has raised doubts in public forums and with other policymakers about the CBCMA Chenoa Fund program in regards to the following questions.

1. Why is CBCMA allowed to operate on a nationwide basis?
2. Why is CBCMA allowed to benefit from its activities off of the reservation?

CBCMA, through the Chenoa Fund program, has provided down payment assistance in the form of a second mortgage to over 14,000 borrowers who were using FHA first mortgages to purchase a home. Of these mortgages, a great many have undergone a review by HUD at every level, and have been subsequently insured by HUD. This is conclusive evidence that its program meets HUD's current guidelines in every respect.

Why Is CBCMA Allowed to Operate on A Nationwide Basis?

CBCMA's nationwide operation of its program complies with HUD guidelines and in accordance with the terms of CBCMA's charter. HUD guidelines do not place any restrictions on where a governmental entity provides secondary financing. HUD Handbook 4000.1 (the "Handbook") provides HUD's guidance on secondary financing, and the conditions upon which HUD will insure an FHA mortgage given to a borrower whose down payment comes in the form of secondary financing from a governmental entity. There is absolutely no mention of jurisdiction or geography in these conditions or anywhere in the Handbook. There is, therefore, no restriction on CBCMA's (nor any other governmental entity's) ability operate a secondary financing DPA program on a nationwide basis.

Why Is CBCMA Allowed to Benefit from Its Activities Off of the Reservation?

Why is CBCMA allowed to benefit from its activities off of the reservation? This question is a bit esoteric, but HUD seems to be questioning whether Chenoa complies with the terms of the Handbook relating to governmental entities that both originate the FHA first mortgage and also provide the DPA. The Handbook does reference HUD's 2012 Interpretive Rule, Docket No. FR-5679-N-01, to make clear that governmental entities, such as CBCMA, are **NOT** prohibited by Section 203(b)(9)(C) from originating loans and providing the down payment on those loans. The 2012 Interpretive Rule states that:

> *HUD interprets NHA section 203(b)(9)'s "prohibited sources" provision in subsection (C) as not including funds provided directly by Federal, State, or local governments, or their agencies and instrumentalities in connection with their respective homeownership programs.*

There is a single sentence in the 2012 Interpretive Rule that some at HUD have latched onto to assert that there is a limitation on where a governmental entity can provide down payment assistance if it is originating the FHA mortgage, which is as follows: "*HFAs provide various* *services to assist citizens* ***within their jurisdictions*** *in attaining affordable housing options*".[24] This phrase, however, was clearly not intended by HUD to create a limitation on where a governmental entity could provide secondary financing, nor is such a limitation permitted by 12 U.S.C 1735f-6, the statute that authorizes governmental entities to provide secondary financing. Again, this is evidenced by the fact that HUD has insured over 14,000 FHA mortgages for which the DPA came from CBCMA and the property was not on the reservation.

DPA for FHA borrowers in the form of second mortgages has been provided by governmental entities since at least the 1970's, and was statutorily protected by Congress under 12 U.S.C. 1735f-6, which mandates that HUD insure first mortgages with associated seconds from governmental entities, provided the loan otherwise meets the terms and conditions approved by the Secretary. In passing this legislation, the intent of Congress was explicitly clear.[25]—(1) Congress wanted to foster innovation in the area of DPA by government programs, (2) HUD is to work with various forms of government and (3) HUD is only to place standard credit restrictions on secondary financing and *only to the extent necessary to prevent government DPA from substantially increasing the risk of loss to the Federal Government*, which HUD clearly has not demonstrated with data with regards to nationwide governmental entities.

The legislative history of 1735f-6 makes it very clear that HUD is not to limit governmental entities providing second mortgages for borrowers' down payment except to limit the credit terms under which such assistance could be provided—and jurisdiction or geography most definitely fall outside of any such permissible credit terms. Section 1735f-6 was part of the Housing and Community Development Amendments of 1978, which was first passed in the Senate without Section 1735f-6. This section was added in conference reconciling the corresponding House bill by the House Committee on Banking, Finance and Urban Affairs. In adding this section, the committee indicated that Section 1735f-6 was included to "permit experimentation and innovation"[26]. The committee made it clear that the language "terms and conditions approved by the Secretary" was meant to apply to the credit terms of the second mortgage and accompanying first mortgage and that it further expected HUD to apply only those conditions that would avoid situations where the secondary financing would ***substantially*** increase the risk of loss to the MMIF:

> *The Secretary remains free to withhold insurance for any other reason associated with normal underwriting standards, but could not withhold such insurance solely because the applicant was receiving or contemplated receiving assistance secured by such a secondary lien.* ***It is the view of the committee that such insurance should not be withheld unless the secondary financing substantially increases the risk of loss to the Federal Government.***[27] (Emphasis added.)

Of course, HUD is aware of Congress' intent, which is why HUD attempts to make the case that nationwide governmental entities are acting in a manner that puts the MMIF at unreasonable risk. It also underscores how important it is that HUD establish with data that practices and programs by government DPA providers that HUD seeks to eliminate actually do pose a threat to the MMIF, rather than simply assuming that because a program is offered on a nationwide basis, it must be harmful to the MMIF, on no other basis then that nationwide SFDPA programs were harmful.

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[24] Interpretive Rule at 6 (emphasis added).
[25] House Report No. 95-1161.
[26] House Report No. 95-1161.
[27] House Report No. 95-1161.

It is worth noting that although Congress explicitly gave HUD authority to impose normal underwriting standards on borrowers receiving DPA from governmental entities, HUD has never elected to do so. HUD does not impose any credit score minimums, any DTI maximums or other credit requirements on governmental entity DPA programs, or any DPA programs. HUD has instead allowed governmental entities to self-police.

It is also worth noting that limiting governmental entities to a specific geography, as HUD is seeking to do, will create monopolies for the local government programs, which will encourage neither experimentation nor innovation, further frustrating Congressional intent.

CBCMA is Not an Interested Party Under 12 U.S.C. 1735f-6

It is critical to note that CBCMA does not rely on the clarification provided in the 2012 Interpretive Rule because it does not originate any of the mortgages for which it provides down payment assistance. FHA first mortgages that receive the benefit of a down payment from CBCMA are all originated by licensed loan originators, which origination transactions occur in what is termed the "primary" mortgage market. These loans are purchased by CBCMA. CBCMA then sells these loans, servicing released, to investors. Both the purchase of the FHA mortgage by CBCMA and its sale to investors occurs in what is termed the "secondary" mortgage market. The fact that CBCMA operates in the secondary mortgage market and not in the primary mortgage market is an important distinction.

As HUD is aware, the HUD Office of Inspector General ("OIG") took issue with the practice of governmental entities raising the interest rate on the FHA first mortgage so that when they sold the mortgage in the secondary mortgage market, the governmental entities would make enough to fund their DPA activities. When the OIG suggested that this practice was in violation of the interested party prohibition in Section 203(b)(9)(C), HUD vigorously defended the practice by making it clear that the Section 203(b)(9)(C) did not apply to secondary market transactions, stating in numerous documents substantially the following:

> *Additionally, as the General Counsel has noted, the "prohibited Sources" provisions of the National Housing Act, captured at section 203(b)(9)(C) of the Act, are directed towards parties that financially benefit from the property sales transaction and the primary mortgage transactions, not transactions that occur in the secondary mortgage market.*.[28]

As noted above, CBCMA acts in the secondary mortgage market, so the prohibitions in section 203(b)(9)(C), do not apply to its activities, even according to HUD.

Even if CBCMA were to originate mortgages for which it provided down payment assistance (it does not), and even if the 2012 Interpretive Rule only applied to governmental entities acting in their governmental capacity (it does not so state), the Cedar Band *does* act in its governmental capacity through CBCMA when it provides down payment assistance off of reservation land and to non-Band members.

[28] See attached letter from Nani Coloretti, Deputy Secretary, HUD at page 3, and attached letter from Robert E. Mulderig, Acting Deputy Assistance Secretary for Single Family Housing, HUD at page 3.

Attachments:

- Letter from Michael Flynn, Partner, Goodwin, November 27, 2018
- Letter from Nani Coloretti, Deputy Secretary, HUD
- Letter from Robert E. Mulderig, Acting Deputy Secretary for Single Family Housing, HUD
- Customer testimonials (a small sampling)

GOODWIN

Michael Flynn
+1 202 346 4175
MichaelFlynn@goodwinlaw.com

Goodwin Procter LLP
901 New York Avenue NW
Washington, DC 20001

goodwinlaw.com
+1 202 346 4000

November 27, 2018

VIA E-MAIL AND OVERNIGHT MAIL

J. Paul Compton, Jr.
General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

**Re: CBC Mortgage Agency's Chenoa Fund
Cedar Band of Paiute Indians**

Dear Mr. Compton:

CBC Mortgage Agency ("CBCMA") is an FHA approved Government Mortgagee wholly owned by the Cedar Band of Paiutes, a federally-recognized Native American Tribe (the "Cedar Band"), which relies, in part, on revenues from Chenoa Fund, CBCMA's Down Payment Assistance ("DPA") program, to fund key activities. CBCMA is submitting this letter to address certain public comments made by Federal Housing Administration ("FHA") Commissioner Montgomery regarding the Department of Housing and Urban Development's ("HUD") plans for changes to requirements for its DPA program guidelines, particularly in light of HUD's Fiscal Year 2018 Report to Congress (the "Annual Report").

The Commissioner's comments reflect a misunderstanding of how HUD can effectively reform FHA's DPA program guidelines. In particular, those comments seem to indicate a reliance on the untested assumption that only state housing finance agencies ("HFAs") operate their DPA programs efficiently and in a manner that decreases default risk. As the data presented herein indicates, that assumption does not hold. Allowing strong competition from quality providers, coupled with implementing clear HUD standards and oversight, offers a better means of maintaining a viable HUD DPA program. Moreover, the Annual Report's assertion that clarifying terms such as "prohibited sources" and "financially benefits from the transaction" will serve to reduce risk to the Mutual Mortgage Insurance Fund (the "MMIF") is made without any evidence that current DPA program guidelines alone increase risk, without regard to other factors.

Further, to the extent the Commissioner's comments may be directed at or involve CBCMA, CBCMA wishes to remind HUD of its status as a Native American tribal governmental entity, authorized to operate in any geographic area in the United States. The Commissioner's comments, if directed toward CBCMA, do not appear to consider CBCMA's loan performance, which compares favorably to loan performance data provided by HUD for other government entities, including HFAs. CBCMA's loan

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performance reflects CBCMA's commitment to strong operational and underwriting standards, appropriate pre- and post-closing borrower counseling, and cost-reducing innovation and efficiency. Further, CBCMA provides its DPA financing in a manner that, unlike many HFAs, does not implicate the so-called "circular funding" mechanism that the HUD Office of Inspector General (the "OIG") has repeatedly criticized.

In this letter, CBCMA will: (1) provide a brief analysis of how its status as a tribal government entity gives it a national operating footprint, and how limiting HFAs to their own states should not implicate CBCMA's geographic range; (2) provide data showing the favorable comparison of its DPA loan performance to other government entities; (3) describe why CBCMA's funding model does not implicate the "circular funding" issue; (4) offer suggestions regarding how HUD might strengthen the DPA guidelines by collecting more specific data on individual DPA providers, including HFAs, and by setting meaningful credit and/or loan performance standards that would promote effective competition to lower costs to borrowers while allowing HUD to effectively oversee participants in the DPA program; and (5) set forth the need for HUD to conduct meaningful consultation with CBCMA if it is contemplating taking any actions regarding the issues articulated by the Commissioner.

I. The Commissioner's Public Comments and the Annual Report

Both the Commissioner and FHA have announced on several occasions and in multiple forums that HUD intends to make changes to DPA program guidelines. For example, at a question and answer session on October 16, 2018, Commission Montgomery explained that HUD intends to limit the operations of DPA providers to their "jurisdiction," mentioning specifically a limitation to the state where a DPA provider is "located." The Commissioner also stated that HUD was focusing on prohibiting parties who receive "financial benefits" from participating in the program. The Annual Report also indicates HUD must take action to address the meaning of "prohibited sources" and "financially benefits" to decrease risk to the MMIF.

It should be noted that the Commissioner's and the Annual Report's comparison of government entity DPA programs to now-prohibited seller-funded down payment assistance ("SFDPA") is wholly inappropriate. Government entity DPA programs involve none of the troubling characteristics of SFDPA, including manipulated appraisals and inflated sales prices that contribute to increased risk to the MMIF. Government entity DPA providers like CBCMA operate to assist low-income borrowers and, as described below, put revenues back into their communities – a stark contrast to the problematic SFDPA financing schemes.

II. Limiting Geographic Operations of CBCMA

Given HUD's lack of data on the performance of individual DPA providers, there is no reason to expect that limiting providers by geography will result in decreased risk to the MMIF. In fact, that approach

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may actually limit the reach of the best-performing DPA providers. More importantly, in regards to CBCMA, any restriction based on "jurisdiction," or some related idea of governmental footprint or capacity, must acknowledge that as a tribal government entity, CBCMA's geographic operating territory is the entire United States. Any effort to limit DPA programs offered by entities like CBCMA is wholly unsupported by the text and legislative history of the Housing and Economic Recovery Act of 2008 ("HERA").[1]

CMCBA is a federally recognized arm of an Indian Band and a nationally-chartered mortgage agency as defined by the Secretary of the Interior. See *Letter from Michael Flynn to Dana Wade, Amy L. Brown, Ricky Nelson and Paul Olin* (Mar. 9, 2018), pp. 2-3 (the "First CBCMA Letter"). A copy of the First CBCMA Letter is enclosed herewith. As described in the First CBCMA Letter, CBCMA's geographic range is recognized as the United States and its territories. The Constitution of the Paiute Indian Tribe of Utah states that the Cedar Band may manage Cedar Band enterprises and own and operate businesses and may conduct business affairs concerning all matters that relate solely to the Cedar Band (i.e., that do not involve the rest of the tribe), all without mention of geographic limitations, while also providing that powers may be expanded by the federal government. See Article VIII, Section 2(c); Article VIII, Section 2(d); Article V, Section 1. The Cedar Band Corporation's charter, issued by the Secretary of the Interior, specifically provides that it may operate "either within or without the Reservation," and CBCMA's charter states that it has authority to operate "anywhere in the United States and its territories." Further, as a government entity of the Cedar Band, CMCBA is seen as a federal instrumentality, not a state instrumentality. See *E.F.W. v. Stephen's Indian High Sch.*, 264 F.3d 1297, 1304 (10th Cir. 2001); Solicitor of the Bureau of Indian Affairs Opinion M-27810.

HUD's longstanding policy recognizes tribal entities as government entities eligible to participate in the FHA DPA program. See First CBCMA Letter, pp. 6-7. Accordingly, in 2013, having received and reviewed CBCMA's charters, HUD approved CBCMA as a Government Mortgagee, thus affirming its status as a governmental entity based upon full information that CBCMA would offer DPA nationwide.

Further, it is clear that Congress intended that government entity DPA providers be limited based on credit and underwriting standards, not on other bases. CBCMA is statutorily authorized to offer secondary financing under 12 U.S.C. § 1735f-6, which mandates that HUD insure first mortgages with associated second mortgages from government entities, provided the loan otherwise meets the terms and conditions approved by the Secretary of HUD. Section 1735f-6 was added to the Housing and Community Development Amendments of 1978 in conference reconciliation. The conference committee indicated that the language "terms and conditions approved by the Secretary" was meant to apply to the credit terms of the second mortgage and accompanying first mortgage, and that it further expected HUD to apply only those limitations to the provision of secondary financing that would mitigate substantial

[1] Pub. Law 110-289 (July 30, 2018).

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risk of loss to the MMIF.[2] In passing Section 1735f-6, Congress wanted to encourage HUD to work with "other forms of government" and foster the kind of innovation that CBCMA brings to the marketplace.[3]

Accordingly, given that CBCMA is specifically authorized to operate its DPA program nationwide, HUD does not appear to have the authority to limit CBCMA's geographic scope.

III. CMCBA's Data

A. <u>CBCMA's Performance Data</u>

CBCMA retained Moody's to analyze its loans and develop data regarding loan performance.[4] Moody's analysis of CBCMA's August 2018 data shows that CBCMA loans outperform the averages of government entity-assisted FHA loans as reported by HUD in its August 2018 FHA Single Family Loans Performance Trend Credit Risk Report. CBCMA's compare ratio with its peer government entities that provide DPA was well below 100 for every category, including seriously delinquent ("SDQ") loan percentages,[5] meaning CBCMA significantly outperformed the average government entity providing DPA.

[*Chart on Following Page*]

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[2] "The Secretary remains free to withhold insurance for any other reason associated with normal underwriting standards, but could not withhold such insurance solely because the applicant was receiving or contemplated receiving assistance secured by such a secondary lien. *It is the view of the committee that such insurance should not be withheld unless the secondary financing substantially increases the risk of loss to the Federal Government.*" (Emphasis added.) House Report No. 95-1161.

[3] *Id.*

[4] HUD does not have similar data for all DPA providers. As discussed below in Section V, HUD should require all DPA providers, including HFAs, to obtain similar analyses of their loan performance so HUD can have a basis for determining the terms under which secondary financing substantially increases the risk of loss to the MMIF.

[5] The total of SDQ loans for all government entities is the sum of the percentages of 90+ days delinquency, plus foreclosures and bankruptcies. The total SDQ for CBCMA is the sum of the percentages of 90 and 120+ day delinquency of CBCMA first mortgages, plus claims made.

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	% Of All CBCMA FHA Mortgages	% of All Government Entities FHA DPA Mortgages	CBCMA Compare Ratio
30 Days Delinquent	4.41%	5.47%	80.7
60 Days Delinquent	1.39%	1.94%	71.4
90 Days Delinquent	1.54%	2.89%	53.4
120+ Days Delinquent	1.61%		
Foreclosure		1.04%	
Bankruptcy		1.07%	
Claims	0.02%		
Total of SDQ	3.18%	5.00%	63.6

Given that CBCMA appears to be performing on par or better than most other government entities, there is no rational basis for limiting CBCMA's area of operations, or for allowing lesser-performing state agencies to have a monopoly in their selected areas of operation. In addition, because HUD is not able to demonstrate that limiting where CBCMA provides secondary financing would substantially mitigate any risk to the Federal Government, such a limitation would contravene Congress' express intent of protecting secondary financing programs under 12 U.S.C. § 1735f-6.

B. CBCMA's Program Standards Drive Its Results

CBCMA performance is driven by its conservative program standards, borrower-focused oversight, and the multiple innovative sources of significant cost savings it brings to any transaction in which it provides DPA:

- CBCMA's programs require various reviews, including oversight by investors, third-party underwriting review of all loans, separate third-party quality control post-closing reviews (using samples of ten percent of loans), and rigorous correspondent lender screening.

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- All borrowers are offered post-closing counseling by Hope Loan Port ("HLP"), a HUD-approved non-profit counseling agency, while borrowers in the 620-640 FICO band also receive pre-closing counseling from HLP.

- CBCMA has one set of guidelines across the geographies it serves, providing lenders with a significant cost savings, thus freeing capital to reach more borrowers. Historically, lenders who operate in a broad geographic region must contend with numerous program parameters in order to provide DPA across their entire operational footprint – large lenders might have to contend with as many as 2000 or more different programs. Using CBCMA allows such institutions to deal with only one set of guidelines and forms.

- CBCMA has innovated to lower costs to borrowers by creating the CRA Note Exchange (the "CRA NE") to allow more efficient secondary market sales. The CRA NE provides banks the ability to sort through loans to find those that meet their Community Reinvestment Act ("CRA") needs, speeding up the secondary market sales of such loans, thus improving DPA program efficiencies across the board. CBCMA has invited state HFAs to utilize the CRA NE so that they and their borrowers can also take advantage of this innovative program.

- CBCMA offers innovative programs such as its earned equity program, which provides borrowers with a sense of "skin in the game." See First CBCMA Letter, p. 3.

- Analyzing Moody's data, CBCMA determined that even with all of the above-described measures utilized to help borrowers be successful long-term homeowners, borrowers with FICO scores between 620 and 639 experience defaults at a higher rate than borrowers with a FICO score of 640 or greater. In response to this, CBCMA determined that in addition to on-going post-purchase counseling, borrowers with FICO scores between 620 and 639 will receive one-on-one pre-purchase education. In order to ensure continuity of assistance both before and after purchase and to further strengthen the relationship of trust with borrowers, the pre-purchase education is provided by HLP, which also provides CBCMA borrowers with post-purchase counseling. CBCMA will continue to review performance data to determine if this education improves the loan performance of borrowers in the 620-639 FICO band. If performance does not improve sufficiently, CBCMA will look at other ways it can support these borrowers, or may simply raise the minimum credit score of its programs to 640.

IV. CBCMA Does Not "Financially Benefit" From Its DPA Programs

The Commissioner also recently stated that HUD is seeking to redefine how a party may "financially benefit" from a transaction so as to eliminate certain DPA programs or providers. The Annual Report

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also indicates HUD intends to clarify the term to potentially expand the meaning of "prohibited sources." Even if such a concern is valid, it is not applicable to CBCMA.

First, under HUD's own rules and policies, government entities such as CBCMA are not subject to the "financial benefits" analysis. Second, CBCMA's program structure does not result in a "financial benefit" as that term is currently understood.

In 2008, Congress passed HERA, which prohibited interested party contributions to the borrower's minimum required investment ("MRI") for FHA-insured loans. HERA prohibited the following parties from contributing funds to MRIs: (1) a seller; (2) any other person or entity that financially benefits from the transaction; or (3) any third party or entity that is reimbursed, directly or indirectly, by the seller or any person or entity that financially benefits from the transaction. The term "financially benefits" was not defined. HUD's 2012 Interpretive Rule clarified that the new prohibition:

> [D]oes not exclude as a permissible source of cash investment, funds provided directly by Federal, State or local governments, or their agencies or instrumentalities as part of their respective homeownership programs. (77 Fed. Reg. 72,222)

Accordingly, CBCMA, as an instrumentality of a tribal government, is not subject to any "financially benefits" standard.

Should HUD expand the meaning of "financially benefits" to encompass CBCMA's structure, it would effectively be doing so for all similarly structured HFAs, thus eliminating the availability of a vast majority of DPA programs.

The OIG has asserted that various state HFAs improperly financially benefit from "circular funding" of DPA programs by effectively obtaining gains from DPA transactions without putting their own capital at risk.[6] Instead of contributing their own capital to provide a DPA second loan or a DPA gift, those HFAs contract with a third party that on behalf of the HFA buys first lien loans that have DPA from lenders who are participating in the HFA's DPA program. As part of that sales price, the lenders are reimbursed for the DPA funds they advanced. The third party bundles the loans, securitizes them, and sells the securities, while also acting as servicer on the loans. It then pays the HFA net proceeds from the securitization sales, with the amount of DPA provided for each having already been taken out via the purchase price paid to the lender. As a result, the HFA receives profit without having put its funds into the DPA at the outset.

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[6] See *HUD OIG Audit Report No. 2015-LA-1005*, issued July 9, 2015; *HUD OIG Audit Report No. 2015-1009* and *No. 1010*, both issued September 30, 2015; *HUD OIG Audit Report 2017-LA-0003*, issued March 3, 2017.

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CBCMA's funding model is quite different, as CBCMA places its own capital at risk in relation to the FHA first mortgages in the transactions. CBCMA maintains a $100 million line of credit. Instead of having its servicer front the funds to buy and securitize the DPA assisted FHA loans, CBCMA itself buys the loans from the originators who participate in making CBCMA DPA loans, utilizing funds it has in its line of credit. CBCMA then sells the loans to third party investors, who hold, sell or securitize the loans. Thus, CBCMA's own funds are inserted into the transaction, greatly increasing its real risk, which accurately reflects its role as a DPA provider. This includes not just the cost of the DPA, but the purchase of the entire first lien loan and subsequent liability for its indemnification and repurchase.

Equally important, like the HFAs, CBCMA uses net revenues to support governmental activities, not for profits for third party investors. All of the net proceeds from CBCMA's activities are distributed to the Cedar Band to fund essential governmental functions and social programs, such as Band Building Maintenance and Renovation, After School Youth Programs; Elders Assistance Programs (including a small monthly stipend), a Scholarship Program, Southern Paiute Language Study and Research, a Work Training Program, and Hunting Camps for youth.

While HUD has previously disagreed with the OIG's analysis,[7] it is not clear from the Commissioner's recent comments or the Annual Report whether HUD will continue to do so. As described above, while CBCMA places its own funds at risk in the transactions, many HFAs do not. Even if HUD adopts the OIG's analysis, CBCMA should not be viewed as "financially benefitting" since it takes on the risk of providing DPA funds.

Thus, even if HUD intends to develop another definition of "financially benefits," it cannot use any such definition to limit CBCMA's operations without placing the same limitations on HFAs.

V. Possible Alternative Approaches for HUD to Reform Its DPA Program

HUD's misplaced focus on geographic limitations and "financial benefits" derives from the fact that HUD lacks quality data about DPA providers and does not have strong uniform standards by which to measure such providers. As a result, HUD seems to base its deliberations on unproven assumptions that HFAs are more reliable DPA providers than other government entities. As CBCMA's above data shows, this is not true with respect to CBCMA. If HUD gives HFAs monopolies in their states, HFAs with poor loan performance will dominate the market. Relying on government entities to self-police, when such entities have no direct responsibility to or liability for the MMIF, is not a strong policy.

