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Committee on Financial Services

Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services

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I. Introduction

Good morning Chairwoman Waters, Ranking Member McHenry, and Members of the United States House Committee on Financial Services. Thank you for the opportunity to testify in today's hearing on, "Justice for All: Achieving Racial Equity Through Fair Access to Housing and Financial Services." I am an Executive Vice President of the Center for Responsible Lending (CRL), CRL is a nonprofit, non-partisan 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 nonprofit community development financial institutions. For 40 years, Self-Help has created asset-building opportunities for low-income individuals, rural communities, women, and families of color. In total, Self-Help has provided over $9 billion in financing to 172,000 homebuyers, small businesses, and nonprofit organizations and serves more than 160,000 mostly low-income families through 72 credit union branches in North Carolina, California, Florida, Illinois, South Carolina, Virginia, Washington, and Wisconsin.

Wide access to low-cost, responsible 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, far too many Black and brown families find themselves on the outskirts of mainstream financial services leading them to pay more for basic banking services. The system's structural discrimination robs families of the opportunity to save and build wealth that can be transferred intergenerationally, which in turn could be used to start a business, pay for a college education, fund retirement, or weather a short-term economic set-back. This inequity also contributes to the persistent and growing racial wealth gap.

The devastating impact of COVID-19 on hardest-hit low wealth families, including Black and brown communities highlights the need for targeted solutions to end systemic inequity in society broadly and in financial services particularly. Discrimination hurts families of color and stifles economic growth in the overall economy. Recent studies show that addressing discrimination targeted at Black Americans alone will add trillions of dollars to the economy creating millions of jobs and generating millions for local jurisdictions.[1]

Policy changes are needed to fix the devastating impact of historic redlining and ongoing discrimination in financial services to move the needle and help achieve racial equity. My testimony draws extensively from remarks delivered to the United States House Financial Services Committee, Subcommittee on Housing, Community Development, and Insurance on, "A Review of the State of and Barriers to Minority Homeownership", delivered on May 8, 2019.[2] It will describe how children today suffer the financial

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[1] Citi, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S*. (Sept. 2020), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D; Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company (Aug. 2019), Exhibit 2 at p. 6, https://www.mckinsey.com/industries/publicand-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap; Jeff Cox, *Morgan Stanley says housing discrimination has taken a huge toll on the economy*, CNBC, November 13, 2020, https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-on-the-economy.html.

[2] Testimony of Nikitra Bailey, Executive Vice President, Center for Responsible Lending, Before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Housing, Community Development, and Insurance, A *Review of the State of and Barriers to Minority Homeownership* (May 8, 2019), https://financialservices.house.gov/uploadedfiles/hhrg-116-ba04-wstate-baileyn-20190508.pdf.

consequences of policy choices of past generations, as well as their ongoing, accumulating and compounding burdens. It will also suggest policies that can be implemented today to give these children a fairer shot at the opportunities our country has to offer.

II. Fair Access Requires Equity and Not Equality

A. Federal Policies Created Homeownership Inequity

1. Federally Sponsored Land Grants Exclude Families of Color

Our nation's painful history of forceful dispossession of land, slavery, racism, and discrimination are well documented. As these ills were targeted racially, rather than spread equally, so too have their accumulated impacts occurred in unequal, racially targeted ways. As such, equity—as opposed to equality—is required for their cure. Discriminatory federal policies are significant contributors to today's racial wealth inequity. Federal laws such as the Homestead Act of 1862 enacted during the Civil War to encourage western expansion promised 160 acres of public land to settlers. Twenty percent of the families that received Homestead Act land grants can trace their families' wealth to this single piece of legislation.[3] Most of these families were white Americans.

2. New Deal Exclusionary Policies and Practices Lock Black and Brown Families Out of the Mortgage Market

Moreover, homeownership is the primary way that most middle class families build wealth and economic stability. Yet, the ability to build wealth through homeownership has not been provided equitably throughout most of our country's history and discrimination remains a pervasive problem. New Deal housing policies established redlining and explicitly discriminated against Black and brown families. At the same time, they created economic subsidies for white families that allowed them to enter homeownership and build financial security. These policies helped to expand the American middle class. These policies bestowed upon white families a crucial measure of financial stability and a cushion against economic setbacks that were denied to families of color. Policies and practices underlying these federal programs included denial of credit for qualified borrowers buying in predominantly Black neighborhoods, thereby depressing the value of homes in those neighborhoods. At the same time, the federal government subsidized mortgages for homes in predominantly white suburbia—where builders included requirements that no homes be sold to Black Americans. These policies granted whites the ability to build wealth through homeownership while denying equal opportunities for Black families and other families of color to build similar home equity over the same period.

This explicit discrimination was not a small matter; it determined the distribution of a massive federal subsidy to spur homeownership. Homeownership, in turn, became the primary way most American families accumulate wealth. These explicitly discriminatory policies did not occur centuries in the past; they directly impacted the parents and grandparents of people in this room today. Perhaps some in this room experienced these impacts themselves.

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,

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

disparities in homeownership are a key driver of the stubborn racial wealth gap and home equity still plays a central role in shaping family wealth for the middle class.

These discriminatory policies were established 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.[4] In FHA's 1936 Underwriting Manual, a multitude of provisions indicated that "inharmonious" racial groups should not live in the same communities.[5] 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."[6] In other words, barriers such as highways were deemed a beneficial way to separate Black and other families of color from white neighborhoods. Examples of the impact of this structural inequity include the reality that only 2% of FHA insured mortgage loans went to Black and other homebuyers of color during the first 35 years of the program due to redlining.[7] Further, the administration of the GI Bill loan programs enacted by Congress in 1944 continued this discrimination. In the state of Mississippi alone, just 2 out of 3,229 VA insured mortgages went to Black servicemembers seeking to finance a home or business in the first three years of the program.[8]

Moreover, the neighborhoods we live in largely determine the schools our children attend, our proximity to healthy food and well-paying jobs, and, in some cases, the quality of the very air we breathe. It is difficult to overstate the vast and on-going inequities that these discriminatory policies have created.

Consequently, the suburbanization of America following the Great Depression financially benefited white Americans and excluded people of color. White homeowners were able to gain home equity appreciation, but for decades families of color were not provided the same opportunity. Although discrimination was made unlawful by the Fair Housing Act in 1968, these long-standing discriminatory policies produced segregated housing patterns across the nation and disinvestment from Black communities. This legacy has limited access to traditional low-cost credit for Black families and other families of color, and unduly exposed them to predatory lending sources.

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[4] 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, 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), 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).

[5] Federal Housing Administration, Underwriting Manual, Excerpts (1936).

[6] *Id*.

[7] Dedrick Asante-Muhammad, et. al, *The Road to Zero Wealth: How the Racial Wealth Divide is Hallowing Out America's Middle Class*, p. 15 (September 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

[8] *Id*.

3. Subprime Lending's Abuses Cost Black and Latino Families $1 Trillion in Lost Wealth

Families of color were then devastated by the subprime lending boom in the early 2000s, in which lenders sold millions of families abusive loans that were not sustainable.[9] Leading up to the 2008 financial crisis, these dangerous niche products that lenders mass-marketed included interest-only loans, ARM loans that combined "teaser" rates with subsequent large jumps in payments, negative amortization loans, and loans made with limited or no documentation of the borrower's income or assets.[10] Studies have shown that these products in and of themselves caused about half of the increased risk in mortgage lending that led to the Great Recession.[11]

Center for Responsible Lending research demonstrated that Black and Latino families disproportionately received subprime loans at a greater rate than whites and that borrower ***credit*** characteristics did not explain the differences in lending.[12] About half of all mortgages made to Black and Latino families during the run-up to the crisis were subprime loans with patently unsustainable terms.[13] Indeed, much

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[9] The GSEs' affordable housing goals and loans counting for Community Reinvestment Act credit did not cause the crisis, although it is a much-repeated myth. As the Financial Crisis Inquiry Commission concluded, the affordable housing goals "only contributed marginally to Fannie's and Freddie's participation in [risky mortgages]." Financial Crisis Inquiry Commission, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at xxvii (2010), https:// www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. Furthermore, "none of Fannie Mae's 2004 purchases of subprime or Alt-A securities were ever submitted to HUD to be counted toward the goals." *Id*. at 123. Additionally, the Federal Reserve Bank of St. Louis determined that there was "no evidence that the affordable housing goals of the CRA or of the GSEs affected" the volume, pricing, and performance of securitized subprime mortgages originated in the sample studied. Rubén Hernández-Murillo, Andra C. Ghent, and Michael T. Owyang, Federal Reserve Bank of St. Louis, *Did Affordable Housing Legislation Contribute to the Subprime Securities Boom?* (March 2012), https://research.stlouisfed.org/wp/more/2012-005.

[10] Financial Crisis Inquiry Commission, *The Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, at pp. 104-111 (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.

[11] Morris A. Davis, William D. Larson, Stephen D. Oliner, and Benjamin R. Smith, A *Quarter Century of Mortgage Risk*, FHFA Staff Working Paper 19-02, at p. 35, October 2019 (revised) January 2019 (original) (finding that "risky product features accounted for more than half of the rise in risk during the boom years", defining "risky product features" as those ineligible for QM status). For characteristics of subprime loans, see Testimony of Eric Stein before the U.S. Senate Committee on Banking, Housing and Urban Affairs, *Turmoil in the U.S. Credit Markets: The Genesis of the Current Economic Crisis*, Center for Responsible Lending (October 16, 2008) at pp. 11-14, 34-39, https://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/senate-testimony-10-16-08-hearing-stein-final.pdf.

[12] 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, https://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf.

[13] Federal Reserve researchers, using data from 2004 through 2008, have reported that higher-rate conventional mortgages were disproportionately distributed to borrowers of color, including African American, Latino, American Indians, Alaskan Natives, Native Hawaiians, Pacific Islanders, and Hispanic borrowers. *See* R.B. Avery, K.P. Brevoort, and G.B. Canner, *Higher-Priced Home Lending and the 2005 HMDA Data*, Federal Reserve Bulletin (September 2006), http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf. For example, in 2006, among consumers who received conventional mortgages for single-family homes, roughly half of African American (53.7 percent) and Hispanic borrowers (46.5 percent) received a higher-rate mortgage compared to about one-fifth of non-Hispanic white borrowers (17.7 percent). According to the researchers, "[F]or higher priced conventional first-lien loans for an owner-occupied site-built home, the mean APR spreads were about 5 percentage points above the yields on comparable Treasury securities both for purchase loans and refinancings". R.B. Avery, K.P. Brevoort,

evidence indicates that borrowers of color, including higher-income borrowers, were disproportionately steered into toxic mortgages ***despite qualifying for safer and more responsible loans with lower costs***.[14] Because of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[15] Moreover, Black homeownership has been the slowest to recover from the Great Recession. In fact, there would be 770,000 more Black homeowners if the homeownership rate recovered to its pre-crisis level in 2000.[16]

President Biden has called for acknowledgment and redress of the impacts of this long history of the nation's and the Federal Government's housing discrimination including the racial gap in homeownership. He stated in one of his early executive orders: "Throughout much of the 20th century, the Federal Government systematically supported discrimination and exclusion in housing and mortgage lending. While many of the Federal Government's housing policies and programs expanded homeownership across the country, many knowingly excluded Black people and other persons of color and, promoted and reinforced housing segregation. Federal policies contributed to mortgage redlining and lending discrimination against persons of color."[17]

4. Post Great Recession Mortgage Lending Is Overly Restrictive Limiting Access for Black and Brown Families Today

However, in recent years rather than remediating the damage done by this history of discrimination against families of color, lenders' overcorrections to lending standards and more restrictive GSE credit policies have instead closed off lending options for these families. Data from the Home Mortgage Disclosure Act and the GSEs themselves continues to demonstrate low levels of conventional mortgage loans to Black and Latino families. For example, in 2019, 4.8% of Fannie Mae and 3.6% of Freddie Mac home purchase loans were from Black borrowers, and 4.1% and 3.7% of refinance loans.[18] Since the financial crisis, many lenders and the 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 to lower levels of family wealth, which in turn is due in large part to generations of systemic discrimination, including by the federal government.

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and G.B. Canner, *The 2006 HMDA Data*, at p. A88, Federal Reserve Bulletin (December 2007), http://www.federalreserve.gov/pubs/bulletin/2007/pdf/hmda06final.pdf.

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

[15] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at p. 2 (Oct. 24, 2012), https://www.responsiblelending.org/mortgagelending/research-analysis/collateral-damage.pdf.

[16] Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A Five Point Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at p. 1 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

[17] The White House, *Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies* (January 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

[18] FHFA Annual Housing Report, at p. 11, Table 6 (October 2020), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2020.pdf.

Discrimination in the mortgage market is also by no means a relic of the past and can manifest in multiple ways. For example, a recent Center for Investigative Reporting Reveal report analyzed 31 million mortgage records and found that, controlling for income and other available characteristics, 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.[19] Furthermore, testing has repeatedly demonstrated housing discrimination. In 2019, Newsday published the results of a three-year undercover investigation which exposed widespread discriminatory home-selling practices by Long Island real estate agents.[20] Two similarly situated testers of different racial backgrounds independently approached the same agent to test whether they were treated differently based on their race. Black testers experienced disparate treatment 49% of the time, compared with 39% for Latino and 19% for Asian testers.[21] And in 8% of the tests, the agents accommodated white testers while imposing more stringent conditions on other testers.[22]

Moreover, Black Americans pay more to be homeowners. The overall differences in mortgage interest payments ($743 per year), mortgage insurance premiums ($550 per year), and property taxes ($390 per year) total $13,464 over the life of the loan, which amounts to $67,320 in lost retirement savings for Black homeowners.[23] Nearly a quarter of the disparity in homeownership costs for Black homeowners is due to local property tax assessments. A research study relying on a national data set found that Black homeowners bear a 13% higher property tax burden than white homeowners in the same jurisdiction; the study identified large tax assessment areas and an appeal process that tends to benefit white homeowners as the key factors resulting in higher relative property tax burden on Black homeowners.[24] Furthermore, Black families realize less growth in home equity as homes in Black neighborhoods of similar quality and amenities as other neighborhoods are worth 23% less, $48,000 per home on average, amounting to $156 billion in cumulative losses.[25]

As a result of this troubled history of inequity and continuing discrimination, Black homeownership levels, the primary asset of Black families, is at levels similar to when the Fair Housing Act was passed in 1968.[26] In fact, the gap between white and Black homeownership rates today is the largest it has been

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[19] Emmanuel Martinez and Aaron Glantz, *Kept Out: For People of Color, Banks Are Shutting the Door to Homeownership*, Center for Investigative Reporting (Feb. 15, 2018), https://revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/ (the study did not have available data on credit scores, but it controlled for nine economic and social factors, including an applicant's income, the amount of the loan, the ratio of the size of the loan to the applicant's income, type of lender, racial makeup and median income of the neighborhood where the applicant wanted to purchase the property).

