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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

[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 color 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 on a foundation of discriminatory federal housing policies. Now the federal government must offer an equitable solution forward.

[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.*

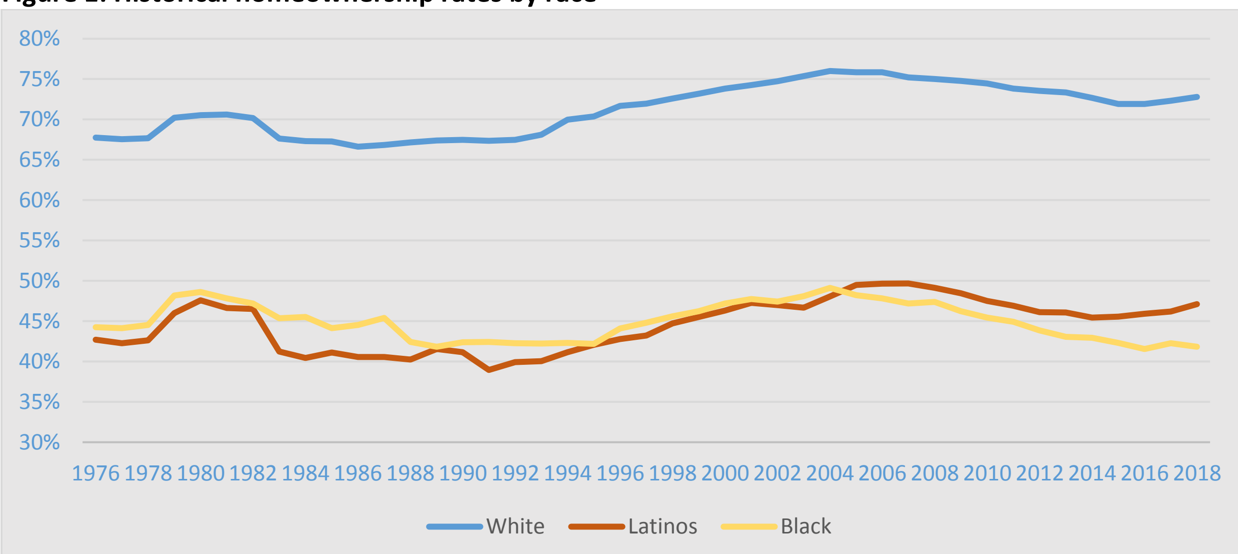
[6] Tanvi Misra, Why America's Racial Wealth Gap is Really a Homeownership Gap, Demos, March 12, 2015, available at http://www.demos.org/news/why-americas-racial-wealth-gap-really-homeownership-gap.

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 presents real safety and soundness concerns for the overall economy since people of color will account for most new household formation for years to come. 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 formerly enslaved Africans and granted them equal protection under law as citizens on the heels of 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.

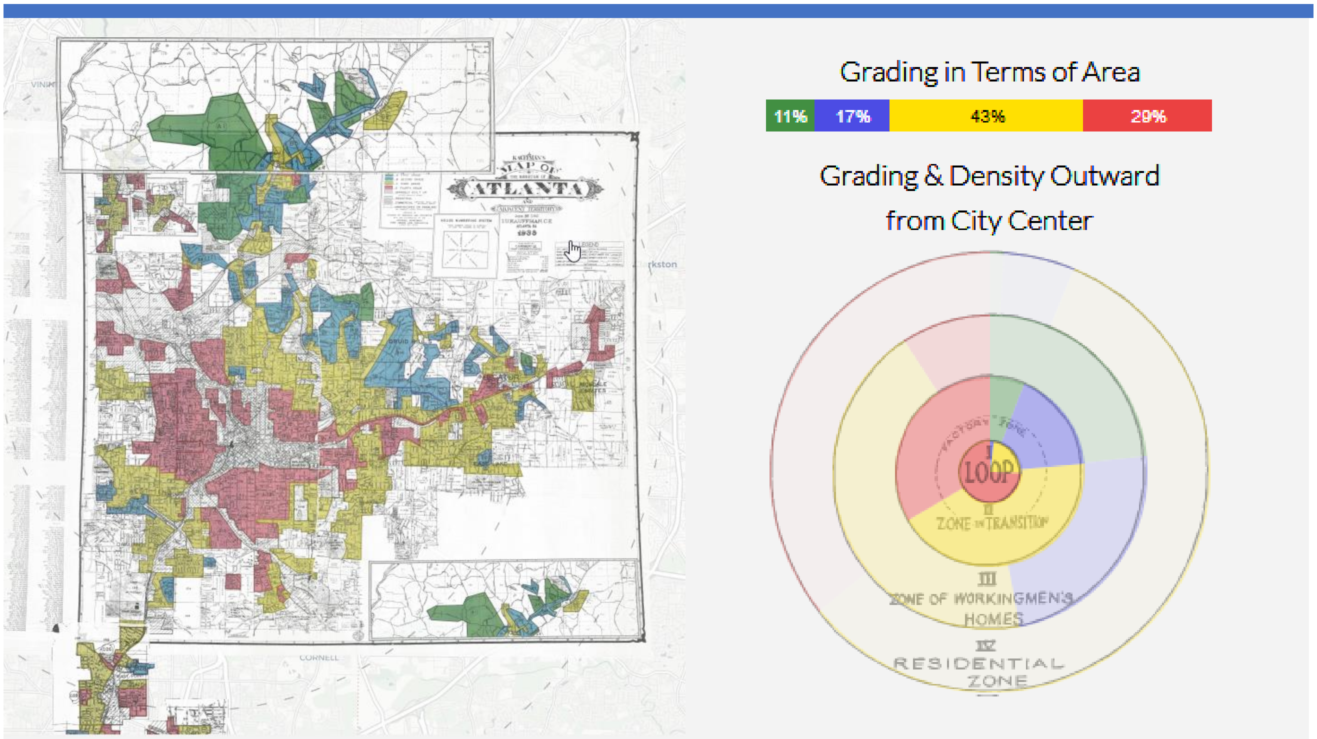
[23] Pub. L. 90–284, title VIII, § 801, Apr. 11, 1968, 82 Stat. 81.

