The Characteristics and Challenges of Today's Homebuyers

Testimony of

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Introduction

Chair Davidson, Ranking Member Cleaver, and other distinguished members of the House Financial Services Subcommittee on Housing and Insurance, thank you for the opportunity to testify during the subcommittee's hearing entitled *The Characteristics and Challenges of Today's Homebuyers*. I am Nikitra Bailey, Executive Vice President of the National Fair Housing Alliance® ("NFHA™"). NFHA leads the fair housing movement and works to eliminate housing discrimination and ensure equitable housing opportunities for all people and communities through its education and outreach, member services, public policy, advocacy, housing and community development, tech equity, enforcement, and consulting and compliance programs. NFHA represents over 170 local fair housing enforcement agencies throughout the U.S.

Today, the nation is faced with a fair and affordable housing crisis that is squeezing the budget of American consumers, particularly consumers of color. Low housing inventory, record competition from corporate investors, restrictive zoning ordinances, high interest rates, and more are all driving prices higher. NFHA advised Congress back in 2022 that the Federal Reserve Board does not have the tools to address these housing challenges. While the Federal Reserve attempted several deflationary efforts, housing costs continued to skyrocket. And Federal Reserve Board Chair Powell recently stated progress on lowering inflation is "not assured."[1] Further, data shows housing will continue to be a major driver of inflation and its impact on inflation will not subside until the end of 2024 and beyond. Thus, Congress and the Biden Administration must act quickly to make equitable housing investments that promote financial inclusion and stimulate economic growth for everyone. We welcome the Subcommittee's commitment to understanding today's homebuyers and to promoting fair and affordable housing for all.

My testimony draws heavily from previous testimonies[2] and makes the following key points:

- Housing continues to be a major driver of inflation and will not subside until the end of 2024 and beyond.
- The Federal Reserve Board lacks the tools to tackle the nation's fair and affordable housing crisis.
- Congress should pass comprehensive legislation with sensible, equitable policies to address the nation's fair and affordable housing crisis.

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[1] Howard Schneider, *Fed's Powell Still Expects Rate Cuts, but Inflation Progress "Not Assured,"* Reuters (March 6, 2024).

[2] *See, e.g.*, *Testimony of Nikitra Bailey, National Fair Housing Alliance*, Hearing before the House Committee on Financial Services, entitled, Boom or Bust: The Need for Bold Investments in Fair and Affordable Housing to Combat Inflation (Dec. 1, 2022); *Testimony of Nikitra Bailey, National Fair Housing Alliance*, Hearing before the House Select Committee on Economic Disparities and Fairness in Growth, entitled, Promoting Economic Disparity and Fair Growth through Access to Affordable and Stable Housing (March 1, 2022).

- Misguided efforts to reverse equitable gains harms individuals, communities, and the economy.

Congress Should Promote Equitable Housing Solutions to Address the Nation’s Fair and Affordable Housing Crisis

Issue #1: Segregation and Discrimination Continue to Be the Bedrocks of Inequality in the U.S.

"A person's zip code shouldn't decide their destiny."
-President Barack Obama

The roots of discrimination in housing are deep, pernicious, and persistent. Thousands of race-conscious housing, banking, and other policies created systems and structures that were highly inequitable. Unfair laws and policies also produced a dual market—a separate and unequal housing system that rewarded White households while simultaneously debilitating Black, Latino, Asian American/Pacific Islander (AAPI), and Native American households.

Even laws that appeared to be racially neutral were implemented with racialized policies. For example, in the 1930s, the New Deal’s federal Home Owners’ Loan Corporation (“HOLC”) developed one of the most harmful policy decisions in the housing and financial services markets by creating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.[3] The HOLC also created maps that were color-coded to indicate the desirability of neighborhoods. Communities of color were coded as “hazardous” as signified by red shading on the map and were assigned a lower value--even when the residents could afford mortgage loans. Areas that contained even small numbers of Black residents were coded as “hazardous” and shaded red. This approach led to the modern-day term “redlining,” which refers to restricting access to credit in communities of color.

The federal government developed other explicitly discriminatory policies that perpetuated the unfounded association between race and risk into the nation’s housing and financial markets. For example, the Federal Housing Administration (“FHA”) encouraged the use of racially restrictive covenants and required them in exchange for supporting the new housing developments built throughout the nation’s suburban communities. Even after the Supreme

[3] The Home Owners’ Loan Act of 1933 established the HOLC as an emergency agency under the Federal Home Loan Bank Board. 12 U.S.C. § 1461 et seq. *See also* University of Richmond, Virginia Tech, University of Maryland, and Johns Hopkins University, *Mapping Inequality* (documenting the maps and area descriptions created by the HOLC between 1935 and 1940); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

Court declared in 1948 that racially restrictive covenants were not enforceable,[4] the FHA gave preferential treatment to developers that adopted them. From 1934 to 1962, the federal government backed over $120 billion in mortgages, but the FHA's race-based policies meant that 98 percent of these loans went to White Americans with only two percent of loans going to Black, Latino, AAPI, and Native American individuals. Similarly, the U.S. Department of Veterans Affairs ("VA") also instituted the use of discrimination in the administration of the GI Bill loan programs enacted by Congress in 1944.[5] In the state of Mississippi alone, just two out of 3,229 VA-insured mortgages went to Black servicemembers seeking to finance a home, business, or farm in the first three years of the program.[6]

Even after passage of the Fair Housing Act in 1968 and Equal Credit Opportunity Act in 1974, policies of the federal government and private actors continued to perpetuate segregation and discrimination. Explicitly race-based policies were replaced by subtler "race-neutral" methods of excluding people of color. For example, in the 1960s and 1970s, the federal government began the urban renewal program and transportation projects in which cities often used eminent domain to condemn and raze housing, businesses, and churches and displace residents of Black communities.[7] In addition, exclusionary zoning policies have made it difficult for low- and even moderate-income households to live in many well-resourced communities.[8] Finally, technology can often be used to perpetuate discrimination instead of preventing it, for example, by using tenant screening or lending algorithms with built-in biases. Researchers found that algorithmic systems overcharge Black and Latino mortgage borrowers by $765M yearly,[9] and Automated Valuation Models[10] perpetuate discrimination against homeowners of color.

