



Testimony of Nikitra Bailey
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Before the U.S. House Select Committee on Economic Disparity and
Fairness in Growth
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Promoting Economic Prosperity and
Fair Growth through
Access to Affordable and Stable Housing

I. Introduction

Good morning, Chairman Hines, Ranking Member Steil, and other members of the United States House Committee on Economic Disparity and Fairness in Growth. I am Nikitra Bailey, Senior Vice President of Public Policy of the National Fair Housing Alliance (NFHA). NFHA is the country's only national non-profit civil rights agency solely dedicated to eliminating all forms of housing discrimination and ensuring equitable housing opportunities for all. We do this by providing leadership, education, outreach, advocacy, community development, enforcement, and services to our membership. NFHA is also the trade association for more than 170 fair housing organizations throughout the U.S.

My testimony today shows federal laws and policies created residential segregation, the dual credit market, institutionalized redlining, and other structural barriers. Families that received opportunities through prior federal investments in housing are some of America's most economically secure citizens. For them, the nation's housing policies served as a foundation of their financial stability and the pathway to future progress. Those who did not benefit from equitable federal investments in housing continue to be excluded. Now, Congress and President Biden have the opportunity to take significant steps to rectify these inequities perpetuated by the federal government by investing in our nation's bedrock of opportunity: housing. Our nation stands at a crossroads of several crises: a reckoning that demands an end to racial injustice; deepening racial and gender wealth gaps; and a housing affordability and homelessness crisis — all of which threaten our nation's future prosperity. The majority of the public understand and feel these crises deeply, and it is up to Congress and President Biden to deliver solutions.

II. America's Land and Homeownership Policies Created Today's Systemic Barriers

For centuries, laws and policies enacted to create land, housing, and credit opportunities were race-based, denying critical opportunities to Black, Latino, AAPI, and Native individuals. Despite our founding principles of liberty and justice for all, these policies were developed and implemented in a racially discriminatory manner.

A. Thousands of American Public Policies Entrenched Structural Inequality

Thousands of race-conscious housing, banking, and other policies created systems and structures that were highly inequitable and persist today, still impacting millions of households. These policies created and perpetuated segregation and re-shaped communities, setting up a built environment that connects place to opportunity in a manner that is highly correlated to race. Unfair laws also produced a dual credit market—a separate and unequal financial system that rewards and benefits White households while simultaneously crippling and debilitating Black, Latino, AAPI, and Native households. They also generated a litany of restrictive and exclusive zoning ordinances and policies that lock families of color in spaces that are toxic and have contaminated land, air, and water. Unfair laws and policies created the U.S. racial wealth, health, and homeownership gaps that, in a Catch-22 cycle, recycle inequality. Moreover, these systems and centuries of discriminatory policies and actions have produced trillions of pieces of data that have been used to develop technologies that then perpetuate disparities.



- Headrights System
- Slave Codes
- Early U.S. Constitution
- Land Ordinances & Grants
- Fugitive Slave Act
- Homestead Act
- Indian Removal Act
- Freedman's Savings & Trust
- Black Codes
- Jim Crow Laws
- Home Owners Loan Corporation Act
- National Housing Act
- Racially Restrictive Covenants
- Chinese Exclusion Act
- Sundown Town Ordinances
- GI Bill
- Social Security Act
- Japanese Internment
- Urban Renewal
- Model Cities
- National Highway Act

From the foundational origins of this nation, policy decisions picked winners and losers. Headrights policies provided immigrants with 50 to 100 acres of land for every person in their household – including enslaved Africans. Slave Codes and Black Codes denied Black people the right to own land or their children to inherit property. Via the Indian Removal Act, land and wealth were taken from Native Nations and many First Nation individuals lost their lives in the process. The Japanese Internment resulted in Japanese citizens losing their homes and businesses. Hundreds of Black communities were decimated by the Urban Renewal and Model Cities programs in which business hubs and whole neighborhoods were taken by eminent domain and demolished to make way for highways and other infrastructure projects. Homeowners and business owners were never fairly compensated in these schemes. These policies and more resulted in the loss of lives and untold wealth for people of color. The destabilization of these communities also resulted in economic harm and loss for the greater society – something that few researchers and legislators have sufficiently explored. This is one reason NFHA welcomes this Committee’s hearing on how ensuring fairness and equity through affordable and stable housing can spur economic security and growth.

B. Seemingly Race Neutral Policies Perpetuated Racial Redlining and the Dual Credit Market

Mapping Inequality: Redlining in New Deal America

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map options Search for c

A "Best"

B "Still Desirable"

C "Definitely Declining"

D "Hazardous"

D4
 Obsolescence. Negro concentration. Excessive ground rents in many cases.
 (Detrimental Influences)

C6
 No immediate danger of negro encroachment, but there is a heavy concentration of negroes in the section adjoining. Section is somewhat spotty and has few ground rent up to \$120.
 (Clarifying Remarks)

BALTIMORE AREA

Even laws that appeared to be racially neutral were implemented with racialized policies. For example, 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.¹ This system included Residential Security Survey forms that explicitly captured the percentage of "Negro" populations and other racial groups living in an area and then utilized that race-based data to grade the neighborhood. The HOLC's policies and procedures helped systematize the unfounded association between race and risk in U.S. housing and financial services markets, a connection that still exists today.

As depicted above, the HOLC system also included the creation of 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.

Notably, the data used to create the maps were not just collected randomly, but rather were based on the opinions of the leading real estate professionals at the time. Later, the Federal Housing Administration adopted these maps and race-based policies as the basis for its mortgage insurance underwriting decisions. Thus, the maps not only reflected the race-conscious views of the nation's housing industry leaders at the time but were also used to amplify and codify these views throughout the housing system.

