

February 19, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: February 24, 2021, Oversight & Investigations Subcommittee Hearing entitled, “How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color.”

The House Financial Services Subcommittee on Oversight and Investigations will hold a hearing entitled, “How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-term Economic Impacts on Borrowers of Color,” on Wednesday, February 24, 2021, at 3:00 p.m. via the virtual meeting platform, Cisco Webex. There will be one panel with the following witnesses:

- **William Darity, Jr.**, Professor of Public Policy, African and African American Studies, and Economics, Duke University; Director, Samuel DuBois Cook Center on Social Equity
- **Lisa Rice**, President & CEO, National Fair Housing Alliance (NFHA)
- **Andre Perry**, Senior Fellow, Metropolitan Policy Program, The Brookings Institution
- **Frances Espinoza**, Executive Director, North Texas Fair Housing Center
- **Cheryl Cooper**, Analyst, Financial Economics Division, Congressional Research Service

This hearing will examine invidious discrimination, its modern manifestations, and its lasting inter-generational effects, including as a determinant of racial wealth gaps. Witnesses will address barriers to asset building, including current and previous public policies and implicit and explicit discrimination. In addition, the hearing will explore available tools and potential legislative solutions to detect hidden discrimination and deter discrimination in lending and housing.

Housing Discrimination Is Perpetuated by Modern-Day Redlining

Today, owning a home has come to define the American dream for many and represents the single greatest driver of wealth for most families across the country.¹ Yet, up until the mid-20th Century, Black people and other people of color were barred from securing home financing outside of racially and ethnically segregated communities, or from owning a home altogether as a result of government-sanctioned redlining.² While redlining began as a matter of federal housing policy decades ago, evidence demonstrates that the practice of redlining effectively persists today, owing in significant part to disparate

¹ Urban Institute, *Homeownership is still financially better than renting*, Feb. 21, 2018, online: <https://www.urban.org/urban-wire/homeownership-still-financially-better-renting>

² Starting in the 1930s, the Federal Housing Administration (FHA) practiced a policy, later termed “redlining,” that denied federally-backed mortgages to persons in particular neighborhoods based on racial composition. Pursuant to this policy, the FHA declined to insure mortgages in and near certain neighborhoods based on their racial and ethnic composition, including African-American neighborhoods, while at the same time that it was providing subsidies to builders of homes in subdivisions with restrictive covenants that precluded sales to African-Americans and other explicitly excluded racial and ethnic groups. See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

treatment of people of color by persons and institutions at all stages of the home buying process, from lenders to real estate agents to appraisers to credit bureaus. The causes of what amounts to modern-day redlining are numerous, having as a common denominator discrimination, both express and implicit. Though perhaps more subtle than the facially-discriminatory policies of federal redlining, discrimination that has as its subject certain persons or groups, but is covertly embedded in prevailing systems and structures, is arguably no less an impediment to wealth accumulation and economic advancement for persons of color.

The Center for Investigative Reporting's Reveal project examined 31 million Home Mortgage Disclosure Act ("HMDA") records, finding "modern-day redlining" in 61 metro areas.³ Reveal reported that, after controlling for income, loan amount, and neighborhood, African Americans and Latinos were denied conventional mortgage loans far more frequently than their White counterparts. As compared to White borrowers, lenders denied African American borrowers at significantly higher rates in 48 cities, Latinos in 25 cities, Asian Americans in 9 cities, and Native Americans in 3 cities.⁴ Still, fully 98% of banks nationally receive passing grade in their Community Reinvestment Act examinations.⁵

The most recent HMDA data, covering the majority of U.S. mortgage loans, similarly reflect that borrowers of color are underserved in the conventional mortgage market. While the share of home purchase loans made to Black and Latino borrowers rose modestly in 2019, they remained well below their respective share of the population overall. In 2019, Black borrowers received 7% of loans, up from 6.7% in 2018, while comprising 13.4% of the total U.S. population; Latinos received 9.2%, up from 6.9% the prior year, while representing 18.3% of the total national population. The share of home purchase loans made in low-to-moderate-income (LMI) neighborhoods declined slightly between 2018 and 2019 to 16.5%. At the same time, the majority of home purchase loans made to Black (60.6%) and Latino (48.8%) borrowers were through government-insured programs through the Department of Veterans Affairs (VA) and FHA, which tend to have higher costs. These utilization levels are considerably higher than the share of such loans made to non-Latino White (29.7%) borrowers. Reflecting on the latest HMDA data release in June 2020, Center for Responsible Lending Executive Vice President Nikitra Bailey linked the discouraging statistics to the invigorated racial justice campaigns beginning last summer:

Recent people-led protest[s] to address today's social injustices are rooted in our nation's discriminatory federal housing policies. These practices caused families of color to accumulate less wealth and be more susceptible to abusive subprime lending that cost Black and Latino families \$1 trillion in wealth. Sadly, the current COVID-19 health crisis is devastating families of color at a disproportionately higher rate than whites. By not creating cost-efficient homeownership opportunities for creditworthy borrowers of color, we are denying millions of Americans the opportunity to accumulate wealth, suppressing economic growth, and widening the racial wealth gap.⁶

³ Reveal, "[Kept Out: For people of color, banks are shutting the door to homeownership](#)," Feb. 15, 2018; Reveal, "[How Reveal Identified Lending Disparities in Federal Mortgage Data](#)," Feb. 2018; see Reveal, "[Kept Out: Gentrification became low-income lending law's unintended consequence](#)," Feb. 16, 2018.

⁴ Reveal, "[Kept Out: For people of color, banks are shutting the door to homeownership](#)," Feb. 15, 2018.

⁵ Congressional Research Service, "[The Effectiveness of the Community Reinvestment Act](#)," Feb. 28, 2019. OCC finalized its harmful CRA rule last year, further weakening its efficacy. See <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=406572>.

⁶ CRL press release, Jun. 26, 2020 online: <https://www.responsiblelending.org/media/new-hmda-data-shows-mortgage-market-continues-exclude-black-and-latino-borrowers>.

Another study found that lenders abandoned majority-African American neighborhoods in Baltimore while favoring White borrowers and majority-White neighborhoods.⁷ According to the study findings, White borrowers received 210% of the lending than their share of the population would predict, while African Americans received only 37%.

Newsday's Long Island Divided series, an exhaustive, three-year investigation into racial discrimination in home buying on Long Island, deployed actors to conduct paired-testing,⁸ which involved the use of hidden cameras to meet and record meetings with real estate agents.⁹ Recognized with the Edward R. Murrow award, the investigation depicted in stark relief disparate treatment of potential homebuyers of color and prompted a year-long investigation by the New York State Senate, which recently advanced a fair housing legislative package¹⁰ following an extensive January 2021 report of findings and legislative recommendations.¹¹ In 40% of tests, agents engaged in potentially unequal, disparate treatment of homebuyers of color as compared to White homebuyers, with nearly 50% of Black homebuyers experiencing unequal treatment, according to fair housing experts consulted by *Newsday*. Agents at ten of the twelve real estate firms that were tested demonstrated evidence of discriminatory behavior, such as steering non-White home shoppers to certain neighborhoods or requiring homebuyers of color to have prequalification letters from a mortgage lender before allowing them to view houses.¹²

The Racial Wealth Gap: Data, Determinants, and Macro Effects

According to the Federal Reserve's most recent Survey of Consumer Finance,¹³ the racial wealth gap is little changed since the prior survey in 2016. The typical (*i.e.*, median) White family has eight times the wealth of the typical Black family and five times the wealth of the typical Latino family. In the 2019 survey, White families were found to have the highest level of both median (\$188,200) and mean (\$983,400) family wealth. In contrast, Black families' median (\$24,100) and mean (\$142,500) wealth is less than 15% that of White families. Latino families' median and mean wealth is \$36,100 and \$165,500, respectively.¹⁴ What is consistent across all groups is starkly inequitable wealth distribution: the mean is substantially higher than the median, meaning that wealth is highly concentrated among relatively few families at the highest levels of wealth.

⁷ NCRC, "[Home Mortgage and Small Business Lending in Baltimore and Surrounding Areas](#)," Nov. 2015.

⁸ Paired-testing is a civil rights enforcement tool that has been used since at least the 1960s to show patterns of individual and systemic discrimination.