[20] Ann Choi, Keith Herbert, Olivia Winslow, and Arthur Browne, *Long Island Divided*, Newsday (November 17, 2019), https://projects.newsday.com/long-island/real-estate-agents-investigation/.

[21] *Id*.

[22] *Id*.

[23] Michelle Aronowitz, Edward L. Golding, and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), http://gcfp.mit.edu/wpcontent/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf.

[24] Carlos Avenancio-León and Howard Troup, *The Assessment Gap: Racial Inequalities in Property Taxation*, Washington Center for Equitable Growth (2020), https://equitablegrowth.org/working-papers/the-assessment-gap-racialinequalities-in-property-taxation/.

[25] Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, Brookings (November 27, 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/.

[26] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Figure 3, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-

since 1890.[27] The homeownership rate for Black Americans is 42%, compared to white homeownership of 72.1%, and 48.1% for Latinos.[28] In large part because families of color were not afforded the opportunity to build wealth through federally supported investment in homeownership and were later devastated by the financial crisis, the median white family has 10 times the wealth of the median Black family and eight times the wealth of the median Latino family.[29] In fact, the racial wealth gap between Black and white families grew from about $100,000 in 1992 to $154,000 in 2016[30] The median white family gained significantly more wealth, with the median increasing by $54,000, while median wealth for Black families did not grow in real terms over the same time period.[31] The racial wealth gap contributes to the fact that in the 46 largest housing markets in the country, a median income Black household could only afford 25 percent of homes on the market last year in comparison to the 57 percent that a median income white household could afford.[32] It will require focused and bold action to reverse these inequities.

The future health of the housing market depends on closing these disparities. Demographic projections for the United States point to future increases in the population shares of people of color, making the need to serve these groups increasingly important for the health and future growth of the housing market. For example, over the past decade, Latinos have accounted for over 40% of all household formation growth and 58% of all population growth. Despite representing 18% of the population, Latinos accounted for more than 60% of new homeowner gains over the past decade.[33] Furthermore, a recent study shows that increasing homeownership to Black homeowners as well as addressing other structural discrimination has the potential to grow the economy by at least $1 trillion per year over the

gaps-building-black-wealth-through-homeownership_0.pdf; *see also* Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?*, Urban Institute (February 14, 2017), https://www.urban.org/urban-wire/are-gains-black-homeownership-history.

[27] Adam Levitin, *How to Start Closing the Racial Wealth Gap*, The American Prospect (June 17, 2020), https://prospect.org/economy/how-to-start-closing-the-racial-wealth-gap/.

[28] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, Figure 3, Urban Institute (November 2020), https://www.urban.org/sites/default/files/publication/103267/closing-the-gaps-building-black-wealth-through-homeownership_0.pdf.

[29] Asset Building Policy Network, *The Hispanic-White Wealth Gap Infographic* (September 2019), https://prosperitynow.org/sites/default/files/resources/ABPN_Hispanic_White_Racial%20Wealth%20Gap%20Infographic_Final.pdf; Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company (August 2019), Exhibit 1 at p. 5, https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-theracial-wealth-gap.

[30] Nick Noel, Duwain Pinder, Shelley Stewart III, and Jason Wright, *The Economic Impact of Closing the Racial Wealth Gap*, McKinsey & Company, August 2019, Exhibit 1 at p. 5, https://www.mckinsey.com/industries/publicand-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.

[31] *Id*.

[32] Paul Davidson, *Black Households Can Afford Just 25% of Homes For Sale*, USA Today, October 15, 2019, https://www.usatoday.com/story/money/2019/10/15/homes-sale-black-households-can-afford-just-25-percenthouses-market/3976383002.

[33] Laura Kusisto and Ben Eisen, *Wave of Hispanic Buyers Shores Up U.S. Housing Market*, Wall Street Journal, July 15, 2019, https://www.wsj.com/articles/wave-of-hispanic-buyers-boosts-u-s-housing-market-11563183000.

next five years.[34] A further study shows that addressing discrimination in mortgage lending targeted at Black Americans can create 4.9 million more households, 784,000 jobs, and $400 billion in tax revenue.[35]

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% for Black Americans and 28% for Latinos.[36] More targeted aid is required to overcome discrimination in homeownership opportunity. As research from Freddie Mac and Urban Institute demonstrates, there are millions of mortgage-ready borrowers of color, based on borrowers' current credit scores and debt-to-income ratios, though not funds available for a down payment. In fact, there are 6.3 million mortgage ready Black and Latino millennials in the 31 largest metropolitan statistical areas.[37] Given that many of these borrowers do not have family wealth for a down payment because of the lack of intergenerational wealth, targeted down payment assistance will be critical to enable mortgage-ready borrowers of color to become homeowners.

Thus, a restorative justice homeownership fund of targeted down payment assistance should be created to stimulate growth in the housing markets. This will be a critical first step in helping to build more racial equity through homeownership.

B. Higher Education Inequity

1. Higher Education is Not a Promise of Opportunity for Black and Hispanic Students

Discrimination faced in the pursuit of higher education is damaging for Black and Hispanic students and has produced disparate outcomes. Rather than lifting people out of poverty and providing access to the middle class, student debt is further entrenching the racial wealth gap and perpetuating the cycle of poverty that results from systemic lack of access to resources, capital, and affordable credit. Bold actions, such as across-the-board student debt cancellation, are needed to help families build wealth and weather the COVID-19 crisis.[38]

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[34] Citi, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.* (Sept. 2020), https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D.

[35] Jeff Cox, *Morgan Stanley says housing discrimination has taken a huge toll on the economy*, CNBC, November 13, 2020, https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-on-the-economy.html.

[36] 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.

[37] Alanna McCargo, *America's Persistent Racial Homeownership Gaps*, Urban Institute, https://www.nar.realtor/sites/default/files/documents/policy-forum-2020-presentation-racial-homeownership-gaps-02-06-2020.pdf. *See also* National Association of Hispanic Real Estate Professionals, *2019 State of Hispanic Homeownership Report*, https://nahrep.org/downloads/2019-state-of-hispanic-homeownership-report.pdf; Alanna McCargo, Jung Hyun Choi, and Edward Golding, *Building Black Homeownership Bridges: A Five Point Framework for Reducing the Racial Homeownership Gap*, Urban Institute, at p. 8 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

[38] Center for Responsible Lending & the National Consumer Law Center. 2020. *Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond.* Available at https://www.responsiblelending.org/research-publication/road-relief-supporting-federal-student-loan-borrowers-during-covid-19-crisis.

The growth of outstanding student loan debt over the last decade has been staggering. Today, more than 44 million people carry over $1.7 trillion of outstanding student loan debt, an amount that exceeds all other types of non-mortgage loan debt.[39] Two out of three graduates in the class of 2017 borrowed federal student loan debt to finance their education.[40] This phenomenon is especially concerning for communities of color, as existing wealth disparities makes the burden of student loan debt particularly heavy for African American and Latino communities.

American institutions of higher education were built on de jure racial segregation.[41] The results of legal segregation in higher education have created an inequitable legacy for communities of color that persists today. Even after *Brown v. Board of Education* (1954), predominately-white institutions (PWIs) in many states resisted integration and equal treatment for nonwhite students.[42] In addition, institutions such as historically black colleges and universities (HBCUs) have never been adequately funded despite the high-quality opportunities they provide. HBCUs perform a critical function for African American undergraduates: Across the 21 states and territories where they are located, HBCUs comprise only 9% of four-year institutions but awarded 26% of all African American bachelor's degrees in 2016.[43] A history of unequal treatment and funding, deferred maintenance costs, and financial challenges threatens the important legacy of HBCUs.[44] A Government Accountability Report recently found that almost half of all HBCU buildings need repair or replacement.[45] Further, public HBCUs in many states have historically lagged behind public predominately-white institutions (PWIs) in per student funding.[46] Indeed, the racial wealth and resource gap extends to institutions of higher education.[47] As the funding inequities accumulate for HBCUs, and in the absence of robust federal, state, and institution-level support, students are left to fill gaps in funding with student loans. Thus, students at HBCUs tend to take on more debt than students who are not at HBCUs.[48]

The Higher Education Act was originally meant to expand access to opportunity to all Americans, and major public investment in higher education, from the GI Bill to the creation of the Pell Grant program, are meant to help students pay for the cost of college. But not all students benefited equally from these social investments: Black students did not have access to the GI Bill initially due to segregation in higher

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[39] Federal Student Aid Portfolio Summary, https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls.

[40] Federal Reserve Bank of New York, Quarterly Report on Household Debt and Credit, (Feb. 2021), https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2020Q4.pdf.

[41] Pierre, 2012. History of De Jure Segregation in Public Higher Education in America and the State of Maryland Prior to 1954 and the Equalization Strategy.

[42] Minor, J.T. 2008. "Segregation Residual in Higher Education: A Tale of Two States." American Educational Research Journal 45(4): 862-882.

[43] Saunders, K.M. & Nagle, B.T. 2018. HBCUs Punching Above Their Weight: A State-Level Analysis of Historically Black College and University Enrollment and Graduation. Washington DC: UNCF Frederick D. Patterson Research Institute. Available at https://www.uncf.org/pages/hbcus-punching-above-their-weight.

[44] Minor, J.T. (2008). "Segregation Residual in Higher Education: A Tale of Two States." American Educational Research Journal 45(4): 862-882.

[45] United States Government Accountability Office. June 2018. *Historically Black Colleges & Universities: Action Needed to Improve Participation in Education's HBCU Capital Financing Program.* Washington DC: U.S. Government Accountability Office. Available at https://www.gao.gov/assets/700/692809.pdf.

[46] Mitchell et. al., 2016.

[47] Mitchell, Leachman, & Masterson, 2016; Boland, William Casey & Gasman, Marybeth. 2014. America's Public HBCUs: A Four-State Comparison of Institutional Capacity and State Funding Priorities. Philadelphia: Penn Center for Minority-Serving Institutions. Available at https://repository.upenn.edu/gse_pubs/340.

[48] Saunders et. al., 2016.

education, and many public institutions in many states have a long history of resistance to integration. In more recent decades, just at the time when student bodies were diversifying, policymakers shifted the costs of higher education from the public to the individual student.[49] Today, this pattern persists, and African American and Latino students struggle to fund their college experiences due to broad societal discrimination and a lack of public investment. Unfortunately, in the worst cases, they are also preyed upon by poor quality for-profit institutions that fail to provide reliable educational benefits.

2. States Limit Funding Higher Education Post Great Recession

In the past decade, the higher education landscape has become significantly more perilous for student borrowers. When state legislatures began to tighten their belts in the wake of the Great Recession, investments in public colleges and universities began to decline.[50] In response, public colleges and universities raised tuition, and cut student services.[51] As states slashed budgets and schools raised the cost of a degree, families experienced massive wealth declines from a sinking economy.[52] With foreclosures, job loss, and downturns in the market fracturing family balance sheets, an entire generation of students needed to borrow more than ever before to attend college. Further, a larger number of students than ever before chose to go to college to pursue an education that could help them secure a solid future. Put simply, students of color pursue postsecondary education in a social and economic system built on racist ideologies and infused with hidden, seemingly unconscious bias that creates and perpetuates the racial wealth, income and achievement gaps.[53] This reality means that, on average, students of color have less familial financial support or knowledge about navigating this complex system. Within this context, students and families of color are more likely to need to borrow for higher education and in larger amounts.

3. Discrimination Continues to Burden Black and Hispanic Students Post Graduation

Even after graduation, African American and Latino people face substantial job discrimination and earn far less than their white counterparts.[54] African Americans can also face more difficulty paying off debt and building savings to withstand future financial shocks because of this income gap. Given these disadvantages, these students tend to take longer to pay their loans back compared to their white

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[49] Huelsman, Mark. 2019. Debt to Society: The Case for Bold, Equitable Student Loan Cancellation and Reform. Washington DC: Demos. Available at https://www.demos.org/research/debt-to-society.

[50] Michael Mitchell, Michael Leachman, and Kathleen Masterson, *Funding Down, Tuition Up: State Cuts to Higher Education Threaten Quality and Affordability at Public Colleges*, Center on Budget and Policy Priorities (2016), https:// www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf.

[51] *Id*.

[52] Center for Responsible Lending, *2013 Update: The Spillover Effects of Foreclosures* (August 2013), https:// www.responsiblelending.org/sites/default/files/nodes/files/research-publication/2013-crl-researchupdate-foreclosurespillover-effects-final-aug-19-docx.pdf.

[53] The federal National Advisory Commission on Civil Disorders ("Kerner Commission") discussed two "separate and unequal" societies (one black, one white). Fifty years later, we are still struggling with this reality despite the availability of reforms. Fred Harris and Alan Curtis, "The Unmet Promise of Equality," The New York Times (Feb. 28, 2018) https://www.nytimes.com/interactive/2018/02/28/opinion/the-unmet-promise-of-equality.html.