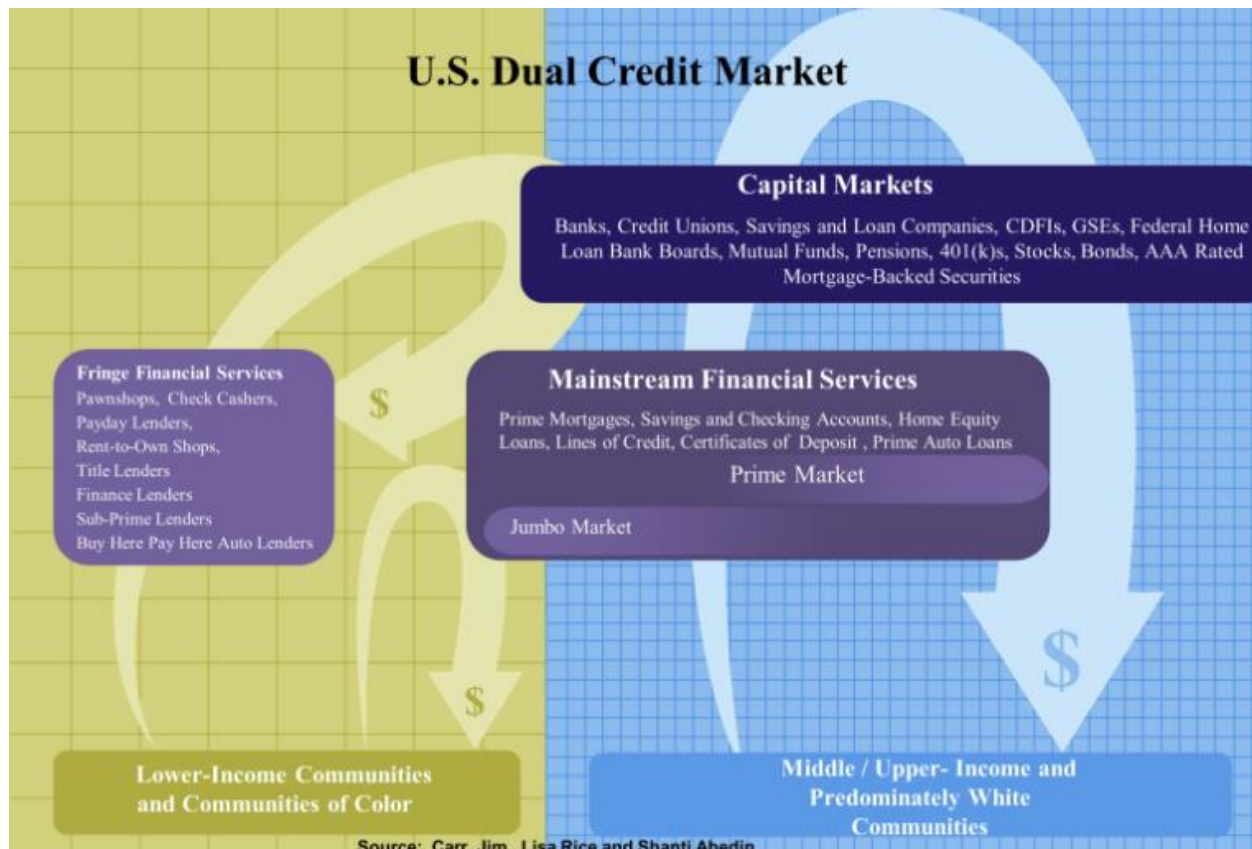
In addition to the mapping system, explicitly discriminatory policies perpetuated the unfounded association between race and risk into the nation's housing and financial markets. For example, the FHA encouraged the use of racially restrictive covenants and required them in exchange for supporting the new housing developments built throughout the nation's suburban communities. Even after the Supreme Court declared that racially restrictive covenants were not enforceable, the FHA gave preferential treatment to developers that adopted them.² From 1934 to 1962, the federal government backed over \$120 billion in mortgages, but the FHA's race-based policies meant that less than 2 percent of loans went to Black, Latino, AAPI, and Native individuals.

These policies did not extend only to FHA. 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. 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.³

¹ 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), <https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58>.

² See Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

³ 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), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.



Unfortunately, borrowers who access credit with subprime or non-traditional lenders often get trapped and find it extremely difficult to access credit from mainstream lenders. One reason is because some credit scoring systems negatively score borrowers who access credit from high-cost or finance company lenders – even if the borrower always pays her bill on time. Many alternative financial services providers (the green side of the graphic) do not report positive credit payments to credit reporting agencies. This means that consumers who access credit from the fringe market typically will not gain the benefit of making positive payments because other creditors cannot see that positive payment history. But consumers who access credit from the financial mainstream (the blue side of the graphic) typically gain positive benefits by having their timely payments reported. The ability to access credit from financial institutions who report timely payments to credit reporting agencies is so important because this information is used to enable consumers to develop and build solid credit scores.

Consumers who primarily access credit from alternative financial services providers (the green side of the graphic) are often “credit invisible.” That this, they lack sufficient credit data to generate a score. People of color are disproportionately represented among the credit invisible. One reason is that mainstream, traditional lenders (the blue side of the graphic) have long redlined and abandoned communities of color. Even today, [banks are closing branches in high-income Black communities](#) at a higher rate than they are closing branches in low-income non-Black communities. Conversely, non-traditional and alternative financial services providers are hyper-concentrated in communities of color. Thus, institutions that report consumers’ positive credit behavior are sparsely located in communities of color while institutions that typically do not report consumers’ positive behavior are highly concentrated in those communities.