There is a better solution. Controlled competition – a "monitored marketplace" – will drive providers to seek ways to operate more efficiently with lower costs while producing quality loans, as CBCMA has

[7] Memorandum from Helen Kanofsky, General Counsel, Department of Housing and Urban Development (2015).

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done, while ensuring that HUD can adequately supervise such participants and their impact on the MMIF. Competition will lead to the innovation that Congress sought to foster when passing Section 1735f-6.

Several elements are needed to achieve a monitored marketplace: (1) reporting and monitoring of performance for individual government entities, (2) uniform minimum credit or performance standards, and (3) sufficient market participants.

A. Reporting and Monitoring of Performance for Individual Governmental Entities

HUD does not currently require identification of the specific government entity providing secondary financing, even though it does require identification of individual non-profits that provide DPA. Because of this lack of specific data, HUD is unable to identify which programs might be operating in a manner which substantially increases the risk of loss to the MMIF. If HUD can identify riskier DPA programs, it can focus its efforts on performance standards, rather than limiting DPA programs as a whole.

HUD should require that originators enter an EIN or similar identifier in the FHA system when originating any FHA loan that receives DPA from a government entity. Presumably, originators could use the same field that they use when they enter the EIN for non-profits that provide DPA, so ideally there should be little or no modification necessary to HUD's systems.

Once HUD begins to link individual government entities to the FHA first mortgage for which they have provided DPA, HUD can create a report for government entities that is similar to Neighborhood Watch. Governmental entities will then have accurate performance information for their programs as well as relative performance information as compared to their peers, which will allow government entities to more easily identify deficiencies in their programs and track the effects of remedial measures. HUD will then be able to identify which government entities are meeting the standards discussed herein.

Currently, many government entities have a difficult time determining the long-term performance of the FHA first mortgages they provide secondary financing on because they only purchase but do not originate the first mortgages and sell them servicing released. Facilitating their ability to track the loan performance of the FHA mortgages for which they provide assistance will almost certainly lead to improvement in the overall delinquency and default rates of FHA mortgages where the borrower receives DPA from a government entity. Once this data is available, HUD could then better assess what (if any) credit standards it may need to impose in order to assure that the performance of down payment assisted mortgages does not present a substantial risk of loss to the Federal Government.

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B. Uniform Minimum Credit Standards and/or Performance Standards

Uniform credit standards are already used in other FHA programs. HUD should also provide uniform minimum credit underwriting standards for all entities providing DPA, including government entities.[8] HUD currently has the data needed to determine the range of FICO scores or DTI ratios at which borrowers receiving DPA begin to default at levels that could pose a threat to the MMIF. From this data, HUD can determine the characteristics of a successful DPA loan and establish uniform credit standards for borrowers receiving DPA, possibly including minimum FICO and maximum DTI requirements.[9]

In place of, or possibly in addition to, uniform credit standards, HUD could also set uniform performance standards for DPA providers. Once HUD is able to publish the loan performance of each government entity, setting loan performance standards would allow government entities to determine how to meet those performance-based standards, including by imposing credit requirements, increasing borrower support services such as pre-purchase education and/or post-purchase counseling, or allowing for some other form of down payment substitute. Most importantly, it would give government entities the opportunity to test out alternative and innovative practices.

C. Sufficient Market Participants

Measuring performance and setting standards, while necessary, are not sufficient in themselves to ensure that DPA programs are incentivized to be innovative, efficient, and focused on lower costs. Strong competition applied to meaningful standards, with effective measuring of performance, can drive efficiency and lower costs. CBCMA's strong program features and innovative processes are a clear example of what a managed marketplace can achieve. A managed marketplace should be HUD's goal; limiting the number of providers in any geographic area is not a recipe for improvement.

VI. Tribal Consultation

As discussed above, the Commissioner's public statements regarding possible geographical limitations on DPA programs and creating a definition for the term "financially benefits" raise issues that would substantially and directly impact the Cedar Band. As discussed in the First CBCMA Letter, HUD's

[8] The delinquency rate for FHA mortgages that receive DPA from government entities is on par with that of FHA mortgages that receive DPA from relatives, and is substantially lower than that of loans that received DPA from "other" sources. However, DPA from government entities makes up only 26.5% of all DPA provided, while DPA from relatives accounts for 62.5% of all DPA.

[9] Such standards will help alleviate any concerns HUD may have that choosing to not restrict the geographic scope of DPA providers will cause a proliferation of DPA. If DPA can be responsibly provided only to creditworthy borrowers, the amount of DPA offered will naturally be limited to a certain portion of HUD's portfolio, and the amount that is actually provided will not be a detriment to the MMIF.

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Tribal Consultation Policy requires that HUD engage in consultation "on regulations, legislative proposals, and other policy statements or actions that have substantial direct effects on one or more Indian tribe [sic], or on the distribution of power and responsibilities between the Federal Government and Indian tribes."[10] Indeed, HUD is required to consult with tribes before drafting policies with tribal implications, including by providing at least a 30-day comment period.[11] In accordance with this requirement, if HUD is contemplating any action that could impact CBCMA's operations, CBCMA requests that HUD first engage in meaningful consultation with CBCMA.

CBCMA values its relationship with HUD and appreciates the opportunity to address any concerns HUD may have with the Chenoa Fund program. We look forward to engaging in a discussion regarding these issues, and appreciate your consideration of our request.

Sincerely,

Michael Flynn

Enclosure

cc (via email and overnight mail):
Brian Montgomery, Assistant Secretary for Housing and FHA Commissioner
Joseph M. Gormley, Associate General Deputy Assistant Secretary for Housing
Amy L. Brown, Acting Associate General Counsel, Office of Insured Housing

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[10] Department of Housing and Urban Development Tribal Government-to-Government Consultation Policy, § II(D).
[11] *Id.*

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, D.C. 20410-0050

May 25, 2016

MEMORANDUM FOR: David Montoya, HUD Inspector General
Edward Golding, Principal Deputy Assistant Secretary, HUD Office of Housing

FROM: Nani Coloretti, Deputy Secretary Nani Coloretti

SUBJECT: Decision: Office of Inspector General Audit of NOVA Financial & Investment Corporation's FHA-Insured Loans with Downpayment Assistance, Report 2015-LA-0010

Consistent with section 5-5 of the Department's Audit Management System Handbook 2000.06 REV-4, this decision memorandum represents management's decision and resolves the present disagreement between the Office of Inspector General (OIG) and the Office of Housing-Federal Housing Administration (FHA) arising out of OIG's audit of NOVA Financial & Investment Corporation (NOVA) and its origination of FHA-insured single family mortgages for borrowers using downpayment assistance provided by various housing finance agencies.

BACKGROUND INFORMATION

Despite several attempts to resolve their differences of opinion, OIG and FHA continue to disagree as to whether the downpayment assistance programs being operated by the governmental entities and utilized by borrowers in connection with FHA-insured financing originated by NOVA violated FHA's requirements. OIG and Housing disagree on six recommendations made in the NOVA Audit, and OIG referred these disagreements to me for resolution. Specifically, OIG recommended that NOVA do the following:

1. OIG Recommendation 1B: "stop originating FHA loans with ineligible gifts as part of downpayment assistance programs …."

2. OIG Recommendation 1C: "indemnify HUD for 405 FHA loans that were originated with the ineligible gift as part of the downpayment assistance programs …."

3. OIG Recommendation 1D: "indemnify HUD for the additional 304 loans originated under the Home in Five, Pima Tucson, and similar downpayment programs that may contain ineligible downpayment assistance …. HUD must review the 304 loans to determine whether they were insurable without the ineligible downpayment assistance."

4. OIG Recommendation 1F: "collaborate with loan servicers to reduce the interest rates for FHA borrowers who received downpayment assistance, were charged a premium interest rate, and have not refinanced or terminated their original FHA loan"

5. OIG Recommendation 1G: "reimburse FHA borrowers for overpaid interest as a result of the premium interest rate for those who received downpayment assistance, were charged a premium interest rate, and have refinanced or terminated their original FHA loan"

6. OIG Recommendation 1H: "update all internal control checklists to include specific HUD FHA rules and regulations governing downpayment assistance, premium interest rates, and allowable fees"

The resolution of these six recommendations primarily depends upon the determination of three issues:

1. What is the interpretation and application of the National Housing Act "Prohibited Sources" provisions to the downpayment assistance provided by a governmental entity?

2. Whether the specific practices of the governmental entities providing downpayment assistance in the particular instances referenced in the NOVA Audit violate these "Prohibited Sources" provisions as they were interpreted and applied at the time of the audit.

3. Whether the specific practices of the governmental entities at issue in the NOVA Audit violate any other applicable FHA requirements concerning premium pricing or gift funds.

After meeting with OIG, FHA and the Office of General Counsel (OGC) on these issues, I charged OIG and OGC with conferring further to see if there was any common ground with respect to the relevant legal issues underscoring the Audit's determinations. The two offices conferred, and OIG also provided documentation that previously was not available to FHA or OGC. I understand that, pursuant to those discussions, the three offices – OIG, Housing, and OGC – agree that the *Federal Housing Administration: Prohibited Sources of Minimum Cash Investment Under the National Housing Act – Interpretive Rule* ("2012 Interpretive Rule") permits governmental entities to provide downpayment assistance that may represent a borrower's minimum cash investment. Docket No. FR-5679-N-01. However, neither office has changed its underlying view of the legal issues surrounding the NOVA FHA-insured single mortgages at issue in the audit and continue to disagree as to the manner in which a governmental entity may raise funds for its downpayment assistance program and the manner in which a governmental entity may provide downpayment assistance to perspective borrowers. Both OIG and OGC provided me with their position on these legal issues, and this memorandum sets forth my final determination.

1) **The "Prohibited Sources" Provisions and Treatment of Governmental Entities**

The 2012 Interpretive Rule is the Department's legal interpretation and application of the National Housing Act's "Prohibited Sources" provisions, which restrict certain persons and entities from funding the borrower's minimum required downpayment. The Interpretive Rule specifically excludes governmental entities from the "Prohibited Sources" provisions and places no restrictions or prohibitions on how governmental entities raise funds for their downpayment assistance programs. In addition, the Department's General Counsel has opined by memorandum dated August 11, 2015 ("General Counsel's opinion") and attached hereto as Attachment A, that governmental entities generate their funds for downpayment assistance programs through a variety of mechanisms (which could include the sale of mortgages on the secondary market) and, once the funds legally belong to the governmental entity, that control is sufficient to render them eligible for use as downpayment assistance and a proper source for the borrower's minimum cash investment. Neither the Interpretive Rule nor the subsequent Mortgagee Letter 2013-14, titled "Minimum Cash Investment and Secondary Financing Requirements – Acceptable Documentation for Funds Provided by Federal, State, or Local Governments, their Agencies or Instrumentalities," placed restrictions on the manner in which governmental entities raised funds. Additionally and as the General Counsel has noted, the "Prohibited Sources" provisions of the National Housing Act, captured at section 203(b)(9)(C) of the Act, are directed towards parties that financially benefit from the property sales transaction and the primary mortgage transaction, not transactions that occur in the secondary mortgage market. As such, I have determined that the governmental entities involved in the NOVA Audit represented a permissible source for borrowers' minimum cash investment.

2) **"Prohibited Sources" Provisions as Interpreted and Applied at the Time of the NOVA Audit**

The 2012 Interpretive Rule and Mortgagee Letter 2013-14 were in effect and applicable during the time of OIG's audit. In fact, OIG's analysis in the audit acknowledged and recognized the applicability of the 2012 Interpretive Rule and Mortgagee Letter 2013-14. The audit determinations, however, rely upon a finding that certain provisions of the FHA Handbook ("Handbook") still apply to governmental entities. Specifically, OIG asserts that the lender is obligated to ensure compliance with 4155.1 5.B.4.a, which requires that there is no expected or implied repayment of gift funds by the borrower, and 4155.1 5.A.2.i, which places a restriction on the use of premium pricing that results in a credit to the borrower such that the credit cannot exceed the borrower's closing costs and/or prepaid items. In light of the Interpretive Rule and Mortgagee Letter 2013-14, which post-date and supersede the cited Handbook provisions, and the subsequent General Counsel's opinion regarding the applicability of these authorities, I conclude that OIG has not established in its audit a violation of any applicable requirements governing these downpayment assistance programs.

3) Gift Funds and Premium Pricing

a. Gift Funds

I also conclude, contrary to OIG's allegations, that the funds used for the downpayment assistance were consistent with the FHA rules governing gift funds, as determined by Handbook 4155.1. Based on the information provided by OIG, it appears that the borrowers received grant funds from the governmental entities and were not, in fact, required to repay these grants. Indeed, OIG takes issue with an apparent arrangement between certain governmental entities and lenders participating in the secondary mortgage market, in which the lenders reportedly provided funds to support the downpayment assistance program (financial support that, according to OIG, was borrower-funded); but documents memorializing the arrangement expressly provide that the "[d]own payment assistance is a grant and is not directly repayable by the borrower …."[1] In addition, according to the record information provided by OIG, the borrowers did not execute any additional note or security instrument to document the creation of a debt obligation securing the repayment of the downpayment assistance amount.[2] The sales contract was not artificially inflated and the original principal balance of the mortgage was not increased to cover the cost of the downpayment assistance. There was no prepayment penalty imposed upon the borrower if the borrower prepaid the mortgage such that the full value of any increased interest rate was not fully realized. As such, I conclude that there was no expectation of repayment of the downpayment assistance as alleged by OIG. Thus, I conclude that the downpayment assistance at issue in OIG's audit is permitted under current FHA rules.

b. Premium Pricing

I also conclude that FHA's policies addressing "premium pricing" in Handbook 4155.1 were not applicable in the circumstances as alleged by OIG. FHA's requirements related to "premium pricing" are only applicable where the interest rate negotiated between the borrower and lender results in a credit from the lender that then is reflected on line 802 of the HUD-1 Form.[3] OIG specifically has found that no credit was generated in these cases. *See* Appendix D (indicating that no credit was found in the HUD-1 for the reviewed loans). Consequently, there cannot be a violation of FHA's premium pricing policies where there is no corresponding credit to the borrower, because FHA's restrictions on premium pricing do not apply.

DECISION

The "Prohibited Sources" provisions of section 203(b)(9)(C) of the National Housing Act do not mandate the conclusion that governmental entities are prohibited sources of downpayment

[1]As previously determined, there are no restrictions placed on governmental entities in how they elect to raise funds for their respective downpayment assistance programs. The subsequent sale of the mortgage on the secondary market is a permissible source of funds for a governmental entity's downpayment assistance program. Additionally, FHA does not have the legal authority to regulate interest rates.

[2] Memorandum of Jeremy Kirkland, Counsel to the Inspector General, to Tanya E. Schulze, Regional Inspector General For Audit (hereinafter "Kirkland Memorandum"), dated June 17, 2015, concerning the NOVA Audit, page 2, (noting borrowers had gift letters stating that the downpayment assistance was not required to be repaid.).

[3] In the section of the HUD-1 Form setting out items payable in connection with the loan, line 802 requires the mortgagee to provide the "credit or charge (points) for the specific interest rate chosen" by the borrower.

assistance in connection with FHA-insured mortgages, regardless of how such entities generate their funds. Based on the facts presented by OIG in the NOVA Audit, it does not appear that the legal position of the Department and the policies of FHA with respect to governmental downpayment assistance in place at the time of the audit were violated by the lender. Moreover, the policies of FHA with respect to premium pricing and gifts also do not appear to have been violated by the lender, based on the facts that OIG has presented.

The NOVA Audit makes neither allegations nor any determinations that the then applicable FHA requirements found in Mortgagee Letter 2013-14 were violated. The NOVA Audit also does not support a determination that the 2012 Interpretive Rule was violated. As such, I find no basis in the NOVA Audit to support Recommendations 1B, 1C, 1D, 1F and 1G and therefore will not require any further action by FHA with respect to these recommendations. With respect to Recommendation 1H, I concur with OIG's recommendation and direct FHA to review and, where appropriate, update its guidance, including any internal control checklists, to include FHA rules and regulations governing downpayment assistance, premium interest rates and allowable fees, consistent with this memorandum. Additionally, while the Department believes the downpayment assistance program as described in OIG's audit is permissible under law and that OIG has not established a violation of any FHA rules and regulations applicable at the time of the audit, I am directing FHA, in concert with the Government National Mortgage Association ("Ginnie Mae"), to review prospectively, and provide to the Deputy Secretary within 90 days any policy recommendations relating to, (1) the role of secondary mortgage market participants in providing financial assistance to governmental entities that in turn use those funds, including funds generated through prior mortgage transactions, to support downpayment assistance programs; and (2) any advisable parameters governing such arrangements. In addition, I am directing FHA to evaluate the appropriate risk-related factors with respect to loans that include downpayment assistance, including any potential additional risk to consumers and/or to the Mutual Mortgage Insurance Fund, and determine whether steps can be taken to mitigate that risk and ensure that the risks are within FHA's risk tolerance. FHA should report the results of its evaluation to the Deputy Secretary within 30 days.

ATTACHMENT A

OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

AUG 1 1 2015

MEMORANDUM FOR: Edward L. Golding, Principal Deputy Assistant Secretary for Housing, H

FROM: Helen Kanovsky, General Counsel, C

SUBJECT: Permissible Source of Funds for Governmental Entities Downpayment Assistance Programs.

You have advised that the audit of NOVA Financial & Investment Corporation by the U.S. Department of Housing and Urban Development's (HUD) Office of Inspector General (OIG) has created concerns about the propriety of certain Downpayment Assistance (DPA) programs being operated by various governmental entities, including Housing Finance Agencies. Specifically, you requested guidance concerning whether a governmental entity's use of FHA mortgages with arguably higher than market interest rates in its DPA program represents "premium pricing" as defined by Federal Housing Administration (FHA) requirements. Additionally, you asked whether a practice of raising funds in this manner by governmental entities to provide DPA is permissible under FHA requirements.

First, FHA's Interpretative Rule, Docket No. FR-5679-N-01, published on December 5, 2012 and Mortgagee Letter 2013-14, published on May 9, 2013 superseded previous FHA guidance in regards to governmental entities DPA programs. Second, neither the Interpretative Rule nor the Mortgagee Letter placed restrictions on how a governmental entity may fund its DPA programs. Finally, the use of funds derived from the sale of mortgages with higher than market interest rates does not constitute premium pricing as defined by FHA, nor does it violate any other requirement placed on DPA provided by governmental entities.

Permissible Source of Funds for Downpayment Assistance Programs

Governmental entities are a permissible source of funds for a borrower's Minimum Cash Investment. FHA's interpretation of section 203(b)(9)(C) of the National Housing Act provides that FHA is not prohibited from insuring mortgages originated as part of a governmental entities DPA programs when the entity directly provides funds toward the required Minimum Cash Investment. This interpretive rule placed no restrictions on how governmental entities acquired the funds used for their respective DPA programs. In fact, the interpretive rule specifically mentioned and recognized various ways governmental entities currently raise funds for their respective DPA programs – such as public funds, tax revenue, taxable and tax exempt general obligation bonds, and housing bonds. Further, the interpretative rule did not prohibit nor preclude governmental entities from raising funds through other means such as the sale of mortgages on the secondary market.

Subsequent to the interpretive rule, FHA issued Mortgagee Letter 2013-14, which provided additional guidance to mortgagees on how to document the funds used for DPA provided as well as guidance on secondary financing by a Federal, State, or local governments or their agencies or instrumentalities. This Mortgagee Letter did not place any restrictions or prohibitions on how a governmental entity could raise funds to fund its DPA program.

FHA's determination not to place restrictions or prohibitions on how a governmental entity raises funds to support its DPA programs through either the Interpretive Rule or the Mortgagee Letter is in keeping with FHA's previous guidance. FHA's Handbook 4155.1.5. B.4.b concerning the source of funds for a gift specifically states that "FHA is not concerned with how a donor obtains gift funds, provided that the funds are not derived in any manner from a party to the sales transaction." Further, as the Interpretative Rule and the Mortgagee Letter are the later enacted, they supersede any previous guidance that arguably may conflict. FHA does not place restrictions or prohibitions on how a governmental entity elects to raise funds to support its DPA program and governmental entities may directly provide funds for a borrower's Minimum Cash Investment.

Premium Pricing

Section 203(b)(5) of the National Housing Act provides that the interest rate on an FHA insured mortgage is to be agreed upon by the borrower and the lender. Regulation 24 C.F.R. §203.20 similarly provides that the borrower and the lender are to agree upon the mortgage interest rate. FHA does not regulate interest rates and cannot regulate interest rates.

FHA's current guidance does not prohibit premium pricing. FHA guidance does, however, restrict how a credit to the borrower, as a result of premium pricing, may be used. FHA permits the credit to be applied towards a borrower's closing costs or other prepaid items, but does not permit the credit to be used towards the borrower's downpayment. If the resulting credit exceeds the amount of actual closing costs or prepaid items, HUD requires the lender to reduce the principal balance of the mortgage.

There is no violation of FHA restrictions on premium pricing where the rates agreed upon by borrower and lender are generally the rates available to homebuyers participating in DPA programs. Similarly, there is also no violation of FHA restrictions on premium pricing where any apparent increased interest rate did not result in a corresponding credit to the borrower.

NOVA Audit

Based on the above legal analysis, we do not see any basis to challenge the legality of NOVA's DPA programs. Because the practices engaged in by NOVA do not represent premium pricing as defined by FHA requirements, and because FHA does not restrict the source of the funds used for the DPA provided by governmental entities, we cannot support the OIG's conclusion that NOVA violated FHA requirements concerning premium pricing or the provision of gifts. Please let me know if you have any further questions concerning this matter.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

December 9, 2016

MEMORANDUM FOR: Tanya E. Schulz
Regional Inspector General for Audit, 9DGA

FROM: Robert E. Mulderig R. E. Mulderig
Acting Deputy Assistant Secretary for Single Family Housing, HU

SUBJECT: Auditee Response:
HUD Failed to Adequately Oversee FHA-Insured Loans with Borrower-Financed Downpayment Assistance
OIG Draft Audit Report Number: 2017-LA-XXXX
Issue Date: December XX, 2016

The Office of Inspector General (OIG) performed the subject audit of oversight by the US Department of Housing and Urban Development (HUD) of Federal Housing Administration (FHA)-insured loans for which downpayment assistance was provided to borrowers through program administered by Housing Finance Agencies (HFAs). OIG's stated objective was to determine whether HUD had adequate controls to ensure that FHA-insured loans with downpayment assistance complied with HUD requirements.

Deputy Secretary Coloretti has asked me to respond to the draft audit report on her behalf, as well as on behalf of the Office of Housing (Housing).

Let me suggest at the outset that we believe that the title of the audit is misleading, in suggesting that HFA-sponsored downpayment-assisted FHA mortgage loans are "borrower-financed." Such loans benefit borrowers financially through the average life of an FHA loan, with interest rates that only marginally higher than FHA loans without downpayment assistance and reflect the slightly increased risk for such borrowers. As our analysis below demonstrates, the draft audit report fails to account for the benefit of the downpayment assistance and overstates interest rate differences.

FHA Response to OIG Proposed Findings and Recommendations--Overview

Housing considers such programs to be an important tool for assisting underserved but credit-worthy families across the United States to move to homeownership—and especially, for helping to make this opportunity available to those families earlier. Of course, Housing is committed to ensuring that a potential borrower enters into an FHA-insured mortgage only if and when his/her financial and credit record demonstrates that homeownership can be successfully sustained—both for the stability of the homeowner and, equally important, for the stability of the Mutual Mortgage Insurance (MMI) Fund. But when our strong underwriting guidelines demonstrate that that is the case for any borrower, FHA's mission is then to expand access to credit for homebuying for such borrowers, not to restrict it; and downpayment assistance from qualified, public purpose-driven government entities is an important tool for enhancing that opportunity.

Housing appreciates the analysis that the OIG has done in preparing this draft audit report. While Housing contends that the draft audit report contains certain inaccurate facts and corollary conclusions related to government-sponsored downpayment assistance, we concur with many of the overarching principles implied by the Recommendations in the draft report.

Absent additional evidence, Housing believes that current government-sponsored downpayment assistance programs are compliant with statute, regulation, and program guidance, while assisting potential homebuyers to secure and sustain the objective of homeownership.

In particular, Housing disagrees with the draft report's assertion that the use of government-sponsored downpayment assistance to fund a FHA borrower's minimum required investment is lacking FHA internal controls. FHA has internal controls to confirm compliance with the law and FHA requirements, consistent with the Office of General Counsels' legal opinion concerning the operation of governmental downpayment assistance programs. Specifically, FHA has put in place controls to ensure that the funds being used for the borrower's minimum cash investment are legally those of the governmental entity at closing, and originating lenders are required to obtain confirmation of that from the governmental entity. The controls in place were not designed to prevent downpayment assistance programs such as those at issue in previous OIG audits, since it is FHA's position—which the Deputy Secretary has confirmed—that such governmental downpayment assistance programs are legal and compliant with FHA requirements.

Of course, Housing routinely evaluates ways in which we can strengthen internal controls, and we will consider how controls for downpayment assistance programs can be improved while still maintaining access to such programs for creditworthy borrowers. We will continue to explore avenues that provide appropriate information to FHA when HFA-sponsored downpayment assistance loans are originated, allowing our reviewers to closely monitor compliance with the National Housing Act.