[54] Quillian, Lincoln; Pager, Devah; Hexel, Ole; & Arnfinn H. Midtbøen. 2017. "Meta-analysis of field experiments show no change in racial discrimination in hiring over time." Proceedings of the National Academy of Sciences of the United States of America 114(41): 10870-10875; Gaddis, S. Michael. 2015. "Discrimination in the Credential Society: An Audit Study of Race and College Selectivity in the Labor Market." Social Forces 93(4): 1451-79.

counterparts.[55] In fact, recent research shows that, rather than helping communities of color build wealth, a college education actually deepens the wealth gap due to the high costs and structural issues in our system.[56] For example, after 20 years in repayment, the typical Black borrower still owes 95% of the original balance while their white peers owe only 6% of their original balance after that amount of time.[57] Despite these facts, for most students, especially students of color, the pursuit of higher education is not a choice. Indeed, postsecondary education is a necessity, not a luxury, for today's workforce.[58]

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.[59] Delinquency and defaults on student loans occur disproportionately for students of color as well as for women. A degree is not a shield from racial disparities: African American 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.[60] Latino bachelor's degree graduates' default at twice the rate of their white peers.[61] Even those who can pay are struggling. Today, nearly half of African American graduates with a bachelor's degree owe more on their undergraduate student loan after four years than they did at graduation, compared to 17% of white graduates and approximately 23% of Latinos.[62] This derails their financial and personal lives and subjects them to harsh collection practices that 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.

Further entrenching these disparities, according to research from the Bureau of Labor Statistics white college graduates are significantly more likely to receive financial support from their parents for their education and even to purchase a home.[63] This research shows that 32% of white parents contribute large financial gifts of $10,000 or more in comparison to only 9% for Black college educated households. It also shows that even when Black students received some support for higher education, the amount averages to just over $16,000 versus the nearly $73,500 that white students receive on average. Even

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[55] Sarah Schultz, *A Blueprint for Higher Education Equity*, Young Invincible (2017), https://younginvincibles.org/blueprint-higher-education-equity/.

[56] Houle and Addo, 2018. "Racial Disparities in Student Debt and Reproduction of the Reproduction of the Fragile Black Middle Class." Sociology of Race and Ethnicity 1-16

[57] Sullivan, L., Meschede, T., Shapiro, T., & Escobar, F. September 2019. "Stalling Dreams: How Student Debt is Disrupting Life Chances and Widening the Racial Wealth Gap." *Institute on Assets and Social Policy at Brandeis University*. Available at https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disruptinglifechances.pdf.

[58] Over 95% of jobs created since the Great Recession have gone to those with at least a bachelor's degree. *See* Anthony Carnevale, et al., *America's Divided Recovery: College Haves and Have-Nots* (2016) https://cew.georgetown.edu/cew-reports/americas-divided-recovery/. By 2020, 65% of all jobs will require some form of postsecondary education. Anthony Carnevale, et al., "Recovery: Job Growth and Education Requirements Through 2020." (2014) https://cew-7632.kxcdn.com/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf.

[59] Judith Scott-Clayton, *The Looming Student Loan Default Crisis is Worse Than We Thought*, Brookings Institution (2018), https://www.brookings.edu/wp-content/uploads/2018/01/scott-claytonreport.pdf.

[60] *Id.*

[61] *Id.*

[62] Brookings Institution, *Black-white disparity in student loan debt more than triples after graduation*, Oct. 2016, https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-aftergraduation/.

[63] https://www.bls.gov/opub/mlr/2017/beyond-bls/explaining-the-black-white-gap-in-returns-to-education.htm

more, almost three times as many college educated Black households provide economic support to their parents than white college graduates based on the Bureau's research.

Further, 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.[64] Thus, this has serious implications for the housing market as well. Moving forward, 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.

From the inability to save for a down payment due to student debt to the impact of delinquency and default on borrower credit reports, student debt is preventing many Black and brown borrowers from entering the housing market. Borrowers who defaulted on a student loan and then cured the default may nonetheless face challenges when attempting to access federal homeownership and small business support.[65]

The perils of default are felt most acutely for Black borrowers as they are particularly at risk of default and also more likely to lack access to affordable credit products even before the additional damage of student loan default to their credit.[66] Black borrowers are also more likely to consolidate their loans to get out of default.[67] While consolidation is a much quicker process than rehabilitation, the default notation and repayment history both remain on the borrower's credit for years. On the other hand, credit reports for borrowers who successfully rehabilitate their loans will only retain the negative repayment history. Black borrowers are also more likely to rely on Federal Housing Administration (FHA) loans to access homeownership opportunities due to being shut out of the conventional mortgage market. However, student loan default can prevent them from accessing this credit option meaning many borrowers will be denied homeownership altogether. Thus, the impact of this unaffordable and inequitable system is further compounded.

Even for borrowers who are managing their payments, FHA loans can still be inaccessible as FHA improperly factors student loan debt in when calculating DTI. Currently, FHA presumes a monthly payment of 1 percent of the outstanding student loan balance if borrowers are actively participating in a repayment plan resulting in a monthly obligation that does not fully amortize the debt. While Fannie Mae, Freddie Mac, the Department of Veterans Affairs (VA) and the Department of Agriculture (USDA) qualify borrowers using the actual monthly obligation or an alternative that is more closely aligned with a fully amortized payment calculation, FHA continues to assume a monthly payment of 1 percent of the outstanding balance – which is almost always larger than the actual payment being made by potential borrowers in both covered plans and fully amortized plans. This policy may be disqualifying creditworthy borrowers because of the inflated DTI ratios that it produces. As a result, many potential borrowers may have more limited financing options or may be unable to obtain mortgage credit entirely. Black and

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[64] 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.
[65] Center for Responsible Lending, Forthcoming. *Data Point: SBA Student Loan Restriction Disproportionately Impacts Black and Latino Business Owners*, https://www.responsiblelending.org/issues/student-loans.
[66] Scott-Clayton, J, *What accounts for gaps in student loan default, and what happens after*, Brookings Institution (June 21, 2018), https://www.brookings.edu/wp-content/uploads/2018/06/Report_Final.pdf.
[67] *Id*.

Latino borrowers are more likely to be enrolled in income-based repayment and more likely to have loans that are negatively amortizing.

Unless bold, new actions such as across-the-board cancellation are taken to deal with the student debt crisis, a generation will be trapped in debt undertaken to try to advance their lives.[68]

C. Small Business Lending Inequity

1. Small Businesses of Color Are Credit Starved

Business ownership is a proven mechanism for wealth-building, with economic benefits that extend beyond the individual business to the entire community. Unfortunately, there are profound disparities in how business owners fund their enterprises with businesses of color having less access to loans from financial institutions. Research from the Federal Reserve found that in the previous five years, 46% of white-owned businesses with employees accessed credit from a bank, and 6% accessed credit from a credit union. During that same time, just 23% of Black-owned employer firms accessed credit from a bank, and 8% from a credit union and 32% of Latino-owned employer firms accessed credit from a bank and 4% from a credit union.[69] A recent study by the National Community Reinvestment Coalition found steep reductions in SBA 7(A) lending to Black businesses between 2008 and 2016.[70] That same study also found that Black and Hispanic testers when applying for loans were required to produce more documentation to support their loan application and received less information about fees, and less friendly service when visiting a small business lender.[71] Additional research found that business owners of color are more likely than white business owners to feel discouraged from seeking loans.[72] Research from the Federal Reserve also found that business owners of color were more likely to rely on personal funds and personal credit scores to finance their business. Twenty-eight percent of Black and Asian owners and 29% of Latino owners relied on personal funds as the primary funding source for their business, compared to 16% of white business owners. Black and Latino business owners were also more likely to use their personal credit scores when obtaining financing with 52% and 51% doing so, respectively, compared to 45% of white and 43% of Asian business owners.[73] In addition, in SBA's fiscal

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[68] Center for Responsible Lending & the National Consumer Law Center. 2020. *Road to Relief: Supporting Federal Student Loan Borrowers During the COVID-19 Crisis and Beyond.* Available at https://www.responsiblelending.org/research-publication/road-relief-supporting-federal-student-loan-borrowers-during-covid-19-crisis.

[69] Small Business Credit Survey: Report on Employer Firms (2020).

[70] National Community Reinvestment Coalition, Disinvestment, Discouragement and Inequity in Small Business Lending (2019), https://ncrc.org/wp-content/uploads/2019/09/NCRC-Small-Business-Research-FINAL.pdf.

[71] *Id.*

[72] *See* McManus, 2016. ("Research also finds that minority business owners are more likely to feel discouraged from seeking private loans. In a Census survey, only 16% of nonminorities felt discouraged from seeking a loan, while almost 30% of minorities felt the same way. These, in combination with other reasons, may be why minority business owners have a heavier reliance on personal finances.") (citing Christine Kymn, U.S. Small Business Administration, Office of Advocacy, Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables, January 2014, https://www.sba.gov/sites/default/files/Issue%20Brief%203%20Access%20to%20Capital.pdf)

[73] Federal Reserve, Small Business Credit Survey: Report on Minority-Owned Firms (2019), https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.

years ending September 30, 2019 and 2018, for all SBA 7(a) loans made, only 5% were made to Black-owned businesses, and only 9% were made to Hispanic-owned businesses.[74]

Lack of access to credit can be harmful in the normal course of business, but in the midst of a pandemic, lack of access can have disastrous consequences for microbusinesses, the owners, and employees who depend on them for their livelihoods. The Paycheck Protection Program (PPP) is the most recent example of these disparities. The design of the program, which relied on banks to originate the loans, unfairly put Black, Latino, and Native American business owners at a distinct disadvantage in attempting to access PPP funds when so many were already on precarious financial footing. Banks prioritized customers with whom they had an existing banking relationship; as noted above, Black businesses are less likely to access credit through a bank. Banks also tended to prioritize larger PPP loans to maximize fees, leaving out the smallest of small business from accessing relief.[75] An analysis of the SBA's PPP data shows that over three-fourths of the 5.2M loans made in 2020 contained *no demographic information.* Just 9.5% reported proprietor race or ethnicity information, 16.2% reported proprietor gender, and 14.5% reported whether the proprietors were veterans.[76] Collecting such little information, the SBA made it nearly impossible to judge their own success in extending relief to vulnerable communities.

The PPP also highlighted the dearth of data on small business lending that has been a major obstacle for ensuring equity for decades. The limited data masks the lack of equitable investment of taxpayer-supported funds and access to business capital for communities of color and those in rural markets. In fact, in addition to data collection being one of the much-needed improvements to the PPP program, robust data collection is also needed for existing laws enacted to incentivize community investment and job creation through access to business capital. Without publicly available data, it is difficult to prove or disprove, or adequately address, inequities in small business lending. Ten years ago, Congress took steps to address this issue through Section 1071 of the Wall Street Reform and Consumer Protection Act, requiring the collection of key data elements, including demographic data, with respect to applications for small business loans. We are pleased that the CFPB is now moving forward implementing section 1071, having convened the SBREFA panel and released a proposed outline.

Beyond data collection and transparency, it is imperative that SBA, Treasury, CFPB and the prudential regulators establish, monitor, and enforce an affirmative duty to fairly serve all small business borrowers; and establish affordable small business lending goals for all credit providers. The prudential regulators should require banks covered by CRA to include a robust small business community reinvestment requirement that includes loans approved for small businesses and for business owners where the business credit runs through their personal credit profile. It is critical for equitable small business lending to be considered in CRA evaluations.

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[74] Small Business Administration, SBA Business Loan Approval Activity Comparisons for Fiscal Years 2012 to 2019, for the Period Ending 08-30-2019, https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20190830.pdf.

[75] For further discussion of the structural inequities in the PPP program, *see* Testimony of Ashley Harrington, Center for Responsible Lending, Before the U.S. House Committee on Small Business Regarding "*Paycheck Protection Program: Loan Forgiveness and Other Challenges*," (June 17, 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-testimony-harrington-house-smallbusiness-17jun2020.pdf.

[76] CRL analysis of SBA PPP data.

Finally, while it may seem obvious, it is worth cautioning against measures that will widen the racial wealth gap, and exacerbate the heavy burden struggling families already face. For as long as families of color have faced structural barriers to low-cost, responsible, mainstream credit, there have always been subprime lenders who exploit these barriers by targeting families of color for loans that can worsen these families' financial struggles, and sometimes make it harder for them to qualify for lower-cost mainstream credit. Such lenders increasingly seek to create or exploit federally-created exemptions from state usury laws applicable to national banks and federally-insured banks, or cite it to press state legislatures for increases in state usury limits. Increasingly, such lenders use the language of racial equity to suggest that making cost loans available is a valid way to redress racial inequities in access to low-cost, mainstream credit. These deceptive claims are a perversion of what real racial economic justice and opportunity entail, and should be decisively rejected.

III. It is Critical to Strengthen and Fully Enforce the Nation's Fair Lending Laws

The COVID-19 pandemic and economic crisis has laid bare and amplified systemic inequity in our nation. As the National Fair Housing Alliance aptly states in its most recent Fair Housing Trends Report:

> This report was not supposed to be about the COVID-19 pandemic. It was supposed to be about fair housing trends in 2019. However, how could we not address the COVID-19 crisis when it illuminated the great disparities at the heart of every fair housing trends report ever released by NFHA? The adverse COVID health outcomes for people of color, and especially for Black Americans, are a manifestation of segregation and absence of opportunity in neighborhoods of color. People of color live in communities with more concrete, toxic facilities, and pollution, but fewer fresh foods or health care facilities. The disparities in economic outcomes reflect the disparities in education and job opportunities linked to differences in school quality, transportation, and employment networks. People of color, especially Latinos, are overrepresented in service industry jobs, those hardest hit by the pandemic. The differences in long-term housing stability relate directly to centuries of differences in housing opportunities–people of color are predominantly renters, while White people are predominantly homeowners.[77]

Additionally, research from NCRC demonstrates that there are statistically significant correlations between redlining and susceptibility to COVID-19.[78] Against this stark backdrop, the Trump administration destroyed critical fair housing protections that are absolutely essential to ensuring that all communities have an opportunity to thrive.