These discriminatory policies and the dual credit market have created distinct advantages for White families. Residential and school segregation, the inextricable link between place and opportunity, the dual credit market, the inequitable health ecosystem, the patchwork of exclusive and restrictive zoning systems, and additional structurally unfair systems all stem from a long stream of laws that were either explicitly racist, implemented with racialized policies, or produced disparate impacts on communities of color. The effect of these policies was to widen the racial wealth, income, and homeownership gaps.

We have lost trillions of dollars in economic growth due to systemic racial inequality. One study estimates that improving access to housing credit would have resulted in an additional 770,000 Black homeowners and \$218 billion in sales and expenditures. Another analysis estimates that addressing disparities in Black homeownership could create nearly 800,000 thousand jobs and generate \$400 billion in tax revenue.⁴ Eliminating racial inequities in the U.S. could add \$5 trillion of growth in our GDP over the next five years.⁵ By not resolving centuries-long injustices, we are not only harming individual members of our society, we also are inhibiting the nation's ability to advance and be economically viable. Ensuring equitable treatment for all will result in our collective prosperity.

C. Underwriting and Appraisal Policies Further Perpetuated the Unfounded Association between Race and Risk That Continues Today

In addition to the redlining and mapping system, explicitly discriminatory underwriting and appraisal principles and practices perpetuated an unfounded association between race and risk in the nation's housing and financial markets. These practices also promoted the idea that a home should be valued based on its neighborhood and that a homogenous, all-White neighborhood held the highest value. Following are excerpts from a few appraisal texts and manuals (emphasis added):

- 1932: Valuation of Real Estate –
“There is one difference in people, namely **race**, which can result in very rapid decline [in real estate values].
- 1935: American Institute of Real Estate Appraisers Manual, Real Estate Appraisal –
“To have the attributes of a good residential area, it is essential that protection be afforded against the **infiltration of inharmonious racial groups....**”
- 1938: Federal Housing Administration Underwriting Manual –
“Areas surrounding a location are investigated to determine whether **incompatible racial and social groups** are present, for the purpose of making a prediction regarding the probability of the locations being **invaded** by such groups. If a neighborhood is to retain stability, **it is**

⁴ 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>.

⁵ Dana M Peterson and Catherine L Mann, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi Global Perspectives and Solutions (September 2020), <https://www.citivelocity.com/citigps/closing-the-racial-inequality-gaps/>.

necessary that properties continue to be occupied by the same social and racial classes. A change in social or racial occupancy generally contributes to instability and a decline in values.”

- 1946: McMichael’s Appraising Manual, Third Edition –
“Those nationalities and races having the most favorable influence [in Chicago] come first in the list and those exerting detrimental effects come last:
 1. English, Germans, Scotch, Irish, Scandinavians.
 2. North Italians.
 3. Bohemians or Czechs.
 4. Poles.
 5. Lithuanians.
 6. Greeks.
 7. Russian, Jews (lower class)
 8. South Italians.
 9. Negroes.
 10. Mexicans.”

- 1967: American Institute of Real Estate Appraisers Textbook, The Appraisal of Real Estate –
“The causes of racial and ethnic conflicts are not the appraiser’s responsibility. However, he must recognize the fact that **values change when people who are different from those presently occupying an area advance into and infiltrate a neighborhood.**”

Notably, although the Fair Housing Act had passed in 1968, the explicitly discriminatory appraisal guidance continued:

- 1973: American Institute of Real Estate Appraisers Course Material –
“**Ethnological information also is significant** to real estate analysis. As a general rule, homogeneity of the population contributes to stability of real estate values. Information on **the percentage of native-born whites, foreign whites, and non-white population is important**, and the changes in this composition have a significance.... As a general rule, minority groups are found at the bottom of the socio-economic ladder, and problems associated with **minority group segments of the population can hinder community growth.**”

In 1976, after decades of these explicitly discriminatory principles and practices, the U.S. Department of Justice (“DOJ”) filed suit against the American Institute of Real Estate Appraisers and three other defendants for alleged violations of the Fair Housing Act.⁶ The defendants settled and agreed to adopt certain policies, including a policy stating that it is improper to base a conclusion or opinion of value, or a conclusion with respect to neighborhood trends, upon stereotyped or biased presumptions relating to race, color, religion, sex or national origin.

⁶ *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977).

Individual Evidence (refinancing): Homeowners of color “whitewashed” their homes to get a fair appraisal.

The Homeowner	Initial Appraisal	White Friend Who Posed as the Homeowner (or a relative)	Appraisal After “Whitewashing” the Home
Austin Family in CA 	\$995,000		\$1,482,500 (+487,500)
Carlette Duffy in IN 	\$110,000		\$259,000 (+149,000)

Unfortunately, the appraisal system continues to suffer from bias on an individual and systemic basis. Recent news stories have highlighted anecdotal evidence on an individual basis:

- California. A Black couple in Marin City, CA, seeking to refinance received an initial appraisal of \$995,000. Suspecting that the valuation of their home was unjustifiably low, they asked a White friend to pose as the homeowner and then received an appraisal of \$1,482,500, which was almost \$500,000 more than the appraisal conducted just weeks earlier. The homeowner said, “There are implications to our ability to create generational wealth or passing things on if our houses appraise for 50 percent less than its value.”⁷
- Indiana. After receiving an initial appraisal of \$110,000, a Black woman in Indianapolis, IN, removed all family photos, Black art and books; declined to identify her race on the refinancing application; communicated with the appraiser by email only; and asked a White friend to pose as her brother and meet the appraiser.⁸ This time, the home appraised for \$259,000. Upon seeing that amount, the homeowner was first overcome with joy. But then the hurt set in of how she had had to erase herself from her home in order to get a value that was fair and accurate.