We urge you to consider the following key points and consider making appropriate revisions to the draft report, since a report with premises that are inaccurate is unlikely to serve well either your office or FHA and the Department.

Subject Downpayment Assistance Programs are Legal

First, let me reiterate what Deputy Secretary Coloretti has already indicated to your Office earlier regarding compliance of HFA-sponsored downpayment assistance programs with FHA guidance: Housing has not identified anything in the draft report that demonstrates such programs are noncompliant with FHA guidance or inconsistent with the legal requirements established in the National Housing Act. We have sought advice from our program counsel on an ongoing basis throughout the review cycles for what are now four different OIG audits on this matter.

As a result of that counsel, our determination consistently remains that the HFA-sponsored downpayment assistance programs specifically identified in your audits comply with the applicable statutory, regulatory and administrative requirements. Our counsel has provided us clear legal advice on the requirements for downpayment assistance sufficient to allow FHA to determine when a program is operating outside the bounds of the law. If evidence is presented to us demonstrating such non-compliance, FHA stands ready to take appropriate action to curtail such activity.

The draft audit makes clear that OIG is operating with a different view of the legal requirements applicable to downpayment assistance programs operated by Governmental Entities. As OGC has opined, and the Deputy Secretary has confirmed in her adjudication of a previous audit disagreement on this very issue, the manner in which a Governmental Entity generates the funds necessary to operate its downpayment assistance programs is not regulated by FHA, nor do the prohibitions of the National Housing Act preclude the types of funding mechanisms that OIG asserts are improper. The Deputy Secretary stated:

> **The 2012 Interpretive Rule is the Department's legal interpretation and application of the National Housing Act's "Prohibited Sources" provisions, which restrict certain persons and** entities from funding the **borrower's minimum required downpayment. The Interpretive Rule specifically excludes governmental entities from the "Prohibited Sources" provisions** and places no restrictions or prohibitions on how governmental entities raise funds for their downpayment assistance programs. **In addition, the Department's General Counsel has** opined by memorandum dated August 11, **2015 ("General Counsel's opinion") and** attached hereto as Attachment A, that governmental entities generate their funds for downpayment assistance programs through a variety of mechanisms (which could include the sale of mortgages on the secondary market) and, once the funds legally belong to the governmental entity, that control is sufficient to render them eligible for use as downpayment assistance and **a proper source for the borrower's minimum cash** investment. Neither the Interpretive Rule nor the subsequent Mortgagee Letter 2013-14, titled **"Minimum Cash Investment and Secondary Financing Requirements** – Acceptable Documentation for Funds Provided by Federal, State, or Local Governments, their Agencies or Instrumentalities,**" placed restrictions on the manner in which governmental** entities raised funds. **(See the Deputy Secretary's** Decision: Office of Inspector General Audit of NOVA Financial & Investment Corporation's **FHA**-Insured Loans with Downpayment Assistance, Report 2015-LA-0010).

Additionally, contrary to the assertions in this audit, the National Housing Act **and FHA's** scope of authority in this area are restricted to the sales transaction being financed with the FHA insured mortgage. As stated by the Deputy Secretary, **"the "Prohibited Sources" provisions of the** National Housing Act, captured at section 203(b)(9)(C) of the Act, are directed towards parties that financially benefit from the property sales transaction and the primary mortgage transaction, <u>not transactions that occur in the secondary mortgage market.</u>" (emphasis added; see Deputy **Secretary's** Decision: Office of Inspector General Audit of NOVA Financial & Investment **Corporation's FHA**-Insured Loans with Downpayment Assistance, Report 2015-LA-0010). We urge the OIG to accept the determination of the Deputy Secretary and the advice of the Office of General Counsel, the office charged with providing all official legal advice to the agency, and evaluate these Governmental Downpayment Assistance programs based on this official understanding of the provisions of the National Housing Act. It is beyond the scope of the National Housing Act and FHA's authority to seek to regulate secondary market transactions.

Housing disagrees with the draft audit report's characterization of FHA's willingness to work with program participants to ensure they are complying with Federal law and FHA requirements, which it describes as "enabling" such programs. FHA regularly works with a variety of stakeholders to ensure that programs are working effectively to serve creditworthy, qualified borrowers across the nation; this is simply good governance on the part of FHA. The conversations referenced were never intended to skirt requirements, as intimated in the draft audit report, but rather to ensure compliance with FHA requirements and the National Housing Act. Indeed, by working with housing finance agencies in this manner, FHA was able to prevent violations of its requirements from occurring in the first place.

In particular, through the meetings referenced, FHA was able to prevent the operation of programs in which the governmental entity would not provide its funds to close nor make a determination as to its willingness to purchase a loan until after the loan had closed. Those meetings were intended to ensure that the governmental entity does make the determination that the borrower is to be given downpayment assistance through the entity's program and that the governmental entity either provides the funds in advance or incurs a legally binding obligation, e.g., by entering into a debt obligation or drawing from a previously established line of credit.

FHA made clear in its policy that it would call into question any downpayment assistance for which the governmental entity does not satisfy the debt or legal obligation. Contrary to the draft report's implication, the prearrangement of funds described does comply with the law and FHA's requirements and was designed to do so. The mere fact that a governmental entity's debt obligation is transferred from an originator to a servicer and then satisfied by the governmental entity does not negate the fact that this funding mechanism is compliant with Federal law and FHA requirements. If the OIG has evidence that these legal debt obligations have not been satisfied in specific downpayment assistance programs, please do provide it to Housing, so that we can pursue with the subject entities the legality of those programs.

Impact of Downpayment Assistance Programs for FHA Borrowers

Second, regarding the impact of HFA-sponsored downpayment assistance to FHA borrowers, our review of the OIG's analysis suggests that that analysis is flawed. By your own acknowledgment in the audit report, some of the HFA-sponsored downpayment assistance programs you have audited have as a condition for borrowers participating that they be required to complete pre-purchase counseling with a HUD-certified housing counseling agency; and the report recommends that FHA standardize this as a requirement for such programs. We are exploring this as a potential policy enhancement, but caution that program counsel have indicated to us that such a policy change will likely require new rulemaking.

Also as you acknowledge, some HFA-sponsored programs already require the borrower to certify that he/she recognizes that receiving downpayment assistance likely results in a higher interest rate overall. Housing acknowledges that not every such program has this certification requirement, though many do.

But the draft audit report fails to acknowledge that every FHA borrower already receives an **"Informed Consumer Choice Disclosure Notice," which advises in part: "In addition to an FHA-**insured mortgage, you may also qualify for other mortgage products offered by your lender. To ensure that you are aware of available financing options, your lender has prepared a comparison of the typical costs of alternative conventional mortgage product(s), using representative loan amounts and costs. The loan amounts and costs shown below will vary from your own mortgage loan transaction. You should study the comparison carefully, ask questions, and determine which **product is best for you."**

Perhaps most important, we are steadfast in our conviction that the borrower financing examples shown in your draft audit report do not accurately represent the significant positive impact to the borrower. Please consider the following:

- The Department has empirical data demonstrating that, given recent conditions, the interest rate charged for an FHA-insured mortgage loan with HFA-sponsored downpayment assistance would unlikely be more than 0.5% higher than that which would be available without downpayment assistance. For each of the past five fiscal years, Housing compared interest rates on all HFA mortgage loans with government-sponsored downpayment assistance with mortgage loans with no downpayment assistance. The average difference in interest rates for these two scenarios was typically less than or equal to 0.25%. Please see Attachment A for the summary data which takes into accounts all single family mortgage loans for the 2012-2016 fiscal years.

- The cost analysis provided in the draft audit report—in addition to basing cost comparisons on interest rate differences of 0.5%, 0.75%, and 1.00%, though the draft report provides no basis for the magnitude of such interest rate differences—fails to take into account the cash value benefit of the downpayment itself, which would have been provided to the borrower at closing. When the cash benefit of the downpayment is applied for a single family mortgage loan with an interest rate that is 0.5% higher, Housing calculates **the "Total 6-**year cost to **borrower"** to be **$2,341 less for borrowers with downpayment assistance**. That is, the borrower with downpayment assistance receives a net cash benefit of $2,341 over the first six years of the mortgage loan. Please see the cost comparison calculation developed by Housing staff in Attachment B.

- The example in the draft report assigns a value **to "reduced equity" under the** downpayment-assisted example, and Housing acknowledges that the amount of principal paid after 6 years is $1,314.47 less, or .9% of the $150,000 purchase price. But on a cash basis, that amount would only be relevant if the borrower were to sell the property at that point—and then subject to changes in property values over that time. On a cash basis, the DPA borrower clearly is advantaged by downpayment assistance.

- It is not until the last payment of the 11th year that the borrower with downpayment assistance begins to be in a cash-disadvantaged position (by $82.80 on the

132[nd] payment). **Even at this stage, the difference in owner's equity** is less by only 1.4%, relative to an unchanged property value of $150,000.

- Moreover, **Housing's** best information suggests that the vast majority of borrowers choosing a government-sponsored downpayment assistance program do not have an option to purchase without downpayment assistance. Therefore, Housing contends that the true equity benefit to the borrower is a +15% equity in an owned home, rather than 0% equity in a rental accommodation.

- It is significant that the borrower with downpayment assistance remains in a cash-advantaged position through 11 years of ownership, because the average term of an FHA Single Family loan is only 6 years; it would be unusual for an FHA homebuyer not to have sold his/her home or refinanced the home mortgage prior to the 11-year break-even point.

- Even with an interest rate a full 1% higher than a supposed market rate—however unlikely that might be—a borrower with downpayment assistance remains in a cash-advantaged position until the last payment of the 6[th] year of the mortgage. The calculations supporting this conclusion are also shown in Attachment B.

Regarding fees supposedly assessed to borrowers to facilitate the downpayment assistance transaction:

- The draft audit report contends that borrowers were charged fees that were not reasonable nor customary—typically in the amount of $460 per transaction ($85 tax service fee[1]; $225 bond application fee; and $150 bond transfer fee). Based on data Housing has reviewed, these fees appear to be reasonable and customary in downpayment assistance transactions, satisfying the need to compensate transactional parties whose actions are necessary to ensure that the mortgage loan comports to requirements both of the HFA and of secondary market participants whose investing effectively raises the funds for the downpayment. To **Housing's best knowledge, these fees have been a standard part of downpayment assistance** transactions dating back to when downpayment funds were raised through the sale of mortgage revenue bonds—hence, **the naming of such fees as "bond" fees.**

- In addition, Housing has no evidence of cases in which FHA borrowers actually paid the subject fees as part of closing costs. Relative to the OIG audit of NOVA Financial & Investment Corp. (NOVA) audit, for example, Housing reviewed not only the 16 loans cited by the OIG, but also additional loans originated by NOVA and by other HFAs in the same

[1] It should be acknowledged that, at the time of the three external audits conducted by the OIG relative to downpayment assistance, payment of a tax service fee by an FHA-insured borrower was prohibited. (That prohibition is no longer relevant, under current FHA guidance.) However, as the discussion notes, Housing does not have evidence at this time that any borrower actually paid a tax service fee, since credits typically from the lender were applied to the tax service and other fees.

geographic area with downpayment assistance. Although the fees were listed as charges to the borrower, credits were provided from the lender or the seller which explicitly or implicitly covered the costs of those fees.

- Thus, not only has Housing found the subject fees to be reasonable and customary; Housing does not have evidence specific to any number of cases identified in which borrowers actually paid such fees from their own financial resources.

Impact of Downpayment Assistance to the Mutual Mortgage Insurance (MMI) Fund

Finally, regarding the draft report's **suggestion** that HFA-sponsored downpayment assistance programs pose undue risk to the MMI Fund, please consider the following:

- Housing maintains that HFA-sponsored downpayment assistance programs are legal and wholly separate and distinct from the seller-funded assistance programs discussed in the draft audit report. The report sustains **the OIG's assertion that the HFA-sponsored downpayment assistance programs "are similar to…seller**-funded downpayment assistance [involving] seller payments to a third party, which provided downpayment assistance to FHA borrowers. The seller then inflated the sales price to recover the downpayment **assistance." The Department does not see the similarity suggested by the OIG**. In the case of seller- funded assistance, financing of the full principal amount of the downpayment was required and then interest charged over the life of the loan for that amount. In the case of downpayment assistance funded through HFAs, the downpayment finances none of the principal amount, but the loan may have a slightly higher than average interest rate charged.

- Moreover, HFAs are entities established by local or state governments for an expressed public purpose, to expand opportunities for affordable housing. **Housing's best information** suggests that the marginally higher interest rate paid by a borrower is for no reason other **than compensating for the "cost of doing business" by the HFA and the associated parties** that assist in generating the downpayment funds, from origination to secondary market investment; and there is no fraudulent inflation of the home sales price or other vehicle that places the borrower at higher risk. Also, it must be noted that the GAO study cited by the OIG suggesting undue risk to the MMI Fund dealt specifically with nonprofit-based, seller-funded downpayment assistance programs, not the types of programs administered by HFAs.

- Housing acknowledges that the delinquency and default rates for loans with government-provided downpayment assistance are somewhat higher than comparable rates for the overall FHA portfolio. FHA controls for this increased risk in utilization of its TOTAL scorecard, which analyzes downpayment source in its acceptable risk determination.

- Housing acknowledges, for example, that the Early Payment Default (EPD) rates for FHA mortgage loans with government-sponsored downpayment assistance have been higher than for loans with no such assistance. That being said, EPD rates have been at historic lows in these years, such that the percentage of new **FHA downpayment-assisted borrowers**

with no Early Payment Default has consistently been above 99% during this period, **rising to nearly 99.5% in FY 2016. This is well within FHA's acceptable risk threshold.** Please see Attachment C for relevant data.

- Similarly, the rate of Serious Delinquency on the roughly 450,000 loans with government-sponsored downpayment assistance in the FHA loan portfolio is roughly 6.27% as of October 2016, admittedly higher than the 4.91% Serious Delinquency rate on the total 7.8 million loans in the portfolio. Again, this is within **FHA's acceptable risk threshold.** Housing considers this in the very positive light that **94% of all borrowers provided loans with downpayment assistance are successful** in meeting their ongoing mortgage obligations on a continuing basis. Please see Attachment D for relevant data.

- **HUD's credit modeling for the FY2017 budget** estimate also predicts that loans with government downpayment assistance will not negatively impact the MMI Fund. Compared with the OMB discount rate of 3.29%, government downpayment assistance loans have a credit subsidy rate of 3.60%, and all other purchase originations have a rate of 4.41%. As these government downpayment assistance **loans are a small portion of FHA's portfolio, the** overall credit subsidy rate for FHA originations remains at 4.39%, just 0.02% lower than the rate for originations without government-sponsored downpayment assistance.

Conclusion

Housing supports the essential intent of the OIG in preparing this draft audit report, to ensure that our government-sponsored downpayment assistance programs are operating in a manner which is fully compliant with statute, regulation, and program guidance; are assisting potential homebuyers to secure and sustain the objective of homeownership; and are contributing positively to the MMI Fund. We are considering certain policy updates that will strengthen downpayment assistance programs, and our Management Decision will generally support the Recommendations outlined in your draft report. However, we believe it is critically important that the audit report correctly represent the facts about and legal requirements for HFA downpayment assistance programs as Housing knows them to be; and we offer these comments to ensure that your final report will serve both our offices as effectively as possible.

We look forward to working with the OIG in our mutual objective to ensure that government-sponsored downpayment assistance programs operate such that they serve our citizens by expanding access to homebuyer credit while ensuring a sustained MMI Fund going forward. Thank you for the opportunity to comment on your draft audit report. We hope these comments are helpful as you prepare your final report.

ATTACHMENT A

Average Interest Rate by Fiscal Year (Percent, Fixed Rate Only)			
Endorsement Year	Government-sponsored DPA	No DPA	Difference between Government DPA and No DPA
2012	4.09	3.94	0.15
2013	3.67	3.60	0.07
2014	4.41	4.27	0.14
2015	4.21	3.99	0.22
2016	4.12	3.86	0.26

This table provides the average interest rates on loans in the five most recent fiscal years for all single family FHA-insured mortgage loans with government-sponsored downpayment assistance vs. mortgage loans with no downpayment assistance.

ATTACHMENT B

The scenarios below recreate the draft audit report examples related to the impact of HFA-sponsored downpayment assistance, but demonstrate the significant cash basis advantage to borrowers receiving downpayment assistance.

Example 1

	Scenario A - No DPA		Scenario B With DPA		Difference	
Home Sale Price Amount	$	150,000.00	$	150,000.00		
Interest Rate		3.250%		3.750%		
Term		360		360		
Monthly Payment	$	629.96	$	670.36		
Cash and Equity effect of payments over time						
Downpayment	$	5,250.00	$	-	$	(5,250.00)
Total interest paid	$	26,470.05	$	30,693.22	$	4,223.18
Principal paid in 6 years (equity)	$	18,887.16	$	17,572.68	$	(1,314.47)
Total 6 Year Cost to Borrower	**$**	**50,607.20**	**$**	**48,265.91**	**$**	**(2,341.30)**
Total 6 year equity		16.1%		15.2%		.9%
Total 11 Year Cost to Borrower	**$**	**88,404.72**	**$**	**88,487.52**	**$**	**82.80**
Total 11 year equity		28.6%		27.2%		1.4%

Example 1 expands upon the data provided by the OIG in the second column of the example on page 15 of the draft audit report. Based on data in the draft audit example, Housing presumes that the data depict a mortgage loan amount of $144,750, which, when added to a $5,250 downpayment, covers a $150,000 home sale price.

While the data Housing has presented in Attachment A would suggest that a 0.5% difference in interest rate would clearly be on the high end of the true rate difference between FHA loans with no downpayment as compared to those with government-sponsored downpayment, that level of interest rate difference is applied **to be consistent with the OIG's example.**

Example 1 shows the effect of factoring in the cost of the downpayment, either provided by the borrower when the loan interest rate is 3.25% or not provided by the borrower (provided by the HFA financing) with an interest rate of 3.75%. Example 1 shows clearly that the total cost of all cash payments made by the borrower at the end of 6 years is **$2,341.30 less for the borrower with downpayment assistance.**

It is not until the last payment of the 11th year that the borrower with downpayment assistance begins to be in a cash-disadvantaged position (by $82.80 on the 132nd payment). Even at this **stage, the difference in owner's equity** is less by only 1.4%, relative to an unchanged property value of $150,000.

It is very significant that the borrower with downpayment assistance remains in a cash-advantaged position through 11 years of ownership, because the average term of an FHA Single Family loan is only 6 years; it would be unusual for an FHA homebuyer not to have sold his/her home or refinanced the home mortgage prior to the 11-year break-even point.

Example 2

	Scenario A - No DPA	Scenario B With DPA	Difference
Home Sale Price Amount	$ 150,000.00	$ 150,000.00	
Interest Rate	3.250%	4.250%	
Term	360	360	
Monthly Payment	$ 626.96	$ 712.08	
Cash and Equity effect of payments over time			
Downpayment	$ 5,250.00	$ -	$ (5,250.00)
Total interest paid	$ 26,470.05	$ 34,947.18	$ 8447.13
Principal paid in 6 years (equity)	$ 18,887.16	$ 16,322.80	$ (2,564.36)
Total 6 Year Cost to Borrower	**$ 50,607.20**	**$ 51,269.98**	**$ 662.77**
Total 6-year equity	16.1%	14.4%	1.7%%

In Example 2, Housing assessed the most significant supposed interest rate difference suggested by the draft audit report (fourth column in example on page 15)—a full 1% difference—although our empirical data on average interest rates this level of rate difference for downpayment-assisted loans would be highly unusual.

Again using the parameters in the draft report example, Example 2 shows that it would not be until the last payment in the 6th year of the mortgage that the borrower with downpayment assistance would begin to be disadvantaged on a cash basis. **The difference in owner's equity at** this point under this scenario would only be 1.7%, based on an unchanged $150,000 property value.

ATTACHMENT C

EPD Rates -Purchase Only				
Endorsement Fiscal Year	Government DPA	Government DPA but no EPD	No-DPA	Difference between Gov-DPA and No-DPA
2012	0.86%	**99.14%**	0.27%	0.59%
2013	0.74%	**99.26%**	0.23%	0.51%
2014	0.74%	**99.26%**	0.32%	0.42%
2015	0.74%	**99.26%**	0.31%	0.44%
2016	0.54%	**99.46%**	0.23%	0.31%

The table above provides Housing's best information on risk to the MMI Fund as evidenced for new FHA-insured homebuyers over the past five fiscal years. While it is true that the rate of Early Payment Defaults for government-sponsored downpayment assistance FHA mortgage loans has been higher than for mortgage loans without downpayment assistance, both sets of EPD rates have been at historic lows in these years, such that the percentage of new FHA **downpayment-assisted borrowers with no Early Payment Default has consistently been above 99% during this period, rising to nearly 99.5% in FY 2016.**

ATTACHMENT D

Seriously Delinquent Rate, FHA Portfolio Status as of October, 2016					
DQ Status	Seller Funded (program terminated in 2009)	No DPA	Other DPA	Government-sponsored DPA	Overall
Current	42,239	5,390,021	1,148,159	393,080	6,973,499
30_day	6,802	247,708	78,212	24,210	356,932
60_day	2,871	84,261	28,941	9,047	125,120
90_day	5,824	136,728	42,619	16,904	202,075
Bankruptcy	2,350	46,566	13,384	5,087	67,387
In Foreclosure	3,712	83,683	21,311	6,506	115,212
Other	-	33	2	1	36
Total	63,798	5,989,000	1,332,628	**454,835**	**7,840,261**
90+	11,886	266,977	77,314	**28,497**	**384,674**
SDQ Rate	**18.63%**	**4.46%**	**5.80%**	**6.27%**	**4.91%**
Downpayment Assistance Type, SF Forward Loans Only by Endorsement Fiscal Year, data from FHA SFDW on 12/5/2016					

Housing evaluated the key measure we use to assess risk on the overall FHA portfolio of 7.8 million loans, the Seriously Delinquent Rate. The table shown provides the full complement of delinquency data for all loans in the portfolio as of October 2016. The Seriously Delinquent (SDQ) rate focuses on loans across the entire single family loan portfolio that are 90+ days delinquent and/or evidencing a bankruptcy or foreclosure status.

It is true that the SDQ rate for all single family mortgage loans with government-sponsored downpayment assistance loans is higher than for mortgage loans with no downpayment assistance and for the portfolio overall. However, the data show clearly that nearly **94% of all borrowers with government-sponsored downpayment assistance do not have any serious delinquency**. Housing is confident that this is a level of risk that can be effectively monitored and controlled with ongoing policy administration.

Cedar Band Corporation Puts Profits to Work for the Community

For Immediate Release
May 6, 2019

Contact: Doug Elmets
(916) 329-9180

Cedar City, UT – In 2013, the Cedar Band of Paiute Indians decided to diversify its economic efforts by launching a mortgage agency. For the next three years, and without any outside investment, the Band built CBC Mortgage Agency (CBCMA) into a thriving company that provides down payment assistance to creditworthy homebuyers.

CBCMA is a federally chartered government entity, and the agency has has helped thousands of borrowers achieve the dream of homeownership through its Chenoa Fund. More than half of CBCMA's borrowers are African American, Latino, or other minorities who lack the funds necessary to meet the down payment threshold to obtain an FHA-insured loan.

Headquartered in Cedar City, Utah, CBCMA and a collection of other businesses owned by the Band now employ scores of people scattered across 14 states. Often overlooked, however, is how CBCMA directly benefits the tribal entity that founded and governs it, by serving as a vital source of employment and reliable revenue generator.

The Cedar Band is one of five constituent bands of the Paiute Indian Tribe of Utah, people whose roots in Southwestern Utah stretch back thousands of years. Formal recognition of the Cedar Band and Cedar (Suh'dutsing) People, came on April 3, 1980, with congressional passage of the Paiute Indian Tribe of Utah Restoration Act.

Today the band occupies a 2,200-acre reservation that stretches from the middle of Cedar City southward along the Interstate 15 corridor. Its people's name, Suh'dutsing, which means cedar, derives from the cedar tree commonly found on the lands long populated by the band.

Through the years, the band's leaders have used distributions from CBCMA and other band enterprises to sustain essential government functions, preserve and promote band culture, and create and expand a wide variety of programs that benefit members.

Revenues support medical and dental care benefits; anti-drug, tobacco, and alcohol education; after-school tutoring; elder care programs; scholarships to help with college tuition; grants that enable tribal members to purchase off-reservation homes; and many other projects.

CBCMA is owned by the Cedar Band Corporation, which was founded by the band in 2002. From its humble beginnings, the Cedar Band Corporation has blossomed to include a diverse array of companies, from premier defense and government contracting firms to a successful convenience store, award-winning wine distributor, and soon-to-open full-service travel plaza.

A summary of some initiatives funded by CBCMA and its sister companies follows:

- ***Youth Programs:*** Seeking to enhance youth development, the Band provides a range of after-school programs, assisting students through tutoring and the opportunity to complete homework in a structured and supportive environment. Students who are struggling to maintain their grades receive special assistance, and all youth have access to computers and multi-media resources. In addition, students also are provided special lectures aimed at preventing drug and alcohol use.

- ***Scholarship Program:*** The Cedar Band of Paiutes Scholarship is available to enrolled Band members who are pursuing a higher education. To qualify, recipients must be enrolled full- or part-time in a university, college, junior college, or technical/trade school and have a cumulative GPA of 2.25. Scholarships are granted on the basis of academic achievement and/or financial need.