⁹ Ann Choi, *et al.*, *Long Island Divided*, NEWSDAY, Nov. 17, 2019, online: <https://projects.newsday.com/long-island/real-estate-agents-investigation/#open-paywall-message> ("Long Island Divided").

¹⁰ New York State Senate, *Here Are the Eleven Bills Kavanagh & the Senate Majority Passed to Stop Housing Discrimination*, Feb. 8, 2021, online: <https://www.nysenate.gov/newsroom/articles/2021/brian-kavanagh/here-are-eleven-bills-kavanagh-senate-majority-passed-stop>

¹¹ New York State Senate, Final Investigative Report, Fair Housing and Discrimination on Long Island, Jan. 27, 2021, online: https://www.nysenate.gov/sites/default/files/article/attachment/fair_housing_and_discrimination_on_long_island_report.pdf.

¹² Long Island Divided, *supra* note 9.

¹³ Federal Reserve Survey of Consumer Finances, Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, Sep. 28, 2020, online: <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>; see also Brookings Institution, "[Examining the Black-white wealth gap](#)," Feb. 27, 2020 (analyses based on the Fed's 2016 and earlier surveys).

¹⁴ Families identifying as Asian American, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, other race, and all respondents reporting more than one racial identification have lower wealth than White families but higher wealth than Black and Hispanic families.

Rates of growth in wealth for the 2016–19 period were faster for Black and Latino families (which experience the largest declines in wealth due to the Great Recession), rising 33% and 65%, respectively, compared to White families, whose wealth rose 3%. Yet, this faster growth in wealth for Black and Latino families resulted in only very modest changes in the racial wealth gap, which actually grew between Black and White families by \$400 to \$164,100 in 2019, while falling by just over \$8,000 between Latino and White families to \$152,100 in 2019.

Moreover, racial wealth gaps are a drag on the U.S. economy broadly and negatively impact the economic prospects of people of color in particular. The effects on GDP are especially stark. Between 2019 and 2028, U.S. GDP is estimated to be reduced by \$1 trillion to \$1.5 trillion.¹⁵ In other words, if the racial wealth gap were closed by 2028, U.S. GDP would rise a projected 4% to 6%, which is the equivalent of an increase of \$2,900 to \$4,300 in GDP per capita.¹⁶ Another recent analysis put the macroeconomic costs of the racial wealth gap higher still, at \$5 trillion over the next five years.¹⁷

Noting that there are numerous ways families transmit wealth across generations, the Federal Reserve’s Survey of Consumer Finance identified several asset classes that give rise to the gaps found: inheritances and other family support; homeownership; and retirement accounts.¹⁸ Other factors contributing to racial wealth gaps are discriminatory policies and practices, as well as new technologies, differences in home appreciation, and inequitable credit reporting systems.

Further, in a nation where homeownership is viewed as a primary way to build wealth, lagging homeownership rates among people of color contribute to the overall racial wealth gap. Even when people of color do obtain homeownership, there are still disparities to unravel within that investment. For homeowners of color, differentials in home value appreciation exacerbate the wealth chasm. An analysis of the six U.S. metropolitan areas with the largest volume of home loans made to African-Americans found that Black borrowers were underrepresented and obtained proportionally fewer, more costly loans than White applicants, even after accounting for income disparities.¹⁹ Moreover, the report found that home values in neighborhoods in which Black homeowners are concentrated appreciated at a slower rate than those in predominantly White areas. This disparity was evident even in areas such as Houston and Dallas, where home prices were less volatile during and after the financial crisis, and where, for both groups, homes in 2017 were valued above 2006 levels.²⁰ To counteract these trends, the report underscored the importance of stopping systematic discrimination through heightened enforcement of civil rights laws. Closely related to the appreciation gap is an appraisal gap that collectively costs Black homeowners over \$156 billion in home equity.²¹

Like the dominant appraisal system, the existing credit-scoring system may appear, race-neutral, but in practice it has perpetuated the racial wealth gap. For example, the typical credit score excludes past rent and utility payments, leaving out most of those Black Americans who don't own homes and thus are rendered “credit invisible.” That is why then-Presidential candidate Joseph R. Biden endorsed the creation

¹⁵ McKinsey & Co., [The Economic Impact of Closing the Racial Wealth Gap](#), Aug. 13, 2019, at 6.