⁷ Fair Housing Advocates of Northern California, *Discrimination Lawsuits Filed Alleging Discrimination in Home Appraisal Process*, Press Release (Dec. 2, 2021), https://www.fairhousingnorcal.org/uploads/1/7/0/5/17051262/press_release_-_austin_case.final.pdf. Julian Glover, *Black California Couple Lowballed by \$500K in Home Appraisal, Believe Race Was a Factor*, ABC7News (Feb. 12, 2021), <https://abc7news.com/black-homeowner-problems-sf-bay-area-housing-discrimination-minority-homeownership-anti-black-policy/10331076/>.

⁸ Fair Housing Center of Central Indiana (“FHCCI”), *FHCCI Announces HUD Complaints Alleging Discrimination in Home Appraisals*, Press Release (May 4, 2021), <https://www.fhcci.org/wp-content/uploads/2021/05/5-4-21-HUD-Appraisal-Filings-Revised.pdf>.

- Colorado. A mixed-race couple in Denver, CO, scheduled an appraisal in connection with a home equity loan. When the Black husband greeted the appraiser, the home was valued at \$405,000 based on comparison to homes selected by the appraiser in a Black neighborhood in a different location. When the White wife greeted the second appraiser, the home was valued at \$550,000, which was an increase of \$145,000. The wife stated, “Race obviously played a role in how we were treated. But what’s deflating is that this experience put a dollar figure on it.”⁹
- Connecticut. After receiving an initial appraisal of \$340,000, a Black family in Bloomfield, CT, removed all family photos and asked a White neighbor to pose as the homeowner. This time, the home appraised for just over \$400,000. The homeowner stated, “[T]his kind of experience not only robs you of the ability to refinance, but also affects opportunities at building generational wealth.”¹⁰
- Florida. After receiving an initial appraisal of \$330,000, a mixed-race couple in Jacksonville, FL, removed all photos of the Black wife and her side of the family, books by Black authors, and holiday cards from Black friends. When the White husband greeted the second appraiser, the home appraised at \$465,000, which was an increase of more than 40 percent. After posting the story on Facebook, the homeowners received over 2,000 comments, many of which were from Black homeowners saying that they had a similar experience. The wife stated, “[I]n the Black community, it’s just common knowledge that you take your pictures down when you’re selling your house.”¹¹

While the individual stories of discrimination in appraisals are alarming, the analyses of systemic bias are even more stunning and disturbing. Recent studies contain the following findings:

- Appraisal Reports: Federal Housing Finance Agency (“FHFA”). FHFA recently analyzed appraisal reports and found that thousands of the reports contained potential race-related flags in the “Neighborhood Description” and other free-form text fields.¹² Some examples that FHFA found in its analysis include:
 - Amenities described as a "commercial strip featuring storefronts supplying Jewish households."
 - A town was described as having a "Black race population above state average."
 - A neighborhood described as "predominately Hispanic" and that the residents have "assimilated their culture heritage" into the neighborhood.
 - Noting that "there is more Asian influence of late" buying the market.
 - A property being in a “homogenous neighborhood with good schools."

⁹ Troy McMullen, *For Black Homeowners, A Common Conundrum with Appraisers*, Washington Post (Jan. 21, 2021), https://www.washingtonpost.com/realestate/for-black-homeowners-a-common-conundrum-with-appraisals/2021/01/20/80fbfb50-543c-11eb-a817-e5e7f8a406d6_story.html.

¹⁰ *Ibid.*

¹¹ Debra Kamin, *Black Homeowners Face Discrimination in Appraisals*, The New York Times (Aug. 25, 2020), <https://www.nytimes.com/2020/08/25/realestate/blacks-minorities-appraisals-discrimination.html>.

¹² FHFA, *Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary*, FHFA Insights Blog (Dec. 14, 2021), <https://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx>.

- Purchases: Freddie Mac. In a groundbreaking study, researchers at Freddie Mac analyzed millions of appraisals submitted for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the “appraisal gap”).¹³ More specifically, the research showed that:
 - *For Black/Latino neighborhoods*. An appraisal gap is more likely to occur in Black or Latino census tracts than White census tracts.
 - *For Black/Latino individuals*. Similarly, an appraisal gap is more likely to occur for Black or Latino mortgage applicants than White mortgage applicants, regardless of the neighborhood where the property is located.
 - *Across appraisers*. The majority of appraisers reviewed showed an appraisal gap. (That is, the issue was not limited to just “a few bad apples,” but rather the majority of appraisers reviewed were more likely to show an appraisal gap for properties in Black or Latino census tracts than for properties in White census tracts.)
- Refinancings: Fannie Mae. In another groundbreaking study, researchers at Fannie Mae analyzed appraisals submitted for refinancing transactions and found that appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.¹⁴ Moreover, the overvaluation could be attributed to appraisers relying on comparable sales from *outside* of the subject property’s immediate area (i.e., the majority-Black neighborhood) even though potentially more appropriate comparable properties were available closer to the subject property.
- Cumulative Cost: The Brookings Institution. A 2018 Brookings Institution study of 2016 American Community Survey homeowner estimates and 2012-2016 Zillow data found that homes in majority Black neighborhoods had values that were 23 percent less than properties in mostly White neighborhoods, even after controlling for home features and neighborhood amenities.¹⁵ That is, differences in home and neighborhood quality could not fully explain the devaluation of homes in Black neighborhoods, raising questions about whether discrimination was the determining factor. The study estimated that homes in majority-Black neighborhoods were undervalued by \$48,000 per home on average, leading to a **\$156 billion cumulative loss** in value nationwide.