A. HUD's Disparate Impact and Affirmatively Furthering Fair Housing Rules Must be Restored

Disparate impact theory helps create accountability for entities that unjustifiably engage in practices that have a disproportionately harmful effect based on protected class. Furthermore, by focusing on the consequences of unfair credit practices, the disparate impact standard is frequently able to uncover discrimination that is intentional, but subtle or hidden. Equally important, disparate impact helps to

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[77] National Fair Housing Alliance, 2019 Fair Housing Trends Report, https://nationalfairhousing.org/wp-content/uploads/2019/10/2019-Trends-Report.pdf.

[78] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, and Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

eliminate practices that are neutral on their face but have an unjustified discriminatory effect. These practices often maintain the effects of prior intentional discrimination and systemic inequality. The Trump administration's replacement of HUD's 2013 disparate impact rule would make it virtually impossible to bring fair housing cases based on this theory, allowing unjustified policies to flourish.[79]

HUD's 2015 Affirmatively Furthering Fair Housing rule provided HUD program participants with a planning framework and data tools to enable them to take meaningful actions to overcome historic patterns of segregation and foster inclusive communities free from discrimination. The Trump administration's replacement rule removes all considerations of race and the impact of segregation on communities.
President Biden recently issued a Presidential Memorandum on "Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies."[80] The Memorandum directs HUD to reassess these rules. It is critical for the disparate impact and AFFH rules to be fully reinstated. Additionally, HUD, CFPB, and DOJ must revive their fair housing and fair lending enforcement efforts.

B. Credit Should be Helpful, not Harmful, to Borrowers

The Equal Credit Opportunity Act (ECOA) and Regulation B are essential for fair lending and aim to guarantee a financial marketplace that operates in an equitable and inclusive manner free of discrimination. Credit determinations impact every facet of American life from birth to death and must be conducted in a fair, non-discriminatory manner to ensure equal opportunity for all, especially those within protected classes long denied equal access.

Underserved borrowers and borrowers of color should be able to access sustainable and responsible loan options, not shunted into predatory products. Implicit in ECOA's purpose is an assumption that credit is helpful and not harmful, that it is productive for consumers rather than destructive, that it serves wealth building rather than exploitative savings and wealth extraction. When the law provides that lenders may affirmatively advertise to disadvantaged groups, or that lenders may not discriminate based on source of income, the law assumes that lenders are not targeting communities of color, or those reliant on minimal public benefits for their income, with toxic loans. Rather, ECOA assumes, as its legislative history reflects, "[c]redit should be granted on one basis alone—the ability of the borrower to repay."[81] As we saw during the subprime mortgage crisis, as discussed in section I, toxic products create immense harm to families and communities.

So ECOA, especially as it affirmatively seeks to ensure that those who are underserved access credit, must be grounded in a responsible, safe lending market. Fulfilling the purpose of ECOA requires regulators to vigorously supervise and enforce not just ECOA itself, but all statutes aimed at a fair credit market, including CFPB's authority to address unfair, deceptive and abusive practices. All lending should

[79] CRL Comment to HUD, Implementation of the Fair Housing Act's Disparate Impact Standard (Oct. 18, 2019), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-sh-comment-disparateimpact-oct2019.pdf.
[80] Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies (Jan. 26, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.
[81] *Id*.

be based on the borrower's ability to repay – a longstanding banking principle and reflected in ECOA's legislative history forty-five years ago. Importantly, lending designed to be affordable aligns lender and borrower incentives so that lenders succeed only when borrowers do, and lenders need not engage in aggressive debt collection practices to support their business model.

Yet, high-cost lenders peddling unaffordable loans can cause particular harm to communities of color,[82] often in the same geographic areas that experienced redlining. Storefront high-cost lenders have long targeted borrowers of color, more likely to locate stores even in more affluent communities of color than in less affluent white communities.[83] Online high-cost lenders may focus more on communities with people that have subprime credit score than geography, although we understand that some lenders use zip codes to target online marketing. But historical discrimination against communities of color is also reflected in credit scores.[84] Lenders that focus on subprime borrowers will inevitably disproportionately target borrowers of color. The algorithms and big data that "fintech" lenders use may also result in disparate impacts on these communities.[85]

Moreover, online lenders often promote their models as expanding economic inclusion, which will often put borrowers of color among their target borrowers. Communities of color have historically been disproportionately left out of the traditional banking system, a disparity that persists today. Some defend the high-cost "fintech" loans as bringing communities of color into the economic mainstream.[86] But high-cost loans, particularly with their high association with lost bank accounts,[87] drive borrowers

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[82] *See* CFPB Payday Rule, 82 Fed. Reg. at 54556-57 (African Americans are payday borrowers at three times the rate, and Hispanics at twice the rate, of non-Hispanic whites (citing 2015 FDIC National Survey of Unbanked and Underbanked Households (calculations using custom data tool). Vehicle title borrowers are also disproportionately African American and Hispanic. *Id*.)

[83] Wei Li, Leslie Parrish, Keith Ernst and Delvin Davis, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California,* Center for Responsible Lending (2009), http://www.responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf; Brandon Coleman and Delvin Davis, *Perfect Storm: Payday Lenders Harm Florida Consumers Despite State Law*, Center for Responsible Lending at 7, Chart 2 (March 2016); Delvin Davis and Lisa Stifler, *Power Steering: Payday Lenders Targeting Vulnerable Michigan Communities*, Center for Responsible Lending (Aug. 2018), https://www.responsiblelending.org/research-publication/power-steering-payday-lenders-targeting-vulnerable-michigan-communities; Delvin Davis, *Mile High Money: Payday Stores Target Colorado Communities of Color*, Center for Responsible Lending (Aug. 2017; amended Feb. 2018), https://www.responsiblelending.org/research-publication/mile-high-money-payday-stores-target-colorado-communities-color.

[84] *See* Chi Chi Wu, *Past Imperfect: How Credit Scores and Other Analytics "Bake In" and Perpetuate Past Discrimination*, National Consumer Law Center (May 2016), https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf.

[85] *See* Testimony of Chi Chi Wu, National Consumer Law Center, Before the U.S. House Committee on Financial Services Task Force on Financial Technology Regarding "Examining the Use of Alternative Data in Underwriting and Credit Scoring to Expand Access to Credit" (July 25, 2019); Carol A. Evans, *Keeping Fintech Fair: Thinking about Fair Lending and UDAP* Risks, Consumer Compliance Outlook (2017), https://consumercomplianceoutlook.org/2017/second-issue/keeping-fintech-fair-thinking-about-fair-lending-and-udap-risks/; *see also* Christopher K. Odinet, *Predatory Fintech and the Politics of Banking* 19-20 (Iowa Law Review (2021 Forthcoming) (Aug. 2020), https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=3677283.

[86] *See* Remarks of Acting Comptroller of the Currency Brian Brooks to the Online Lending Policy Institute, June 11, 2020.

[87] CFPB found that about half of borrowers with online payday or other high-cost online loans paid a nonsufficient funds (NSF) or overdraft fee. These borrowers paid an average of $185 in such fees, while 10% paid at least $432. It

out of the banking system and exacerbate this disparity. By sustaining and exacerbating an existing precarious financial situation, high-cost lending reinforces and magnifies existing income and wealth gaps – legacies of continuing discrimination – and perpetuates discrimination today.

C. CFPB, HUD, and DOJ Should Encourage Special Purpose Credit Programs (SPCPs)

ECOA permits creditors to create special purpose credit programs to facilitate lending to underserved consumers with the protection that those lenders would not be held in violation of the nation's fair lending laws. We urge the banking regulatory agencies, CFPB, HUD, and DOJ to more broadly inform lenders of the potential to use special purpose credit programs (SPCPs) in order to facilitate extension of responsible credit favorably designed for underserved communities.[88]

CFPB should coordinate with HUD and DOJ to ensure lenders have confidence that SPCPs do not conflict with other civil rights laws; rather, they promote the purposes of those laws. To address potential regulatory uncertainty, we point to the recently published work of the NFHA and Relman Colfax PLLC.[89] This work explains how ECOA coexists within the regulatory framework with the Fair Housing Act and sections 1981 and 1982 of the Civil Rights Act of 1866.

At the same time, the federal agencies must emphasize that SPCPs are for responsibly designed programs. They are not a license to offer borrowers a slightly less predatory version of a predatory product, which is more likely to extract wealth than to promote financial stability.

D. Federal Regulators and Enforcement Agencies Should Scrutinize Lenders' Use of Algorithmic Systems

Federal agencies should be vigilant about artificial intelligence and machine learning models and consider the ways in which they can create unjustified outcomes in credit decisions, sometimes without detection. The agencies should be careful not to put forth guidance that suggests support for innovative models and technology without accompanying fair lending inquiry.

As research demonstrates, algorithms are not objective or free of potential bias.[90] They are only as good as the data that biased humans program into them. And even when the data itself is not biased, the interactions between the data may produce biased outcomes. Bias in the context of algorithmic analysis can create "outcomes which are systematically less favorable to individuals within a particular group and where there is no relevant difference between groups that justifies such harms."[91] In 2018, the New

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further found that 36% of borrowers with a bounced payday payment later had their checking accounts closed involuntarily by the bank. CFPB Online Payday Loan Payments at 3-4, 22 (April 2016).

[88] *See*, *e.g.*, Lisa Rice, President and CEO, *Using Special Purpose Credit Programs to Expand Equality*, Nov. 4, 2020, https://nationalfairhousing.org/using-spcps-blog/.

[89] Relman Colfax LLC and National Fair Housing Alliance, *Special Purpose Credit Programs: How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem* (Nov. 2020), https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.

[90] Claire Cain Miller, *Algorithms and Bias: Q. and A. With Cynthia Dwork*, NY Times, Aug. 10, 2015, https://www.nytimes.com/2015/08/11/upshot/algorithms-and-bias-q-and-a-with-cynthia-dwork.html.

[91] Nicol Turner Lee, Paul Resnick, and Genie Barton, *Algorithmic Bias Detection and Mitigation: Best Practices and Policies to Reduce Consumer Harms*, Brookings Institute, May 22, 2019, https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-toreduce-consumer-harms/.

York Times published a study finding artificial intelligence – in particular, facial recognition technology – was much less effective when the subject of the analysis was not a white male.[92] While the software was correct 99 percent of the time when the subject in the photo was a white man, when the subject was a darker skinned female, the software was wrong 35 percent of the time.[93] This is because the data set used in artificial intelligence is often reflective of those creating it, who are disproportionately white and male.[94] As Joy Buolamwini, MIT professor, stated "[y]ou can't have ethical A.I. that's not inclusive" and "[w]hoever is creating the technology is setting the standards."[95] This is a fundamental issue with algorithms.

Furthermore, divining a model's intent is challenging and often impossible. The complex interactions that AI engages in to form a decision can be so opaque that they prevent any party from being able to divine the intent of the machine's creator.[96] When AI programs are black boxes, they are able to form predictions and decisions in the same way as humans, but they are not able to communicate their reasons for making these conclusions.[97] This situation has been analogized to a human attempting to communicate with another highly intelligent species, with both species able to reason and understand but not able to communicate with each other.[98] Scholars have stated that this difficulty in communication "means that little can be inferred about the intent or conduct of the humans that created or deployed the AI, since even they may not be able to foresee what solutions the AI will reach or what decisions it will make."[99] Indeed, a recent paper argues that artificial intelligence is inherently structured in a manner that makes "proxy discrimination" a likely possibility.[100] Consumers have no way of knowing what data is fed into the models, which factors the algorithm used in making the determination, whether there are proxies for protected classes, or whether the algorithm denied credit based on erroneous or biased data.

Artificial intelligence and algorithms have been exposed as problematic in various sectors, including employment and criminal justice.[101] Potential discrimination claims are shielded due to the black-box nature of algorithms plus the fact that companies claim the algorithm is a trade secret. This creates an insurmountable and unjust obstacle for disparate impact claimants. Federal Reserve Bank Governor Lael Brainard gives a disturbing example taken from a hiring firm's AI algorithm: "the AI developed a bias against female applicants, going so far as to exclude resumes of graduates from two women's

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[92] Steve Lohr, *Facial Recognition Is Accurate, if You're a White Guy*, NY Times, February 9, 2018, https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html.
[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] Yavar Bathaee, *The Artificial Intelligence Black Box and the Failure of Intent and Causation*, 31 Harv. J.L. & Tech. 890 (2018), at 892, 897, 907, https://jolt.law.harvard.edu/assets/articlePDFs/v31/The-ArtificialIntelligence-Black-Box-and-the-Failure-of-Intent-and-Causation-Yavar-Bathaee.pdf.
[97] *Id*. at 907.
[98] *Id.* at 893.
[99] *Id.*
[100] Anya Prince and Daniel B. Schwarcz, *Proxy Discrimination in the Age of Artificial Intelligence and Big Data*, Iowa Law Review (August 5, 2019), https://ssrn.com/abstract=3347959.
[101] *See, e.g.*, Ifeoma Ajunwa, Automated Employment Discrimination (March 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437631; Andrew Guthrie Ferguson, *The Police Are Using Computer Algorithms to Tell If You're a Threat*, TIME Magazine, October 3, 2017, https://time.com/4966125/police-departments-algorithms-chicago/; Julia Angwin et. al., Machine Bias, Pro Publica, May 23, 2016, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing.

colleges."[102] Brookings' Aaron Klein expanded on this example by stating "[o]ne can imagine a lender being aghast at finding out their AI was making credit decisions on a similar basis, simply rejecting everyone from a woman's college or a historically black college or university."[103]

Moreover, non-traditional variables increase the likelihood that conclusions will be biased as well as increase the likelihood that AI will draw a conclusion that there is causation where there is only correlation.[104] Nontraditional variables include data obtained from internet search histories, shopping patterns, social media activity, and various other consumer-related inputs.[105] This non-traditional information can be fed into machines, which can draw conclusions based on the patterns it observes in the dataset.[106] This is a major concern because financial technology companies are using nontraditional data more and more to make consumer credit decisions. As one article put it: "If there are data out there on you, there is probably a way to integrate it into a credit model. But just because there is a statistical relationship does not mean that it is predictive, or even that it is legally allowable to be incorporated into a credit decision."[107]

Rather than shield algorithms from examination, a recent research article urges us to create an "auditing imperative" for algorithmic systems.[108] It is critical that regulators do not permit algorithmic models to bypass fair lending scrutiny.