The Department of Justice's recent record settlements totaling more than $100 million in redlining cases in Black and Latino neighborhoods nationwide is a stark reminder that redlining persists and underscores the importance of using all the tools at our disposal to root it out. Moreover, Home Mortgage Disclosure Act data reveals each year that Black and Latino borrowers are denied home mortgages at rates higher than the whole market.[11]

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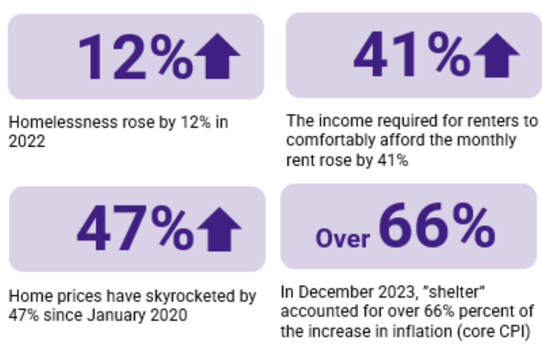
[4] *See Shelley v. Kraemer*, 334 U.S. 1 (1948).
[5] *See, e.g.,* Alex Horton, *Racial Discrimination by Veterans Affairs Spans Decades, Lawsuit Says*, Washington Post (Nov. 28, 2022).
[6] Dedrick Asante-Muhammad, et al., *The Road to Zero Wealth: How the Racial Wealth Divide Is Hollowing Out America's Middle Class*, p. 15 (September 2017).
[7] *See* Troy McMullen, *More Cities Seek to Redress Widespread 20th-century Destruction of Black Neighborhoods*, Washington Post (Feb. 10, 2022).
[8] *See* Margery Austin Turner and Solomon Greene, *Causes and Consequences of Separate and Unequal Neighborhoods*, Urban Institute.
[9] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace, *Consumer-Lending Discrimination in the FinTech Era*, University of California, Berkeley, (Nov. 2019).
[10] Linna Zhu, Michael Neal, and Caitlin Young, *Revisiting Automated Valuation Model Disparities in Majority-Black Neighborhoods*, Urban Institute (May 19, 2022).
[11] Jacob Channel, Dan Shepard, Xiomara Martinez-White, *Black Homebuyers in 50 Largest US Metros 1.6 Times More Likely to Be Denied for Mortgage Than Overall Population*, LendingTree (July 24, 2023).

Recommendation: Congress should vigorously protect the Affirmatively Furthering Fair Housing (AFFH) provisions of the Fair Housing Act, including by:

- Opposing any anti-AFFH budget riders;
- Providing sufficient funding for the U.S. Department of Housing and Urban Development ("HUD") to effectively implement the Fair Housing Act's AFFH provision;
- Urging the Administration to ensure the American Rescue Plan Act, Bipartisan Infrastructure Law, Inflation Reduction Act, and CHIPS and Science Act are implemented with AFFH principles;
- Urging HUD to implement comprehensive AFFH education and training for municipalities, public housing authorities, fair housing groups, and others; and
- Requesting the Secretaries of Treasury, Commerce, Education, Labor, and other appropriate agencies develop Memoranda of Understanding between those agencies and HUD to fulfill the legal AFFH obligations.
- Increasing funding for the Fair Housing Initiatives Program to at least $100,000,000 to adequately support community-based fair housing groups that provide critical services at the local level to affirmatively further fair housing in their jurisdictions.
- Increasing funding for the Fair Housing Assistance Program to provide states and local jurisdictions adequate support to ensure the actions of municipalities comport with their obligation to affirmatively further fair housing.

Issue #2: Housing Costs Are at Records Highs

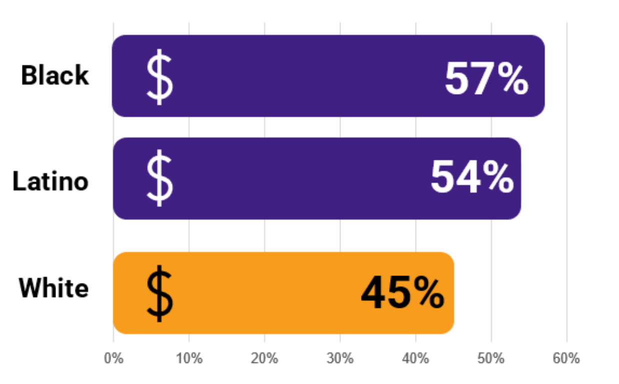
Housing Costs Are a Main Driver of Inflation and American Consumers Are Feeling the Squeeze



Rising housing, gas, and food costs are the main drivers of inflation. But housing costs are the key driver.[12] Housing costs are now the largest single driver of inflation, according to the Labor Department, with shelter prices making up two-thirds of the annual increase last month.

[12] *See* Adam Cancryn, Eugene Daniels, and Katy O'Donnell, *The Rent Is Too Damn High and Biden Knows It*, Politico (March 14, 2024); Eleanor Mueller and Katy O'Donnell, *Congress Scrambles to Fix Housing as*

More Than Half of Renters of Color Are "Cost-Burdened"



In 2022, a record-high 22.4 million renter households were "cost-burdened," meaning they spent more than 30 percent of their income on rent and utilities.[13] This is an increase of 2 million households over three years. Black and Latino renters were more likely than White renters to be cost-burdened. More than half of Black renters (57 percent) and Latino renters (54 percent) were cost-burdened, while about 45 percent of White renters were cost-burdened. These disparities make it more difficult for Black and Latino renters to build wealth and save for down payments for homeownership.