- ***Elder Assistance Programs:*** The Cedar Band cherishes its elder members and considers them a living thread to its past. To help maintain and preserve cultural values and traditions, the Band puts a focus on elders and supports them through special activities. Targeted efforts also are made to improve the quality of life for Band elders and foster their independence. Specifically, revenues fund supportive services, such as transportation, as well as a small monthly stipend to each band member over the age of 62.

- ***Southern Paiute Language Study and Research:*** As part of its cultural preservation efforts, the Band offers members the opportunity to learn the Paiute language in classes provided twice each week. In addition to learning to speak Paiute, students can further their skills and knowledge of Paiute history and traditions by engaging in guided research and writing projects.

- ***Cultural Opportunities:*** The Band's leaders are dedicated to sustaining and expanding awareness of important historical and cultural customs. Toward that goal, the Band periodically funds culturally significant opportunities, such as Spirit runs and hunting camps where youth can learn to hunt and field dress.

- ***Cedar Band Building Renovation and Maintenance:*** One of the most significant improvement projects undertaken by the Band has been the recent (and ongoing) renovation of the headquarters building in Cedar City. Work completed in 2018 included upgrades to the kitchen, bathrooms, classrooms, CBC's headquarters. and landscaping. Remodeling will continue in 2019, when CBC will re-roof the Cedar Band of Paiutes building. Revenues also finance ongoing building maintenance.

- ***Work Training:*** A key element of the Band's ongoing economic development efforts is providing work opportunities and training to its members, particularly youth. The Work Training Program is designed to offer hands-on job opportunities, as well as education. Participants in the Work Training Program provided substantial assistance in the recent renovation of the Band's headquarters. They also perform building maintenance and landscaping.

- ***New Travel Plaza:*** Thanks to ongoing revenues, the Band has been able to move ahead with plans to break ground on a new enterprise that combines a gas station, travel plaza, and convenience store. The complex, scheduled for completion in January 2020, will provide additional jobs and income opportunities for members of the Band. Profits from CBC's companies allowed the Band to build this travel plaza without taking on long-term debt.

###

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 11:33 AM

[redacted]

If I wasn't able to receive down payment assistance, I would never have been able to buy a house. Owning a home means I can plan for my family's financial future instead of living paycheck to paycheck. My rent went up every year, but my mortgage has actually gone down since I bought my house in 2017. I chose the Chenoa Fund because they not only offered financial assistance, but education and post-purchase support. The only improvement I can think of is to get the word out! Relatively few people know down payment assistance is an option, and I know that's what stops most people my age (29) from buying a home.

[redacted]

From: **Chenoa Fund**
Subject: Chenoa Fund Borrower Feedback
Date: July 25, 2018 at 9:18 PM

[redacted]

Recieving this assistance didnt just aid me in purchasing a house, I was able to find my dream home at the age of 24. House buying is no picnic and my experience was no exception. The Chenoa Fund helped the process go so much smoother than I could have ever dreamed. I was able to use money I had saved up to fix my home thanks to Chenoa. Owning a home to me means I don't just have a roof over my head, I have a safe place to come home to after taking care of my patients as a nurse after a long 12 hour shift. I searched for other funds and lenders but The Chenoa Fund were the ones who believed in me and extended their hand with aid I most desperately needed. Their communication was phenominal even though the process was long. Thank you for your support when I needed you the most.

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: July 17, 2016 at 8:19 PM

[redacted]

The Down payment assistance meant the world to my family and I. Without the down payment assistance we received, my husband and I would have never been able to buy our first home at 22 years old for our soon to be family of 4! Owning our own home is so special because it allows us to provide a consistent a loving place for our children to grow up in and cherish. We did not have any other down payment so this truly made purchasing a home possible for us. We did look at other down payment programs but all the other ones were either way too hard to qualify for or had hidden details that we didn't like. I think the Chenoa fund is an amazing program and I wouldn't change a thing!

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 15, 2018 at 3:12 PM

[redacted]

The down payment assistance program was a God send. My credit score was not very high and my debt to income ratio was high. I found this program and was eligible for assistance. I never imagined being a first time homeowner at 47 years old. I was able to utilize the program, purchase my home, and move my 83 year old mother in with me. Thank you so much!

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 14, 2018 at 8:49 AM

[redacted]

We had to move to a larger home to care for my MIL who was diagnosed with lung cancer and could not afford the cost of a care home. We planned to buy in the next couple years, but had to move quickly and the Down Payment assistance was very helpful with being able to accomplish that

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 8:24 PM

[redacted]

Thank you Chenoa Fund. you were a true blessing I'm so appreciative of the roll you played in the assistance of the purchase of my new home. My family and I were able to purchase our home thanks to the assistants provided by the Chenoa Fund Funding was a hardship for me. I'm the only full time income for my family Your assistants got me through a stressful time. I'm glad there're trustworthy organizations like yours that are truly out there to make our American dream come true I'm now a home owner. Please remember you played a roll in that My family and I could never express our gratitude Thank you sincerely [redacted]

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 12:32 PM

[redacted]

Without the assistance of Chenoa Fund, we wouldn't have had the full down payment to purchase our very first home, and we would still be renting. We are so thankful that they were there to help us become happy home owners! Their assistance also allowed us to save the money we did have put aside for other expenses and any unexpected expenses along the way. After closing on our home, they've kept in consistent contact to ensure that we are making our mortgage payments on time so that we do not have to pay back the money they provided. It feels great knowing that they are on your side and want you to be a successful home owner.

[redacted]

Chenoa fund
offered by
CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

mr. Whipple,

I am happy to provide this information to you. I'd like to thank you for your assistance and everyone over @ Chenoa fund. Owning a home has always been important for me. My family fell apart at a very young age. Mother passed @ 3years old. Two older brothers in prison. I've been on my own since I was 17. I've always been a hard working individual with a huge heart. I've worked for everything I have and often give when I have nothing. I took in my nephew @ 16 and he's now 19. Starting the home purchase process was because of him. He helped me focus and to accomplish my goals. It was not easy saving for all the additional costs that come along with the purchase process. The assistance that I received from your organization made it all happen. I thank you for the help. I am happy and excited to be a homeowner!! I have something to call my own and something to be able to leave behind for my own children. I absolutely couldn't have done it without you all!

forever grateful, [redacted]

912 W. Baxter Drive, Suite 150 South Jordan, Utah 84095

Chenoa fund

offered by

CBC Mortgage Agency

866-563-3507

Please provide your response below:

Thank you for helping us get our home.

My wife and I suddenly had to start caring for her mother, and we found ourselves needing a larger home with very short notice. It would have been difficult saving for the down payment while paying for the unplanned medical expenses treating mom's lung cancer.

Thanks again for helping us provide a home for mom during a very difficult time.

Respectfully

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
866-563-3507

Please provide your response below:

Thank-you from the bottom of my heart. Having the down payment assistance was my only way of fulfilling my dreams of being a homeowner once again. After divorcing more than 8 years ago, I lost our family home since I was unable to maintain on my own. I have worked hard to restore my credit after foreclosure and I have worked in the same industry for more than 27yrs and I was a good candidate for purchasing, however I am in a position that I am unable to save enough for a down payment. I assist my daughter who is a single mother of three with necessities and I even have my grandson living with me so he can go to school so I am not sure I would have been able to accomplish my dream without your generosity. I never imagined being in a position to get assistance due to my income level but I am so thankful, I hope to be able to make you proud and glad you helped me. I cherish my new home and I will pay on time and take great care of it for many years to come. Bless you and thank you for this tremendous opportunity.

912 W. Baxter Drive, Suite 150 South Jordan, Utah 84095

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

The Chenoa Fund was everything to us, without this help we would not of been able to do the down payment of the home we were in process of buying. I was counting on first-time Home Buyer FHA assistance, then it was found my income just tipped over allowable for down payment assistance. So, we needed to have a down payment and without your timely assistance our dream of finally being able to own a home would of been post-poned yet again. This would of been devastating this time as we thought we had what was needed. My wife and I are 52 years old. Since receiving your help, we purchased our first home and we are loving being home owners. I have heard my wife say many, many times, "I Love My Home", "I Love Our Home", to which I reply, "Yes, I Love it too!!

Thank You Sincerily,

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency

866-563-3507

Please provide your response below:

I am so happy I was able ~~f~~ to get help with my down payment I have been a single mom for most of my life, and to say that I have struggled, like so many people do is an understatement. In the last few years, I have worked so hard to build credit, pay off old debts to get myself in a position to purchase a home. Without the help of a down payment, I would not have been able to do it! I quickly learned that there is a lot of money needed up front when buying a house. I am so grateful for the help of this fund, and I hope this fund will continue to help people like me in purchasing a home for their family

Thank you so much!

Warm Regards,

[redacted]

912 W. Baxter Drive, Suite 150 | South Jordan, Utah 84095

Chenoa fund

offered by

CBC Mortgage Agency

866-563-3507

Please provide your response below:

The Chenoa fund's assistance with the down payment on our new home was more than financially valuable. It was an answer to prayer. Actually, it was an answer to hundreds of prayers over many years.

Without the Chenoa fund and the CBC Mortgage Agency providing this monetary opportunity, our dream to begin the journey of home ownership would only have been an unreachable dream.

We pledge that we will continue to do all in our power to make each home mortgage payment in full and on time each month.

Thank you Chenoa fund, from the bottom of our hearts.

[redacted]

912 W. Baxter Drive, Suite 150 · South Jordan, Utah 84095

From: **Chenoa Fund** [illegible]
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 11:35 AM

[redacted]

Hello! We were able to become our dream of being homeowners a lot faster using your assistance!! We are so grateful that we received the down payment assistance from you guys because we were able to buy a home for our growing family. Being owners is a huge blessing for us as a family. We are currently a family of 4 but will be adopting a child soon and become a family of 5! Having this home has allowed us to grow our family and be happier than ever. We had some down payment but not enough. We were able to use what we had to purchase applicants and needed items after we moved in which was a huge help. We did not look at other programs. You guys provide an amazing opportunity to families like us. We are very thankful for the blessing we received! Thank you!

[redacted]

Chenoa Fund
Chenoa Fund Borrower Feedback
September 12, 2018 at 1:13 PM

[redacted]

The assistance of the Chenoa fund made the difference between us having a home or being homeless. Rising rents had pushed us out of where we were renting, and we did not have enough saved for first, last and deposit at a new place. We were facing some tough decisions ahead for myself, my husband, and our two dogs and cats. The Chenoa fund was presented to us by [redacted], and we were able to use it for a down-payment. We now have a home, and were able to stay in the city close to where we work. Our dogs love the big yard, and our neighbors have been amazing. It's difficult to think where we might have ended up without this assistance, and I am so thankful for the fund. This is a life-changing resource that can make all the difference families and keep them from getting displaced by rising rent costs. Thank you!

[redacted]

[redacted]

Dear Mr. Whipple,

I am responding to your letter and your request of feedback concerning the purchase of our new home and the assistance that your office provided.

My husband and I purchased our first home end of October 2017. Prior to buying our home, we were renting a home in [redacted]. We have 3 children; two of whom are under the age of 3. Our two year old daughter likes to chew, on everything... including the window sill in her bedroom. Very quickly we discovered that our sweet girl had lead poisoning. This prompted us to apply for a home loan and attempt to buy a house. We hadn't planned on purchasing a home for another 3 years, and I was just starting to clean up our finances work towards saving for a down payment.

Had we not had your assistant with our down payment, we would not have been able to purchase our home. My husband and I had no savings at the time. Having two complicated pregnancies and two children in the last 3 years has tapped us out. Your assistance was a very appropriately timed and a very much needed blessing.

We LOVE our new cozy, cute, little home and we have grown very quickly to adore our new neighbors. We plan on living in this house for a long time and we are so blessed thanks to your agency.

Gratefully yours,

[redacted]

From: **Chenoa Fund**
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 11:45 AM

CF

[redacted]

The Chenoa funds I received made the impossible, possible. My daughter will now have a home to finish growing up in, a place to drive by and point at and say "That is where I grew up". Having our own home, a place to belong, is incredibly powerful. As a single mother, without the help of another parent, with student debt that greatly exceeds the average, being a home owner was a dream always just out of reach. I work really hard- I have a full time and a part time job. I do what I can but my student loan debt and circumstances are limiting. I literally cannot thank you enough for bringing this gift into our lives. Thank you for your help. Thank you for your generosity and your humanity. I hope karma exists and that it comes back to you because I want other people to be able to have this wonderful addition, this foundation on which to stand. When things get difficult, when there are hard days, when I am tired and feeling a bit defeated at the end of the day.... I have come home and been able to say "Well, today was hard. But this place is MINE." My little haven, my collection of good things, and my little loved one, kept safe by the home made possible by you. I've never understood so fully the meaning of the word "grateful". So, as small and trivial as the two words feel compared to the amount of gratitude I feel - Thank You

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 1:25 PM

[redacted]

•What did our assistance mean to you and your family in terms of your ability to purchase a home, and what owning a home means to you and your family. With the assistance of Chenoa Fund, I was able to purchase my home without having worrying about a full down payment. Owning a home means the world to me. I have a place to call my own and I no longer have to worry about the rent going up or renewing a lease. I have a place that is now big enough to host my family when they visit from out of town!

•If you had your own down-payment, did you use our assistance so that you could keep your savings for unexpected expenses with your new home? Yes. Unexpected expenses come up at the worst times and being able to keep my saving was a amazing.

•Did you look at other sources of down payment assistance? If so, what lead you to choose our program? Yes, your program was a better fit for me as a first time home buyer.

•How can we improve our program to better support borrowers before and after the purchase of their new home? I would say, continue your great service.. It is much appreciated

[redacted]

From: Chenoa Fund [illegible]
Subject: Chenoa Fund Borrower Feedback
Date: July 21, 2018 at 6:08 PM

[redacted]

I really appreciate the Chenoa fund because my wife and myself would not own our home without the down payment assistance we received. Owning our home has help stabilize our family; previously we were renting for 18 years and constantly moving to find more affordable housing. After deciding that we could no longer afford to live in MA we were planning to relocate to a more affordable housing market. With the encouragement and support from some amazing friends and divine intervention we decided to stay in MA and attempt to purchase a home. Then we heard about the Chenoa fund and all our dreams came true, we found a lovely home, were approved for a mortgage loan and down payment assistance provided by the Chenoa fund and closed on our house. Our monthly mortgage including taxes and fees equals the rent we were paying for many years. We love our home and are happy to pay our mortgage each month while we build equity in home. We extend our deepest gratitude to the folks at the Chenoa fund! We recently shared our story with a family member and they applied for and received down payment assitance from the Chenoa fund and recently moved into their new home.

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: July 17, 2018 at 6:01 PM

[redacted]

Without the assistance of the CBC Mortgage my family would have had to wait much longer before we could have purchased our home. We had a lot of expenses that were involved in moving out of state that were not paid for by employers. The assistance with the down payment allowed for us to pay for the move as well as keep some for savings. The program was recommended to us. We did not look at any other sources. We are now happily living in our dream home in a dream location. We couldn't be happier with the service and assistance provided to us.

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
(435) 273-0022 | (866) 563-3507
www.chenoafund.org

Please provide your response below:

Thank you so much for the assistance I had the funds but need them for medical expenses my husband has an illness, for which there is currently no cure. Most importantly, we were living on the 2nd floor of a rented condo + my husband could no longer climb the stairs to the unit.

We had to move quickly + your loan made all the pieces come together. Without your assistance, we would not be in our beautiful new, single story home.

This has changed our lives beyond belief and made whatever time my husband has left so very much more enjoyable. It may have even extended his life as he is so happy + under less stress in our new home!

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: July 17, 2018 at 5:16 PM
[redacted]

The down payment assistance I received was monumental to me and my opportunity of owning a home. It has given me the freedom to be my own person and have my own space to be creative and relaxed. I had some money saved but not enough for the full down payment. I looked into some other down payment assistance options but after talking with my lender we both decided that Chenoa Fund was the best fit for me. My experience with the before and after process with CBC has left me believing there is no need for improvements to the program.

[redacted]

From: Chenoa Fund
Subject: Chenoa Fund Borrower Feedback
Date: July 17, 2018 at 5 23 PM

[redacted]

Owning a home means that in retirement I won't to to worry about where I am going to live. Owning my home anchors me to something, and keeps me from moving over and over Owning my home commits me to a foundation that will be there when I retire. We had the availability to get more down payment, but it would have been from my 401(k). Recieving your assistance helps keep more of that mine, and keeps me from having to pay more of it back.

To the question regarding why Chenoa Fund, this was our lender's pick. We were new at the home buying experience, and [redacted] walked us through the process. When [redacted] our lending agent, explained the Chenoa Fund, we liked the thought a lot as we planned to stay in the home for a long time, and my paying habits work with the 3 year no late payment mentality. After moving in the direction of getting the funds to buy the home, he unfortunately disclosed that it was only available for FHA Loans and not Conventional, and thus caused us to have a higher interest rate and mortgage insurance. We had to think about that, and even in the next 2 1/2 years we will have to weigh pro's and con's of refi into a conventional loan and paying your assistance back ($5000) but reduce my interest rate and mortgage insurance

With that said, that leads me into what could be better with the Chenoa Fund. It would be nice to be able to utilize your assistance in conventional loans as well. For a new home-owner every expense is one step closer to being to much, and the little bit you save in a conventional loan can mean the difference on success.

[redacted]

From Chenoa Fund
Subject Chenoa Fund Borrower Feedback
Date July 18, 2018 at 9 57 AM

[redacted]

I just wanted to take a minute and write to let you know how much the Chenoa Fund helped me. If I would not have had this assistant I would not be living in my home. Down payments are hard something to come up with especially when you are already in a bind and not making much money. The fund helped me not only move into my home, but it helped me build my dream house for me and my little one and actually give me an opportunity to live in a nice area. I did not have another source of assistant from anyone else. It was not a option when I was purchasing my home. I am so grateful for this and I know that they will only help other like me in the future and continue to do great things for a lot of people around the world

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

Thank you so much for the funds you gave me in the purchasing of my home. I needed the money to meet my down payment as well as having money to take care of all the things that needed to be done when purchasing a home such as having the air conditioning system checked, plumbing checked, locks changed and other minor repairs needed. With your help I was able to do to these things as I prepared to move in.

Home ownership was a goal realized for me especially after being homeless after our August 14, 2016 flood here in [redacted]

A GOOD START OVER for ME,

[redacted]

CBC Mortgage Agency February 10th, 2018

- First of all, Thank you will never be enough for the most wonderful, amazing and completely unexpected gift ever in the form of a down payment.

I had actually given up hope, that it was just not for me to ever own a home. But, then I was notified that someone is giving me the down payment to buy my home, and that alone gave me all the hope I needed to keep fighting, to do what was needed to buy my house. Now, as I sit here, it's still unbelievable and doesn't feel real. I haven't even hung any pictures, decor. Nothing on the walls so I won't put holes in the wall. This home would not be possible without your Agency.

There really are no words to describe what you have given to me.

Thank You,

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
866-563-3507

Please provide your response below:

Dear Folks at Chenoa Fund

My husband & I want to say a big thank you to your team! The down payment assistance meant we could own a home again. We lost everything in the 2008 Recession due to cancer & job loss. Thought we would never be "whole" again. You have given the opportunity to be whole!

912 W. Baxter Drive, Suite 150 | South Jordan, Utah 84095

And as we get on in years we will have a "home".

Thank you is an inadequet word -

Kindest Regards - [redacted]

From: Chenoa Fund [illegible]
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 1:37 PM

[redacted]

Because of the down payment assistance we were able to own a home after being renters for 17 years in the same apartment complex. Owning our own home was a goal we didn't think we could ever manage with rising rent and a child who was just about to start college. The down payment assistance made it possible for us to reach both goals- homeownership and sending our child off to pursue higher education. We were lucky that our lender knew about the Chenoa fund, as we didn't qualify for first time homebuyer programs due to income (but this was our first home purchase).

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

The down payment assistance Chenoa provided to me was incredibly important to me. I was needed to help in the care of my mother. I was able to get pre approved for a loan which was also equally important in order to be competitive when making an offer on a house.

With Chenoa's assistance I was able to locate, make an offer, and move in within 30 days. This allowed me to spend necessary quality time with my mother the last six months of her life and I am truly grateful!

Thank You!

[redacted]

From: **Chenoa Fund**
Subject: Chenoa Fund Borrower Feedback
Date: July 30, 2018 at 9:54 PM

[redacted]

Down payment assistance afforded me through the Chenoa Fund meant that I could purchase a home right away instead of having to resign a new lease for an overpriced, poorly maintained rental, that was in an undesirable section of town, in hopes that I would be able to save up enough money for a down payment before having to extend the lease yet again.
My family loves our new home The neighborhood is beautiful, safer, and has many conviences close by We feel blessed to call this house, home.
I worked a lot of overtime to save for an adequate down payment, but I also had to purchase new furnishings as the previous place had a termite infestation, so I also had to save for that expense as well I worked so much that I did not qualify for other income based assistance, but Chenoa came through for me and my family and I am grateful. I loved the simplicity of the approval process. Maybe Chenoa can provide proven referral information for maintenance contractors to assist new homeowners with projects that come up.

[redacted]

From: **Chenoa Fund**
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 1:14 PM

[redacted]

Thank you so much for all of your help. The Chenoa Funds made what appeared to be an impossible dream and closing possible. My daughter and I are enjoying our new home and are so very thankful for each day that we get to come back to it. The Chenoa Funds are a great asset to the community and to people like me that have a dream to own their own home.

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency

866-563-3507

Please provide your response below:

This loan meant so much to our family. we would not be in this home without it. we realized what we were paying in rent we could pay a mortgage. we Struggled to save money with Kids, Something always Comming up and one off to College. So we concentrated on getting our credit up. we didn't realize the help that was out there until we started the process. I'm glad and thankful for this loan to get my family in this home. Could not thank you enough

[redacted]

Chenoa fund

CBC Mortgage Agency

866-563-3507

Please provide your response below:

We have been traveling for work for 6 years and staying in our 5th wheel. We had grand kids move in with us 16 months ago and we had to rent a home to fit us all in. My Husband had been working 550 miles from home and so we looked to rent closer to him. We did not have a down payment so we thought that meant we could not own our own home. The help you gave us has meant the world to us. the Grandkids feel more secure knowing it is our home. Thank You so much for helping to make all of our dreams come true

[redacted]

P.S. This also allowed us to be closer to the rest of our grandkids and also our brothers & sisters. We have been away for 13 yrs

Thank You

Chenoa fund

offered by

CBC Mortgage Agency

866-563-3507

Please provide your response below:

I am so grateful to receive this down payment assistance. There wasn't a way my husband and I could purchase a new home without it. We were not able to save up our down payment in time so this made it possible. We are extremely thankful and excited to be in our own place.

We did not have an additional down payment besides this grant.

Thank you for making home ownership possible for us as well as so many other people!

[redacted]

Chenoa fund
offered by
CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

THANKS TO YOUR PROGRAM WE ARE BACK IN A HOME OF OUR OWN. WE HAD AN ACCOUNTANT THAT HAD MADE A MISTAKE. WHEN THE IRS AUDITED US HE SAID HE COULD DEFEND THE SALE OF AN APPARTMENT BUILDING - THEN HE DIED. IN THE MESS THAT FOLLOWED WE LOST OUR HOME AND NEARLY ALL WE OWNED. MY WIFE IS A DOG TRAINER AND RENTING IS VERY DIFFICULT FOR US AND ALLOW HER TO WORK WITH ANIMALS IN A RENTAL.

WE ARE SO GRATEFUL TO BE IN A HOME AND WHILE NOT AN IDEAL HOME IT IS IN A GREAT NEIGHBORHOOD. THANKS AGAIN.

[redacted]

Chenoa fund
offered by
CBC Mortgage Agency
(435) 273-0022 | (866)-563-3507
www.chenoafund.org

Please provide your response below:

We did not have any money to be able to pay our down paymet. With the assistance of CBC Mortgage Agency We would not have been able to purchase our home. Owning our home means everything to us. I am 47 years old and have never been able to own a home before so this is the best feeling in the world!

Thank you!

[redacted]

912 W. Baxter Drive, Suite 150 South Jordan, Utah 84095

From: Chenoa Fund [illegible]
Subject: Chenoa Fund Borrower Feedback
Date: August 13, 2018 at 12:55 PM

[redacted]

With the assistance of your program we were able to purchase our dream home and still have money left to paint the walls (which were hideous) and other items that we needed to get started in our new location. When we moved to Utah buying a home was a huge priority, as we have the best dog in the world and two small children. and we wanted to make sure that they all had a sale place to play and enjoy the outdoors. Without the assistance your program provided we would not have been able to purchase a home with as much yard space as we did. We spend most of our time at home outside, so this has been amazing for us! The process of applying for your program was effortless, and we encountered no obstacles or undue stress. Thank you so much for all you have don't for our family!

[redacted]

From: **Chenoa Fund** [illegible]
Subject: Chenoa Fund Borrower Feedback
Date: July 23, 2018 at 7:46 PM

[redacted]

The Chenoa Fund saved my husband and me!
We began the build on our first home in September of last year, we put $3,000 down even to begin the build. We had already had our FHA [redacted] Housing Approval, so we weren't worried. And it made the news we were expecting our first child that following month that much sweeter. It made us happy to know we could provide a forever home for him

The building process progressed nicely. We saved up a couple grand to cover the closing costs we knew we needed, and went on to pick the paint, the carpet, the whole 9 yards.