E. HMDA is Critical to Shedding Light on Discrimination in the Mortgage Market

When it was enacted in 1975, the Home Mortgage Disclosure Act (HMDA) marked an important change in the way race and ethnicity were treated within consumer financial data. Instead of prohibiting banks and lenders from maintaining records around customer demographics, HMDA required the collection of race data in connection with mortgage lending. Beginning in 1989, HMDA began to require mortgage lenders to report the borrower race for each loan they made.[109] This approach to fighting financial discrimination represented a change in tactics from race-blindness to transparency, and has been instrumental ever since, in allowing elected officials, regulators, advocates, and the public to detect patterns of unfair lending.

Throughout the subprime mortgage crisis and Great Recession, HMDA data was key for demonstrating disparities and reforming practices in the mortgage market. Moreover, the Dodd-Frank Act and

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[102] Aaron Klein, *Credit Denial in the Age of AI*, Brookings Institute, April 11, 2019, https://www.brookings.edu/research/credit-denial-in-the-age-of-ai/.
[103] *Id*.
[104] White & Case, *Algorithms and Bias: What Lenders Need to Know*, January 20, 2017, https://www.whitecase.com/publications/insight/algorithms-and-bias-what-lenders-need-know. *See also* Ian Ayres, *Testing for Discrimination and the Problem of Included Variable Bias* (2010) at p. 6, https://www.law.upenn.edu/live/files/1138-ayresincludedvariablebiaspdf.
[105] *Id.*
[106] *Id.*
[107] Aaron Klein, *Credit Denial*, Brookings Institute (April 11, 2019), https://www.brookings.edu/research/credit-denial-in-the-age-of-ai/.
[108] Ifeoma Ajunwa, *Automated Employment Discrimination* (March 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437631.
[109] History of HMDA (March 8, 2021), https://www.ffiec.gov/hmda/history2.htm.

subsequent CFPB rulemaking required further transparency by requiring financial institutions to report additional data points, including borrower credit scores.[110]

In recent years, however, CFPB has weakened HMDA. CFPB finalized a rule that would increase the HMDA reporting threshold for mortgages, which means that some smaller lenders may not have to report at all.[111] CFPB also announced an advance notice of proposed rulemaking that would solicit feedback on the costs and benefits of collecting and reporting the additional data points in the 2015 HMDA rule.[112] Additionally, in 2019, 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 address the gap in accessibility that will have occurred between the release of the 2018 HMDA data and the launch of a replacement to HMDA Explorer.

We further urge CFPB to conduct research into the racial disparities in mortgage approvals and mortgage pricing, including controlling for FICO, which the CFPB's initial 2019 HMDA report failed to do. Only the Bureau can do this as FICO is not publicly released. We also urge CFPB to immediately cease work on the HMDA rules listed in the Unified Agenda which would narrow data collected under HMDA and codify the privacy policy into Regulation B; create a "trusted researcher" program to allow others to access the full set of HMDA data; and reinstate the requirement for lenders to submit quarterly data so CFPB can observe and report on trends in closer to real time.

F. CFPB Should Promulgate a Robust Section 1071 Rule to Shed Light on Discrimination and Unmet Credit Needs of Small Businesses

The data collection envisioned by section 1071 can provide the insights needed to address discrimination in small business lending. It can shed light on discrimination by individual lenders and practices with racially disparate effects; indeed, the first purpose of the section is "to facilitate enforcement of fair lending laws." At the same time, these data can identify unmet credit needs, especially among women-owned and people of color-owned businesses which is the second stated purpose of Section 1071.

We are pleased that CFPB is now moving forward implementing section 1071, having convened the SBREFA panel and released a proposed outline. We have urged CFPB to ensure robust data collection that covers lenders representing at least 95% of small business loans, including depositories, credit card providers, and other lenders. We urge a proposed rule that achieves the following:

1) Limits any exemption from reporting to financial institutions that fall below an activity-based threshold geared to assuring that the loss of data resulting from such exemption does not undermine the purposes of Section 1071
2) Defines "small business" in a manner that is easy to implement and that is consonant with the approach taken with the SBA
3) Covers merchant cash advances as a form of open-end credit
4) Requires the collection and reporting of the key components of pricing
5) Provides for quarterly reporting of data by larger financial institutions

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[110] 80 Fed. Reg. 66127 (Oct. 28, 2015).
[111] 85 Fed. Reg. 28364 (May 12, 2020).
[112] *Id*.

Detailed recommendations may be found in our comment letter to the CFPB on the outline of proposals.[113]

Assuming the CFPB incorporates these priorities in the final section 1071 rule, we urge the Federal Reserve Board, OCC, FDIC, CFPB, SBA, and CDFI Fund to coordinate small business data collection via section 1071. The agencies should determine on an interagency basis whether section 1071 is comprehensive enough to replace CRA, SBA, and CDFI Fund data collection and reporting requirements. Similar to the Home Mortgage Disclosure Act, section 1071 data could become the data source that CRA exams and other analyses use in the future. Once section 1071 is implemented, CRA exams could utilize the more granular section 1071 data to measure whether the smallest of businesses and businesses owned by people of color are receiving loans. Use of this data will help ensure that small business lending is provided on an equitable basis and is sufficiently reaching underserved communities, particularly communities of color.

G. The Community Reinvestment Act Should Incorporate Consideration of Race and Ethnicity to Address Lending and Investment Gaps

Although the Fair Housing Act made housing discrimination – including redlining in lending – unlawful, discrimination targeted at Black and brown families in the nation's lending markets persisted. Nearly a decade after the Fair Housing Act passed, Congress passed CRA to address the urgent credit needs of low- and moderate-income (LMI) communities. This was intended to include the credits needs of people of color. CRA was designed to open up access to credit for those to whom it had previously been denied and address systemic inequities in financial services. Congress recognized that many banks were serving the convenience and needs of some parts of their communities, but not others.

Indeed, racial equity is inextricable from CRA's history and purpose. We appreciate the Federal Reserve Board's recent request for input in its ANPR on how to better address "ongoing systemic inequity in credit access for minority individuals and communities."[114] Among other recommendations detailed in our comment letter, we urged the Board to explore and consider proposals which embed increasing access to credit to communities of color into the CRA exam and subtests.

First, the CRA statutory framework permits consideration of race. The statute includes references to race, including allowing investments in Minority Depository Institutions (MDIs), women-owned financial institutions, or low-income credit unions in minority communities to count for CRA credit. The statute further requires reporting to Congress comparing residential, small business, and commercial lending by banks in low-income, minority, and distressed neighborhoods to such lending in other neighborhoods.[115]

The law emphasizes banks meeting credit needs in all communities, but particularly underserved ones. Extensive data indicates that banks are not meeting the credit needs of Black and brown families.[116] To

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[113] CRL Comment to CFPB, CFPB Outline of Proposals Under Consideration and Alternatives Considered for Section 1071 (Dec. 14, 2020), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/comment-cfpb-outline-of-proposal-for-section1071-feb2021.pdf.

[114] Federal Reserve Board Advance Notice of Proposed Rulemaking, Question 2.

[115] Pub. L. 102-550, Title IX, § 910 (Oct. 28, 1992).

[116] *See, e.g.*, Michelle Aronowitz, Edward L. Golding and Jung Hyun Choi, *The Unequal Costs of Black Homeownership*, MIT Golub Center for Finance and Policy (Oct. 1, 2020), http://gcfp.mit.edu/wpcontent/uploads/2020/10/Mortgage-Cost-for-Black-Homeowners-10.1.pdf; Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman and Caitlin Young, *Explaining the Black-White*

ameliorate these gaps, CRA exams could include performance measures assessing responsible lending, investing, branching and services to people of color and communities of color. In addition, CRA exams could include racial and ethnic demographic data in performance context analysis and require banks to affirmatively include communities of color in their assessment areas. The banking agencies could consider ways to incentivize lenders to participate in Special Purpose Credit Programs targeted at underserved borrowers.[117] The banking agencies could also provide CRA consideration for lending and investing in census tracts that are majority people of color outside of assessment areas, just as the Board is considering for Federal Native Areas (such as Federally Designated Indian reservations) and other underserved areas. NCRC released an analysis exploring where and whether regulators could insert race into the CRA framework from a statutory and constitutional perspective.[118] These proposals should be given robust consideration.

H. FHFA Must Strengthen the GSEs Affordable Housing Goals Which is Critical to Ensuring Access for LMI Families and Families of Color

FHFA must prioritize strengthening the GSEs' affordable housing goals as outlined in our comment submitted on February 28, 2021.[119] The GSEs have woefully unfulfilled their statutory obligations to ensure adequate activity to Black, Latino, and other communities of color since the Great Recession. Therefore, FHFA must take swift and bold action now in creating affordable housing goals that can help return the GSEs to former periods when their activity was much stronger. A key goal of the affordable housing goals must be to help to build toward more racial equity in homeownership. The GSEs should focus explicitly on addressing racial homeownership gaps; marginal improvements are insufficient given the GSEs' charters that cite the GSEs' responsibility to underserved communities and borrowers of color, including to "minority census tracts."

IV. Targeted Down Payment Assistance is a Critical First Step Toward Building Racial Equity in Homeownership

According to the 2019 American Community Survey, homeownership among Black families is thirty percentage points below that of white families – a larger gap than existed in 1968 when the Fair Housing Act was passed. The disparity in homeownership rates is a large driver of the enormous racial wealth gap, with the median Black family having thirteen cents in net worth for every dollar of net worth held by the median white family.

For a Down Payment Assistance (DPA) program to reduce barriers to home ownership in a way that advances the Biden-Harris Administration's commitment to racial equity and puts the nation on a firm

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Homeownership Gap: A Closer Look at Disparities across Local Markets, Urban Institute (November 2019), https://www.urban.org/sites/default/files/publication/101160/explaining_the_blackwhite_homeownership_gap_2.pdf; Sarah Strochak, Caitlin Young and Alanna McCargo, *Mapping the Hispanic Homeownership Gap*, Urban Institute (August 2019), https://www.urban.org/urban-wire/mappinghispanic-homeownership-gap.

[117] 12 C.F.R. § 1002.8; National Fair Housing Alliance and Relman Colfax, PLLC, *Special Purpose Credit Programs: How a Powerful Tool for Addressing Lending Disparities Fits Within the Antidiscrimination Law Ecosystem* (Nov. 2020), https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA_Relman_SPCP_Article.pdf.

[118] Gerron Levi, *CRA & Race: The Federal Reserve's Proposal on the Community Reinvestment Act*, NCRC (Dec. 9, 2020), https://ncrc.org/the-federal-reserves-proposal-on-the-community-reinvestment-act-cra/.

[119] Comment from CRL to FHFA on Enterprise Affordable Housing Goals Advance Notice of Proposed Rulemaking (Feb. 28, 2021), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-comment-fhfa-affordable-housing-goals-anpr-feb2021.pdf.

trajectory to closing the wealth and home ownership gaps between whites and people of color, we recommend the following:

1. Eligibility should be limited to first-generation homebuyers whose income is within 120% of the Area Median Income (AMI). This will create an eligible pool of 12.8 million families, 72% of whom will be families of color, including 42% Black families.
2. Half of the funds should be set aside for state Housing Finance Agencies that have adopted Affirmatively Furthering Fair Housing (AFFH) Plans, awarded based on the size of the renter population in each state. The other 50% should be awarded through a competitive bidding process run by the CDFI Fund to select Administrators committed to and capable of delivering funds to socially and economically disadvantaged individuals.
3. The DPA should be a minimum of $20,000 per applicant (could be increased for high cost markets) to provide sufficient funds to make homeownership affordable.

In addition, strong reporting and evaluation requirements should be included to ensure transparency and efficacy.

Finally, the Departments of Justice and Housing and Urban Development should be directed to conduct a study to determine whether this program, in conjunction with any other extant efforts, will succeed in remedying the effects of past and present discrimination and closing the racial homeownership gap. If the study finds that more is needed, the Administrators shall be authorized to use race-conscious remedies to overcome discriminatory barriers to serving socially and economically disadvantaged people, using a rebuttable presumption that people of color are socially and economically disadvantaged.

See Appendix 1 for more detailed information on the proposal.