¹³ Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, Freddie Mac Economic and Housing Research Note (Sept. 2021), <http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf>.

¹⁴ Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae (Feb. 2022), <https://www.fanniemae.com/media/42541/display>.

¹⁵ Andre M. Perry, Jonathan Rothwell, and David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, The Brookings Institution Metropolitan Policy Program (Nov. 2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf. https://www.brookings.edu/research/biased-appraisals-and-the-devaluation-of-housing-in-black-neighborhoods/?utm_campaign=Brookings%20Brief&utm_medium=email&utm_content=184613964&utm_source=hs_email; See also Junia Howell and Elizabeth Korver-Glen, *Neighborhoods, Race, and the Twenty-first Century Housing Appraisal Industry*, 4 *Sociology of Race and Ethnicity* 473 (2018), <https://journals.sagepub.com/doi/abs/10.1177/2332649218755178?journalCode=srea> (finding substantial differences in home values in communities of color even after controlling for home features, neighborhood amenities, socioeconomic status and consumer demand).



D. Irresponsible Algorithms Further Perpetuate Systemic Barriers

1. Algorithmic Systems Can Manifest Bias

Algorithmic systems—like regression models, machine learning models, or Artificial Intelligence (AI)-driven solutions—touch virtually every part of a person’s life, whether it is the advertisements on their social media feeds, determining interest rates on their auto loans, or their ability to qualify for a loan to buy a home. However, many of these systems can inflict untold harm. High-profile examples of algorithmic bias and discrimination include but are not limited to applications in health¹⁶, tenant screening¹⁷, criminal justice¹⁸, facial recognition¹⁹, employment screening²⁰, and marketing.²¹ Discriminatory models can lead to incarceration, homelessness, job loss, equity-stripping, debilitating health, and other devastating consequences.

¹⁶ Obermeyer, Ziad, Brian Powers, Christine Vogeli, and Sendhil Mullainathan, *Dissecting racial bias in an algorithm used to manage the health of populations*, *Science* 366, no. 6464 (2019): 447-453. <https://www.science.org/doi/10.1126/science.aax2342>.

¹⁷ Sisson, Patrick, *Housing Discrimination Goes High Tech*, Curbed, Vox Media, (Dec. 17, 2019). <https://archive.curbed.com/2019/12/17/21026311/mortgage-apartment-housing-algorithm-discrimination>.

¹⁸ Richardson, Rashida, Jason M. Schultz, and Kate Crawford, *Dirty data, bad predictions: How civil rights violations impact police data, predictive policing systems, and justice*, *NYUL Rev. Online* 94 (2019): 15. https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-Richardson_et al-FIN.pdf.

¹⁹ Najibi, Alex, *Racial discrimination in face recognition technology*, *Harvard Online: Science Policy and Social Justice* 24 (2020). <https://sitn.hms.harvard.edu/flash/2020/racial-discrimination-in-face-recognition-technology/>.

²⁰ Dastin, Jeffrey, *Amazon Scraps Secret AI Recruiting Tool That Showed Bias against Women*, Reuters, Thomson Reuters, (Oct. 10, 2018), <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight/amazon-scraps-secret-ai-recruiting-tool-that-showed-bias-against-women-idUSKCN1MK08G>.

²¹ Zang, Jinyan, *Solving the Problem of Racially Discriminatory Advertising on Facebook*, The Brookings Institution, (Jan. 31, 2022), <https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/>.

The long history of unfair and race-based policies in the U.S. has left a deeply segregated and inequitable landscape which algorithmic systems can perpetuate and exacerbate. For example, one's ZIP Code is often life-impacting. Where people live determines their access to homeownership, the type of credit they use, their ability to attend a well-resourced school, their exposure to toxins and pollutants, and their employment opportunities, all of which are consequential to their economic status and level of wealth. Fair housing research, litigation and other efforts undertaken by NFHA over the decades reveal that algorithmic-based systems used in the housing and financial services space, for example in AdTech²² and credit scoring systems²³, are built using data that is imbued with bias and discrimination, either inherently or due to the proxies created by intricately linked variables. Therefore, the use of algorithms in these areas must be scrutinized such that they do not impede equitable access to housing, lending, credit, and other important opportunities.

There is an imperative to mitigate consumer fairness, privacy, and security risks associated with algorithmic systems including AI. Policymakers at the state and federal levels are already embarking down the path to regulate discriminatory or harmful algorithms more specifically. New York City policymakers recently passed the Automated Employment Decision Act,²⁴ which calls for regular "bias audits" of automated hiring and employment tools. The District of Columbia Attorney General proposed a bill²⁵ addressing algorithmic discrimination beyond employment issues. The bill has broad coverage including substantive protections, notice provisions, and auditing requirements. The U.S. Congress has held hearings²⁶ on and is contemplating legislation to effectively police and regulate various technologies to mitigate bias and harmful impacts.

2. Personalization Algorithms Enable Advertisement Bias

Another category of algorithms that requires more attention from policymakers is personalization algorithms. These are algorithms that monitor consumers' habits on websites they visit and attempt to predict their next moves and next choices.²⁷ The level of personal data that powers these algorithms as well as their tendency to intrude on consumers' privacy warrants their special scrutiny, especially in the COVID-19 and post- COVID-19 era where many services, including housing and lending services, are

²² NFHA, *Facebook Settlement*, D.C., National Fair Housing Alliance (March 14, 2019), <https://nationalfairhousing.org/facebook-settlement/>.