Que the end of January, our home in nearing completion and we are finalizing all the numbers on our loan. Well on the final credit pull, and less than a week before we were scheduled to close, there was an error on my credit. An old school had misreported on my credit and dropped my score from 735 to 650. The was devastating and I spent that whole day in tears over this. We had lost the [redacted] Housing, and could no longer afford our home.

At 5 months pregnant and more then a little distraught I explained the situation to my husband and we held our breath as our Lender searched for a resolution

A lender called me the following morning and told me about the Chenoa Fund. It was a miracle. We filled all the paperwork, put every penny we had into closing costs and were able to sign on our home on time

We moved in February and welcomed our son [redacted] in June

[redacted]

Chenoa fund

offered by

CBC Mortgage Agency

(435) 273-0022 | (866)-563-3507

www.chenoafund.org

Please provide your response below:

12/31/2017

Dear CBC Mortgage Agency:

The assistance for the down payment for my home purchase March 2017 was such a surprise and much needed. I had been left with large credit card debt in my name from a recent divorce (my spouse had used them for his business, unknowingly to me.) I had received some child support after 4 years of waiting and I was contemplating filing bankruptcy. Because of the assistance program, I was able to have the downpayment needed, negotiate with the credit card companies and have a place for my teen aged son and myself. Without this program, I would have had to rent and the payments would be nearly the same! I had been house sitting for four years while getting back on my feet. The thought of owning a home was not even a possibility in my mind. I had called about a rental property and the manager of that property was a mortgage broker and helped me through the process of owning my current home. It's a 1908 farmhouse with rennovated kitchen & bathroom/laundry on 1/3 acre [redacted]

912 W. Baxter Drive, Suite 150 | South Jordan, Utah 84095

The Leadership Conference
on Civil and Human Rights

1620 L Street, NW
Suite 1100
Washington, DC
20036

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

The Leadership Conference

Statement of
The Leadership Conference on Civil and Human Rights
and
Americans for Financial Reform

Hearing on
"A Review of the State of and Barriers to Minority Homeownership"

Subcommittee on Housing, Community Development, and Insurance
House Committee on Financial Services

May 8, 2019

Chairman Clay, Ranking Member Duffy, and members of the Subcommittee: thank you for holding this very important hearing today on the state of minority homeownership and for examining policies aimed at addressing our nation's troubling racial gap in homeownership. The Leadership Conference on Civil and Human Rights and Americans for Financial Reform are pleased to submit this statement for the record of today's hearing.

The Leadership Conference on Civil and Human Rights is a coalition of more than 200 national civil and human rights organizations dedicated to building an America as good as its ideals. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education.

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 financial crisis, Americans for Financial Reform is working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

We are grateful not just for today's hearing, but for what can only be described as a flurry of hearings in the past several weeks that have examined policies and practices affecting the financial health of communities of color. In the past month, the Committee on Financial Services has also looked at issues surrounding the Fair Housing Act, the Community Reinvestment Act, the role of big banks in our economy, public housing, payday and small-dollar lending, diversity and inclusion in the financial services industry, and racial and ethnic disparities in auto finance and insurance – all of which have important ramifications for the communities we represent. The pace has undoubtedly been challenging, but we commend the members of this committee and its tireless staff for their hard work and their willingness to engage in serious discussions about how our nation should regulate the financial services industry moving forward. This is precisely what oversight should look like.

Lost Ground: The Current State of Minority Homeownership and How We Got There

Upon signing the Fair Housing Act of 1968, President Lyndon Baines Johnson observed that the bill "proclaims that fair housing for all – all human beings who live in this country – is now a part of the American way of life." Along with several other major civil rights laws enacted in the following years –

most notably the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, and the Community Reinvestment Act – the enactment of the Fair Housing Act represented a significant turning point in our nation's history, and a promise to do better in fighting discrimination and its effects than we had done in the past. These laws have undoubtedly been helpful in fighting the most overt and intentional forms of discrimination in housing and home lending that had plagued our nation for decades before their enactment, from government-sanctioned "redlining" maps to individual-level refusals to sell or rent housing to people of color.

Yet fifty-one years after the enactment of the Fair Housing Act, the racial gap in homeownership – and the racial wealth gap, in part due to the role that homeownership can play in building and maintaining wealth – remains staggering. As the FSC Majority Staff Memorandum for today's hearing correctly points out, the homeownership rate for African Americans now stands at approximately the same low level that existed before the passage of the Fair Housing Act. While homeownership rates for non-white Hispanic households have recovered slightly in recent years, they continue to lag far behind white households, and people of color have lost significantly more wealth in the wake of the financial crisis than their white counterparts.

Many of the causes of this ongoing racial gap in homeownership and in wealth – including lasting disparities in employment, education, environmental regulation, health care, transportation, the justice system, restrictionist immigration policies, and others – lie outside of this committee's reach. But it is clear that widespread abusive practices, along with the gross negligence of Congress and financial regulators in the years before the 2008 financial crisis, and the often-inadequate policy responses over the following decade, have played a significant role in leading communities of color to the situation in which they find themselves today.

The factors that led to the 2008 financial crisis and the millions of foreclosures that occurred in its wake have been the subject of a great deal of analysis, subsequent policymaking, and, sadly, a significant amount of misunderstanding and outright misrepresentation. The Leadership Conference and many of its member organizations, however, speak with a great deal of direct experience on the matter. For years before the mortgage system collapsed, we spoke out against a range of home lending practices that could only be characterized as "reverse redlining." Using the limited Home Mortgage Disclosure Act data that we had available at the time, we showed that borrowers of color were being steered into predatory, unsustainable loans at much higher rates than white borrowers. The terms of these loans were unconscionable: prepayment penalties that stripped borrowers of wealth if they tried to refinance; yield-spread premiums that incentivized mortgage brokers to "steer" borrowers into more expensive mortgages than their credit records qualified them for; 2/28 and 3/27 subprime loans that appeared affordable at first but that led to unsustainable monthly payments after several years; and reckless underwriting practices that deliberately ignored borrowers' incomes or their ability to repay. And we predicted that millions of foreclosures were foreseeable and that the results would be catastrophic. Some Members of Congress such as former Chairman Barney Frank (D-MA) and former Reps. Brad Miller (D-NC) and Mel Watt (D-NC) worked with us on legislation to curtail abusive practices and impose a common-sense "ability to repay" requirement on home loans. But our efforts were rebuffed at nearly every step.

While we and our member organizations were successful – as part of a coalition of organizations that came to be known as Americans for Financial Reform – in pushing Congress to enact stronger regulations two years after the financial crisis, we were less successful in securing policies to reduce the impact of the millions of mortgage defaults that followed. We called for – and the House passed – legislation that would have allowed homeowners who were "underwater" to avoid foreclosure by using the bankruptcy process to force reductions in their mortgage principal and their monthly payments. But that legislation was fiercely opposed by the same industry that had just been bailed out itself, and it died in the Senate. Likewise, former FDIC Chairman Sheila Bair tried to get banks to implement strong mortgage modifications, but she was also rebuffed. Meanwhile, mortgage servicers insisted they could contain the crisis and keep borrowers in their homes, yet shoddy servicing practices failed to keep up with the tide – and foreclosed homes in many communities went neglected in communities of color, spreading the contagion by depressing neighboring home values, while foreclosed homes in wealthier communities received better care. And as foreclosures continued, pools of defaulted mortgages were often sold off to investors who emphasized rental housing returns over neighborhood stabilization. While the CFPB issued rules to improve loan servicing, they were too little, too late to help most struggling homeowners.

To add insult to injury, the causes of the foreclosure crisis have long been the subject of false and dangerous narratives that still threaten to undermine additional reforms. The Community Reinvestment Act was scapegoated, even though most abusive subprime lending was being done by lending companies that were not subject to the law. And the GSE affordable housing goals were also blamed, even though losses at Freddie Mac and Fannie Mae were caused more by "no-income, no-asset" loans to wealthier borrowers that couldn't have qualified for the goals, as they deliberately ignored whether borrowers met the low-income requirements set by the goals.[1] Because laws such as the Community Reinvestment Act and policies such as affordable housing goals are instrumental to rebuilding homeownership in communities of color, it is important that the Committee keep working to dispel the myths around their role in the financial crisis.

There have been many shameful consequences of the financial crisis. It is shameful that in the wake of the rampant fraud that caused a financial crisis that nearly brought our economy to its knees, virtually nobody was prosecuted. It is also shameful that many participants in the financial services industry were bailed out – with bonuses intact – only to turn around and resist stronger foreclosure prevention efforts because it would have raised issues of "moral hazard." But given the promise of the Fair Housing Act and other key fair housing and lending laws, and the history they were meant to address, the erosion of homeownership among minority communities stands out as perhaps the most shameful consequence of all. We must do better.

Regaining Lost Ground: Policies Aimed at Rebuilding Minority Homeownership

The lessons learned from the housing crisis – or in some cases, the lessons that should have been learned – must be kept in mind if we are to succeed in efforts to promote sustainable levels of homeownership among communities of color. With that, we would like to offer up some views on a number of policies – by no means comprehensive – that we believe are relevant to the discussion moving forward.

<u>Incremental but Important Improvements</u>

The Committee has flagged four bills in particular for consideration in today's hearing. We welcome the introduction of these bills. While we strongly favor more comprehensive efforts aimed at rebuilding minority homeownership, we also recognize the value of thoughtful, targeted measures that can make a difference even as broader efforts are under development.

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[1] *See, e.g.*, Susan Wharton Gates, *Days of Slaughter: Inside the Fall of Freddie Mac and Why it Could Happen Again*, Johns Hopkins University Press (April 2, 2017).

The Leadership Conference

First, Rep. Rashida Tlaib (D-MI) has circulated draft legislation providing important federal protections for purchasers of land installment contracts, also known as rent-to-own housing contracts. Such arrangements have a troubled history of being sold on abusive terms and of being peddled to people of color in the decades prior to the enactment of the Fair Housing Act, and there is evidence that they are on the rise again. Rep. Tlaib's bill would help ensure that purchasers of these contracts are not saddled with dilapidated housing and stuck with repair costs, and it would require judicial proceedings to protect a purchaser in the event of default. We applaud Rep. Tlaib for bringing attention to this important issue, and we look forward to working with her to ensure adequate protections.

Second, Rep. Dean Phillips (D-MN) has circulated the "Making FHA More Affordable Act," draft legislation to eliminate the FHA life-of-loan insurance premium, putting FHA in line with private mortgage insurers and with prior FHA policy. FHA's current policy since 2013 has driven up costs for FHA borrowers, disproportionately affecting minority homeowners in the process. We and a number of our member organizations have called for repealing the life-of-loan premium, and we would support legislation to that end if FHA will not take such a step itself.

Third is the Housing Financial Literacy Act (H.R. 2162), introduced by Reps. Joyce Beatty (D-OH) and Steve Stivers (R-OH). It would call for a 25 basis point discount in FHA mortgage insurance premiums for first-time homebuyers who complete a HUD-approved financial literacy counseling program. With the caveat that financial literacy counseling is no substitute for vigorous consumer and antidiscrimination protections, including a careful assessment of a borrower's ability to repay a loan, such counseling certainly has value in promoting sustainable homeownership and it makes sense to provide clear incentives for borrowers to engage in it. We are pleased that this measure has been introduced on a bipartisan basis, and we look forward to further discussion of it.

And finally, Rep. Juan Vargas (D-CA) has circulated draft legislation to clarify that recipients of Deferred Action for Childhood Arrivals (DACA) status are eligible for mortgages backed by FHA, USDA, Fannie Mae, and Freddie Mac. The Leadership Conference strongly supports H.R. 6, the American Dream and Promise Act, to provide permanent legal status and a path to citizenship for Dreamers as well as TPS/DED recipients. The bill currently has 228 cosponsors (including Rep. Vargas), more than enough to secure passage in the House. We believe it must and eventually will be enacted. That said, it is unclear whether the Senate leadership will allow a vote on H.R. 6 in this Congress and whether President Trump would sign it, in the absence of other far more controversial immigration law changes. But in the meantime, Dreamers should be given as much stability in their lives as possible, including in this case the chance to become homeowners. While legislation to make that clear should be unnecessary – Fannie Mae, to its credit, has stated it supports lending to DACA recipients – we would support it.

<u>Housing Finance Reform</u>

The question of what to do with mortgage giants Fannie Mae and Freddie Mac has often been referred to as the last "unfinished business" of the financial crisis. Since 2008, Fannie and Freddie have remained under conservatorship, where they are subject to heightened regulation, and under an arrangement in which virtually all of their profits are paid to the Treasury. Some members of Congress and housing policy trade groups have even argued that they should remain in this arrangement until Congress enacts GSE reform.

The Leadership Conference has long taken the view that any company engaged in mortgage finance that benefits from special protections or guarantees provided by the federal government – whether implicit or explicit – has a heightened duty to ensure that all communities are being adequately and responsibly served by that company. Under the current system, this duty manifests itself in several ways. First, Fannie and Freddie are required to meet affordable housing goals, in which certain percentages of the loans they purchase must be to low-income borrowers and communities. Second, as a result of a major reform enacted in 2008, Fannie and Freddie have a "duty to serve" underserved markets, specifically, rural housing, manufactured housing, and affordable housing preservation. Third, the same 2008 law requires Fannie and Freddie to contribute a small portion of their proceeds to a "Housing Trust Fund" and a "Capital Magnet Fund," which provide funds for very low-income housing and community development financial institutions, respectively.

These access and affordability policies have long been subjected to false attacks. This is particularly true of the affordable housing goals, which, as discussed above, have been scapegoated for causing the 2008 mortgage crisis. And in several efforts in recent years to enact GSE reform legislation, some parties have been all too willing to trade them away in an effort to secure a bipartisan consensus.

All too often, lost in the discussions over GSE reform is the fact that significant reforms have already taken place, as a result of the Homeownership and Economic Recovery Act of 2008 as well as the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Congress should be mindful of these reforms and how they have changed the GSE system. That is, Congress should aim any reforms at the system we have today, not the system we had before 2008. While The Leadership Conference remains open to exploring further GSE reform legislation, it is essential that no harm be done to existing access and affordability policies. Instead, these policies should be strengthened. In addition, any new system must ensure strong and transparent oversight of fair lending and antidiscrimination laws. And it must ensure equal access to community banks, credit unions, and other smaller lending institutions that are instrumental in reaching underserved communities.

Improved Credit Scoring

Another issue partly related to the GSEs and housing finance, because the Federal Housing Finance Agency (FHFA) is currently reviewing comments to a proposed rulemaking on the subject, is the need for improvements in credit score models. In theory, credit scoring systems are meant to determine the level of risk in a loan based on an individual's past management and repayment of debt. Yet the prevalent model is badly outdated, and includes factors that are not an accurate gauge of creditworthiness while excluding others. Extensive research has shown that the current credit scoring system has disproportionately shut out people of color from mainstream finance and pushed them into alternative, more expensive and risky forms of credit. This is true in the area of housing finance, as well as many other areas – as the committee explored last week in the use of credit scoring for automotive insurance.

While Fannie Mae and Freddie Mac rely heavily on their own proprietary systems for determining credit risk, systems that are as opaque as credit scores, outdated FICO scores are used as a minimum qualification for loans entering into their underwriting systems and they are used in applying risk-based pricing. In order to give communities of color a better chance of obtaining mortgage loans on fair terms, we need improved systems that score larger numbers of consumers and that are as accurate and inclusive as possible. We intend to continue calling upon FHFA to modernize the scoring system used by the GSEs, and we would urge the Committee to do the same.

We also support Chairwoman Waters' "Comprehensive Consumer Credit Reporting Reform Act," which would enhance consumers' credit reporting rights, create more transparency over the credit reporting and scoring process, and increase the accountability of those who develop credit scoring models.

The American Housing and Economic Mobility Act

As stated earlier, we believe that comprehensive reform of our housing and mortgage lending system is ultimately necessary to address the troubling racial and ethnic disparities in homeownership. Rep. Cedric Richmond (D-LA) and Sen. Elizabeth Warren (D-MA) have introduced legislation that we believe represents a very helpful contribution to this effort. The American Housing and Economic Mobility Act proposes to take on a number of factors that have contributed to the situation in which we find ourselves today, including low affordable housing supply, restrictive local land use regulations, little savings among communities of color affected by past and continuing discrimination, underwater mortgages, the pipeline of sales of foreclosed or distressed homes to private equity firms, outdated provisions of the Community Reinvestment Act, and forms of housing discrimination not explicitly covered by existing antidiscrimination law.

We support this bill because we hope it will help elevate the importance of affordable housing supply, past and present patterns of housing discrimination, mortgage servicing factors, and other issues at a national level and spark continuing discussion and action on the best solutions. At the same time, we are open to additional ideas and refinements – for example, the downpayment assistance program could be expanded to assist not only families affected by redlining but by "reverse redlining" as well – and we would be pleased to engage in further discussions around it and other comprehensive approaches.

Enforcement of the Fair Housing Act

Because the subcommittee held a hearing in April on this subject, in which the National Fair Housing Alliance – one of the co-chairs of The Leadership Conference's housing and lending task force – delivered extensive testimony, we will not go into great detail here. But we would say – as The Leadership Conference said in Congressional testimony in 2007, well before the mortgage crisis exploded into the front pages of newspapers – that the failure of regulatory agencies to ensure that the institutions under their watch fully met their obligations under the Fair Housing Act and Community Reinvestment Act is a key reason why we are here today. If federally regulated institutions were meeting their fair lending and CRA requirements and making affordable, sustainable, prime loans to deserving borrowers, we would not have seen such an explosive growth in abusive subprime lending. The hard truth is that African-Americans, Latinos and female householders disproportionately received unsustainable high cost subprime loans. Federally regulated lenders, who routinely have denial rates for African-American and Latino loan applicants that are at least double the rate for Caucasian loan applicants, were not lending as they should have to African-American, Latino and female borrowers. This gap in fair lending opened the door for the unregulated lending market to come in and take advantage of these borrowers.

While the last administration took a number of steps to improve policies under the Fair Housing Act, we share NFHA's alarm that the current administration is undertaking efforts to roll back that progress. In particular, we are greatly troubled that HUD has suspended the "affirmatively furthering fair housing" rule, and has been working on language to drastically undermine its "disparate impact" rule – a change that would not only decimate Fair Housing Act enforcement but set a dangerous precedent for the enforcement of other civil rights protections as well. If HUD proceeds with these changes, we intend to mobilize the full weight of our coalition in response.

Community Reinvestment Act

The Subcommittee on Consumer Protection and Financial Institutions held a hearing last month on this important – and often misunderstood – civil rights law that was instrumental in addressing redlining practices. We share the views and concerns voiced by Jesse Van Tol of the National Community Reinvestment Coalition,[2] also a Leadership Conference member organization, including with respect to the troubling changes proposed by the Office of the Comptroller of the Currency.

Home Mortgage Disclosure Act

One of the major contributors to the financial crisis was the lack of comprehensive, actionable data on what kinds of loans were being made, on what kinds of terms, and to whom. Dodd-Frank called for significant improvements under the Home Mortgage Disclosure Act. But between the enactment of the Economic Growth, Regulatory Relief and Consumer Protection Act (S.2155) last year and the recent announcement by the CFPB that it will revisit HMDA rules, we are deeply concerned about a retreat from the important reforms that have been made to this area.

Opportunity Zones

While the creation of the Opportunity Zones program, under the Tax Cuts and Jobs Act of 2017, raises many issues that go well beyond this committee's jurisdiction, it also raises interesting opportunities and troubling risks with respect to affordable housing. In December, under the umbrella of the Asset Building Policy Network, we voiced some preliminary concerns about the potential for Opportunity Zones – depending on how regulations are developed moving forward – to place additional displacement risks on low-income renters and homeowners. We urged the IRS to ensure that investments under the law do no harm to existing residents, that "abuse" is clearly defined in a way that prevents the loss of affordable housing, and that there are clear metrics for measuring affordable housing units that are created or preserved. Because there are no requirements that local residents benefit from the Opportunity Zone investments and an overly broad definition of low-income community, we are concerned that Opportunity Zones program could divert investment from truly disadvantaged communities and increase displacement. At a minimum, the Opportunity Zones program will require strong oversight from this and other committees to prevent this program from doing more harm than good. We would be pleased to work with you further in monitoring developments and progress.

Thank you for the opportunity to add some additional views of The Leadership Conference on Civil and Human Rights and Americans for Financial Reform to the record of today's hearing.

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[2] The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing before the Consumer Protection and Financial Institutions Subcommittee, House, 116th Cong. (2019) (testimony of Jesse Van Tol).

STATEMENT OF THE NATIONAL COMMUNITY REINVESTMENT COALITION

U.S. HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT AND INSURANCE

A REVIEW OF THE STATE OF AND BARRIERS TO MINORITY HOMEOWNERSHIP

MAY 8, 2019

Chairman Clay, Ranking member Duffy and members of the Subcommittee on Housing, Community Development and Insurance:

The National Community Reinvestment Coalition (NCRC) commends you for holding this review on the state of and barriers to minority homeownership and we are pleased to submit this statement for the record of today's hearing.

NCRC and its more than 600 grassroots members include community reinvestment organizations; community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations, as well as local and social service providers from across the nation. We work with community leaders, policymakers and financial institutions to champion fairness and fight discrimination in banking, housing and business. In brief, NCRC member organizations create opportunities for people to build wealth.

We at NCRC recognize that both growing economic inequality and the ongoing racial wealth divide derive from and are perpetuated by regressive public policies. Public policy advancing homeownership and affordable housing to low-wealth Americans are fundamental to maintaining and advancing our country's middle-class economy. Recently, NCRC has taken two steps to advance our work in addressing affordable housing and asset building. We helped form the *Affordable Homeownership Coalition* with industry stakeholders that include a wide array of organizations – community and civil rights advocacy groups, lenders, home builders, real estate professionals and trade associations. The Coalition is building a broad consensus around a set of national, state and local laws, policies and business practices that enable more families to access affordable homeownership. We are also working throughout all of our departments to strengthen our racial-wealth-divide analysis so our policies and programs can better address the growing challenge of racialized-asset poverty. As part of this effort, we have hired Dedrick Asante-Muhammad, a known and long-time national expert on racial economic inequality, as our new Chief of Equity and Inclusion.

I. Minority Homeownership and Wealth-Building

We at NCRC recognize that no investment is more significant to building wealth for low-wealth Americans than owning a home.

For proof, look no further than the latest edition of the Federal Reserve's Survey of Consumer Finances which reported that the median net worth of a homeowner was $231,400 in 2016, a 15% increase since its previous survey in 2013. Meanwhile, the median net worth of renters decreased by 5% to just $5,200.[1]

White households already held a significant wealth advantage over minorities, reflected in the huge historic gap in homeownership rates among races. According to the Federal Reserve Board, the net worth of a typical Black family was $17,409 in 2016 compared to $171,000 for a typical White family, a roughly 10-fold difference.[2]

[1] "Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances," Federal Reserve Bulletin, Sept. 2017, vol. 103, number 3, p. 13

[2] Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances, **FedNote, Sept. 27, 2017.** In 2016, White families had the highest level of both median and mean family wealth: $171,000 and $933,700, respectively. Black and Hispanic families have considerably less wealth than White families. Black families' median and mean net worth is less than 15 percent that of White families, at $17,600 and $138,200, respectively. Hispanic families' median and mean net worth was $20,700 and $191,200, respectively.

Table 1. Household financial profile by race/ethnicity, 2016 survey

Thousands of 2016 dollars or percent

Make Full Screen

	White	Black	Hispanic	Other
Income:				
Median	61.2	35.4	38.5	50.6
Mean	123.4	54.0	57.3	86.9
Net Worth:				
Median	171	17.6	20.7	64.8
Mean	933.7	138.2	191.2	457.8
Percent of families with zero or negative net worth	9	19	13	14
Assets (percent of families with):				
Primary residence	73	45	46	54
Vehicle	90	73	80	80
Retirement accounts	60	34	30	48
Business equity	15	7	6	13
Direct and indirect equity	61	31	28	47
Debts (percent of families with):				
Debt secured by primary residence	46	32	31	38
Vehicle loans	34	33	32	34
Credit card balances	42	48	50	44
Education loans	20	31	19	26
Wealth from housing (for homeowners):				
Percent of assets in housing	32	37	39	35
Mean net housing wealth	215.8	94.4	129.8	220.7
Credit Experiences (percent of families with):				
Payment-to-income ratio greater than 40%	6	9	8	9
Late on payments 60 days or more	5	10	4	9
Denied credit or feared denial	15	35	32	25

Source: Federal Reserve Board, Survey of Consumer Finances.

In important research, Demos and the Institute on Assets and Social Policy (IASP) projected the impact that equal homeownership and home appreciation would have on closing the racial wealth divide for African Americans and Latinos.[3] It noted that parity in

[3] "**The Racial Wealth Gap: Why Policy Matters"** Demos and IASP, 2015.

homeownership for Blacks and Hispanics would increase and help close the racial wealth divide by about $30,000 and that equalizing returns in homeownership would increase Black wealth by another $17,000 and Hispanic wealth another $42,000. Expanding homeownership levels and increasing returns of homeownership for Blacks and Hispanics promises to increase wealth levels many times over.