V. Mortgage Servicing Reforms are Critical to Preventing a Foreclosure Crisis

The COVID-19 crisis is having a disproportionate impact on families of color, by nearly every metric. Data has shown that the virus is infecting and killing people of color at a much higher rate.[120] People of color are overrepresented among essential workers who are generally not able to work from home and are more likely to encounter the virus.[121] From February to April 2020, the number of Black business owners dropped by 440,000 or 41%, compared to a 17% decline in white small business owners.[122] Families of color who are hardest hit by COVID-19 are the same families long denied equity in homeownership opportunities.[123] Indeed, there are statistically significant correlations between redlining and

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[120] Centers for Disease Control and Prevention, *COVID-19 Racial and Ethnic Health Disparities*, https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/index.html.
[121] Tiana N. Rogers, Charles R. Rogers, Elizabeth VanSant-Webb, Lily Y. Gu, Bin Yan, Fares Qeadan, *Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States*, *World Medical & Health Policy*, 2020; DOI: 10.1002/wmh3.358.
[122] Robert W. Fairle, *The Impact of COVID-19 on Small Business Owners: Evidence of Early-Stage Losses From the April 2020 Current Population Survey*, National Bureau of Economic Reserve, Working Paper 27309 (June 2020), https://www.nber.org/papers/w27309.
[123] *See* Alan Gomez, et al, '*An Unbelievable Chain of Oppression': America's History of Racism Was a Preexisting Condition for COVID-19*, USA Today, Oct. 12, 2020, https://www.usatoday.com/in-depth/news/nation/2020/10/12/coronavirus-deaths-reveal-systemic-racism-united-states/5770952002/; Andre M. Perry, Black Americans Were Forced Into 'Social Distancing' Long Before the Coronavirus, The Brookings

susceptibility to COVID-19.[124] The same low-income neighborhoods of color that were intentionally cut off from lending and investment today suffer from reduced wealth, greater poverty, lower life expectancy, and higher incidence of chronic disease that are risk factors for poor outcomes from the coronavirus.[125]

According to the Bureau of Labor Statistics, while the unemployment rate of whites, which peaked at 14% in April, has dropped to 5.6%, the reported unemployment rate of Blacks stands at 9.9% and actually increased in February, even while the economy added over 350,000 new jobs. And a recent report from the Center for Economic and Policy Research demonstrates that BLS' surveys systematically understate the unemployment rate for Blacks relative to whites.[126]

Further, the unemployment rate captures only those who are still deemed to be within the labor force and thus misses the decline in workforce participation. That has been especially pronounced for Blacks women and Latinas: there are 9.9% fewer Black women and 8,6% fewer Latinas in the workforce today than at the start of the pandemic.

Not surprisingly given their employment situation, Black and brown families are struggling to make ends meet. The most recent Household Pulse Survey from the Bureau of the Census found that 44% of Blacks and 43% of Hispanics reported that they were finding it difficult to pay their usual household expenses, a rate more than 60% higher than for whites. Moreover, according to a CFPB report, as of December, almost one in five Black homeowners and one in seven Hispanic homeowners reported being behind on their mortgage compared to only one in twenty white homeowners.[127]

Fortunately, the CARES Act – coupled with actions taken by FHA, FHFA and the GSEs, as well as many private lenders – have provided a lifeline to many struggling homeowners. Under the CARES Act, those with a federally-backed mortgage suffering a COVID-19 related hardship were granted the right to obtain up to twelve months of forbearance on their mortgage payments. Many private lenders appear to have extended similar rights to borrowers whose mortgages are not federally backed. And in February both FHA and FHFA announced that they would allow those who have obtained forbearance to extend forbearance by up to six additional months and also announced that they would extend the CARES Act moratorium on foreclosures, which lasted only six months, through the end of June.

To date, 6.9 million borrowers – 13% of all borrowers – have obtained forbearance. Those in forbearance experienced significant drops in income; indeed, fully 85% received unemployment benefits. Over 60% of those who obtained forbearance have since exited forbearance, leaving 2.7 million borrowers in forbearance as of the end of January. Importantly, a much smaller share of FHA borrowers have been able to exit forbearance.

Institution (March 20, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/20/black-americans-were-forced-into-social-distancing-long-before-the-coronavirus/.

[124] Jason Richardson, Bruce C. Mitchell, Helen C.S. Meier, Emily Lynch, Jad Edlebi, *Redlining and Neighborhood Health*, NCRC, September 2020, https://ncrc.org/holc-health/.

[125] *Id.*

[126] Yixia Cai and Dean Baker, *Masking Real Unemployment: The Overall and Racial Impact of Survey Non-Response on Measured Labor Market Outcomes*, Center for Economic and Policy Research (March 2021), https://www.ineteconomics.org/research/research-papers/masking-real-unemployment-the-overall-and-racial-impact-of-survey-non-response-on-measured-labor-market-outcomes.

[127] CFPB, Housing Insecurity and the COVID-19 Pandemic (March 2021), https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

However, there is a significant number of borrowers who are struggling with their mortgage obligations. There are approximately 500,000 borrowers who are now at least three months past due who are not in forbearance. Many of these borrowers never obtained forbearance in the first place; others exited forbearance but have been unable to resume making their regular payments. Indeed, of those who have exited forbearance, more than one in ten have fallen behind on their mortgages and for FHA borrowers the number is closer to one in five. Moreover, whereas those who were able to exit forbearance last summer have low levels of delinquencies, among those exiting more recently the subsequent delinquency rates have been two to three times higher.

For those still in forbearance, the most significant question is what happens to them once their forbearance period ends. Fortunately, the mortgage market is in a much better position than it was entering the last crisis. The government agencies, led by FHA, as well as FHFA and the GSEs, acted quickly to develop post-forbearance policies to help affected borrowers. As a result, mortgage servicers have much better tools than during the Great Recession to help borrowers struggling to repay.

For federally-backed mortgages, borrowers can exit forbearance and simply resume their regular monthly payments and then repay the arrearages -- that is, the amounts that they would have paid but for the forbearance -- without interest, when they pay off the loan. And borrowers who are not able to resume their regular payments can receive a streamlined loan modification that reduces the monthly payments required. If the borrower needs more payment relief than the streamlined offer provides, they may be eligible for greater payment reduction if they provide income documentation.

In addition, servicer capacity is much greater than during the housing crisis, when few were set up to work with borrowers to obtain a modification. However, servicers may be sorely tested when forbearance comes to an end as upwards of two million borrowers may need assistance in a limited time frame, and execution by large organizations is always a challenge, particularly with something as complicated, and important, as a mortgage. Housing counselors have reported instances of borrowers not receiving correct information from servicers, and counselors' support will be essential.

Moreover, when forbearance ends there will be many borrowers – especially Black and brown families – who will need further relief if they are not to lose their homes. Even though many borrowers have equity in their houses today, positive equity alone does not prevent homeowners from losing their home to foreclosure; depending on the time period and associated home price appreciation, between 30% and 80% of foreclosed-upon homeowners had positive equity at the time of default.[128]

Foreclosure is costly to society and comes with significant negative after-effects for the household and their neighbors. The average foreclosure costs society between $51,000 (HUD) and $70,000 (U.S. Congress Joint Economic Committee) and is borne by the foreclosed-upon household, their neighbors, the lender, and local governments.[129] Foreclosed upon households are likely to move more frequently,

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[128] David Low, *Mortgage Default with Positive Equity,* Working Paper (2018), Andrew F. Haughwout and Ebiere Okah, *Below the Line: Estimates of Negative Equity Among Nonprime Mortgage Borrowers,* Economic Policy Review, Vol. 15, No. 1, pp. 32-43 (2009), and Anthony Pennington-Cross, *Subprime and Prime Mortgages – Loss Distributions*, FHFA Staff Working Papers 03-01, Federal Housing Finance Agency (2003).
[129] United States Department of Housing and Urban Development, *Economic Impact Analysis of the FHA Refinance Program for Borrowers in Negative Equity Positions* (2010) and U.S. Congress Joint Economic Committee, *Report of*

less likely to own a home in the future, and some move to neighborhoods with lower incomes and school test scores and are more likely to get divorced.[130] Foreclosed-upon homeowners also suffer from negative physical health consequences resulting in increased incidences of unscheduled hospital visits[131] as well as a range of mental health issues, including depression, anxiety, alcohol use, and even suicide.[132] Unfortunately, foreclosure is also contagious. Studies show that foreclosure reduces the value of neighboring properties by nearly $15,000 and leads to an additional 0.5 foreclosures in the neighboring area.[133] Foreclosure alternatives (i.e. short sales and deed-in-lieu of foreclosure) and forced sales may be less costly to lenders, but the end result for the homeowner may be equally negative.

As a result, it is incumbent on policymakers at all levels to do everything in their power to reduce the number of needless foreclosures that occur. The following are our suggestions to accomplish this goal.

Congress

Congress should extend the protections that FHFA and FHA provide to private loans, which comprise about 30 percent of the mortgage market. While many servicers of private loans are voluntarily adopting GSE policies, and forbearance rates for private loans are higher than the market as a whole, some are not providing comparable assistance. In addition, the lack of standardization and specificity in forbearance and post-forbearance terms limits servicers in some cases from offering this relief.[134] Congress should not attempt to spell out these policies in detail in legislation since government policies change as policymakers adjust as circumstances do and in accord with lessons learned.

Therefore, Congress should simply require private loans to adopt the foreclosure moratorium and forbearance policies offered by one of the GSEs or FHA, as well to mirror the federally-backed loans in providing a post-forbearance solution that does not increase borrowers' monthly payments. In addition, Congress should provide servicers of private-label securities a safe harbor from investor lawsuits when they follow these provisions.

Additionally, the $10 billion dollar Homeowner Assistance Fund is a critical component of the American Rescue Plan bill. It will help protect struggling homeowners and communities by preventing avoidable foreclosures, evictions, and utility shut offs. The Fund would provide a flexible source of federal aid to housing finance agencies to help people who have experienced COVID-19 hardships maintain their housing payments so they can stay in their homes. A critical lesson of the Great Recession is that the communities most impacted need aggressive, targeted, early intervention. Once the Homeowner Assistance Fund is enacted, the Department of Treasury must ensure an equitable distribution of

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the Joint Economic Committee Congress of the United States on the 2007 Economic Report of the President Together With Minority Views, U.S. Government Printing Office (2007).

[130] Rebecca Diamond, Adam Guren, and Rose Tan, *The Effects of Foreclosures on Homeowners, Tenants, and Landlords*, Working Paper (2020).

[131] Janet Currie and Erdal Tekin, *Is There a Link between Foreclosure and Health?*, American Economic Journal: Economic Policy, 7 (1): 63-94 (2015).

[132] Alexander C. Tsai, *Home Foreclosure, Health, and Mental Health: A Systematic Review of Individual, Aggregate, and Contextual Associations*." *PLoS ONE* 10(4): e0123182 (2015).

[133] Arpit Gupta, *Foreclosure Contagion and the Neighborhood Spillover Effects of Mortgage Defaults*, Journal of Finance *74*, 2249–2301 (2019).

[134] Urban Institute, *Why It's Harder to Offer Mortgage Assistance to 3 Million Borrowers with Private Loans* (Aug. 13, 2020).

funding to ensure the families hardest hit by the COVID crisis – Black and brown families – are able to access relief.

Consumer Financial Protection Bureau

First, if Congress doesn't enact the 120-day foreclosure pause, CFPB should require it using its RESPA authority. Second, if Congress doesn't require private loans to follow federally-backed requirements after forbearance, CFPB should prohibit servicers from requiring borrowers to repay their arrearages from COVID-related forbearance without first evaluating the borrower for all loss mitigation options the borrower is eligible for. Third, CFPB should facilitate servicers offering streamlined payment reduction modifications to borrowers who indicate that they cannot afford their previous monthly payments, as it did with its interim final rule on deferrals and partial claims, with appropriate consumer protections. Fourth, CFPB should supervise servicer conduct when transitioning borrowers out of forbearance and take appropriate action against servicers who revert to previous bad practices. Fifth, CFPB should continue its good work providing information to borrowers to explain their options in dealing with COVID-19 hardships, and in particular it should provide outreach to borrowers who are delinquent but not in forbearance. Finally, CFPB should help servicers in conducting effective communications with their borrowers by establishing best practices for servicer communications, including websites and emails.

Federal Housing Finance Agency

The modification provided by the GSEs, called the Flex Mod, is commendable. It is streamlined for borrowers 90 days or more delinquent, which reduces frictions and increases take-up rates, and provides substantial payment relief for borrowers with loan-to-value (LTV) ratios above 80%. When the Flex Mod was developed, the expectation was that if there were another crisis, it would look like the last one and housing values would fall, which would push up borrowers' LTVs over 80% and most would get this payment relief. However, the current crisis is accompanied by continued rapid house price appreciation in many communities, and so roughly 75 percent of GSE borrowers exiting forbearance will have LTVs **below** 80 percent.[135] As a result, the only modification step these borrowers are eligible for under the Flex Mod is extension of the mortgage term to 40 years. The GSEs target 20 percent reduction in principal and interest (P&I) payments, which equates to about a 14 percent reduction in the overall monthly payment. After receiving the term extension, some borrowers below 80% LTV will receive this level of payment relief but some others will not, depending largely on how old the loan was. However, even if they receive this amount of payment relief, it will not be enough for many borrowers given the economic dislocations they face and they will lose their house to foreclosure, or in the best case, through a forced sale.

The GSEs should target a higher level of payment reduction with their Flex Mod, providing a 25% or 30% reduction in the P&I payments. For their below 80% LTV borrowers, the GSEs should reduce the interest rate as much as necessary to reach the target, although no lower than the market interest rate, or simply provide the market interest rate as they do with their above 80% LTV borrowers. The GSEs and wealthier borrowers benefit from current low mortgage rates, which is in significant part due to Federal Reserve purchases of their MBS, and these benefits should be shared with the GSEs' most distressed

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[135] Black Knight (https://cdn.blackknightinc.com/wp-content/uploads/2020/10/BKI_MM_Aug2020_Report.pdf) indicates that 84% of homeowners with a GSE-backed mortgage have a current CLTV below 80%. After capitalizing arrearages, roughly 75% of homeowners with a GSE-backed mortgage have a current CLTV below 80%.

borrowers. The 20% P&I target for reductions should be compared with the FHA-HAMP target of a 20% reduction in the full monthly payment, which equates to a 31% reduction in P&I for the average borrower in forbearance with a Government-backed mortgage. Greater payment relief would also bring the Flex Mod payment reduction target closer to that offered by private modifications; those offered by Chase in the 2011-2014 period targeted a 30% P&I reduction.[136]

Second, the GSEs should provide streamlined refinances for low-wealth borrowers. Especially now, during the COVID-19 crisis and at a time of historic low interest rates, more borrowers should be able to benefit from the current refinance boom to save money on their mortgage payment. Unfortunately, the refinance surge is not reaching lower-income, lower-wealth, or Black and Hispanic families adequately, particularly borrowers with smaller loan balances.[137] Refinance activity for higher FICO borrowers accelerated significantly in 2020, boosting the average FICO score for GSE refinances to 775, well above credit scores for communities of color due to less family wealth.[138]

At a time that the Federal Reserve is purchasing $40 billion in agency mortgage-backed securities per month to help reduce the cost of buying or refinancing a home and to stimulate the economy, FHFA and the GSEs should ensure rate term refinances are more available, not more costly, for lower-income, Black, or Hispanic families who would benefit greatly from the savings on their mortgage payment. We urge the GSEs to create a streamline refinance program to ensure that affordable refinances are more accessible to borrowers, particularly borrowers of color. By doing so, the GSEs would be taking a positive step toward helping the Federal Reserve undo the disproportionate benefits of monetary policy that accrue to the wealthy. Moreover, the GSEs should not charge any LLPAs on a streamline refinance, as LLPAs were already paid at purchase.