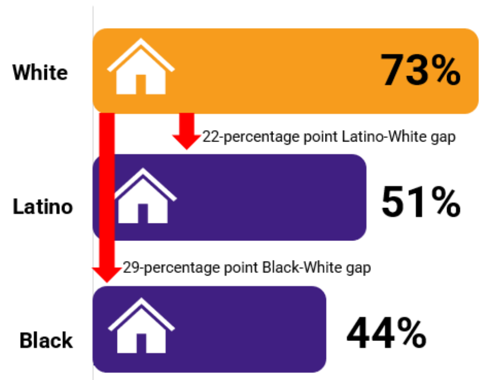
Recommendation: Congress should pass H.R. 4233-Housing Crisis Response Act, including:

- $65B to improve and modernize public housing units
- $24B to fund incremental Housing Choice Vouchers
- $12B for the Low-Income Housing Tax Credit
- $10B for first-generation downpayment assistance
- $5B to address lead-based paint and other housing hazards
- $5B for the LIFT Act
- $3B for the Community Restoration and Revitalization Fund
- $2B for rural rental housing
- $1B for investment in Native American communities
- $500M for Supportive Housing for People with Disabilities
- $500M for Supportive Housing for the Elderly Program

Prices Soar, Politico (Feb. 1. 2024); Jim Probasco, *Inflation and the Housing Market*, Bankrate.com (Jan. 11, 2024).
[13] Joint Center for Housing Studies of Harvard University, *America's Rental Housing 2024* (Jan. 2024).

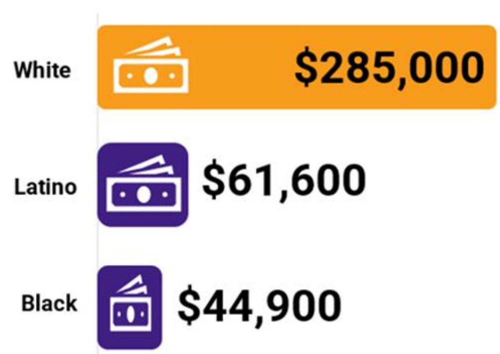
Issue #3: The Black-White and Latino-White Homeownership and Wealth Gaps Remain Wide and Persistent

The Homeownership Gap Is Wide and Persistent



In 1960, when housing discrimination was legal, there was a **27-percentage** points gap between Black homeownership (38 percent) and White homeownership (65 percent).[14] In 2021, the racial homeownership gap was even wider at **29 percentage** points, representing another barrier to wealth-building for households of color. Currently, the homeownership rate is 73 percent for White households, 51 percent for Latino households, and 44 percent for Black households. The White homeownership rate is nearly 67 percent higher than the Black homeownership rate, 45 percent higher than the Latino homeownership rate, and 20 percent higher than the rate for the Asian American community.

The Wealth Gap is Wide and Persistent



[14] National Association of REALTORS® Research Group, *2023 Snapshot of Race and Homebuying in America* (2023); Urban Institute, *Reducing the Racial Homeownership Gap.*

Since the Great Recession, the typical Black and Latino household has had between about $10 to $15 of wealth for every $100 held by the typical White household.[15] In 2022, the median wealth was $285,000 for White households, $61,600 for Latino households (20 percent of the typical White household), and $44,900 for Black households (15 percent of the typical White household). Both the Black-White and the Latino-White median wealth gaps increased by around $50,000 between 2019 and 2022, with each gap reaching over $220,000 in 2022.

Inclusive Policies are Needed to Circumvent Structural Inequality

<u>First-Generation Downpayment Assistance</u>
By investing $10 billion in first-generation downpayment assistance, based on a proven strategy developed by the National Fair Housing Alliance and Center for Responsible Lending based on data provided by the Urban Institute,[16] Congress would enable over 96,000 Black, 83,000 White, nearly 75,000 Latino, and 29,000 Asian American, Pacific Islander, or Native American consumers to become new homebuyers and build wealth. This is because the lack of access to home equity is the most significant driver of wealth inequality. For example, in 2019, Latino homeowners had an average net worth 40 times higher than Latino renters.[17] Many Black and Latino consumers have sufficient income to pay a monthly mortgage obligation, but exclusionary federal housing policies denied their families the intergenerational wealth to buy a home or gift a down payment to successive generations. Because of the lack of intergenerational wealth, Black and Latino families are far less likely to receive down payment assistance from their family,[18] delaying transitions into homeownership. In fact, more than one-third of Latinos indicated in 2020 that the biggest hurdle to buying a home was insufficient funds for a down payment. Moreover, existing first-time homebuyer downpayment assistance (DPA) models have failed to close the racial homeownership gaps.

<u>Special Purpose Credit Programs</u>
The Equal Credit Opportunity Act (ECOA) and Regulation B[19] allow Special Purpose Credit Programs (SPCPs), which are targeted lending products designed to specifically advantage an economically disadvantaged group of people. SPCPs can be created to benefit designated protected classes of people. They were designed to circumvent structural inequality and replace them with fairer systems to counteract centuries of unfair laws and policies that deprived millions of consumers of the right and opportunity to fairly access mortgage and credit opportunities. Those unfair laws and policies created many inequities and barriers in our