Rates of homeownership for all races began to climb in 1994 and continued through the mid-2000s. Homeownership rates for Whites and Blacks peaked in 2004 when 76% and 49.1% were homeowners, respectively, a 26.9 percentage-point gap. Hispanic homeowners were one point behind Black homeowners in 2004 but passed them the next year and have continued to widen the gap.[4]

The Great Recession hit many homeowners hard but Blacks and Hispanics far worse. Those borrowers were more likely to have held subprime and predatory loans, suffered from foreclosure and lived in neighborhoods ravaged by vacant and abandoned homes, all of which wreaked havoc on nascent, wealth-building efforts.

Here we are, just a few months away from the longest peacetime economic expansion in our nation's history and Black and Hispanic families still have yet to see the majority of their populations become homeowners. Hispanic homeownership is only at 46.5% - below its pre-recession level of 48.5% in 2007- and African Americans have a homeownership rate of 41.1%, the lowest since the passage of the Fair Housing Act in 1968. The gap between White and Black homeownership has soared to 32.1 percentage points.[5]

II. The Barriers: The legacy of redlining and modern-day cases

In a 2018 report, NCRC researchers found that economic and racial segregation created by "redlining" persists in many cities.[6] While overt redlining is illegal today, its enduring effect is still evident in the structure of U.S. cities. Part of the evidence of this enduring structure can

[4] U.S. Census Bureau, "Housing Vacancies and Homeownership" surveys
[5] U.S. Census Bureau, "Quarterly Residential Vacancies and Homeownership" survey for First Quarter 2019, April 25, 2019. NCRC has also found that the gap in Black and White homeownership has averaged 25 percent for 119 years. The gap has never been smaller than 22 percent and now stands at its largest at 32 percent.
[6] **HOLC "REDLINING" MAPS: The persistent structure of segregation and economic inequality**, NCRC, March 20, 2018.

be seen in the Home Owners' Loan Corporation (HOLC) maps created 80 years ago, and the economic and racial/ethnic composition of neighborhoods today. The maps were created by the HOLC as part of its City Survey Program in the late 1930s. Neighborhoods considered high risk or "Hazardous" were often "redlined" by lending institutions, denying them access to capital investment which could improve the housing and economic opportunity of residents.

NCRC took these maps and compared the grading from 80 years ago with more current economic and demographic status of neighborhoods as low-to-moderate income (LMI), middle-to-upper income (MUI), or majority-minority. To a startling degree, the results reveal a persistent pattern of both economic and racial residential exclusion. They provide evidence that the segregated and exclusionary structures of the past still exist in many U.S. cities. Descriptive analysis indicated a high degree of correspondence between HOLC high-risk grading of 80 years ago and a persistent pattern of economic inequality and segregation today. A regional analysis showed that the South and West had the highest correspondence for HOLC high-risk grades and majority-minority neighborhood presence, while the South and Midwest had the most persistent economic inequality.

Redlining is not just a matter of is history. In recent years, the CFPB, HUD, and DOJ have settled several multi-million dollar redlining cases.[7] And, this committee recently heard testimony from Aaron Glantz who documented redlining against Black and minority communities in 61 cities as part of his Reveal reporting for the Center for Investigative Reporting.

***A.* Breaking down redlining and credit access barriers....erecting new ones?**

Legislation pending before the Committee make important strides forward by removing some cost barriers in the FHA programs (e.g. The Making FHA More Affordable Act of 2019), establishing basic requirements around land installment contracts and clarifying rules for mortgagors that are DACA recipients (e.g. The Homeownership for Dreamers Act). In addition to acting on new legislative proposals to address existing or longstanding barriers to minority

[7] BancorpSouth entered a **$10.6 million consent order with the CFPB and the DOJ** in 2016; **Hudson City Savings Bank settled for $27 million** in 2015; DOJ entered a $9 million settlement with Union Savings Bank and Guardian Savings Bank in 2016; DOJ entered a settlement with Eagle Bank and Trust in 2015 to name a few.

homeownership, the Committee's oversight and input will be critical as today's regulators reshape interpretations of current laws in ways that can either mitigate barriers or create new ones.

1. *Regulatory rewrite of the Community Reinvestment Act (CRA)*

As you know, the bank regulators are considering transformational changes to the regulatory framework for the Community Reinvestment Act (CRA) - a remedial statute and a potent Congressional response to redlining. Proposed changes could impact the extent to which the law facilitates homeownership for low- and moderate-income borrowers and communities. How will single-family lending count in a reconfigured CRA exam? Will the CRA exams' fair-lending reviews be further weakened or strengthened? Will regulators provide CRA examiners better guidance on bank lending that facilitates gentrification or displacement in minority and LMI communities?

Today, CRA examinations cover about 30% of all mortgages. Will regulators define bank assessment areas under CRA in ways that examine more of a bank's lending - a step that would mitigate CRA grade inflation and help address some barriers to homeownership? Among other provisions designed to remedy historic redlining, H.R. 1737, the American Housing and Economic Mobility Act, would update and expand CRA examinations to more lending and more lenders.

2. *Proposed changes to HMDA*

The CFPB is currently considering a proposal that could exempt more than half of the nation's banks from having to report basic information about their mortgage lending and could also require fewer independent mortgage companies and other nonbanks to report Home Mortgage Disclosure Act (HMDA) data than before the crisis. The agency could also trim enhanced data added to HMDA reporting by the Dodd-Frank Act and the CFPB's 2015 rule implementing the law. Both basic HMDA data and enhanced HMDA data not only help regulators and other stakeholders better understand the barriers to homeownership and discriminatory lending patterns, but also helps public officials who use the information to develop and allocate housing and community development investments and to respond to market failures.

3. *Housing finance reform on the horizon*

The Presidential Memoranda on Housing Finance Reform issued broad directives to nine federal officials calling for a Treasury Housing Reform Plan and a HUD Reform Plan. These plans will inform or reflect Administration policy around Fannie Mae and Freddie Mac's (the government-sponsored enterprises or "GSEs") capital requirements, set our parameters around risk management and mitigation at the GSEs and other federal insurance programs, define the interplay between the GSEs and FHA, and overall, put a number of policies in motion that could really redefine how and to what extent LMI borrowers and communities access mortgage credit - borrowers who have access today or who have historically had some access to affordable mortgage credit to purchase and rehabilitate their homes. Important issues around accessibility and affordability on whether guarantee fees and other credit pricing is affordable, the extent of affordable loan products available, allowable debt-to-income (DTI) ratios and more could have real impacts for minority borrowers. The FHFA approach to the GSEs affordable housing obligations (e.g. level of annual affordable housing goals, rigor around Duty to Serve obligations, whether contributions to the Housing Trust Fund and Capital Magnet Fund are made) all play an important role.

III. The Barriers: Income inequality, neighborhood and broader challenges that impede minority homeownership

A family history of owning a home is another key indicator of the prospects for homeownership for young adults, a statistic that tilts decidedly in the direction of White households[8]. The homeownership rate of white millennials is 37 percent, compared with 27 percent for Asians, 25 percent for Hispanics, and 13 percent for blacks.[9] And while

[8] *How your parents affect your chances of buying a home*, Washington Post, May 4, 2016. See more at:

[9] *Is homeownership inherited? A tale of three millennials,* Urban Institute, August 2, 2018.

18-to-34-year-old millennials in all racial and ethnic groups have experienced a drop in homeownership since 2005, the homeownership rate among black households headed by 45-to-64-year-olds (who are most likely to be parents of millennials) dropped significantly over the past 15 years.[10] Student debt is also a greater burden on minorities, as well. And, while a college degree generally enhances the possibility to own a home the stark reality is that Black households with a college education are less likely to own a home than White households whose head did not graduate from high school.[11] The factors behind these realities implicate a broader array of issues around income inequality, neighborhood and other barriers that also affect minority homeownership and asset-building.

In groundbreaking research, Harvard University Professor Raj Chetty mapped which neighborhoods in America offer children the best chance to rise out of poverty and found that the intergenerational persistence of disparities varies substantially across racial groups.[12] For example, Hispanic Americans are moving up significantly in the income distribution across generations because they have relatively high rates of intergenerational income mobility. In contrast, Black Americans have substantially lower rates of upward mobility and higher rates of downward mobility than Whites, leading to large income disparities that persist across generations. Conditional on parent income, the Black-White income gap is driven entirely by large differences in wages and employment rates between Black and White men.

In other work, the Economic Policy Institute's review of progress 50 years after the Kerner Commission documented in 11 diagrams the continuing racial inequality between Black

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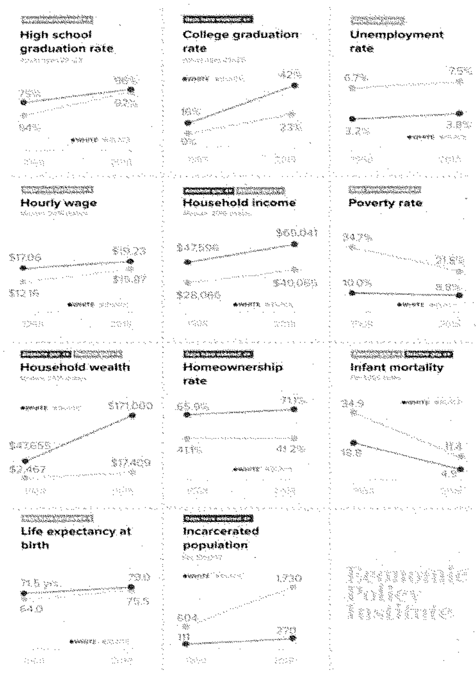
[10] Ibid.

[11] Laurie Goodman and Christopher Meyer, "Homeownership and the American Dream," Journal of Economic Perspectives, vol. 32, no. 1, January 2018, p. 32

[12] These findings suggest that reducing the Black-White income gap will require efforts whose impacts cross neighborhood and class lines and increase upward mobility specifically for Black men. See Opportunity Insights, Race and Economic Opportunity in the United States: An Intergenerational Perspective, Working Paper, March 2018.See also, See also, ***Black men face economic disadvantages even if they start out in wealthier households***, new study shows, PBS Newshour, March 21, 2018.

Social and economic circumstances of African American and white families, c. 1968 and c. 2018



Source: Adapted from Table 1 in Janelle Jones, John Schmitt, and Valerie Wilson, *50 Years After the Kerner Commission: African Americans Are Better Off in Many Ways but Are Still Disadvantaged by Racial Inequality*, Economic Policy Institute, February 2018. Values are for 1968 and 2018 or closest year for which data are available.

and White families.

This research, as well as other evidence, tends to all reinforce that earlier interventions, place-based strategies and related approaches are critical to overcoming barriers to minority homeownership and asset-building.

A. Promising approaches on inequality and homeownership...but also policy challenges

A number of new initiatives and proposals are attempting to address a broader array of issues around financial access.

1. Baby Bonds and other possible solutions

The Institute of Policy Studies has proposed, and others have joined in supporting, 10 ways to address the racial wealth divide.[13] Some of these proposals fall within the Committee's jurisdiction, such as a greater investment in affordable housing. Setting up baby bonds is another solution. They are federally managed accounts set up at birth for children and endowed by the federal government with assets that will grow over time. When a child reaches adulthood, they can access these funds to purchase a home, for example. One recent study shows that a baby bond program has the potential to reduce the current Black-White wealth gap by more than tenfold.[14] Another study shows that had a baby bond program been initiated 40 years ago, the Latinx-White wealth divide would be closed by now and the Black- White wealth divide would have shrunk by 82 percent.[15] Improving data collection on the breadth and scope of the racial wealth divide would also help inform the discussion and policy approaches.

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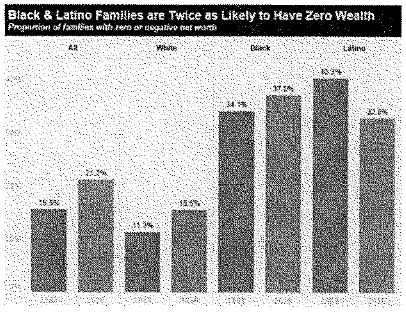
[13] Dedrick Asante-Muhammad, Chuck Collins, Darrick Hamilton, Darrick Hamilton, Josh Hoxie, *Ten Solutions to Bridge the Racial Wealth Divide*, ISPS, April 2019.
[14] Ibid.
[15] Id.



Source: ISPS, see footnote 10.

2. Better access to housing counseling

Housing counseling is a very effective way to eliminate barriers for minority families and prepare them for responsible and sustainable homeownership, and loans to home buyers that have received counseling perform better.[16] In FY 2017, 74 percent of housing counseling clients were people of color and 73 percent were LMI households with incomes of 80% of median income or less.[17] H.R. 2162 improves the incentives for home buyers to use housing counseling by linking it to a discount on FHA mortgage insurance premiums, which also makes homeownership more affordable. Given the data about the advantages of parental homeownership, we recommend the sponsors consider adding a deeper discount for first generation home buyers.

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[16] *See, e.g.*, Neil S. Mayer & Kenneth Temkin, *Pre-Purchase Counseling Impacts on Mortgage Performance: Empirical Analysis of NeighborWorks America's Experience* (p. iii) (March 7, 2013); Marvin M. Smith et al., *The Effectiveness of Pre-Purchase Homeownership Counseling and Financial Management Skills* (April 2014); and, https://www.huduser.gov/portal/sites/default/files/pdf/Housing-Counseling-Works.pdf

[17] National Housing Resource Center and HUD FY 2017 9902 Housing Counseling Data.

3. *Opportunity Zones...also challenges*

Newly-created Opportunity Zones have created a new vehicle to invest in thousands of underserved communities across the country. Implementation of the program offers an opportunity to facilitate affordable homeownership for minority families, but done incorrectly, it could also facilitate widespread displacement in minority and LMI communities, and particularly in markets already grappling with affordable housing issues and with high levels of socioeconomic change - a proxy for gentrification and displacement risk.[18] Currently, the program has no real statutory data collection or reporting requirements on investments or outcomes. Both HUD and IRS have outstanding proposals on Opportunity Zones and, among other reporting requirements, regulators should track, collect and report data that evinces displacement risk. We urge this Committee to also consider how it might weigh in on Opportunity Zones policy around minority homeownership and affordable housing issues.

IV. Affordable housing inventory and other barriers affecting minority buyers and the broader market

There are a number of housing inventory issues that are inhibiting minority families and LMI families more broadly in their effort to own a piece of the American Dream - a home. NCRC, in conjunction with a number of industry stakeholders, as a part of the *Affordable Homeownership Coalition,* have identified a number of infrastructure, financing and other barriers, including:

- a historic low in the inventory of affordable homes for sale;

[18] See more at: 2019 NCRC Policy Agenda, p. 40, Issue: *Encourage Responsible Investment in Opportunity Zones & Robust Data Collection, Including on Outcomes*

- household formation and demand for homes is outstripping the supply of affordable homes;
- some local zoning, land-use and permitting requirements are making it increasingly difficult to secure land and build homes affordable to LMI households;
- labor shortages and workforce training issues are also roadblocks to affordable homebuilding;
- financing small mortgages - for home purchase and rehabilitation - in large swaths of the country, including many traditionally minority communities, is near impossible;
- home appraisal issues have been identified in a number of minority and LMI communities across the country;
- issues around down payment - the difficulty of saving towards one and access to down payment assistance.

One way to begin to address some of these inequities would be for Congress and the Administration to include select incentives for single-family residential construction and preservation as part of any national infrastructure plan to be considered.

V. Conclusion

We know there are no "silver bullets" to solve these vexing problems. Moreover, the crisis of affordable homeownership for minority and LMI families cannot be solved at the federal level alone, but must also find supporters in state and local governments who are eager to address existing barriers. It is why we are prepared to take our fight not only here to Capitol Hill but to statehouses and city halls throughout the nation so that the American Dream of homeownership can be a reality for families too often left behind.

The challenges of increasing access to affordable homeownership for the nation's minority households, including eliminating existing barriers and defeating policies that could erect new ones, are considerable. But the risks to the social and economic well-being of the country of ignoring those challenges are even greater.

The nation can't afford to fail in this effort. To do so would consign a generation of involuntary renters to a future free from financial security and hope for a better life and a racial wealth gap that could widen further. Rather, the country must do the hard work to create more affordable homes and more minority homeowners. A fairer and more prosperous nation awaits when we succeed.

Testimony of David M. Dworkin
President and CEO of the National Housing Conference
Before the House Financial Services Committee
Subcommittee on Housing, Community Development and Insurance
"Review of the State of and Barriers to Minority Homeownership"

May 8, 2018

Thank you Chairman Clay, Ranking Member Duffy and distinguished members of the committee. My name is David Dworkin, and I am president and chief executive officer of the National Housing Conference, the nation's oldest and broadest housing coalition. Founded in 1931, the National Housing Conference, or NHC, has advocated for affordable housing and community development for nine decades. Today, our over 200 members include every sector of the housing industry from housing developers, both for-profit and nonprofit, to state and local government agencies, lenders of all sizes, investors, builders, national associations and low-income housing advocates in every region of the country. No one sector makes up more than 20 percent of our membership.

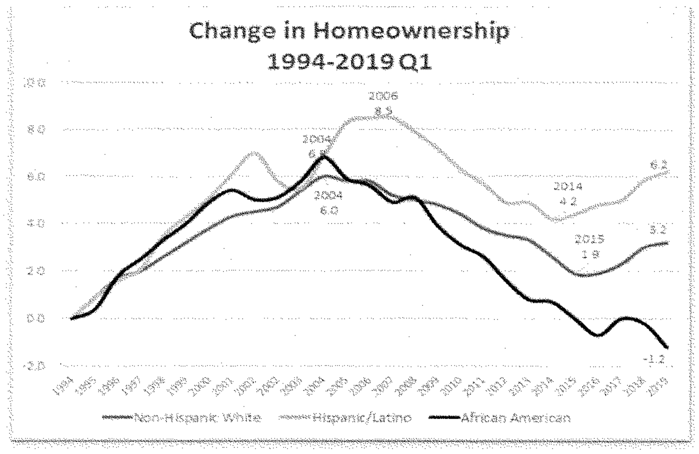
I have spent most of my adult life working for affordable housing, including running the Fannie Mae Partnership Office in Detroit, Michigan, where we focused on building a legacy of homeownership among the city's predominantly Black and Latino residents. Those efforts were enormously successful, but were wiped out during the Great Recession as thousands of Detroiters and millions of Americans lost their homes due to predatory lending practices and a nationwide collapse of housing values. This impact was particularly devastating to Black homeowners, for reasons that I will explore in more detail.

I also spent six years in the Treasury Department, working on housing and community development issues, where I specialized in strategies to stabilize hardest hit communities and reform of our housing finance system. During my last year at Treasury, under the leadership of Secretary Steven Mnuchin, I worked exclusively on modernization of the Community Reinvestment Act, participating in over 80 meetings with a wide range of stakeholders from the nation's largest banks to fair housing advocates from New York to California. Today, the National Housing Conference has convened leaders on affordable homeownership from across the country to address the unique and vexing issue of the Black homeownership gap, and to work with our members and stakeholders, including many of my colleagues here at this hearing, to develop actionable strategies to reverse the current trend and significantly improve and ultimately close the homeownership gap for all minority groups.

The homeownership rate for African-Americans in the first quarter of 2019 is 41.1 percent – the lowest in recent history, and notably lower than in 1968 when housing discrimination was still legal.[1] This is a national tragedy that all of us must address. It didn't happen by accident. As you can see in the chart below, when we level set homeownership rates in 1994, we see a distinct

[1] "Housing Vacancies and Homeownership (CPS/HVS)," U.S. Census Bureau https://www.census.gov/housing/hvs/data/histtab16.xlsx

difference in the experience of Black homeowners from other racial and ethnic groups. While Whites, Blacks and non-white Hispanics all rise in homeownership from 1994 to 2000, the Black homeownership rate plateaus early, remains relatively flat before plunging down a steeper slope than any other group. Most disturbing is that this collapse in Black homeownership never recovers. Why?



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The narrative that many of us had come to believe is that unqualified first-time homebuyers bought their first home with bad mortgages that they could not afford. While this certainly happened to many families, the fact is that most new African-American homeowners since 1994 achieved homeownership during the period before toxic mortgage products became most prevalent. The vast majority of them had good mortgages that were purchased by Fannie Mae or Freddie Mac, or insured by FHA. Unregulated mortgage brokers, many of whom lived in communities where they pushed these toxic mortgage products, routinely refinanced their customers into new loans before they reset, taking more equity out of the home with each turn.[3] This incorrect narrative of the unqualified homebuyer conveniently placed significant blame on the consumers of all races and ethnicities.

The truth is that many more homeowners were victims of predatory cash-out refinances and millions of others who paid their mortgages for years, whether conventional, government or subprime, became collateral damage of the historic collapse of housing values during the Great Recession. When housing prices collapsed, and credit dried up, many of these families lost their homes. As one member of our Black Homeownership Working Group told me, "we did a good

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[2] U.S. Census, National Housing Conference tabulations

[3] "The Role of Mortgage Brokers in the Subprime Crisis," by Antje Berndt, Burton Hollifield and Patrik Sandås. NBER, July 2010 http://www.nber.org/papers/w16175

job of teaching how to use homeownership to build wealth, but we never taught wealth management." It's an important point. Multi-generational homeowners had parents and grandparents, aunts and uncles, to advise them on getting a home and on refinancing. But first generation, first-time homebuyers often had no one when the predatory lender came calling.

One important factor in the devastating consequences of the financial crisis for Black homeowners was the role of cash-out refinancing, which reduced equity in the original prime loan and was then replaced with an unsustainable subprime loan. This was not the case in Texas, however, where cash-out refinancing was strictly limited by law. A study conducted by the Federal Reserve Bank of Dallas found that "at the peak of the housing crisis, the share of subprime mortgages underwater in Texas was 40 percentage points below the rest of the nation, with serious delinquencies among subprime borrowers about ten percentage points lower."[4]

The root causes of the Black and minority homeownership gap are multifaceted, as are the solutions. While there is no silver bullet, NHC's Black Homeownership Working Group has compiled various contributing factors to the gap and possible ways to address them. Below are discussions about some of the integral factors we are looking to address. It is likely that many African Americans who lost their homes were first refinanced into toxic mortgage products they could not maintain. The worsening recession leveraged these trends, and concentrations of foreclosures in poor, historically African-American neighborhoods drove up vacancy and blight, which further fed the cycle.[5] Additional research on this is both necessary and ongoing. Our challenge today is how we reverse this trend, for all Americans, but particularly for those disproportionally impacted, and in the case of African-Americans, for those who continue to see homeownership rates fall.

Our Working Group has begun to identify and explore a wide range of strategies to address this crisis in Black homeownership, including changes in mortgage underwriting, reducing the costs of originating and servicing lower dollar loans, improving FHA and conventional rehab loans, increasing production of affordable housing, changes in how we conduct homeownership counseling – both before and after purchase, modernizing our approach to marketing to underserved communities, and advancing housing finance reform so FHA, Fannie Mae and Freddie Mac can better serve communities of color, effectively leveraging private capital while protecting the taxpayer from future bailouts and protecting consumers from having their American Dream become a nightmare.

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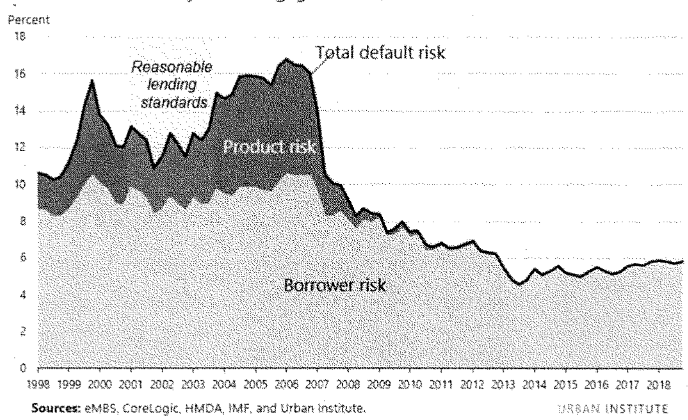
[4] "Do Restrictions on Home Equity Extraction Contribute to Lower Mortgage Defaults? Evidence from a Policy Discontinuity at the Texas Border," by Anil Kumar. Federal Reserve Bank of Dallas Research Department, January 2017
https://www.dallasfed.org/careers/Student%20and%20Graduates/~/media/documents/research/papers/2014/wp1410.pdf

[5] "Foreclosures by Race and Ethnicity: The Demographics of a Crisis," by Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst. Center for Responsible Lending, June 18, 2010
https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf

I. Risk reduction and access to credit

Since the financial crisis, many lenders have taken steps to reduce their exposure to default risk. But we must ensure that the tighter lending standards that are in use now don't lock qualified Black would-be homeowners out of the market. The Urban Institute Housing Finance Policy Center's most recent Housing Credit Availability Index shows that mortgage credit availability is dramatically lower today than it was before the crisis, translating to much higher difficulty for would-be homebuyers to get a mortgage.[6] Although we clearly don't want to return to the loose standards during the run up to the crash, there remains much room for the credit box to be safely expanded, opening up access to mortgages for more borrowers of color. We have successfully mitigated undue product risk, but the pendulum has swung too far when it comes to borrower risk.

Default Risk Taken by the Mortgage Market, 1998Q1–2018Q4



Sources: eMBS, CoreLogic, HMDA, IMF, and Urban Institute.