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

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 2 below detailing the Home Owners' Loan Corporation map of the Atlanta region.[27]

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



Source: Mapping Inequality: Redlining in New Deal America

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[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.

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, Herbert Hoover, established an Advisory Committee on Zoning that promoted racially homogeneous neighborhoods through a model zoning law 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]

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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).
[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.

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 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.

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[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.
[42] *Id*.
[43] *Id.*
[44] *Id*.
[45] *Id.*
[46] *Id.* at 82-83.
[47] 334 U.S. 1 (1948).

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 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 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]

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[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.

[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/.

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 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

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[54] See Jeremiah Battle, Jr., Sarah Mancini, Margot Saunders, and Odette Williamson, Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color, at 4 (July 2016), available at https://www.nclc.org/issues/toxic-transactions-threaten-communities-of-color.html#key.

[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/.

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 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.

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[59] https://www.justice.gov/opa/press-release/file/926566/download; *B*en 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.*

[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.

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.

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 (Figure 3).[69]

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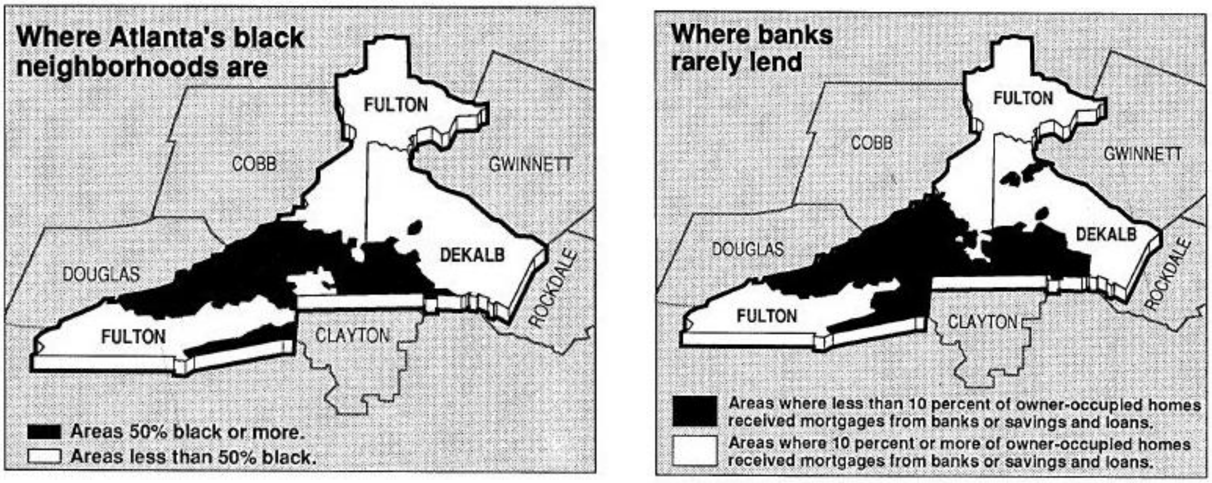
[63] 42 U.S.C. § 3601 *et seq*.
[64] 15 U.S.C. § 1691 *et seq.*
[65] 12 U.S.C. § 2801 *et seq*.
[66] 42 U.S.C. § 5301 *et seq*.
[67] Pub. L. 96-221 (Mar. 31, 1980).
[68] Title VIII of Pub. L. 97-320 (Oct. 15, 1982).
[69] Bill Dedman, The Color of Money, Journal-Constitution (May 1, 1988).