Federal Housing Administration

FHA acted quickly as the economic effects of the pandemic began to be felt to create its COVID-19 home retention options. Its waterfall of post-forbearance options is significantly more streamlined than FHA's standard waterfall, and therefore can accommodate the hundreds of thousands of FHA borrowers all needing assistance in a compressed time frame to help them remain in their homes. HUD should be commended for its swift and effective action. However, given the stakes involved for FHA borrowers, their families' futures, and the neighborhoods in which they live, it is worth continuing to evaluate the FHA COVID waterfall to determine whether further improvements could provide greater payment relief to borrowers and permit more to qualify for modifications, while taking into account any effects on the MMIF.

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[136] Peter Ganong and Pascal Noel, *Liquidity Versus Wealth in Household Debt Obligations: Evidence from Housing Policy in the Great Recession*, American Economic Review, 110(10): 3100-3138 (2020).
[137] Sumit Agarwal, Souphala Chomsisengphet, Hua Kiefer, Leonard C. Kiefer, and Paolina C. Medina, *Inequality During the COVID-19 Pandemic: The Case of Savings from Mortgage Refinancing*, Working Paper (2020) and Kristopher Gerardi, Paul Willen, and David Hao Zhang, *Mortgage Prepayment, Race, and Monetary Policy*, Working Paper 20-7. Boston: Federal Reserve Bank of Boston (2020).
[138] Urban Institute, Housing Finance At a Glance: A Monthly Chartbook (February 2021), https://www.urban.org/sites/default/files/publication/103746/housing-finance-at-a-glance-a-monthly-chartbook-february-2021_0.pdf. See pages 17 and 23.

VI. Diversity in Executive Ranks and Boards

It is well settled that diverse companies outperform those that lack diversity, inclusion, and equity. According to a report from McKinsey & Company, for every 10 percent more racially or ethnically diverse a company's senior team is, earnings before interest and taxes (EBIT) is nearly 1 percent higher.[139] Simply put, diversity is good for business.

The racial reckoning ignited during the summer of 2020 make clear that broad structural reforms are necessary to eliminate systemic oppression, including throughout financial services. In response to the people-led protests demanding change, many financial services firms issued broad racial justice promises. As stated earlier, eliminating discrimination is good for Black and brown communities that held back by the harmful practices and the economy overall. Now, is the time to ensure that the financial services system mirrors the rich diversity of our nation, including in the C-suites and boardrooms. A report from McKinsey & Company notes that at the entry level US financial services firms employ around 40 percent people of color, which is in line with the representation of people of color in society generally. However, these figures drop substantially as an employee reaches the C-suite by 75 percent.[140] Nine out of ten C-suite financial services leaders are white.[141] The numbers show that women of color face some of the greatest obstacles climbing the corporate ladder in the financial services industry with Latina women the least likely to reach the top level of an organization.[142] Further, employees that identify as an "only" report high levels of isolation and missed career opportunities because of discrimination.[143] The report shows that 75 percent of Black employees above entry level are onlys, compared with 40 percent of Latinx, 31 percent of Asian, and 4 percent of white employees.[144]

Much remains to be done to change established practices of exploitation. It is long past time for firms to establish stronger pipelines to our nation's Historically Black Colleges and Universities and other Minority Serving Institutions. They can also create partnerships with minority depository institutions and community development financial institutions that have successful track records of serving communities of color. Further, financial services firms would benefit from taking a long-term view of the financial needs of communities of color, especially as projected growth in areas such as the mortgage market will be comprised mostly of Black and brown consumers. Our nation's fair lending laws empower firms with the tools that they need to reach underserved communities and help to bring them into the economic mainstream.

Moreover, federal banking regulators should also do the same. It was recently reported by the New York Times that only 2 out of more than 400 economists at the Federal Reserve in DC are Black.[145] Diverse staff members bring lived experience that can be an asset in the workplace, as President Biden stated in his recent orders on racial equity, "[b]y advancing equity across the Federal Government, we

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[139] Arelis Diaz, La June Montgomery Tabron, Carlos Rangel, Joel Wittenberg, Stefon Burns, Aria Florant, Stacey Haas, Max Magni, and Paula Ramos, *Racial Equity in Financial Services*, McKinsey & Company, September 2021, https://www.mckinsey.com/industries/financial-services/our-insights/racial-equity-in-financial-services.
[140] *Id*.
[141] *Id*.
[142] *See id*. The proportion of white men in the C-suite is 112 percent higher than at entry level, but this proportion is 30 percent lower for white women, 60 percent lower for men of color, and 90 percent lower for women of color.
[143] *Id*.
[144] *Id*.
[145] Jeanna Smialek, *Why Are There So Few Black Economists at the Fed?*, New York Times, Feb. 2, 2021, https://www.nytimes.com/2021/02/02/business/economy/federal-reserve-diversity.html

can create opportunities for the improvement of communities that have been historically underserved, which benefits everyone."[146]

Conclusion

Present-day homeownership disparities did not occur by happenstance. 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. Acting now will benefit underserved Black and brown communities and the economy overall.

[146] Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 13985, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

Appendix 1
First Generation Down Payment Assistance Program Proposal[147]

Homeownership is the primary way that most families build wealth and achieve economic stability. But buying a home is an expensive proposition, and the upfront costs stand as a significant impediment, especially for those who cannot fall back on their families for help with a down payment and closing costs. Accordingly, we welcome and applaud the efforts to develop a new DPA program to complement existing programs and put homeownership in reach of those currently excluded from the market.

For people of color, homeownership is especially elusive. For decades, federally-sanctioned discrimination in the housing finance system denied them access to homeownership opportunity on parity with whites as discussed in Section I above. As a result of this and other forms of long-standing institutional discrimination, Black and Hispanic families have less wealth and lower homeownership rates, and thus less ability to provide financial assistance to their children. At the same time, broader societal discrimination, including in education and employment, have produced a massive income gap that makes it more difficult for Black and Hispanic families to accumulate sufficient savings. For these and other reasons, access to homeownership and its wealth-building benefits continue to be delayed or denied to far too many people of color and other low-wealth families, and the wealth gap continues to grow.

The numbers tell the story. The homeownership rate for Blacks under age 35 is below 20% – less than half the rate for whites. The gap closes some over the lifecycle, but even for those aged 35-54, the Black homeownership rate is just 50% compared to over 70% for whites.[148] Overall, the gap – more precisely, the chasm – today is even higher than it was in 1968 when the Fair Housing Act was enacted. Bringing the Black homeownership rate up to the level of whites would require increasing the number of Black homeowners by roughly five million, which would represent approximately a 66% increase.

Even more troubling, the Urban Institute projects that over the next twenty years all net new household growth will be from families of color, but that the homeownership rate, left unaddressed, will continue to fall for every age group.[149] Even more starkly, the same study projects that the Black homeownership rate will fall even further by 2040, with the decline particularly pronounced for households age 45-74. This is an economic disaster for the Black families who will be unable to achieve homeownership, but it is also a moral and economic problem for the country. The safety and soundness of the future mortgage market depends on there being consumers who can access safe and responsible loans. Acting now to increase homeownership among underserved communities is a cost-effective solution to strengthen the middle-class and grow the economy.[150]

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[147] The proposal is a joint project of the Center for Responsible Lending, National Fair Housing Alliance, and Self-Help. Appreciations to the Urban Institute Housing Finance Policy Center for its research and data analysis on this proposal.
[148] Bhutta *et al*, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*
[149] Urban Institute, By 2040, the US Will Experience Modest Homeownership Declines. But for Black Households, the Impact Will Be Dramatic
[150] Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, The Economic Impact Of Closing The Racial Wealth Gap, McKinsey & Company (August 13, 2020); Dana M. Peterson and Catherin L. Mann, Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S., Citi GPS: Global Perspectives & Solutions (September 20, 2020); Jeff Cox, Morgan Stanley Says Housing Discrimination Has Taken A Huge Toll On The Economy, CNBC, November 13, 2020.

Further, even those Black families who eventually are able to assemble a down payment and money for closing costs are able to afford less home and must take out more debt at a higher cost than whites; that plus the delay in entering the market depresses Black families' ability to accumulate wealth through their investment.[151]

A robust and sustained federally-funded DPA program is a proven strategy that can begin to address these barriers and facilitate new homeownership. Although there undoubtedly are millions of young families for whom down payment assistance could accelerate their path to homeownership, given limited resources, it is essential that this program be targeted in a way that delivers on President Biden's promise to address the long-term discrimination and racial inequities that continue to plague our society, especially those rooted in exclusionary housing policies.[152] It is also critical that the program reaches potential homebuyers who bear the burdens of past discrimination and who may never be able to achieve the dream of homeownership without this assistance. The following proposal is recommended to target a DPA program to accomplish these objectives.

Part 1: Core Program Elements

The group most in need of DPA assistance are those who neither have the income to accumulate money for a down payment nor family resources to draw upon for these purposes but are able to afford the monthly payments for a mortgage. Accordingly, drawing on the approach in the educational arena in which there are special programs targeting first-generation college students, we recommend that the core program be limited to first-generation, first-time homebuyers within certain income limits. We would add to this a house price limit as an additional safeguard to assure the money is well targeted.

Eligibility Criteria

The following table summarizes the criteria that recipients of the DPA would have to meet. Appendix 1a has an analysis of the number and percent of eligible individuals based on these criteria.

Eligibility Criteria	
Borrower Status	First-Generation Homebuyer[153]
First Home Requirement	First-Time Homebuyer[154]

[151] Urban Institute, Three differences between black and white homeownership that add to the housing wealth gap
[152] See Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. January 20, 2021. 86 FR 7009. See also Presidential Memorandum Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies. January 26, 2021. 86 FR 7487.
[153] We include within the category of "first generation homebuyer" those whose parents never owned a home, those whose parents owned a home but lost it to foreclosure, and those who grew up in foster care. Modeled on the first generation homebuyer assistance program of the Massachusetts Affordable Housing Alliance, borrowers would self-certify, as first generation college students currently do. In particular, at least one of the borrowers would certify to the best of their knowledge via affidavit that: (1) their parents never owned a home while the borrower was alive; (2) their parents owned a home while the borrower was alive but lost it through foreclosure, deed-in-lieu, or short sale; or (3) they were in foster care for some period of time as a minor. If the borrower is found to have provided false information, they must return the money (without criminal or civil penalties). Applicants may be required to provide their parents' full names and most recent address(es).
[154] All borrowers (and spouse of a borrower if not a co-borrower) must certify to being First Time Homebuyers. An individual is to be considered a first-time homebuyer who (1) is purchasing the security property; (2) will reside in the security property as a principal residence; and (3) had no ownership interest (sole or joint) in a residential property during the three-year period preceding the date of the purchase of the security property. In addition, an

Borrower Household Income Limit	Borrower household shall earn less than 120% of the Household Area Median Income
Counseling	Pre-purchase counseling by HUD-approved agency required
Mortgage Features	Qualified Mortgages as defined after March 1, 2021

The rationale for targeting first-generation homebuyers is clear: those whose parents were the victims of exclusionary housing policies or otherwise unable to become homeowners are unlikely to have the benefit of intergenerational wealth and thus are most likely to be limited in their ability to purchase by the long-standing and massive racial wealth gap. Given that first-generation homebuyers almost certainly cannot turn to their parents for assistance with a home purchase and must rely on whatever savings they have been able to accumulate, we also recommend an income limit above the traditional line defining low-income families – 80% of Area Median Income (AMI) – in recognition of the fact that families with incomes above that level (which translates to roughly $62,000 on a national basis), but without the benefit of intergenerational wealth, face severe challenges in achieving homeownership.

Our recommended income limit of 120% of AMI (approximately $94,000 on a national basis) would create an eligible universe of 12.8 million first-generation homebuyer households nationwide. Importantly, although not surprisingly, precisely because it has been so difficult for Black and Hispanic families to obtain homes in the past and because of the large income gap between white families and families of color, the first generation homebuying population with incomes below 120% of the AMI is disproportionately comprised of people of color. Indeed, fully 66% of this population are Black (42%) or Hispanic (24%), although the percentage drops to 60% (32% Black, 27% Hispanic if we were to assume that those with incomes below 40% of AMI and younger than 25 or over age 54 as a practical matter are unlikely to participate in this first-time homebuyer program. See Appendix 1 for a detailed analysis of targeting First Generation, First Time Homebuyers.