²³ Rice, Lisa, and Deidre Swesnik, *Discriminatory effects of credit scoring on communities of color*, *Suffolk UL Rev.* 46 (2013): 935. https://cpb-us-e1.wpmucdn.com/sites.suffolk.edu/dist/3/1172/files/2014/01/Rice-Swesnik_Lead.pdf, <https://nationalfairhousing.org/wp-content/uploads/2021/12/NFHA-credit-scoring-paper-for-Suffolk-NCLC-symposium-submitted-to-Suffolk-Law.pdf>.

²⁴ The New York City Council, Committee on Technology, *Automated Employment Decision Tools*, 21AD, New York, New York City: Legislative Research Center, 2021. <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4344524&GUID=B051915D-A9AC-451E-81F8-6596032FA3F9&Options=Advanced&Search>.

²⁵ Council of the District of Columbia, *Stop Discrimination by Algorithms Act of 2021*, Phil Mendelson. Sec.2. Washington, D.C.: OAG DC, 2021, <https://oag.dc.gov/sites/default/files/2021-12/DC-Bill-SDAA-FINAL-to-file-.pdf>.

²⁶ U.S. Congress, House of Representatives Committee on Financial Services, *Equitable Algorithms: How Human-Centered AI Can Address Systemic Racism and Racial Justice in Housing and Financial Services*, *Before the House Financial Services Task Force on Artificial Intelligence*, 117th Cong., virtual hearing, May 7, 2021. (Testimony of Lisa Rice, President and CEO of the National Fair Housing Alliance). <https://financialservices.house.gov/uploadedfiles/hrg-117-ba00-wstate-ricel-20210507.pdf>

²⁷ Engin Bozdog, Bias in algorithmic filtering and personalization, *Ethics Inf Technol* (2013) 15:209-227. https://www.researchgate.net/publication/257560404_Bias_in_algorithmic_filtering_and_personalization.

being digitized. These personal data may include demographic information directly or may include proxies for demographic data derived from the interests or preferences of users (e.g., a “Black Affinity Group”).

The internet has drastically changed how people search for housing even pre-COVID-19. At the click of a button, users can now access listing information traditionally available only to real-estate agents by visiting websites for property listing, using housing search engines, and targeted advertising, otherwise known as personalization algorithmic solution. Each of these can introduce bias.²⁸ For example, recent studies of Airbnb show significant racial bias against potential renters with African American names.²⁹ There is abundant evidence showing users overwhelmingly favor top results in (housing) search pages.³⁰ Because ordering can affect decision-making and ranking algorithms are components of personalization algorithms, it is important to require transparency on how digital advertisement companies rank and present their recommended house search results to consumers in order to eliminate bias associated with personalization algorithms.

E. Discrimination Impedes Economic Growth and Development

Bias disrupts and distorts markets and creates inefficiencies. It not only impedes earnings, employment, homeownership, educational, and other important wealth-building opportunities for those who actually experience the discrimination, but it negatively impacts the economic progress and productivity of the society at large. As former Federal Reserve Chair Alan Greenspan noted:

“Discrimination is against the interests of business—yet businesspeople too often practice it. To the extent that market participants discriminate, they erect barriers to the free flow of capital and labor to their most profitable employment, and the distribution of output is distorted. In the end, costs are higher, less real output is produced, and national wealth accumulation is slowed. By removing the non-economic distortions that arise as a result of discrimination, we can generate higher returns to both human and physical capital.”³¹

Economists have also found that racial violence and discrimination stifles innovation and economic growth. In her groundbreaking research, Dr. Lisa Cook³² found that between 1870 and 1940 there were 1,100 patents that were not filed by Black inventors due to domestic terrorism and racial violence. Patents filed by Blacks peaked in 1899. Lynchings peaked in the early 1890s while race riots peaked in 1919 and 1921, the year the Tulsa Race Massacre occurred. The passage of segregation laws passed by

²⁸ *Ragin v. New York Times* (923 F.2d 995 (1991)) is an example where housing ads was ruled to have violated FHA. <https://casetext.com/case/ragin-v-new-york-times-co>.

²⁹ Edelman, B. G., and Luca, M., *Digital discrimination: the case of Airbnb.com*, SSRN Scholarly Paper ID 2377353, Social Science Research Network (2014), Rochester, NY.

³⁰ Guan, Z., and Cutrell, E., *An eye tracking study of the effect of target rank on web search*, In Proceedings of the SIGCHI Conference on Human Factors in Computing Systems, (2007).

<https://dl.acm.org/doi/10.1145/1240624.1240691>; Craswell, N., Zoeter, O., Taylor, M., and Ramsey, B., *An experimental comparison of click position-bias models*, WSDM 2008, 87-94. ACM.

³¹ 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, <https://www.federalreserve.gov/boarddocs/speeches/2000/20000322.htm>.

³² Lisa Cook, *Violence and Economic Activity: Evidence from African American Patents, 1870 to 1940*, https://lisadcook.net/wp-content/uploads/2014/02/pats_paper17_1013_final_web.pdf.

states peaked in 1908, 1928, and 1933. Dr. Cook’s research reveals that peak periods for violence against Black people were highly correlated to declinations in patent filings by Black inventors. Moreover, these impacts endure over time; they are long-lasting.