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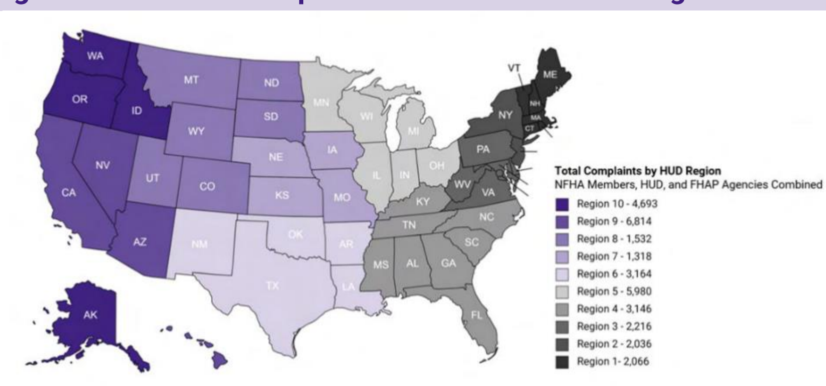
[15] Aditya Aladangady, Andrew C. Chang, Jacob Krimmel, *Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances*, Federal Reserve Board FEDS Notes (2023).
[16] NFHA and Center for Responsible Lending, *First Generation: Criteria for a Targeted Down Payment Assistance Program* (May 21, 2021).
[17] National Association of Hispanic Real Estate Professionals, *2020: State of Hispanic Homeownership Report* (2020).
[18] Kerwin Kofi Charles and Erik Hurst, *The Transition to Home Ownership and the Black-White Wealth Gap*, The Review of Economics and Statistics (2002).
[19] Equal Credit Opportunity Act, 15 U.S.C. § 1691(c); Regulation B, 12 CFR § 1002.8.

housing and lending markets that still impact millions of consumers. SPCPs are a way of providing these consumers access to the quality, affordable, sustainable credit they need to live successful, thriving lives. The U.S. Department of Housing and Urban Development (HUD) clarified through guidance SPCPs that comply with ECOA do not violate the Fair Housing Act.[20] In fact, all the regulators--Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Housing Finance Agency, Department of Justice, National Credit Union Administration, and the Consumer Financial Protection Bureau-- joined HUD in issuing an Interagency Statement making this point.[21] ECOA authorizes SPCPs to be used by both for-profit and non-profit organizations. CDFIs and State Housing Finance Agencies can employ SPCPs to fulfill their missions.

Recommendation: Congress should pass the Downpayment Toward Equity Act following the lead of states like Minnesota, Maine, Vermont, Rhode Island, New Jersey, and North Carolina. The $10B in and H.R.4233-Housing Crises Response Act of 2023 and President Biden's FY25 Budget builds on a proven strategy to grow homeownership opportunity in urban and rural communities.

Issue #4: Housing Discrimination Complaints Are at an All-Time High



Every year, there are over 4 million incidents of housing discrimination, with most going unreported. In 2022, we saw the largest number of complaints ever, up 5.74% higher than 2021.[22] Domestic violence and source of income complaints increased significantly. Complaints on the basis of sex were the highest since recording the data. These are signs that the

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[20] HUD, *Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs that Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B* (Dec. 6, 2021).

[21] *See* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, Department of Housing and Urban Development, Department of Justice, Federal Housing Finance Agency, *Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B* (Feb.22, 2022).

[22] NFHA, *2023 Fair Housing Trends Report: Advancing a Blueprint for Equity* (2023).

organizations investigating housing discrimination cases need more resources to address these critical problems.

Recommendation: Congress should increase FHIP/FHAP/FHEO funding, including:

- $100 million for the Fair Housing Initiatives Program (FHIP), which is HUD's federal grant program that funds private fair housing organizations that assist victims of discrimination;
- $36.6 million for the Fair Housing Assistance Program (FHAP), which is a HUD program that provides annual funding to state and local agencies to enforce fair housing laws; and
- $153 million for HUD-Office of Fair Housing/Equal Opportunity (FHEO) staffing to properly carry out its enforcement responsibilities.

Issue #5: Some Housing Policies Risk Gentrification and Displacement

The Neighborhood Home Investment Act can provide much-needed investment in underserved areas, but risks displacing people of color residing in neighborhoods of color.
The bill passed the Senate in March 2023 and awaits consideration in the House. The bill would:

- Establish a new federal tax credit to incentivize the construction and rehabilitation of affordable homes in distressed neighborhoods;
- Allocate $16 billion for building and rehabilitating an estimated 400,000 homes; and
- Include $10 billion in down payment assistance for home buyers.

But historically, investment in underserved communities has led to displacement of current residents, disproportionately affecting people of color.

Recommendation: Congress should revise the Neighborhood Homes Investment Act to avert displacement of people of color and better comply with the Fair Housing Act.
To this end, Congress should add a "Statement of Policy" that reads:

Congress –

(1) Supports continuing homeownership for current residents of distressed neighborhoods as part of the revitalization of those neighborhoods;
(2) Seeks to minimize displacement of current residents of distressed neighborhoods; and
(3) Expects that the Departments of Treasury and Housing and Urban Development will work together cooperatively, including through development of a Memorandum of Understanding if appropriate, to assure that implementation of this legislation is consistent with the provisions of the Fair Housing Act.

Issue #6: Appraisal Bias Continues to Undercut Wealth-Building Opportunities for Families of Color

In 2021, homes in White neighborhoods were appraised at values nearly 250 percent higher than similar homes in similar Black neighborhoods and at values nearly 278 percent higher than similar homes in similar Latino neighborhoods within the same metropolitan areas, depriving households of color of opportunities to build wealth.[23] Overall, White communities have access to over $15 trillion more in capital because of racialized appraisal practices.

Recommendation: Congress should continue to provide robust support for efforts to combat appraisal bias, including by:

- Holding a hearing to determine:
  - The PAVE Task Force Agencies' progress in meeting the goals of the PAVE Action Plan;
  - HUD's plans to resolve the backlog of appraisal discrimination complaints; and
  - The feasibility of releasing to the public the property-level uniform appraisal datasets from the Federal Housing Finance Agency, the Federal Housing Administration, the U.S. Department of Veterans Affairs, and the U.S. Department of Agriculture;
- Increasing FHIP funding to allow private fair housing centers to appropriately investigate complaints;
- Supporting legislation such as the "Fair Appraisal and Inequity Reform Act" and the "Real Estate Valuation Fairness and Improvement Act," which focus on accountable, efficient governance; fair, consistent, and accurate processes; reasonable appraiser qualification criteria; and public datasets; and
- Ensuring all appraisers in the U.S. undergo fair housing training developed by fair housing experts.