Many programs aimed at first-time homebuyers provide eligibility for all low-income households, i.e. for all families with income up to 80% of AMI. We recognize that obtaining homeownership is a struggle for low-income families generally. However, we estimate that there would be 28.8 million eligible households if the DPA program were open to all such households, of whom roughly half have incomes above 40% of AMI. Among that group, further limited to the age range of 25 – 54, 45% would be white compared to just 23% Black and 23% Hispanic (with the rest falling in the "other" category). Moreover, with an eligible universe of 28.8 million families, the almost inevitable result would be that those best able to work the system would succeed in getting the available DPA dollars. Such a result would not begin to shrink disparities – and could even increase – the Black-white homeownership gap. See Appendix 1b for a detailed analysis of targeting Low-Income, First Time Homebuyers.

Focused Delivery Channel Criteria

Even with the eligibility limitations recommended above, the universe of eligible and likely participants, i.e. those meeting the eligibility criteria who are likely participants, with incomes above 40% of AMI and between the ages of 25 and 54, would be large (5.4 million). It would take over $100 billion dollars to serve all those households. Although we believe that the size of the program should be commensurate to the need, we recognize that there likely will be substantially more eligible would-be buyers than funds available for DPA. For that reason, the channels through which DPA will be delivered are every bit

individual who is a displaced homemaker or single parent also will be considered a first-time homebuyer if he or she had no ownership interest in a principal residence (other than a joint ownership interest with a spouse) during the preceding three-year time period.

as important as the eligibility criteria to assure that the program works as intended. Previous experience with homeownership assistance funds, specifically the Hardest Hit Fund, have demonstrated that without targeting, resources will not equitably reach Black and brown communities. Black and Hispanic communities lost $1 trillion in wealth during the Great Recession as much of the relief came too late and lacked the programmatic designs necessary to reach the needs of Black and Latino communities.[155]

Specifically, we recommend the following approach to allocating funds and to selecting recipient agencies to administer the funds. The DPA funds should be appropriated to the CDFI Fund for it to disburse as set forth below and subject to the requirement that the Treasury Department and CDFI Fund must explicitly acknowledge that the CDFI Fund is subject to the Fair Housing Act's Affirmatively Furthering Fair Housing mandate. The CDFI Fund would be responsible for disbursing 50% of the funds through a competitive grant process to "Targeted DPA Administrators" who would be organizations with the capabilities and commitments to administer funds to achieve the Program's overall objectives. The Targeted DPA Administrators would, in turn, provide DPA to eligible mortgage applicants sourced through retail and wholesale channels. Although CDFIs could apply for funding through this competitive process, they would be judged by the same criteria as all other bidders and would not be provided with any competitive advantage.

A Consumer Advisory Board will be established to advise and consult with the CDFI Fund in the exercise of its functions in administering the DPA and will help ensure compliance with the requirements laid out in the legislation establishing the DPA. The Consumer Advisory Board will be composed of experts in civil rights, fair housing, fair lending, consumer protection, housing counseling, consumer financial products or services; representatives of financial institutions that primarily serve underserved communities; representatives of communities that have been under-served by the financial services mainstream industry; and real estate housing professionals drawn from and serving underserved communities. Geographic diversity will be a criterion for selection, including allocating at least one seat for a community representative from the Deep South.

We recommend that the remaining 50% of the funds (plus any of the first 50% not delivered through the competitive process) be disbursed to state Housing Finance Agencies (HFAs) in accordance with a formula based on the number of renters in each state but with the requirement that to obtain a disbursement the HFA must meet certain criteria as set forth below.

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[155] Debbie Gruenstein Bocian, Peter Smith, and Wei Li, Collateral Damage: The Spillover Costs of Foreclosures, Center for Responsible Lending, at p. 2 (Oct. 24, 2012).

Channel Summary Table:

DPA Delivery Channel	Allocation	Notes
Targeted DPA Administrators	50%	Annual competitive process that awards allocations based on the criteria set forth below. If the selected Targeted DPA Administrators do not have sufficient capacity to deploy this 50%, remaining unallocated funds can be distributed via state HFAs.
State Housing Finance Agencies	50%	Allocation methodology to State HFAs based on number of renters in each state; requirement that to be eligible to receive funds HFAs (1) have an AFFH Plan and (2) have existing partnerships with federally-insured depositories, mortgage banks, non-profit loan funds, and/or mortgage brokers that serve underserved groups, nonprofit intermediaries, including local fair housing organizations and/or community development corporations.

Targeted DPA Administrators may include:[156]

- Federal Home Loan Banks;
- Community Development Financial Institutions;
- Community Development Credit Unions;
- Non-profit community lenders;
- Minority Depository Institutions; and
  Depository and non-depository mortgage lenders for use in conjunction with Special Purpose Credit programs.

Criteria used to select Targeted DPA Administrators in the competitive process described above should include:

- Strong track record of serving first-time Black, Hispanic, Asian American and Pacific Islander, and Native homebuyers and other underserved populations;
- Affirmative outreach plan to reach underserved populations, including existing and/or new partnerships with mortgage brokers that serve underserved communities;
- Partnerships with nonprofit intermediaries, including local fair housing organizations and community development corporations;
- Adoption of an Affirmatively Furthering Fair Housing Plan;
- Relationship with HUD-approved housing counseling agencies to prepare potential homebuyers; and
- Use of innovative products and programs that address barriers to attaining and sustaining homeownership.

[156] This section incorporates recommendations from the Black Homeownership Collaborative.

Amount of Assistance

In determining how much assistance should be available to eligible participants it is important to recognize the challenges first-generation homebuyers face in accumulating sufficient savings to purchase a home. We estimate that it would take nine years for a household earning the median income to save sufficient money to be able to make even a 3% down payment and cover the closing costs on a median-priced home.[157] The table below shows a simplified calculation of the minimum cash required to purchase the median home in 2020[158]:

Funds Needed	$	% of Home Price	Funds Required	$	% of Home Price
Median Home	$ 334,700	100.0%	Mortgage	$ 324,659	97.0%
Closing Costs	$ 10,041	3.0%	Borrower Cash	$ 29,201	8.7%
Moving Costs	$ 1,250	0.4%			
Reserves	$ 5,494	1.6%			
First Year Taxes	$ 2,375	0.7%			
Total Needed	$ 353,860	105.7%	Total Required	$ 353,860	105.7%

Given this reality, we recommend that the program provide a minimum of $20,000 of DPA to eligible families (could be adjusted up for high cost markets). That would significantly reduce the number of years of savings required to purchase their first home to three years. Further, for those able to accumulate some savings, a $20,000 DPA grant could be used to reduce the mortgage amount, which would make the housing payment more affordable for lower income families and help the family create wealth faster. A $20,000 DPA also would enable at least some families to preserve some of their own money for a critical reserve to maintain the home or manage through unforeseen life events.

Additional Requirements

Liquidity: The DPA program should include a requirement that the Government Sponsored Enterprises (Fannie Mae, Freddie Mac, and Federal Home Loan Banks) provide ongoing assistance and liquidity instruments to support this program.

Accountability and Transparency: Every administrator that receives funds under the DPA program, including each HFA recipient, should be required to report program results to the CDFI Fund in a timely manner in an electronically accessible format specified by the CDFI Fund and at intervals specified by the CDFI Fund but initially no less frequently than annually. The report should include applicant and loan-level data sufficient to assess the extent to which the program is adequately and safely closing homeownership and wealth gaps between and among racial and ethnic groups (including but not limited to applicant demographic information, application outcomes, terms of the DPA assistance), and property information (including geography, property value and type, and first mortgage type and investor). The loan-level data should be made publicly available by the CDFI Fund subject to modifications made by CDFI Fund to protect the privacy of borrowers in a manner consistent with the accountability purposes of this section.

Program Evaluation: The program should be evaluated 24 months after the initial disbursement of funds under this program. The CDFI Fund shall issue a report evaluating the program's effectiveness in achieving its objectives, including closing homeownership and wealth gaps between and among racial

[157] Calculations on file with Center for Responsible Lending; available on request.

[158] CNBC, Here's how much you will really need to buy your first home (Hint: It's more than you think)

and ethnic groups and enabling socially and economically disadvantaged households to become homeowners in a manner that is likely to enable them to sustainably remain homeowners and to build their family's assets. The program will be re-evaluated every 12 months after the initial 24-month initial evaluation.

Part 2: Program Element to Enhance Targeting

Within 60 days after enactment of the legislation, the Department of Housing and Urban Development and the Department of Justice should be required to jointly prepare and release a report analyzing the evidence of the existence and continuing effects of discrimination in the mortgage lending market that precludes certain classes of consumers from fairly obtaining credit. The report should also analyze evidence of structural or other barriers, such as policies, systems, technologies, practices, or other impediments that restrict the ability of socially and economically disadvantaged groups to fairly access mortgage credit.

The report must evaluate the extent to which there exists a significant gap in mortgage credit access for socially and economically disadvantaged groups, including Black, Hispanic, Native American, Asian American, and other groups. The analysis must also examine whether existing race-neutral lending programs, including the program established in Part 1 by this legislation, will be sufficient to cause a significant decline in the access gap such that the nation is put on a firm trajectory toward homeownership parity among advantaged and disadvantaged groups.

The purpose of this report shall be to determine whether adding the consideration of race to the DPA program, along with other modifications, are necessary to achieve the compelling governmental interest of eliminating the effects of past and present discrimination in the mortgage lending market so that all people, including underserved communities, have equal access.

In the event the Department of Housing and Urban Development and Department of Justice determine that the gap in access to mortgage credit is unlikely to be closed by the Core Program Elements as set forth in Part 1, Administrators shall establish programs—including a modification to the program in Part 1—that use race-conscious remedies to overcome discriminatory barriers to serving socially and economically disadvantaged people, using a rebuttable presumption that people of color are socially and economically disadvantaged.

Conclusion

Homeownership is the primary way that most Americans build wealth. Unfortunately, historic and ongoing discriminatory housing policies result in Black families and other people of color being excluded from having access to owning a home. As a result, persistent and growing racial wealth gaps continue with many hardworking families lacking the resources to save for a down payment to purchase their first home. A targeted down payment assistance program will serve as a critical first step in addressing these disparities, strengthening the wealth building capacity for millions while also growing the economy.

Appendix 1a: Targeting of First Generation, First Time Homebuyers with <120% AMI

Row	Description	White	Black	Latino	Other	Total	Black & Latino	Source
		By Race						
	Total Households							
1	# of All Households (Millions)	84.9	17.1	17.7	8.9	128.5	34.7	*Census Bureau* (1)
2	% of Total Households	66%	13%	14%	7%	100%	**27%**	*% of Sum of Row 1*
	Eligible Households							
3	% Renter Households	26%	56%	51%	42%	34%	53%	*Census Bureau* (2)
4	% of Renter Households at or Below 120% AMI	79%	87%	87%	78%	82%	87%	*PSID* (3)
5	% of All Above, First Generation Homebuyer	21%	65%	39%	27%	36%	57%	*PSID* (3)
6	% of Race Eligible	4%	32%	17%	9%	10%	24%	*Product of Rows 3-5*
7	# of Eligible Households (Millions)	3.6	5.4	3.0	0.8	12.8	8.4	*Row 1 x Row 6*
8	% of Total Eligible	28%	42%	24%	6%	100%	**66%**	*% of Sum of Row 7*
	Likely Program Participants							
9	% of Race Eligible	4%	32%	17%	9%	10%	24%	*Row 6*
10	% of All above, Eligible, Income Above 40% AMI	61%	39%	66%	80%	50%	44%	*PSID* (3)
11	% of All above, Households Age 25 - 54	74%	83%	73%	83%	78%	78%	*PSID* (3)
12	% of Race Likely Program Participants	2.0%	10.2%	8.3%	5.8%	3.8%	9.2%	*Product of Rows 9-11*
13	# of Likely Program Participants (Millions)	1.7	1.7	1.5	0.5	5.4	3.2	*Row 12 x Row 1*
14	% of Total Likely Program Participants	31%	32%	27%	10%	100%	**60%**	*% of Sum of Row 13*

(1) Census Bureau "Historical Households Tables"; calculated using 2020 estimates for number of households by race from Table HH-7.

(2) From the "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020" report published by the Census Bureau.

(3) Urban Institutue calculations using PSID data.

Appendix 1b: Targeting of First Time Homebuyers with <80% AMI

Row	Description	White	Black	Latino	Other	Total	Black & Latino	Source
		By Race						
	Total Households							
1	# of All Households (Millions)	84.9	17.1	17.7	8.9	128.5	34.7	*Census Bureau* (1)
2	% of Total Households	66%	13%	14%	7%	100%	**27%**	*% of Sum of Row 1*
	Eligible Households							
3	% Renter Households	26%	56%	51%	42%	34%	53%	*Census Bureau* (2)
4	% of Renter Households at or Below 80% AMI	61%	76%	68%	56%	66%	73%	*PSID* (3)
5	% of Race Eligible	16%	42%	35%	24%	22%	39%	*Row 3 x Row 4*
6	# of Eligible Households (Millions)	13.3	7.2	6.2	2.1	28.8	13.4	*Row 1 x Row 5*
7	% of Total Eligible	46%	25%	21%	7%	100%	**46%**	*% of Sum of Row 6*
	Likely Program Participants							
8	% of Race Eligible	16%	42%	35%	24%	22%	39%	*Row 5*
9	% of All above, Eligible, Income Above 40% AMI	50%	39%	50%	56%	47%	43%	*PSID* (3)
10	% of All above, Households Age 25 - 54	58%	68%	65%	61%	61%	66%	*PSID* (3)
11	% of Race Likely Program Participants	5%	11%	11%	8%	7%	11.3%	*Product of Rows 8-10*
12	# of Likely Program Participants	3.8	1.9	2.0	0.7	8.5	3.9	*Row 1 x Row 11*
13	% of Total Likely Program Participants	45%	23%	23%	9%	100%	**46%**	*% of Sum of Row 12*

(1) Census Bureau "Historical Households Tables"; calculated using 2020 estimates for number of households by race from Table HH-7.

(2) From the "Quarterly Residential Vacancies and Homeownership, Fourth Quarter 2020" report published by the Census Bureau.

(3) Urban Institute calculations using PSID data.