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 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.

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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.

[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.

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 $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

[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).
[76] CRL calculations of FDIC data on agency and non-agency MBS issuance.

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]

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

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[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.
[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.

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 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

[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.

[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.

homes are not being built, housing prices are rising, and homeownership is less affordable for working families (Figure 4).

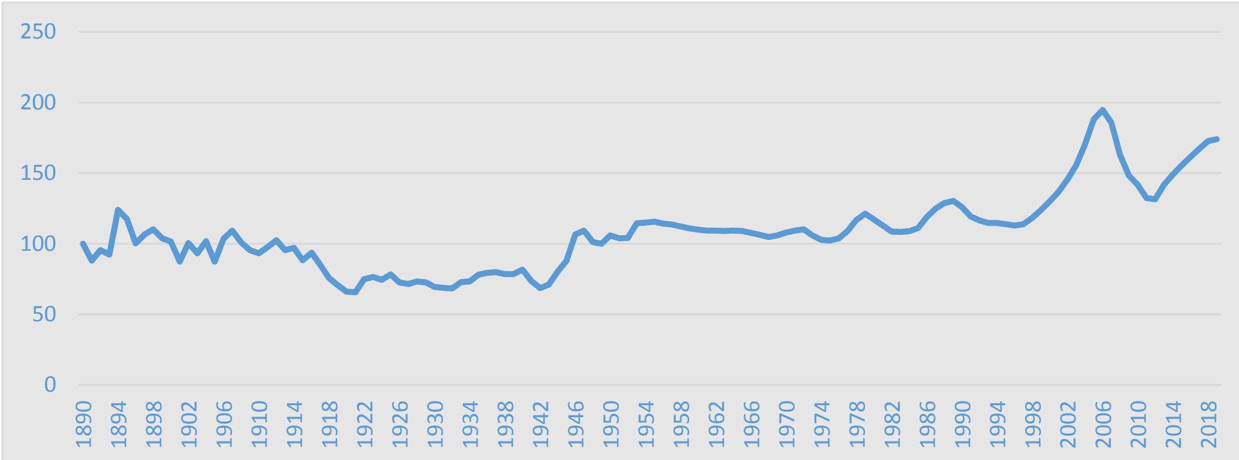
Providing sustainable credit for home lending is only half of the equation of a healthy housing market: there also must be an adequate supply of housing to be financed. In the starter home market, as discussed above, there has been a major shortage of homes. Structural obstacles prevent the shortage 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.

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.

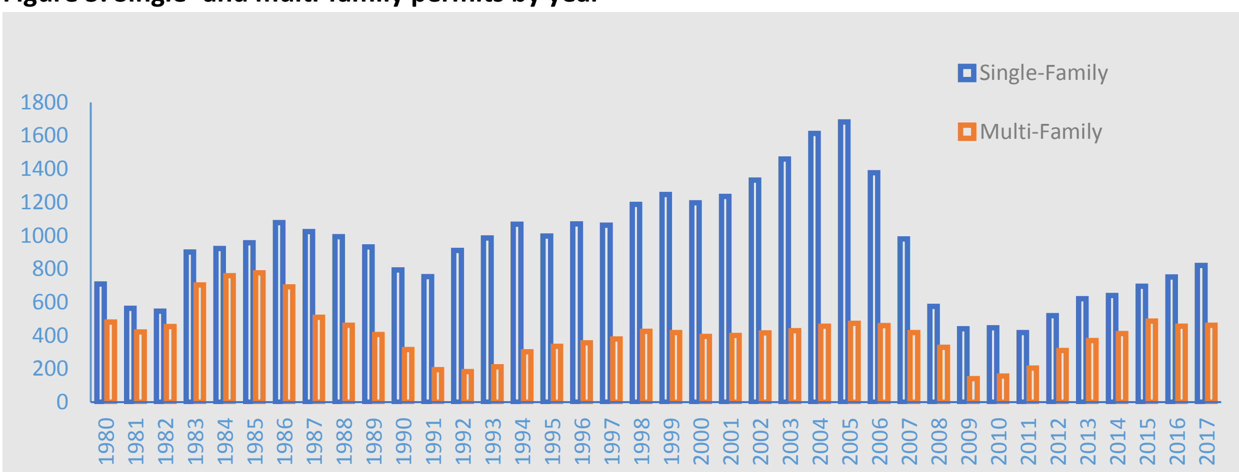
[88] Ashok Chaluvadi, National Association of Home Builders, Builder Materials Prices and Labor Access Top Challenges for 2018 (Jan. 16, 2018), available at http://eyeonhousing.org/2018/01/building-materials-prices-and-labor-access-top-challenges-for-2018/; Carmel Ford, Cost of Constructing a Home, National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

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 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.