[23] Junia Howell and Elizabeth Korver-Glenn, *Appraised: The Persistent Evaluation of White Neighborhood as More Valuable Than Communities of Color*, Eruka (2022),

Issue #7: Many Communities Remain Underserved Because of the Lack of Small Dollar Loans

Rising home prices and lack of availability of small dollar mortgage loans have impacted entire cities and regions of the nation that have not fully recovered from the housing crisis. Cities like Detroit are credit starved leaving families with only exploitative credit availability.[24] Estimates show that small dollar mortgage lending fell by nearly 70% between 2004-2021.[25] Federally insured banks often cite a lack of profitability in their decision not to issue small balance mortgages while their investment arms benefit substantially from their vanishing presence in the single-family market[26]

In 2019, nearly 475,000 homes priced below $80,000 were sold, according to U.S. Census Bureau data with only 43 percent of those financed with a mortgage loan.[27] The pandemic has worsened this reality as the focus of mortgage originations shifted to the wealthiest borrowers leaving many credit worthy families in the Midwest with limited mortgage access, which has fallen disproportionately on families of color who typically rely on small balance mortgage loans to purchase a home.

Recommendation: Congress should act to ensure consumers can fairly access small dollar mortgages by:

- Ensuring our nation's fair lending and consumer protection laws are fully enforced, including in land contracts and rent-to-own agreements;
- Encouraging the Federal Housing Finance Agency to continue eliminating fees that place homeownership out of reach for underserved borrowers while continuing to balance safety and soundness;
- Encouraging the CDFI Fund to promote the use of Special Purpose Credit Programs for CDFIs;
- Encouraging regulators to promote technological solutions to improve the experience of borrowers to reduce barriers; and
- Supporting the use of positive rental payment data in underwriting.

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[24] Ben Eisen, *Dearth of Credit Starves Detroit Housing Market*, Wall Street Journal (Oct. 29, 2020).
[25] Alex Horowitz and Tara Roche, *Small Mortgages Are Too Hard to Get*, The Pew Charitable Trusts (July 3, 2023), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/06/small-mortgages-are-too-hard-to-get.
[26] Inside Mortgage Finance, A Stunning Year for Wholesale Lenders, March 5, 2021,
[27] Clare Trapasso, *Lots of Homes Under $100K Are for Sale, but Most Buyers Can't Get One for This Reason*, National Association of Realtors, December 30, 2020, https://www.realtor.com/news/trends/small-dollarmortgages-help-communities-of-color/.

Issue #8: Institutional Investors Are Exacerbating the Fair and Affordable Housing Crisis

Investor purchases put homeownership further out of reach for first-time homebuyers and prevent families from generating wealth that could be invested in education or small businesses or passed on to the next generation. Investors have cash on hand to outbid owner-occupants and developers are selling newly-built homes to investors because consumers face stiff barriers in accessing mortgage loans. In 2021, one in 7 homes sold in 40 major metro areas were bought by investors, driving up purchase prices by record highs.[28] This trend also has a disparate impact on communities of color. In 2021, 30 percent of home sales in majority Black neighborhoods were to investors, compared with only 12 percent in other zip codes. Moreover, research has shown that many renters living in investor-owned properties report subpar housing conditions, unexpected fees, and unresponsive management staff.

Recommendation: Congress should take action to remedy the challenges posed by institutional investors by:

- Supporting HUD's efforts to implement AFFH, including encouraging jurisdictions to make it easier for consumers to purchase housing;
- Directing the GAO to conduct an analysis of this issue and provide recommendations;
- Urging the GSEs and FHA to make every effort to sell REO assets to owner-occupants;
- Passing the Housing Crisis Response Act, Neighborhood Homes Investment Act, Downpayment Toward Equity Act, and LIFT Act;
- Supporting lenders and other entities in developing Special Purpose Credit Programs;
- Passing the Stop Predatory Investing Act (Brown-OH);
- Providing additional Community Development Block Grant (CDBG) funding strictly to allow municipalities to purchase poorly maintained homes owned by investors, renovate them, and sell them to owner-occupants; and
- Passing the Neighborhood Home Investment Act.

Issue #9: Ensure the LIHTC and Other Tax Credits Provide Consumers with Fair Housing Options

The Low-Income Housing Tax Credit ("LIHTC") plays a significant role in determining where families with low incomes are able to reside. Often LIHTC properties are located in communities that are severely under-resourced and racially segregated. Rarely are LIHTC properties developed in communities that have the amenities that all residents need to thrive. LIHTC properties must be equitably developed in all communities to ensure residents have fair housing options. Further action must be taken to ensure the benefits of the LIHTC reach residents and not just wealthy developers.

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[28] Kevin Shaul and Jonathan O'Connell, *Investors Bought a Record Share of Homes in 2021. See Where*, Washington Post (Feb. 16, 2022).

Recommendation: Congress should ensure the U.S. Treasury Department's housing and tax credit programs dismantle residential segregation, offer real choice in housing, and create thriving communities by:

- Increasing the number of LIHTC developments that are located in well-resourced communities.
- Encouraging the Treasury Department to embed fair housing principles in Treasury's housing related and tax credit programs;
- Encouraging the Biden Administration to reconstitute and expand the President's Fair Housing Council outlined in Presidential Executive Order 12892 to affirmatively further fair housing, remedy the impacts of residential segregation, housing inequality, and structural racism in all federal programs;
- Encouraging the Biden Administration to re-establish or adopt agreements to coordinate government-wide efforts to affirmatively further fair housing and advance fair housing principles;
- Prohibiting lending institutions, housing providers, and other entities that operate in the housing space from accessing federal programs, subsidies, tax breaks, or other government assistance if they have been found in violation of the Fair Housing Act or Equal Credit Opportunity Act within the last five years; and
- Encouraging federal agencies to require meaningful fair housing impact analyses in every effort to fill the nation's affordable housing shortage. Reporting requirements are a critical step, but are not sufficient to change the location, types and cost of housing units available to households in the U.S.