Blacks invented the three-light traffic light, gas mask, folding cabinet bed, blood bank, home security system, clothes dryer, and so much more. George Washington Carver created over 300 products from the peanut. All these products and more have contributed tremendously to productivity and economic growth in U.S. markets. It is almost impossible to calculate the true cost of lost opportunities due to racism and discrimination that prohibited over 1,000 products from being developed. These lost opportunities certainly restricted the ability of Black families to gain wealth, but they also impeded the broader economy. To quote Dr. Greenspan, removing racial inequality and discrimination will generate “higher returns” to both people and the larger society.

III. Racial Homeownership Gaps Prevent Wealth Accumulation for Black, Latino, AAPI, and Native Communities

Although housing discrimination was made unlawful by the Civil Rights Act of 1968³³, long-standing discriminatory policies produced segregated housing patterns across the nation and disinvestment from communities of color for over 102 years until the Fair Housing Act of 1968 provided meaningful enforcement and an affirmative obligation for the federal government to create inclusive communities. This legacy has limited access to traditional low-cost credit for families of color, and unduly exposed them to exploitative predatory lending, such as land installment contracts or contracts for deeds that robbed families of the wealth-building benefits of homeownership. For instance, in Chicago, 85 percent of Black homebuyers purchased their homes “on contract” from White sellers in the mid-20th century.³⁴ Estimates show that these Black homebuyers had more than \$500 million legally extorted from them from 1940-1970.³⁵ Latino families also have a history of being victimized by these same practices.³⁶

A. Racial Disparities in Homeownership Produced Today’s Racial Wealth Gaps

As a result of this troubled history of inequity and continuing discrimination, Black homeownership, the primary asset of Black families, is at levels similar to when the Fair Housing Act was passed in 1968.³⁷ In

³³ 14 Stat. 27–30.

³⁴ Megan Wright, *Installment Housing Contracts: Presumptively Unconscionable*, 18 Berkeley J. Afr.-Am. L. & Pol’y, at 5 (2016).

³⁵ Rebecca Burns, *The Infamous Practice of Contract Selling is Back in Chicago*, Reader News and Politics, March 2017, <https://www.chicagoreader.com/chicago/contract-selling-redlininghousingdiscrimination/Content?oid=25705647>.

³⁶ Ann Carpenter, Taz George, And Lisa Nelson, *The American Dream or Just an Illusion? Understanding Land Contract Trends in the Midwest Pre- and Post-Crisis*, Harvard Joint Center for Housing Studies (March 2019), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_housing_tenure_symposium_carpenter_george_nelson_0.pdf.

³⁷ 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; See also Laurie Goodman, Jun Zhu, and Rolf Pendall, *Are Gains in Black Homeownership History?*, Urban Institute (Feb. 14, 2017), <https://www.urban.org/urbanwire/are-gains-black-homeownership-history>.

fact, the gap between White and Black homeownership rates today is the largest it has been since 1890.³⁸ This reality is harrowing when one considers that the nation's mortgage finance system and modern day Wall Street were built off the backs of enslaved Africans.³⁹

More recently, actions leading to the Great Recession and the response to it, created a net drain on homeownership. As a result, Black and Latino families lost \$1 trillion in wealth from being steered unnecessarily into risky subprime loans.⁴⁰ Indeed, much evidence indicates that many subprime borrowers, including higher income families of color, **qualified for safer loans that were lower cost.**⁴¹ However, Wall Street's appetite for excessive profits and lax federal regulation drove these outcomes.⁴² 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 2000.⁴³

Following the Great Recession, rather than remediating the damage done by the legacy of housing discrimination against families of color, lenders' overcorrections to lending standards and more restrictive Government Sponsored Enterprise (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 2020, only 4 percent of Fannie Mae and 3.4 percent of Freddie Mac home purchase loans were from Black borrowers, and only 2.6 percent and 2.5 percent of refinance loans.⁴⁴ Similarly, only 10.9 percent of Fannie Mae and 8.4 percent of Freddie Mac home purchase loans were from Latino borrowers, and only 8 percent and 7 percent of refinance loans.⁴⁵ Since the Great Recession, the gap between the Black and White homeownership rates in the U.S. has increased to its highest level in 50 years, from 28.1 percentage points in 2010 to 30.1 percentage points in 2017.⁴⁶ Most alarmingly, this gap is wider than it was when race-based discrimination against homebuyers was legal.

³⁸ 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/>.

³⁹ Matthew Desmond, *In order to understand the brutality of American capitalism, you have to start on the plantation.*, 1619 Project, The New York Times Magazine (Aug. 14, 2019), available at <https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html>.

⁴⁰ Debbie Gruenstein Bocian, Peter Smith, and Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures*, Center for Responsible Lending, at 2 (Oct. 24, 2012), <https://www.responsiblelending.org/mortgagelending/research-analysis/collateral-damage.pdf>.

⁴¹ Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, *Wall Street Journal* (December 2007), <https://www.wsj.com/articles/SB119662974358911035>.

⁴² The Financial Crisis Inquiry Report, *Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* (2011), at xxvii, available at <https://www.gpo.gov/fdsys/pkg/GPOFCIC/pdf/GPO-FCIC.pdf>.

⁴³ 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 1 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

⁴⁴ FHFA Annual Housing Report 2021 at 68, Appendix E (October 2021), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2021.pdf>.

⁴⁵ *Ibid.*

⁴⁶ See Jung Hyun Choi, *Breaking Down the Black-White Homeownership Gap*, Urban institute (Feb. 21, 2020), <https://www.urban.org/urban-wire/breaking-down-black-white-homeownership-gap>.