¹⁶ *Id.*

¹⁷ Citi Global Perspectives and Solutions, [Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.](#), Sep. 2020, at 7, 36.

¹⁸ *Supra* note 13.

¹⁹ Center for American Progress, [Racial Disparities in Home Appreciation: Implications of the Racially Segmented Housing Market for African Americans’ Equity Building and the Enforcement of Fair Housing Policies](#), July 2019.

²⁰ *Id.* at 24.

²¹ Perry, A., Rothwell, J., Harshbarger, D., The Brookings Institution, “The Devaluation of Assets in Black Neighborhoods” (2018).

of a public credit reporting agency to provide a non-discriminatory credit report alternative that would be used by all federal lending programs, including for home and student loans.²²

Finally, technologies that can have discriminatory impacts and thereby exacerbate the racial wealth gap are highlighted in a recent lawsuit by the National Fair Housing Alliance against Redfin, a largely online real estate brokerage platform.²³ Based on a two-year investigation from 2018 to 2020, the case alleges that Redfin's minimum home price policy, which requires homes to meet a minimum price threshold in order for buyers and sellers to qualify to receive brokerage services, has resulted in discriminatory provision of services and disparate levels of service across neighborhoods in at least ten metropolitan areas based on the racial composition of the neighborhood. NFHA alleges that Redfin's policies and practices have effectively resulted in redlining communities of color, fueling the racial wealth and homeownership gaps.²⁴

Detecting and Deterring Hidden Discrimination: Matched-Pair Testing

Matched-pair testing is an enforcement method that utilizes a pair of testers who differ in their race, gender, or belonging to some other protected class, but who otherwise have similar profiles as a means of detecting impermissible differences in treatment based on a protected class. For decades, HUD, fair housing practitioners, researchers, and courts, including the Supreme Court, have agreed that such testing is a viable means of uncovering illegal and unequal treatment in the housing market. The Long Island *Newsday* investigation is a recent example that demonstrates both the unique efficacy and the significant costs of testing as a tool of civil rights enforcement.²⁵ First, only testing of the kind utilized in the *Newsday* investigation could detect the very real differences in treatment accorded to prospective homebuyers on the basis of race. In a non-testing environment, those who experience such disparate treatment would not have reason to know that others similarly situated, but of a different race, experienced substantively different levels of service and degrees of accommodation. Consider, for example, agents who told testers of color that they would “never” show a house to a prospect without a prequalification letter from a mortgage lender. Paired testing showed that the same agents, when assisting White paired testers, averred to no such requirement. In this sense, then, the disparate treatment is “hidden” from its targets.

Legislation

H.R. 166, the Fair Lending for All Act, is aimed at uncovering discrimination by lenders that is knowing or willful. First, to detect hidden discrimination, the bill creates within the Consumer Financial Protection Bureau an Office of Fair Lending Testing that is charged with testing creditors' compliance with the Equal Credit Opportunity Act. Second, the bill creates criminal penalties under federal law for knowing and willful discrimination by lenders in any credit decision. Penalties for a single violation are up to \$50,000 in fines and 1 year in prison. For a pattern or practice violation, the bill authorizes fines up to \$100,000 and imprisonment not to exceed 20 years. Finally, the measure amends ECOA to prohibit discrimination in credit on the basis of sexual orientation and gender identity as well as zip code.

²² Cf. Testimony of Chi Chi Wu, National Consumer Law Center, House Committee on Financial Services, Feb. 2019, online: https://www.nclc.org/images/pdf/credit_reports/testimony-hfsc-credit-reporting-hearing.pdf; Traub, A., Demos, *Establish a Public Credit Registry* (describing concept of public credit reporting agency), Mar. 2019; online: <https://www.demos.org/policy-briefs/establish-public-credit-registry>.

²³ <https://nationalfairhousing.org/wp-content/uploads/2020/10/Redfin-Filed-Complaint.pdf>

²⁴ NFHA press release, Oct. 29, 2020, online <https://nationalfairhousing.org/2020/10/29/nfha-files-federal-discrimination-lawsuit-to-stop-redfins-real-estate-redlining/>

²⁵ *Supra* note 9 at 8.