Issue #10: Zoning Can Be a Barrier to Fair and Affordable Housing

Single-family zoning has been used to effectively lock out renters, low-income individuals, and people of color from certain neighborhoods.[29] While zoning and land use reforms are often discussed as a tool to improve rental housing affordability, certain reforms, such as upzoning and minimum lot sizes, can also be used to support the creation of more affordable, entry-level homeownership opportunities. For example, zoning reforms can help promote missing middle housing, such as condos in triplexes, quadplexes, and a range of other options beyond typical single-family detached homes and high-rises that help reduce the cost of construction and home prices.[30]

Some states are using legislation to reduce local zoning barriers. [31] In 2023, Montana and Washington passed sweeping reforms allowing other types of housing on parcels previously zoned exclusively for single-family homes, joining California, Oregon, and Maine. And in Massachusetts, communities served by public transit must now designate at least one zoning

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[29] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* (2023).
[30] National Association of Realtors, *Promoting Affordable Housing Via Zoning Reform* (Nov. 8, 2023).
[31] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* (2023).

district that permits multifamily housing. Colorado also offers communities grants for affordable housing development as an incentive to reform zoning and expedite approval processes. Although these reforms do not guarantee increased construction, they remove substantial barriers to developing more housing types that may also be more affordable to produce.

Recommendation: Congress should ensure no federal funding for housing and community development is utilized by jurisdictions that continue exclusionary zoning practices and encourage and incentivize local zoning reform by:

- Ensuring proper resources to fully implement HUD's proposed final AFFH rule; and
- Supporting HUD's work in administering $85 million in grants for cities to identify and implement reforms that will increase density, reduce minimum lot sizes, and streamline permitting processes.

Issue #11: CDFI Fund Investments Support Wealthy Developers Instead of Potential Homebuyers

Despite a unique history rooted in the work of racial justice and community development advocates, research shows that the majority of Community Development Financial Institutions' ("CDFIs") investments have gone to real estate developments in low-income communities, which are not necessarily communities of color. According to the Hope Policy Institute analysis of CDFI Fund recipients, White-led CDFIs held approximately $13 billion, or 72 percent, of the total assets reported in FY2014 despite having a lower asset size than minority controlled CDFIs.[32] The average asset size for White-led CDFIs increased from $58.1 million to $169.7 million from FY2014-FY2017, while the average asset size of minority-led CDFIs was relatively stagnant, remaining at near $71 million. Moreover, as of 2017, only two to six percent of CDFI funds have been used to support the activities of minority depository institutions despite Section 308(b) of FIRREA directing the Federal Deposit Insurance Corporation to act to preserve minority ownership of minority financial institutions.

Recommendation: Congress should conduct oversight of Treasury and CDFIs, including by ensuring that Treasury:

- Applies the Biden Administration's Racial Equity Framework to the CDFI Fund and Treasury's Housing Programs;
- Develops a fair housing and fair lending oversight program that is more consistent with the oversight structure of the other federal financial regulators;
- Provides CDFIs with guidance on the use of less discriminatory alternatives to traditional credit scoring;
- Requires fair housing and fair lending training for CDFI boards, executive staff, and staff;

[32] Hope Policy Institute, *Closing the CDFI Asset Gap*, (April 21, 2020).

- Audits CDFI Community Reinvestment Act (CRA) activities for compliance with the CDFI Fund principles and fair housing and fair lending obligations;
- Allows First-Generation Downpayment Assistance and Special Purpose Credit Programs (SPCPs) to count as eligible financial products and services, including SPCPs that are designed to remove the over-reliance on discriminatory credit scoring systems or designed to consider positive rental housing payments;
- Encourages CDFI investments in investors of color;
- Requires CDFI Venture Funds seeking certification to provide data transparency and data collection to ensure compliance with our nation's fair housing and fair lending laws;
- Requires each CDFI certified by the CDFI Fund to collect and publish board and executive staff demographic information; and
- For CDFIs with assets greater than $1 billion:
    - Requires them to enter into Community Benefits Agreements in their Target Markets to make sure their missions remain a focus of their work and loans are not just flowing to high-wealth developers;
    - Permits CDFI product innovation that better transmits the benefits of their subsidies directly to consumers;
    - Requires CFDIs to provide automatic interest rate reductions every 24-36 months for mortgage borrowers who perform well; and
    - Requires more direct mortgage lending, including to Black and female consumers through first-generation down payment assistance, Special Purpose Credit Programs, and small dollar pilot initiatives.

Issue #12: The Federal Home Loan Banks Continue to Reap Private Benefits Rather Than Promote Fair and Affordable Housing

Generally, the Federal Home Loan Bank ("FHLBank") System and the member institutions benefit from tremendous public subsidies and private benefits while providing comparatively little in public benefits. The FHLBank System benefits from substantial public subsidies and privileges, including exemption from federal, state, and local taxes (except real estate taxes); the ability to borrower cheaply because of an implicit federal guarantee; and the ability to generate significant revenue by lending out the funds they acquired at below-market rates to their member institutions at a higher rate than they borrowed. Despite their public purpose, however, the FHLBanks return relatively little to support affordable housing. For example, in 2021, the FHLBanks paid out more than $1 billion in dividends to their members, which was more than three times the amount they contributed to the Affordable Housing Program that year ($314.7 million).[33]

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[33] *See* Testimony of Director Sandra L. Thompson, FHFA, before the House Committee on Financial Services (July 20, 2022); FHLBanks Office of Finance, Lending, and Collateral Q&A (March 25, 2022).