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]

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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.").
[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-

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 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

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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.

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 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

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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/.
[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).

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:

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

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[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.
[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.

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.

[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

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[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.

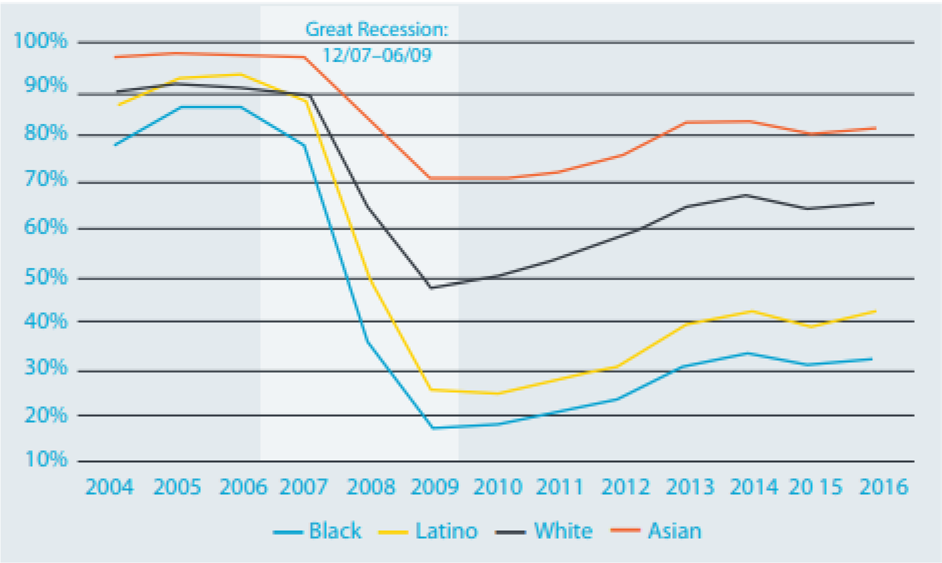
mortgages, but it marked changes within both markets. While FHA has historically provided access to credit to lower-income borrowers and first-time homebuyers, it has emerged and remained the mortgage credit source for over 40% of the low-income home purchase market.

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 6).

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 of color who could be well served by conventional lenders (Figure 7). 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.

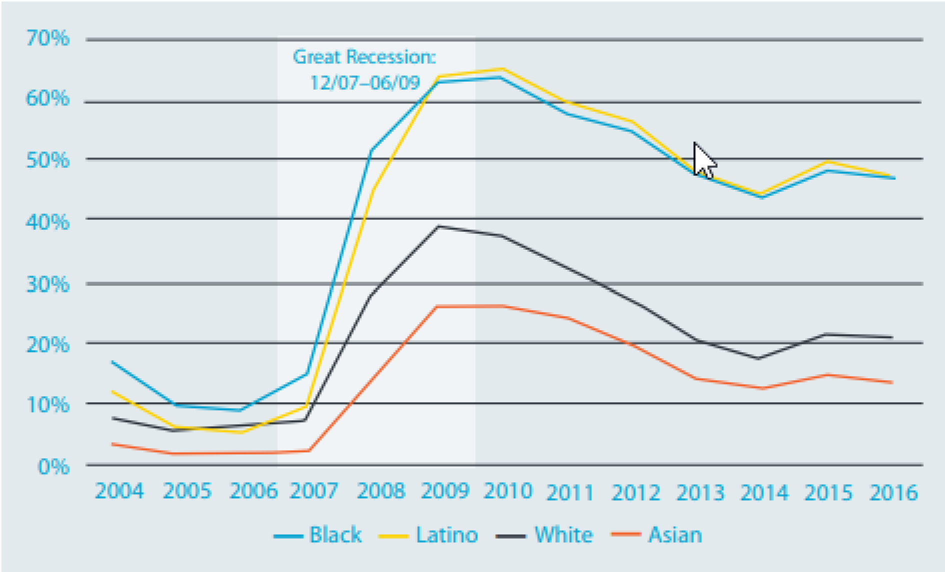
While FHA should not be the only source of mortgage credit for borrowers of color, it does provide a large share of first-time home purchase loans. Thus, FHA is critical and deserve ongoing federal support, and reductions in funding would significantly impact affordable lending. The FHA program must 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 (Interview with Richard Rothstein).