One factor that restricts access to credit for borrowers of color is a lower supply of FHA loans due to fears about liability under the False Claims Act, a civil-war era defense contracting law never intended for use in the financial markets. The FHA share of loans originated by Wells Fargo, Bank of America, and JPMorgan Chase plummeted between 2010 and 2016, from 43 percent to just 5 percent.[7] This is in part due to the overly punitive use of the False Claims Act

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[6] "Housing Credit Availability Index," Urban Institute Housing Finance Policy Center, April 19, 2019 https://www.urban.org/policy-centers/housing-finance-policy-center/projects/housing-credit-availability-index

[7] "The Decline in Lending to Lower-Income Borrowers by the Biggest Banks," by Neil Bhutta, Steven Laufer, and Daniel R. Ringo. Board of Governors of the Federal Reserve System, September 28, 2017 https://www.federalreserve.gov/econres/notes/feds-notes/the-decline-in-lending-to-lower-income-borrowers-by-the-biggest-banks-20170928.htm

against abuse among FHA lenders.[8] The FHA must be given the resources it needs to implement a new taxonomy that assigns proportional punishments for bad actors.[9] We are encouraged to see that HUD Secretary Ben Carson[10] and FHA Commissioner Brian Montgomery[11] are taking the issue of False Claims Act overreach seriously. However, we must also be mindful of the fact that lenders are making a 30-year commitment and need to know that the rules won't change on current loans with a change in leadership. Otherwise, they will understandably underwrite for political and regulatory risk, rather than borrower risk. There are many effective ways for regulators to go after bad lenders without resorting to a law designed to punish defense contractors who sold lame mules and shoddy fabric to the Union Army.

Another important issue when it comes to access to credit is that the model for loan servicing that many lenders use is built around a flawed servicing model that pays too much for performing loans, and not enough or failed ones. Servicing costs for non-performing loans have skyrocketed in recent years.[12] As a result, lenders are increasingly hesitant to make loans with even a minimal chance of defaulting out of a fear of these costs, therefore applying credit overlays as a way to reduce lender risk.[13] We must work with lenders to establish a compensation model that allows them to make loans to more borrowers without worrying about high servicing costs that can wipe out the profits of dozens of performing loans. Finding the right balance is as difficult as it is essential to getting our most experienced, well-regulated and well-capitalized lenders back in the game.

Loan-level price adjustments (LLPA) are another factor contributing to the difficulty of underserved applicants becoming homeowners. LLPAs are risk-based fees assessed through traits such as loan-to-value and credit score and are often paid in the form of higher mortgage rates. LLPAs were introduced in 2008 and helped Fannie and Freddie during the financial crisis when mortgage insurers were badly undercapitalized. Today, however, they act as a proverbial

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[8] "FHA commissioner: We're easing False Claims Act use to bring big banks back to FHA lending FHA wants the big banks to come back," by Ben Lane. Housing Wire, July 10, 2018 https://www.housingwire.com/articles/46029-fha-commissioner-were-easing-false-claims-act-use-to-bring-big-banks-back-to-fha-lending

[9] "Lessons from the financial crisis: The central importance of a sustainable, affordable and inclusive housing market," by Michael Calhoun. Brooking Institution, September 5, 2018 https://www.brookings.edu/research/lessons-from-the-financial-crisis-the-central-importance-of-a-sustainable-affordable-and-inclusive-housing-market/

[10] "Carson: Government considering ending use of False Claims Act against FHA lenders," by Ben Lane. Housing Wire, October 12, 2017 https://www.housingwire.com/articles/41551-carson-government-considering-ending-use-of-false-claims-act-against-fha-lenders

[11] "FHA commissioner: We're easing False Claims Act use to bring big banks back to FHA lending," by Ben Lane. Housing Wire, July 10, 2018 https://www.housingwire.com/articles/46029-fha-commissioner-were-easing-false-claims-act-use-to-bring-big-banks-back-to-fha-lending

[12] "MBA Chart of the Week: Servicing Costs Per Loan (Single-Family)--Performing v. Non-Performing, By Marina Walsh. Mortgage Bankers Association, July 25, 2017 https://www.mba.org/servicing-newslink/2017/july/servicing-newslink-tuesday-7-25-17/news-and-trends/mba-chart-of-the-week-servicing-costs-per-loan-(single-family)-performing-v-non-performing

[13] "Servicing Costs and the Rise of the Squeaky-Clean Loan," by Laurie Goodman. Urban Institute, February 2016 https://www.urban.org/sites/default/files/publication/77626/2000607-Servicing-Costs-and-the-Rise-of-the-Squeaky-Clean-Loan.pdf

belt and suspenders approach. When combined with other credit overlays, it is no wonder that so many borrowers who would have qualified for a responsible loan in 2001 are unable to get one today.

II. Affordable housing supply

We face a crisis of affordable housing in America, and it is important that any efforts to address the racial homeownership gap not only address access to credit for borrowers of color but also access to affordable homes. A large part of the affordability crisis we face comes down to supply and demand: we are simply not building enough homes. In 2015, the overall gap between new housing units and new households was 430,000.[14] According to one estimate, by 2030 we will need a total of over 18 million new housing units to meet America's housing needs.[15] That translates to about 1.3 million new units per year, a total we have not hit since 2007.[16] Building new affordable housing units requires government subsidies.

As Steven Lawson of the National Association of Home Builders testified before the full House Financial Services Committee, "It is financially infeasible to construct new affordable rental units without a subsidy."[17] Financial Services Committee Chairwoman Maxine Waters' Housing is Infrastructure Act of 2019 is a good first step. The bill would invest $92 billion in federal housing programs, including $70 billion for the Public Housing Capital Fund, $5 billion for disaster aid, and $5 billion for the Housing Trust Fund.[18] It would also allocate $10 billion for a Community Development Block Grant program set-aside to incentivize states and cities to get rid of regulations that drive up the cost of housing construction. This would address another critical issue when it comes to affordable housing: local regulations that drive up the cost of construction.[19]

III. Housing finance reform

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[14] "Housing supply falls short of demand by 430,000 units," Laurie Goodman and Rolf Pendall. Urban Institute, June 20, 2016 https://www.urban.org/urban-wire/housing-supply-falls-short-demand-430000-units

[15] "U.S. Apartment Demand – A Forward Look," National Multifamily Housing Council & National Apartment Association, May 2017 https://www.naahq.org/sites/default/files/naa-documents/government-affairs/naa-nmhc-us-apartment-demand-a-forward-look-may-2017.pdf

[16] "New Privately Owned Housing Units Completed," U.S. Census Bureau https://www.census.gov/construction/nrc/pdf/compann.pdf

[17] "Housing in America: Assessing the Infrastructure Needs of America's Housing Stock," House Financial Services Committee, April 30, 2019 https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403645

[18] "Housing is Infrastructure Act of 2019," House Financial Services Committee https://financialservices.house.gov/uploadedfiles/bills-116pih-housinginfrastructure.pdf

[19] "Regulation: Over 30 percent of the cost of a multifamily development" by Paul Emrath and Caitlin Walter. Housing Economics, June 12, 2018 https://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=262391&channelID=311&_ga=2.117886025.1324576529.1556919678-231691428.1556919678

The issue of housing finance reform, which was recently jumpstarted by the White House memo directing the Treasury and HUD to come up with a housing finance reform plan, is also a significant component of the minority homeownership gap. We must dispel the myth that Freddie Mac and Fannie Mae caused the financial crisis through their efforts to help underserved and minority homebuyers. In fact, the largest increase in African-American homeownership occurred between 1994 and 2001, when lenders across the country, encouraged by Fannie and Freddie, sought out African-American first-time homebuyers in record numbers. In the run-up to the crisis, the vast majority of subprime loans were originated by private lenders, not the GSEs.[20] Although the GSEs did not cause the foreclosure crisis which devastated so many Black homeowners, they certainly failed to prevent it and they should definitely be a significant part of the solution.

NHC believes that reform of America's mortgage finance system must include a limited, explicit and appropriately compensated government guarantee that encourages private capital participation to ensure reliable access to long-term fixed-rate mortgages and financing for multifamily housing nationwide, including a broad commitment to access and affordability through measurable and enforceable standards, a Duty to Serve requirement in the secondary mortgage market, and appropriate funding for the National Housing Trust Fund and the Capital Magnet Fund. Any housing finance reform proposal, whether administrative, legislative, or a combination of the two, must ensure access to affordable and sustainable mortgage credit to broadly serve homeownership-ready borrowers through a variety of public and private channels, including addressing the homeownership gap for communities of color and the impact of student loan debt on homeownership.

We must also sustain, strengthen and modernize FHA's capacity and flexibility to meet the nation's housing financing needs while protecting the taxpayer's investment. We cannot tolerate a segregated housing finance system that is separate and unequal. While it is important to look at housing finance reform holistically, including the roles of FHA, the U.S. Department of Veterans Affairs and the U.S. Department of Agriculture Rural Development. We must ensure that no one agency is tasked with the entirety of the federal government's affordability goals, and that they all continue to provide the vital services that they do to help low- and middle-income people achieve homeownership.

IV. Small-dollar loans

Expanding access to small-dollar loans is another area that has a disproportionate impact on Black homeownership, but also hurts all low- and moderate-income Americans in many urban areas as well as throughout rural America. Mortgage availability is limited for low-cost homes

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[20] "Fannie and Freddie don't deserve blame for bubble" by Mark Zandi. The Washington Post, January 24, 2012 https://www.washingtonpost.com/realestate/fannie-and-freddie-dont-deserve-blame-for-bubble/2012/01/23/gIQAn3LZMQ_story.html?noredirect=on&utm_term=.03c5008842c0

due to incorrect assumption that small-dollar loans are riskier[21] as well as the fact that origination and marketing costs are fixed while compensation models for real estate professionals and loan officers are based on sales price and loan size, respectively. This limited access to home mortgages exclude aspiring low- and moderate-income homebuyers who can neither afford a mortgage for a higher-cost home nor afford to purchase a low-cost home without a mortgage at all. The serious and persistent racial wealth gap in this country[22] means that the lack of access to small-dollar mortgages and possible subsequent access to low-cost homes disproportionately impacts minority communities, keeping prospects of homeownership further out of reach.

V. Rehabilitation financing products

Another important means we can use to address the racial homeownership gap is streamlining and expanding access to rehabilitation financing products. There are various loan products available through which existing homes can be renovated. The Federal Housing Administration offers 203(k) Rehab Mortgage Insurance, which provides homebuyers and homeowners financing for the purchase or rehabilitation of a home, with the total property value still falling within the FHA mortgage limit. This may be a vital tool as many lower-cost homes are not in the condition needed to get approval for GSE- or FHA-backed loans. Prospective homebuyers interested in these homes are then forced to compete against cash investors. Lenders should look for ways to better provide the 203(k) loan product. Freddie Mac also offers a Renovation Mortgage and Fannie Mae has a HomeStyle Renovation mortgage. These products need to be reviewed for ease of use, consumer protection and then effectively marketed to communities that need them the most.

VI. CRA modernization

Finally, a critical component of closing the minority homeownership gap is successful modernization of the Community Reinvestment Act (CRA), which is currently underway. CRA is one of the most important tools that banks, communities and regulators have to increase lending and investment in underserved communities. But it has never achieved its full potential. We have an historic opportunity to invest in the people and places who need it most by making bank performance and government enforcement more transparent, predictable and ultimately more impactful.

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[21] "Small-Dollar Mortgages for Single-Family Residential Properties" by Alanna McCargo, Bing Bai, Taz George and Sarah Strochak. Urban Institute, April 2018 https://www.urban.org/research/publication/small-dollar-mortgages-single-family-residential-properties/view/full_report

[22] "What Is Behind the Persistence of the Racial Wealth Gap?" by Dionissi Aliprantis and Daniel Carroll. Federal Reserve Bank of Cleveland, February 28, 2019 https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx

The three primary regulators of the CRA met in Washington last month to formally begin a process of preparing a Notice of Proposed Rulemaking (NPR). NHC's first principles on CRA modernization are simple. We believe that any new CRA regulatory regimen must:

1. Increase investment in communities that are currently underserved;
2. Benefit more low- and moderate-income (LMI) people, particularly people of color, who live in those communities;
3. Ensure that CRA lending and investment does not lead to displacement of the very people it is meant to help; and
4. Make both bank performance and government enforcement more transparent and predictable.

CRA was originally passed because passage of the Fair Housing Act nearly ten years earlier had failed to reverse the pernicious practice of redlining, which segregated neighborhoods by their racial composition. Maps were literally colored blue to represent 100 percent white residency and red to indicate "hazardous" levels of risk due to the presence of black residents. To avoid being labeled a "declining" neighborhood, one neighborhood in Detroit, just three miles from where I grew up, built an actual wall to separate black and white residents.[23] It's easy for some to dismiss these stories as ancient history, but just this year HUD filed charges against Facebook alleging that the internet advertising platform "unlawfully discriminates based on race, color, national origin, religion, familial status, sex, and disability by restricting who can view housing-related ads on Facebook's platforms and across the internet."[24]

HUD has charged that Facebook uses its enormous database of user data to control who sees housing-related ads in their Facebook "feed." Facebook offered advertisers the ability to choose or exclude attributes like "foreigners," "Puerto Rico Islanders," or people interested in "accessibility," "Hijab Fashion," or "Hispanic Culture."[25] That's not all. Facebook also offers advertisers the ability to target customers using a tool called "Lookalike Audiences."[26] Even more shocking, Facebook refused to support advertising to diverse audiences. "Even if an advertiser tries to target an audience that broadly spans protected class groups, [Facebook's] ad delivery system will not show the ad to a diverse audience if the system considers users with particular characteristics most likely to engage with the ad," according to HUD.[27] Advertisers were invited to exclude areas by drawing a red line around them with their mouse. While times have changed, so has redlining. We have a lot of work to do.

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[23] "In Detroit, A Colorful Mural Stands as a Reminder of the City's 'Segregation Wall'", by Elizabeth Baker and Matthew Schwartz, All Things Considered, National Public Radio. July 27, 2017. https://www.npr.org/2017/07/22/538760677/in-detroit-a-colorful-mural-stands-as-a-reminder-of-the-citys-segregation-wall

[24] "Hud Charges Facebook With Housing Discrimination Over Company's Targeted Advertising Practices," Department of Housing and Urban Development, March 28, 2019 https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_035

[25] "Charge of Discrimination," Department of Housing and Urban Development, March 27, 2019 https://www.hud.gov/sites/dfiles/Main/documents/HUD_v_Facebook.pdf

[26] Ibid.

[27] Ibid.

The National Housing Conference has been defending the American Home since 1931. We have advocated for every major piece of housing legislation over the past 88 years, including the inclusion of public housing development in the New Deal's infrastructure program, the Public Works Administration through the National Industrial Recovery Act of 1933, and the National Housing Acts of 1937, 1949 and 1968. Today, NHC is convening our members to draft a National Housing Act for the 21st century that seeks to modernize our housing policy infrastructure for the future. We look forward to working with Members of Congress on both sides of the aisle to develop a truly bipartisan approach to our growing affordable housing crisis.

Thank you for convening this hearing on such a vital issue, and for the opportunity to submit testimony. The minority homeownership gap is a complex problem but demands our attention as we look towards creating a more equitable future. NHC stands ready to work with you to advance policies toward closing the racial homeownership gap.

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Multifamily Cost of Regulation

2018 Special Study

Dr. Paul Emrath, National Association of Home Builders
Caitlin Walter, National Multifamily Housing Council

National Association of Home Builders

Regulation: Over 30 Percent of the Cost of a Multifamily Development

June 12, 2018

Paul Emrath, National Association of Home Builders
Caitlin Walter, National Multifamily Housing Council

Many Industry experts have become concerned about affordability of rental housing in America, and how difficult it has become to address the problem through new construction. According to the report on America's Rental Housing 2017 published by the Joint Center for Housing Studies at Harvard University, "The lack of new, more affordable rentals is in part a consequence of sharply rising construction costs, including labor and materials." The Harvard report goes on to say, "Tight land use regulations also add to costs by limiting the land zoned for higher-density housing and entailing lengthy approval processes."

Recently, the National Association of Home Builders (NAHB) and the National Multifamily Housing Council (NMHC) undertook a joint research effort to find out how much government regulation adds to the cost of building new multifamily housing. Results show that well over 90 percent of multifamily developers typically incur hard costs of paying fees to local jurisdictions, both when applying for zoning approval, and again when local jurisdictions authorize the construction of buildings.

However, government regulation can impose costs in other ways as well. Over 90 percent of multifamily developers also incur costs of delays caused by sometimes lengthy approval processes, development standards that go beyond what would ordinarily be done, changes to building codes over the past decade, and OSHA requirements. Other regulations, such as requiring developers to dedicate land to the government, are somewhat less common, but can be quite costly when they are encountered. The bottom line is that regulation imposed by all levels of government (whether local, state or federal) accounts for 32.1 percent of the cost of an average multifamily development.

A substantial amount of regulation is well intentioned and some of it undoubtedly serves a worthwhile purpose. Few would argue, for example, that basic safety standards for structures and workers are unnecessary. But regulation that exceeds 30 percent of a project's development costs raises questions about how thoroughly governments are considering the consequences of their actions. Are they aware of how much regulation currently exists? Do they realize how multiple regulations with conflicting standards can cause delays and increase costs? And do they understand the extent to which these increased costs translate into higher rents and make it difficult to build new housing that families with modest incomes can afford?

Survey Design

While the assertion that regulations increase the cost of multifamily development is commonly heard, the extent to which this happens is not easy to measure, and currently does not exist on a national scale. The only way to gather data that is at all comprehensive is from multifamily developers, as they are the only ones who experience a wide range of the various forms regulation can take. NAHB and NMHC set out to accomplish this through a survey of both memberships. The purpose of the survey was to quantify how much regulation exists and how much it is adding to the cost of developing new multifamily properties.

Multifamily developers do not, in general, have accounting systems designed to tease out these regulatory costs. So NAHB and NMHC crafted questions that most developers would be able to answer. The questions asked developers about the typical projects they build. The questions covered various delays and costs incurred at different stages of the development process. Developers were asked to provide all hard costs as a percent of total development cost for their typical projects (see Appendix 2).

The survey was conducted in the fourth quarter of 2017. A total of 40 usable responses were received from multifamily developers, evenly split between NAHB and NMHC members (with no duplication). The developers who responded reported building multifamily projects in all regions of the country, and the typical projects they build vary widely: from fewer than 5 apartments to more than 400, and from under $2 million in total development costs to more than $100 million.

NMHC and NAHB combined the results with information from other survey collections and public data sources, such as typical terms on construction loans and the average time it takes to complete different phases of a project, to estimate the final costs (see Appendix 1).

Types of Regulation

Regulatory costs fall into several categories—fees, development standards, building codes, land dedicated to public purposes, etc. The range of these regulations can be broad, and the cost of complying with them substantial. Figure 1 shows the incidence of different types of regulations imposed on multifamily developers, as well as the average cost of complying with those regulations when they do exist.

Figure 1: Incidence and Typical Magnitude of Regulatory Costs

Type of Cost	Share of Developers' Projects Subject to the Cost	Average Cost When Present (as a Share of Total Development Costs)
Cost of applying for zoning approval	98%	4.1%
Interest costs on refundable fees charged when site work begins	50%	0.5%
Other (non-refundable) fees charged when site work begins	93%	4.5%
Development requirements that go beyond the ordinary	95%	6.3%
Land dedicated to the government or otherwise left unbuilt	50%	4.3%
Fees charged when building construction is authorized	93%	4.2%
Cost of complying with affordability mandates (e.g., inclusionary zoning)	30%	5.7%
Cost increases from changes to building codes over the past 10 years	98%	7.2%
Cost of complying with OSHA requirements	90%	2.6%
Pure cost of delay (i.e., even if regulation imposed no other type of cost)	98%	0.7%

The first significant interaction between a multifamily developer and the government usually occurs when the developer applies for zoning approval to allow multifamily housing to be built on a particular parcel of land. The U.S. Constitution gives states the authority to regulate land use; and, although states sometimes try to influence land use patterns in various ways, they most often leave this up to local governments. Local governments, in turn, pass zoning ordinances that divide their territories into districts and specify how land in each district can be used (single-family versus commercial versus multifamily, for example). It's not impossible for a developer to acquire land that allows multifamily structures to be built on it without going through a rezoning process or obtaining some type of exemption to an existing ordinance, but this is the exception rather than the rule.

The typical projects of almost all the respondents (98 percent) were subject to costs at the zoning approval stage. When they exist, these costs average 4.1 percent of the total development costs. Regulatory costs incurred at this stage can include fees paid directly to a government, but may also include other types of costs. For example, the developers may have to pay for environmental impact, archeological or other types of studies.

Although local governments have the authority to approve development, existing environmental laws also give a role to the federal government. A developer may need to obtain a wetlands, stormwater and/or endangered species-critical habitat permit, each of which is overseen by a different federal government agency. Many states manage the wetlands permits under federal guidance, and states and local jurisdictions may have their own sets of requirements. Indeed, it can be difficult to identify which level of government is ultimately responsible for some regulation, and trying to reconcile conflicting requirements is one factor that can drive up the cost of compliance.

It is also common for governments to impose fees on a multifamily development when site work begins. Many communities charge impact, utility hook-up and other fees at this point. Impact fees are fees that are charged only on a new development and are supposed to be used only for capital improvements. State legislation establishes the types of impact fees local governments can charge. Examples are impact fees for the construction of new schools, roads, water facilities, sewer facilities, stormwater management, parks, fire, police, libraries, solid waste management, and general government. Some states allow all of these, while a select few of states do not allow them, such as Virginia. There are consultants who travel the country and specialize in calculating the maximum impact fees local governments can legally charge. Moreover, as a recently published University of California, Berkeley paper documented, cities often charge additional fees, negotiated on a case-by-case basis at different points in the development process, to allow a project to be built.

According to the 2012 Census of Governments, there are roughly 90,000 local governments in the U.S., and a particular development may be subject to fees from more than one of them—for example, from a municipality, a water district, and a school district with overlapping jurisdictions. The overwhelming majority (93 percent) of the typical projects of multifamily developers in the NAHB-NMHC survey pay fees at this stage of the process. When they exist, these fees average 4.5 percent of total development costs.

Some local governments charge developers guarantee or other fees that are refundable when the project is completed. Although these fees are also usually imposed when site work begins, the survey treats them separately, due to the different cost implications. If the fee is eventually refunded, the developer ultimately pays only the interest that accrues on the development and construction loans until that happens. Half of respondents' typical projects were subject to these fees; which, when present, averaged half a percent of the total development cost.

Many local governments require new development to conform to community design standards. This may include standards for streets and sidewalks, parking, height of buildings, landscaping and the architectural design of individual buildings. These standards impose little extra cost if they don't significantly exceed the developer's ordinary practices. In the absence of regulation, for example, developers will still ordinarily provide spaces for walking and parking, landscaping, and employ architects who attempt to design buildings that are attractive to potential tenants. The NAHB-NMHC survey asked multifamily developers specifically about the cost of standards that go beyond what they would otherwise do.

Almost all (95 percent) of the typical projects of the developers surveyed were subject to design standards that that go beyond what the developer would otherwise do. When these beyond-ordinary requirements were present, they accounted for an average of 6.3 percent of the overall development cost. Energy efficiency is a worthwhile objective, but NMHC and NAHB have argued that the up-front cost needs to be kept within reasonable bounds. NMHC and NMHC have supported some recent changes to the IECC but opposed others as not cost-effective. Not surprisingly, manufacturers of building products advocate for code changes that mandate more use of their products, and tend to be less concerned than NMHC and NAHB about costs. Past analysis by NMHC on previous code cycles (which remain in effect in many states) has shown that changes to the IECC have the potential to drive up construction costs by over $3,000 per apartment (depending on type of building and climate zone) and argued that subsequent savings on utility bills come nowhere near justifying the cost.

Half of the typical projects required developers to dedicate land to the government or otherwise leave it unbuilt. This requirement can take many forms, such as creating a park on the property or reserving part of the property for the government to use in some way. In these cases the developer must pay for the land but is not allowed to derive revenue from it, driving up the cost per unit for the housing that can be built. For those projects subject to this regulation, it represented an average of 4.3 percent of total development cost.

Almost all of respondents (93 percent) paid some sort of fee when construction in their typical project was authorized. This could be limited to a building permit fee, but additional impact, hook-up or other fees may also be charged at this point. When they exist, the fees charged at this point average 4.2 percent of development costs, large enough to suggest that they often encompass more than the building permit fees.

Local jurisdictions are increasingly beginning to consider imposing affordability mandates to attempt to create new affordable housing. These mandates without any offsetting incentive like a tax exception typically create few units and effectively tax some housing units (and their occupants) to subsidize others. The easiest way to see this is in cases where developers pay a fee to avoid the requirement—that amount gets added to the overall amount the developer must pay, thus raising the rents required. But even if they don't pay a fee, the regulation may require them to lose money on some of the housing they build, which is effectively a tax, resulting in higher rents on non-subsidized apartments. Almost one-third (30 percent) of developers who responded indicated that their typical projects incurred costs related to complying with such mandates. These costs, when they exist, averaged 5.7 percent of total development costs, enough to result in substantially higher rents.

The NAHB-NMHC survey also asked developers about the cost implications of changes to building codes over the past ten years. Most jurisdictions have been enforcing building codes for decades, and the codes have been updated and refined many times over that span. Most have adopted a version of national model codes, which have been in widespread use since the 1950s. These are updated every three years, and the number of refinements considered and voted upon during each three year cycle runs into the thousands.