Recommendation: Congress should take action to reform the FHLBank System, including:

- Requiring the FHLBanks to direct substantially more of their net income to affordable housing, with a substantial portion of that amount dedicated to affirmatively furthering fair housing;
- Expanding the purpose of the Affordable Housing Program to include funding for climate resiliency;
- Requiring the FHLBanks to submit Equitable Housing Finance Plans;
- Requiring the FHLBanks to ensure that member advances are not used to promote source of income discrimination in multi-family rental housing; and
- Requiring the FHLBanks to add more public interest independent directors, including those with experience in fair housing and fair lending.

Issue #13: The GSEs Must Fulfill Their Mission Mandates

Discrimination in the mortgage market is by no means a relic of the past and continues to manifest in multiple ways. Data from the Home Mortgage Disclosure Act and the Government-Sponsored Enterprises ("GSEs") themselves continue to demonstrate low levels of conventional mortgage loans to Black and Latino families. For example, in 2020, only 4 percent of Fannie Mae and 3.4 percent of Freddie Mac home purchase loans were from Black borrowers. Moreover, only 2.6 percent and 2.5 percent of Fannie Mae and Freddie Mac's purchases of refinance loans, respectively, were from Black borrowers.[34] Similarly, only 10.9 percent of Fannie Mae and 8.4 percent of Freddie Mac home purchase loans, and only 8 percent and 7 percent of refinance loans, respectively were from Latino borrowers.

Recommendation: Congress should conduct oversight of FHFA and the GSEs to ensure that they help build racial equity in homeownership, including by:

- Fully implementing their robust Equitable Housing Finance Plans that focus on addressing the racial homeownership gap;
- Considering the elimination of the Loan Level Pricing Adjustments[35] ("LLPAs") as well as addressing barriers such as biased credit scores, lack of collateral and appraisal issues, and discrimination which can all restrict access to credit for underserved groups;
- Insert fair housing protections into the eligibility guidelines of all their affordable housing programs, including the Low-Income Housing Tax Credit, State Housing Finance Agency, and other programs;

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[34] FHFA, *Annual Housing Report 2021* at 68, Appendix E (October 2021).

[35] The GSEs updated their Loan Level Pricing Adjustments grid which helped address concerns that the LLPAs presented a discriminatory impact against borrowers of color. However, the GSEs should seriously examine the complete elimination of the LLPAs, which were added during the financial crisis to help the GSEs repay their tax-payer bailout.

- Including in their financing contracts an affirmative obligation for developers to build housing in accordance with the accessibility requirements mandated by fair housing laws as well as an affirmative obligation to further fair housing; and
- Facilitating the widescale use of Special Purpose Credit Programs.

Issue #14: Artificial Intelligence Related to Housing and Lending Offers Both Promise and Peril

Artificial Intelligence (AI) holds great promise for improving systems, democratizing opportunities, lowering costs, and increasing productivity. Yet, it also holds great dangers for perpetuating bias, spreading mis-information, excluding people from necessary services, and generating other harms. AI and automated systems are already used extensively in the housing and finance sectors, including in credit scoring, tenant screening, automated underwriting, risk-based pricing, dynamic rental pricing, marketing, automated valuation models. Typically, AI models are developed using historical data, which can exacerbate historical discrimination.

Recommendation Congress should:

- Advance Legislative Actions for Safe, Secure, And Trustworthy Use of AI to Address the Fair and Affordable Housing Crisis

The rapid advancement of Artificial Intelligence (AI) technology has significantly boosted its integration into the US's housing and financial services system. This integration is evident in the widespread adoption of automated underwriting systems, risk-based pricing systems, and automated valuation models, among other applications. Though there are bias and discrimination risks in AI systems and their impact on housing and financial services, they can be mitigated and decreased to allow AI systems to promote fairer outcomes.

Algorithmic systems, when used responsibly, can help circumvent and overcome biases in AI and automated systems to allow for fair and affordable housing. Algorithmic fairness techniques can be utilized to mitigate bias by addressing bias at different stages of the AI life cycle, such as through pre-processing, in-processing, and post-processing, to ensure equitable outcomes in AI systems.[36] AI can also assist in identifying and mitigating risk in discriminatory practices and policies for housing and employment. AI-driven approaches that assist in the identification and mitigation of discriminatory practices and policies include identifying data sets that are non-representative/under-representative of specific populations,[37] internet or

[36] Zhou, N., Zhang, Z., Nair, V. N., Singhal, H., & Chen, J. (2022). Bias, fairness and accountability with artificial intelligence and machine learning algorithms. *International Statistical Review*, 90(3), 468-480.
[37] 7 Rie Kamikubo, Lining Wang, Crystal Marte, Amnah Mahmood and Hernisa Kacorri, Data *Representativeness in Accessibility Datasets: A Meta-Analysis,* (2022), https://doi.org/10.1145/3517428.3544826.

website crawling tools to gather online data such as housing listing, which be analyzed for patterns of discrimination, and AI tools utilizing natural language processing NLP and large language models (LLMs) to analyze textual data to identify discriminatory language or patterns in documents, policies, and communications.[38]

When harnessed responsibly, ethically, and safely AI can be leveraged to automate workflows streamline mortgage processes, improve data accuracy and reliability, accelerate appraisal modernization, improve borrower education and credit accessibility services provided to underserved communities, and much more. The potential benefit to the American people for fairer and more affordable housing through AI systems is glaringly apparent. However, to ensure this potential is fully realized, legislative action such as ensuring AI Systems compliance with existing civil rights and consumer protection laws, integrating the review of racial equity in the algorithm's lifecycle, auditing requirements, and ensuring public data access, transparency, and explainability for systems is imperative to ensure these technological innovations are spurring economic progress towards affordable housing and creating more equitable outcomes.

- Advance Responsible Tech Solutions for Fair and Affordable Housing

In the current state of housing development, we face a labyrinth of regulatory processes that can stifle innovation and prolong the delivery of affordable housing. Innovative technology solutions can transform the approval process, making a substantial impact on the fair and affordable housing crisis.[39]

These technologies have begun to address the inefficiencies at the core of America's housing shortage. They offer reimagined finance models, alternative paths to homeownership, and pioneering construction methods, which collectively foster a more efficient real estate ecosystem. For instance, proptech companies are revolutionizing the way we understand and navigate zoning meetings and permitting processes, effectively condensing timelines that have traditionally prolonged development.[40] Moreover, platforms that automate compliance and leasing processes can cut through bureaucratic red tape, saving time and resources while complying with the law. Similarly, advancements in materials technology and modular

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[38] Paula Reyero Lobo, *Bias in Hate Speech and Toxicity Detection* (2022), https://doi.org/10.1145/3514094.3539519.

[39] See, National Multifamily Housing Council. (2022, June 9). *NAHB cost of regulations report (2022)*. NMHC. https://www.nmhc.org/research-insight/research-report/nmhc-nahb-cost-of-regulations-report/ National Multifamily Housing Council (NMHC) & National Association of Home Builders (NAHB). (n.d.). NMHC/NAHB cost of regulations report 2022. Retrieved from https://www.nmhc.org/research-insight/research-report/nmhc-nahb-cost-of-regulations-report/.

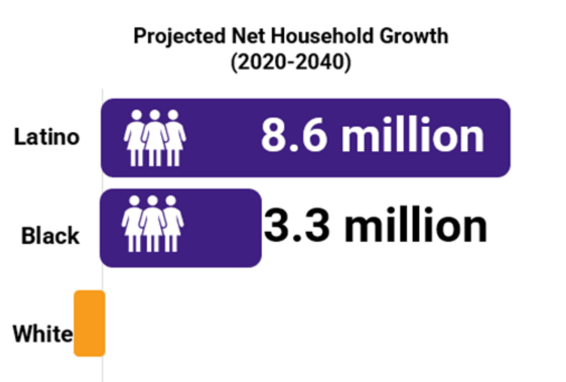
[40] Sage Computing Inc. *Using AI to promote equitable and affordable housing.* Office of Policy Development and Research. https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-022024.html.

construction are setting the stage for quicker, more cost-effective building methods, vital for expanding the supply of fair and affordable housing.[41]

In summary, by harnessing the power of responsible and innovative tech, we can streamline the development process, reduce costs, and deliver affordable housing more rapidly to the market. These technologies are not mere conveniences; they are essential tools in our urgent quest to close the housing gap. As legislators, embracing and fostering these innovations is paramount to ensuring a future where fair and affordable housing is not a privilege, but a reality for all.

Issue #15: Anti-DEI Activists Are Willing to Hold Back the American Economy to Advance Their Misguided Cause

Sustainable Growth in the Housing Market Will Depend on
Fair Access to Credit for Consumers of Color



All future net household growth will be from households of color.[42] Research shows that between 2020 and 2040, 16.1 million net new households will form, including 8.6 million more Latino households and 3.3 million more Black households, but fewer White households. Therefore, a sustainable, healthy housing market and housing-related businesses will depend on the ability to serve consumers of color.

[41] Zander, G. (2023, May). Innovation & AI in Affordable Housing . The World Bank. https://thedocs.worldbank.org/en/doc/fff83f483c76eef814d7488b25689a10-0430012023/related/2-Zander-Geronimos.pdf.

[42] Laurie Goodman, Jun Zhu, *The Future of Headship and Homeownership*, Urban Institute (2021).

Closing the Racial Gaps Would Contribute Billions to the Economy and Trillions to GDP

$218 BILLION

In sales and expenditures as well as **770,000** additional Black homeowners by improving access to housing credit, according to Citigroup.

Source: Citigroup, *In Pursuit of Equity: Why America's Future Depends on Closing the Racial Wealth Gap* (2021)

$400 BILLION

In tax revenue could be generated if racial disparities in homeownership were addressed, according to Morgan Stanley.

Jeff Cox, *Morgan Stanley Says Housing Discrimination Has Taken a Huge Toll on the Economy*, CNBC (Nov. 13, 2020)

$5 TRILLION

In growth to GDP over 5 years by eliminating racial disparities, according to Citi Global Perspectives.

Source: Dana Peterson and Catherine Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S*, Citi Global Perspectives and Solutions 3 (Sept. 1, 2020)

Recommendation: Congress should lead the way in demonstrating an unwavering commitment to racial equity, promoting anti-discrimination measures, and recognizing the many ways that diversity benefits American society.

Conclusion

Inequitable race-conscious housing policies created and cemented today's housing inequities, and now equitable policies are needed to rectify the problem. Housing discrimination and residential segregation are underlying factors in today's fair and affordable housing crisis and inflaming inflation. The inability to stop discrimination and overhaul unfair systems is stifling this nation as we need between 4-7 million new units to address the nation's fair and affordable housing crisis. Creating a fair, just, and equitable society is critical for the millions of people who lack access to viable financial services and opportunities to lead successful lives. But it is also imperative for our collective progress as a nation. Groundbreaking research has revealed that if we eliminated racial inequality, the U.S. GDP would increase by $5 trillion over a 5-year period. Thanks to inclusive policies like the American Rescue Plan Act's Homeowner Assistance Fund and Emergency Rental Assistance Program,[43] millions of families remained housed during the COVID pandemic and homeownership rates for Black, Latino, and Asian Americans are on an upward trend. Equity-based policies like these helped to prevent catastrophic losses during and after the pandemic. Congress must pass comprehensive legislation with critical equitable investments in housing opportunity to ensure the recovery is equitable. Since housing accounts for nearly 20% of the U.S. GDP, failing to act puts the economy and American's economic

[43] Pub. L. No. 117-2 (2021)

stability at risk. To quote former Federal Reserve Board Chair Greenspan, removing racial inequality and discrimination will generate “higher returns” to both people and the larger society.[44]

[44] *See* Remarks by Chairman Alan Greenspan, *Economic Challenges in the New Century*, before the Annual Conference of the National Community Reinvestment Coalition, Washington, D.C., (March 22, 2000).