Virtually no one would argue against public standards for basic soundness and safety of residential structures, but over the decades codes have expanded well beyond this and are increasingly being used as a vehicle to advance various policy objectives. A leading example is energy efficiency. There is now a model International Energy Conservation Code® (IECC).

Energy efficiency is a worthwhile objective, but NMHC and NAHB have argued that the up-front cost needs to be kept within reasonable bounds. NMHC and NMHC have supported some recent changes to the IECC but opposed others as not cost-effective. Not surprisingly, manufacturers of building products advocate for code changes that mandate more use of their products, and tend to be less concerned than NMHC and NAHB about costs.

This is another area where the federal government has become increasingly involved. The Environmental Protection Agency, the Federal Emergency Management Agency, and the Department of Energy (DOE), all actively participate in the development of national model codes, proposing changes to national model codes and testifying in favor of them during code hearings. DOE also has a share of its budget set aside for persuading state and local jurisdictions to adopt more stringent codes. Representatives from NAHB who witnessed all of the recent code hearings have criticized federal agencies for supporting certain code changes that removed flexibility and limited builders' options, driving up costs without improving energy efficiency, to the benefit of specific product manufacturers.

Nearly all (98 percent) of developers said changes in building codes over the past 10 years increased development costs in their typical projects, and these costs, when they exist, average 7.2 percent of total development costs.

Nine out of ten developers said complying with requirements of the Occupational Safety and Health Administration (OSHA) increased costs in their typical projects, and these costs, when present, average 2.3 percent of total development costs. Again, few would argue that safety standards for construction workers are unnecessary. In recent years, however, OSHA has issued a substantial number of regulations imposing costly compliance requirements all without providing any evidence that they would actually improve safety in the residential construction industry. In the Beryllium rule, for example, the evidence of a health risk came from workers in manufacturing industries or performing abrasive blasting activities. In the Volks rule, OSHA was criticized as doing little beyond driving up record keeping costs for businesses (and possibly violating the statute of limitations in the process).

Even when regulation imposes no direct costs, it can have a financial impact if it delays the development and construction process. If it takes longer to begin leasing and earning income on a property, it will take longer to pay off any development and construction loans and more interest will accrue.

Some regulatory delay is inevitable, as it will naturally take some time for local building departments to review and approve plans and respond to requests for inspections. Precisely how long it is reasonable for a developer to wait for approvals and inspections is open to debate, but there are examples that clearly seem excessive. One academic study, for example, found that it took an average of 788 days to prepare a submission and receive approval for an individual federal wetlands permit.

Virtually all the developers (98 percent) said complying with regulations caused some sort of delay for their typical projects. For these projects, NMHC and NAHB estimated that average additional interest was 0.7 percent of total development costs. This is a "pure" cost of delay that regulation would cause even if it imposed no other type of cost. It is calculated by subtracting every other type of regulatory cost, then estimating the additional interest accruing on the share of the remaining development cost that is typically financed.

Total Cost of Regulation

To estimate how much in total the government regulations described above add to multifamily development costs, it is necessary to take both the incidence and magnitude of the various types of regulation into account—in other words, to average in the "zeroes" when a particular regulation does not apply. Figure 2 shows that, when this is done, the listed categories taken together on average account for 32.1 percent of development costs for a multifamily project.

Among the listed categories, average cost is highest for changes to building codes over the past 10 years (7.0 percent of total development costs), followed by development standards imposed by government that go beyond what the developer would ordinarily do. It is interesting that government control over how a project is built can be more costly than actual fees charged, but unsurprising given that they can be time consuming and thus cost more.

Figure 2: Government Regulation as a Share of Multifamily Development Costs

Type of Cost	Lower Quartile	Average	Upper Quartile
Cost of applying for zoning approval	1.1%	4.0%	5.3%
Interest costs on refundable fees charged when site work begins	0.0%	0.2%	0.2%
Other (non-refundable) fees charged when site work begins	1.9%	4.2%	5.5%
Development requirements that go beyond the ordinary	1.1%	5.9%	8.4%
Land dedicated to the government or otherwise left unbuilt	0.0%	2.1%	3.3%
Fees charged when building construction is authorized	1.1%	3.9%	5.4%
Cost of complying with affordability mandates (e.g., inclusionary zoning)	0.0%	1.7%	2.6%
Cost increases from changes to building codes over the past 10 years	5.2%	7.0%	7.1%
Cost of complying with OSHA requirements	1.3%	2.3%	2.3%
Pure cost of delay (i.e., even if regulation imposed no other type of cost)	0.1%	0.7%	1.2%
TOTAL ESTIMATED REGULATION AS A SHARE OF DEVELOPMENT COSTS	21.7%	**32.1%**	42.6%

Affordability mandates, when they exist, are nearly as costly as relatively recent changes to building codes and beyond-ordinary development starts, but overall have a smaller average impact on costs because they are encountered less frequently. In contrast, regulatory delays are encountered very frequently, but have a comparatively small average impact on costs because they are limited to the extra interest that accrues on development and construction loans.

Refundable fees have the smallest impact of any of the types of regulatory costs listed, both because they apply only half of the time and because they are limited to the interest that accrues until they are refunded.

To illustrate the variability in regulatory costs, in addition to averages, Figure 2 shows the upper and lower quartiles (costs are below the lower quartile for 25 percent of respondents, and above the upper quartile for 25 percent). While on average regulation accounts for 32.1 percent of total multifamily development costs, the quartiles give a range of 21.7 to 42.6 percent.

Although the cost components sum to the bottom line total for the averages in Figure 2, the components of the upper and lower quartiles do not. The ten components in the "lower quartile" column in particular sum to considerably less than 21.7 percent. The implication is that multifamily developers can minimize some types of regulatory costs depending on where they operate—but not all of them proportionately at the same time.

Costs Not Captured

Although the NAHB-NMHC survey sought to be as comprehensive as possible, the above results do not capture everything. Some government actions impact development costs in a way a multifamily developer can't reasonably be expected to quantify. For example, federal immigration policy may affect the supply of construction labor, and tariffs can affect prices of building materials like lumber[1] and steel. Developers do not in general have a way of evaluating how much the prices they pay for labor and materials are influenced by these federal policies.

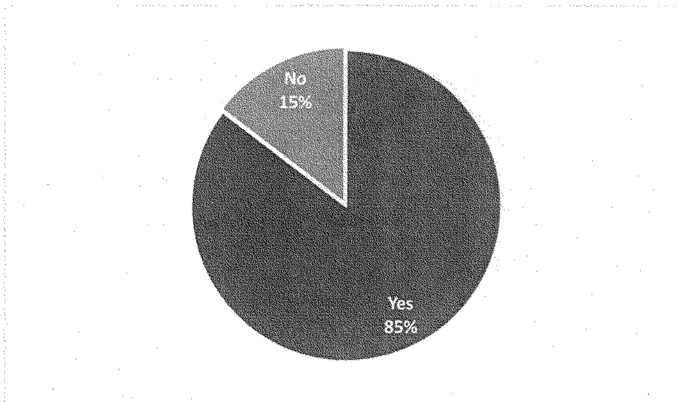
The survey asked developers about delays due to government regulation, but there can be multiple reasons for those delays not all unambiguously tied to a government action. One is neighborhood opposition to the development. At the local level, governments may encourage or facilitate local groups who oppose multifamily development. An obvious way to do this is by allowing local groups to sue any developer who proposes to build multifamily housing, but there are many more subtle ways to encourage opposition.

A developer may have to devote time and financial resources to deal with this opposition, by meeting with local groups before seeking zoning approval, for instance. To quiet the opposition, developers may find it necessary to make concessions to local groups, such as reducing size of the buildings so that land costs are allocated to fewer apartments and cost per apartment is increased. In an extreme case, local opposition may be able to cause a local government to reverse its decision to approve a project after the developer has already invested heavily in it. In many of these cases, there is an obvious cost to neighborhood opposition, but how much responsibility the local government bears for it may not always be clear. It is not uncommon for developers to hire consultants to debunk claims made by opposition to a project.

Figure 3 below shows that the overwhelming majority (85 percent) of the developers responding to the NAHB-NMHC survey have experienced added costs or delays due to such opposition.

[1] The effects of the current lumber tariffs are estimated in Impact of the Canadian Lumber Duties on the U.S. Economy in 2018.

Figure 3: Have you experienced added costs or delays due to neighborhood opposition to multifamily construction?

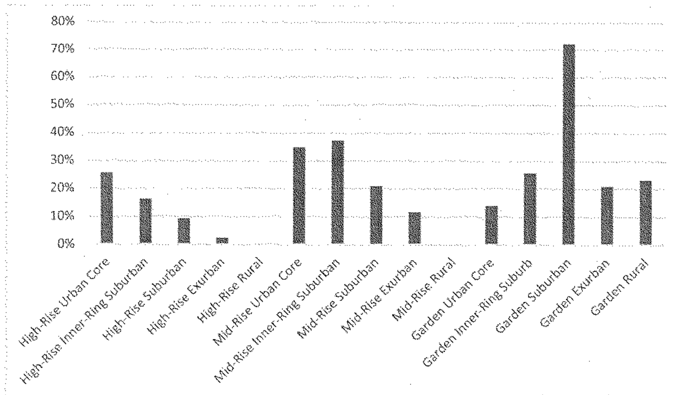


Profile of Respondents and Their Typical Projects

The range of costs highlights that not all development projects are the same. Costs can vary by jurisdiction, as well as by geographic location and type of project—garden apartments on undeveloped land can be much less complicated to build than a high-rise in an urban area, for example. Respondents were able to choose more than one option as to their typical project type.

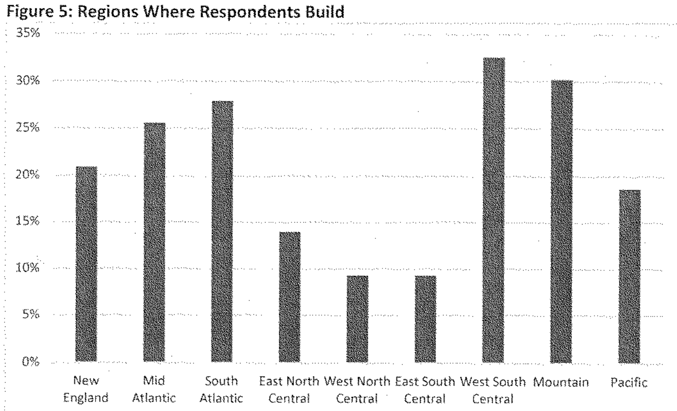
Respondents built a variety of product types that also varied by location (see Figure 4). The most common type of project was a garden development in the suburbs (72 percent). Mid-rise projects were the next common, with 35 percent building mid-rise developments in urban areas, and 37 percent building similar projects in inner-ring suburbs. About one-quarter (26 percent) of developers reported that they typically build high-rise apartments in urban settings.

Figure 4: Type and Location of Multifamily Projects



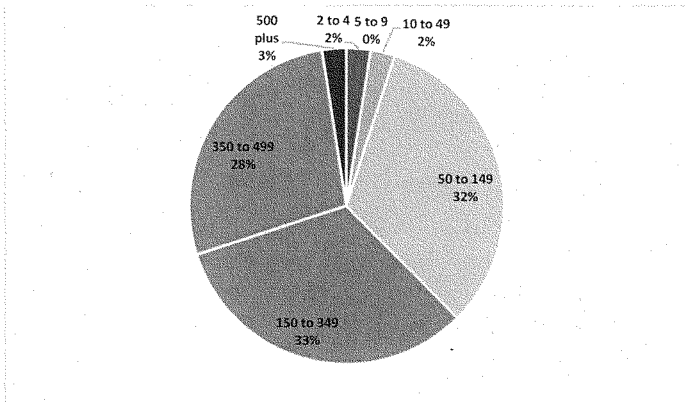
All regions of the United States were represented in the survey sample as well. The largest percentage of developers operated in the West South Central (33 percent) and Mountain (30 percent) regions (see Figure 5). The South Atlantic and Pacific regions featured the highest distribution of multifamily permits in the U.S. in 2017 and had the third and fifth largest distribution of respondents, respectively.

Figure 5: Regions Where Respondents Build



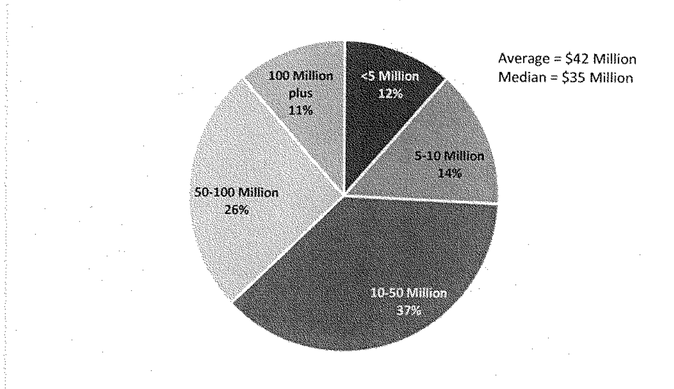
A fairly wide range of typical development size was represented by respondents as well (Figure 6). A small portion of respondents (4 percent) typically built projects fewer than 50 units or greater than 499 units (3 percent), while the remaining respondents were relatively evenly split between 50 to 149 units (32 percent), 150 to 349 units (33 percent), and 350 to 499 units (28 percent).

Figure 6: Typical Project Size (No. of Units)



In terms of financial costs, the cost was even more widely distributed (see Figure 7). The average cost of a typical development project for these developers was $42 million. Over one-third (37 percent) of respondents had a typical project size of $10-$50 million.

Figure 7: Typical Project Size ($Development Costs)



Summary and Conclusion

As the above discussion has demonstrated, multifamily development can be subject to a bewildering array of regulatory costs, including a broad range of fees, standards, and other requirements imposed at different stages of the development and construction process. In view of this, it may not be surprising that regulation imposed by all levels of government accounts for 32.1 percent of multifamily development costs on average, and one-fourth of the time reaches as high as 42.6 percent.

Although local governments generally have authority for approving development and adopting building codes, state and federal governments are becoming increasingly involved in the process. Sometimes the federal involvement is readily apparent, as when issuing stormwater permits or enforcing OSHA requirements. At other times, the federal involvement is less obvious. Examples include federal participation in model building codes, and attempts to influence local development through conditions for obtaining grants or other sources of funding. Indirect influences like these sometimes make it impossible to untangle which level of government is ultimately responsible for a given dollar of regulatory cost.

The current estimate that government regulation accounts for 32.1 percent of total development costs is almost certainly understated to some extent, as it was not possible to account for items like the effects of tariffs on building materials or the extent to which local jurisdictions may empower their citizens to oppose multifamily housing in their communities. Average costs could be even higher now or in the near future due to regulations taking effect since the multifamily projects in the survey were completed. For example, OSHA's Silica Rule went into effect in late 2017, a regulation that industry groups have criticized as unreasonably onerous and unnecessarily costly. Similarly, local jurisdictions are just beginning to adopt the 2018 versions of the model international building codes. Home Innovation Research Labs has recently estimated that the difference between the 2018 and 2015 versions of the codes can add thousands of dollars onto the cost of a multifamily building. As is typically the case, federal agencies supported several of the cost-increasing changes to the codes.

When the cost of multifamily development rises, it unavoidably translates to higher rents and reduced affordability of rental housing. Multifamily developers can not secure financing to build their projects unless they can demonstrate to lenders that the rents will be sufficient to cover costs and pay off the loans.

The purpose of this article is not to argue that all regulation is bad and should be eliminated, but to raise awareness of how much regulation currently exists, how much it costs, and to encourage governments to do a thorough job of considering the implications for housing affordability when proposing and implementing new directives.

Appendix 1:

Assumptions Used in the Calculations

In order to calculate a final effect on development costs, many of the NAHB-NMHC survey responses need to be combined with additional information. Primarily these are assumptions about the terms of development and construction loans, and how long construction typically takes, and how to allocate costs to different stages of the development and construction process. This appendix lists all the assumptions used in the calculations and gives the sources for each.

Loan terms

1.0 point charged for all land acquisition, development, and construction (AD&C) loans, based on results from a Quarterly Finance Survey (QFS) that NAHB was conducting in the early to mid-2000s.

A 7.65 percent interest rate on all AD&C loans. The QFS indicates that rates are typically set one point above prime, and 6.65 percent is NAHB's estimate of the prime rate that would prevail in the long run under neutral Federal Reserve policy.

The estimates also assume that three-fourths of any category of costs are financed, based on typical AD&C loan-to-value ratios in the QFS.

Construction Lags

The source for information lags not directly collected in the NAHB-NMHC questionnaire is the Survey of Construction, conducted by the Census Bureau and partially funded by the Department of Housing and Urban Development. Preliminary estimates are taken from the published annual tables, averaged over the 2001-2016 period:

If project is 2-4 units
- Authorization to start = 1.71 months
- Start to completion = 10.87 months

If project is 5-9 units
- Authorization to start = 1.95 months
- Start to completion = 11.64 months

If project is 10+ units
- Authorization to start = 1.94 months
- Start to completion = 13.21 months

The NAHB-NMHC survey collected data on how much time regulation adds to the development process. To assign this to a particular phase of the development the following assumptions are used.

The regulatory delay is split and attributed half to the lag between applying for zoning approval and the beginning of site work, and half to the period after site work begins. If half of the regulatory delay exceeds the lag between applying for approval and beginning of site work, the excess is also attributed to the period after site work begins. It is first assumed that the resulting regulatory delay is attributable to the period between the start of site work and the start of building construction, minus 3 months (the assumed minimum time it would take to do site work in the absence of regulation, based on conversations with developers). If any regulatory delay remains after being allocated to the zoning approval and site work periods, it is then attributed to the building construction period, and the start-to-completion lag is adjusted upward beyond the SOC-based average, accordingly.

The analysis assumes all loans are paid off when the buildings are completed.

Cost Breakdown

To implement the process described in the paragraph above and calculate a "pure" cost of delay (i.e., the effect regulatory delay would have even if the regulation imposed no other cost), estimates of costs incurred during different phases of the development process are needed.

The breakdown is based on the split between lot and construction costs in NAHB's Construction Cost Surveys (averaged over surveys conducted since 2000) and the Census Bureau's "noncostruction cost factor" for raw land. The calculations also assume three-fourths of these costs are financed, based on typical AD&C loan-to-value rations in the QFS.

Resulting assumptions:

- Only the cost of applying for zoning occurs at the very start of the development process. Financing costs associated with this are charged are to the regulatory cost of the application and not counted in the pure cost of delay.
- 10.2 percent of total development represent costs financed by a land acquisition loan at the start of the site work phase.
- 10.8 percent of total development costs represent costs financed by a development loan during the site work phase, assuming draws on the loan occur on average halfway through this phase.
- 54.0 percent of total development costs represent costs incurred after building construction has started and financed with a construction loan, again assuming draws on the loan occur on average halfway through the site work phase.

Appendix II.

NAHB-NMHC Multifamily Regulations Cost Survey Questionnaire

1. **What type of multifamily projects do you typically build in what areas?** ***Select all that apply***

	Urban Core	Inner-Ring Suburban	Suburban	Exurban	Rural
High-Rise	☐	☐	☐	☐	☐
Mid-Rise	☐	☐	☐	☐	☐
Garden/Low-Rise	☐	☐	☐	☐	☐

2. **What regions do you build in? Please select all that apply.**

- ☐ New England (CT, ME, MA, NH, RI, VT)
- ☐ Mid Atlantic (NJ, NY, PA)
- ☐ South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)
- ☐ East North Central (IN, IL, MI, OH, WI)
- ☐ West North Central (IA, KS, MN, MO, NE, ND, SD)
- ☐ East South Central (AL, KY, MS, TN)
- ☐ West South Central (AR, LA, OK, TX)
- ☐ Mountain (AZ, CO, ID, NM, MT, UT, NV, WY)
- ☐ Pacific (AK, CA, HI, OR, WA)

3. **Including units you may start before the end of the year, how many multifamily units will your company start in 2017?** ________________

When answering this survey, please refer all your answers to the typical (most common) multifamily project your company builds.

Respond only for your local office/division, if you are part of a larger company.

4. **How many units does your typical project have?**

- ☐ 2-4 units
- ☐ 5-9
- ☐ 10-49
- ☐ 50-149
- ☐ 150-349
- ☐ 350-499
- ☐ 500 units or more

5. **What is the total dollar amount spent on development costs in your typical project?**
$________________

Land Use & Planning Regulations

6. **For a typical piece of land, how much does it cost to apply for zoning approval as a % of total development cost?** *(Include costs of fiscal or traffic impact or other studies, and any review or other fees that must be paid by time of application. Please enter "0" if application costs are Zero percent).*

________________%

7. For a typical project , how many months does it take between the time you apply for zoning approval and the time you begin site work?

__________________months

8a. When you begin site work, do you pay any guarantee or other fees that are refundable when the project is completed?

☐ Yes ☐ No

8b. If "yes" in question 8A, how much are those refundable fees, as a % of total development costs?

__________________%

9. Other than the refundable fees mentioned in question 8a, how much does it cost to comply with regulations when site work begins, as a % of total development costs? *(Include costs of complying with environmental or other regulation as well as the cost of hook-up or impact or other fees.) Please enter "0" if cost of complying with these regulations is Zero percent).*

__________________%

10. How much do development requirements that go beyond what you would otherwise do (in terms of property layout, landscaping, materials used on building facades, etc.) add to your cost, as a % of total development costs? *(Please enter "0" if the jurisdiction's requirements don't go beyond what you would normally do).*

__________________%

11. In the typical case, what is the value of any land that must be dedicated to the local government or otherwise left unbuilt (for parks, open green space, etc.), as a % of total development cost? *(Please enter "0" if dedicating land is required infrequently).*

__________________%

12. How many months does it take between the time you begin site work and the time you obtain authorization to begin construction of the apartment building(s)?

__________________ months

13. How much extra time (in months) overall does complying with regulations add to the development process? *(Please enter "0" if regulations typically cause no delay).*

__________________months

14. When you obtain authorization to begin construction, how much do you pay in additional fees, as a % of total development costs? *In many cases, this will be only a permit fee, but include any additional impact or hook-up or inspection fees if they kick in at this time. (Please enter "0" if fees paid during or after construction are Zero percent).*

__________________%

15a. In the typical case, does a jurisdiction have inclusionary zoning/affordable housing requirements that apply to your project?

☐ Yes ☐ No

15b. In the typical case, how much do these requirements (or a fee in lieu of affordable housing) cost as a percent of total development costs? (*Please enter "0" if inclusionary zoning/affordable housing mandates/fees in lieu of affordable housing are encountered infrequently).*

________________%

Construction/Building Regulations

16. Over the past 10 years, how much have changes in construction codes and standards added to the cost of building a typical multifamily project, as a % of total development costs? *(Please enter "0" if code changes have had minimal impact on costs).*

________________%

17. How much does complying with OSHA or other labor regulations cost, as a % of total development cost? *(Please enter "0" if labor regulations have no impact on development costs).*

________________% ☐ Don't know/use of subs makes it impossible to estimate

18. Have you experienced added costs or delays due to neighborhood opposition to multifamily construction?

☐ Yes ☐ No

Statement of the National Consumer Law Center (on behalf of its low-income clients)
for
Hearing: A Review of the State of and Barriers to Minority Homeownership
before the
Subcommittee on Housing, Community Development and Insurance,
House Financial Services Committee

May 8, 2019

The National Consumer Law Center,[1] on behalf of its low-income clients, strongly supports congressional efforts to regulate predatory land contracts. In the aftermath of the housing crisis, in which communities of color were targeted by high-cost predatory lenders with destructive loans, land installment contracts have re-emerged. Marketed as an alternative path to homeownership in credit-starved communities, predatory land installment contracts have further harmed communities and destabilized neighborhoods in need of true investment.

In our 2016 report, *Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color*, we outline the racist history of land contracts and their relationship to historical redlining and the predatory lending that caused the recent financial crisis. The current predatory land installment contracts we see in the market are designed to fail. They involve the sale of uninhabitable homes to purchasers who have no chance of adequately repairing the homes, especially since the contracts often include extremely high interest rates that impose a significant financial burden. The purchasers are often in a legal limbo in which they do not own the home but have all the responsibilities of homeownership. In some states, they can be swiftly evicted, which relieves the seller of an obligation to compensate the buyer for investments in the home.

Land contracts can only be a fair method of transferring ownership when the equities between the parties are more balanced. Congress can achieve this balance by simply imposing three obligations on land installment contract transactions:

- Require sellers to ensure that the homes are habitable at the point of sale and throughout the contract.

[1] Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness. www.nclc.org

- Require sellers to record the land contract promptly after the contract is signed to ensure that sellers do not encumber or sell the property during the term of the land contract without appropriate recognition of the purchaser's rights to the property.
- Allow termination of land contracts by sellers only through a judicial process that protects the purchaser's investments.

We recognize that there is a significant demand for homeownership opportunities in communities of color and a dearth of reasonable credit options. Legitimate, honest sellers of homes are always free to enter into seller-financed mortgages, an age-old mechanism of financing home sales. Predatory land contracts do not achieve the goal of providing housing opportunities because they drain wealth and deny true homeownership opportunities for families looking to rebuild after the foreclosure crisis. Dismantling important consumer protections created in the aftermath of a crisis that disproportionately impacted communities of color is also not the right avenue. Rather, federal protections are necessary to protect homebuyers from those who use gaps in the law to deny the promise of homeownership.