Discrimination in the mortgage market is also by no means a relic of the past and continues to manifest in multiple ways.⁴⁷ In today's COVID-19 mortgage market, investors are pricing out first-time homebuyers, especially in Black neighborhoods. In 2021, 1 in 7 homes sold in 40 major metropolitan areas were bought by investors, driving up purchase prices by outbidding would-be owner-occupants, making homeownership further out of reach for new households, and preventing families from generating wealth that could be invested in education, small businesses, or passed on to the next generation.⁴⁸ Most of the homes were in Black neighborhoods ravaged by the previous foreclosure crisis in southern and post-industrial Midwest cities.

Research has shown that homeownership overall is likely to drop in the next two decades. This drop will be more pronounced for Black Americans, unless actions are taken to ensure that they have equitable access. In other words, future housing demand will be driven by people of color. A robust housing market, both for new homebuyers seeking to purchase homes and for existing homeowners seeking to refinance or sell their homes, cannot exist in the absence of access to homeownership and mortgage credit on fair and equal terms for all creditworthy borrowers.

Discriminatory policies created distinct advantages for White families, leading to massive homeownership, wealth, and credit gaps that persist today. In particular, because home value has been the cornerstone of intergenerational wealth in the U.S., the historical housing practices have had long-term effects in creating some of the current wealth inequalities, where White wealth has soared while Black wealth has remained stagnant. In 2016, the typical middle-class Black household had \$13,024 in wealth versus \$149,703 for the median White household.⁴⁹ In 2019, White family wealth sat at \$188,200 (median) and \$983,400 (mean).⁵⁰ In contrast, Black families' median and mean net worth were \$24,100

⁴⁷ 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. Further, 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. The Markup found that after "[h]olding 17 different factors steady in a complex statistical analysis of more than two million conventional mortgage applications for home purchases, we found that lenders were 40 percent more likely to turn down Latino applicants for loans, 50 percent more likely to deny Asian/Pacific Islander applicants, and 70 percent more likely to deny Native American applicants than similar White applicants. Lenders were 80 percent more likely to reject Black applicants than similar White applicants." See, 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/>; 7 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>; and *The Secret Bias Hidden in Mortgage-Approval Algorithms*, *The Markup* (August 25, 2021), <https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>.

⁴⁸ Kevin Schaul and Jonathan O'Connell, *Investors bought a record share of homes in 2021. See where.*, *The Washington Post* (February 16, 2022), <https://www.washingtonpost.com/business/interactive/2022/housing-market-investors/?itid=hp-top-table-main>.

⁴⁹ See Heather Long and Andrew Van Dam, *The Black-White Economic Divide Is as Wide as It Was in 1968*, *Washington Post* (June 4, 2020), <https://www.washingtonpost.com/business/2020/06/04/economic-divide-blackhouseholds/>.

⁵⁰ Neil Bhutta, Jesse Bricker, Andrew Chang, et al., *Changes in U.S. family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances*, 106(5) *Fed. Res. Bulletin* (Sept. 2020), <https://www.federalreserve.gov/publications/files/scf20.pdf>.

and \$142,500, respectively.⁵¹ These wealth disparities, in turn, reflect intergenerational transfer disparities: 29.9 percent of White families have received an inheritance, compared with only 10.1 percent of Black families.⁵² It will require focused and bold action to reverse these inequities. If current trends continue, it could take as long as 228 years for the average Black family to reach the level of wealth White families own today.⁵³ For the average Latino family, matching the wealth of White families could take 84 years.⁵⁴

While we have passed civil rights statutes designed to stop discrimination, we have not designed laws to dismantle the systems of inequality that are still producing biased impacts. Laws like the Fair Housing Act of 1968 or the Equal Credit Opportunity Act of 1974 prohibit housing and financial services providers from considering race, national origin, or gender when making a housing-related decision, and can be effective, when enforced. But we have done little to nothing to remedy or rectify the discriminatory structures that were created from centuries of discriminatory laws. For example, although the Fair Housing Act does contain a provision for dismantling systemic inequality — the Affirmatively Furthering Fair Housing mandate — it has never been enforced.

B. Where You Live Matters: Entrenched Residential Segregation Means That Your ZIP Code Often Determines Your Opportunities

In this nation, where you live matters. Your address determines almost everything about you — your chances of graduating from high school or college, getting arrested, net worth, income, ability to own a home, credit score and how long you will live. Your ZIP Code is a better determinant of your health than your genetic code. Segregation creates an inequitable built environment in which resources and opportunities get concentrated in predominantly White communities and are sparsely located in communities of color.

Segregation is not a natural construct. Our neighborhoods are segregated by design, and it was perpetuated by federal and local governments,⁵⁵ as well as private actors.⁵⁶ As explained above, hundreds of laws, policies, and ordinances such as the Land Grants Act, Homestead Act, Home Owners

⁵¹ *Ibid.*

⁵² See Neil Bhutta, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS Notes, Board of Governors of the Federal Reserve System (Sept. 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the2019-survey-of-consumer-finances-20200928.htm>.

⁵³ See Dedrick Asante-Muhammad, et al., *The Road to Zero Wealth*, at 15 (Sept. 2017), https://prosperitynow.org/files/PDFs/road_to_zero_wealth.pdf.

⁵⁴ *Ibid.*

⁵⁵ New Towne Court in Boston is a great example of local government creating segregation. The Housing Authority razed about 100 homes in what had been an integrated community and built a public housing development. But the new residents were all White; Blacks were not allowed to live there. The governments had segregated the community. This was by design, and it was common, not just throughout Boston, but all over the nation.

⁵⁶ For example, the National Association of Real Estate Boards amended its code of ethics in 1924 to state that “a Realtor should never be instrumental in introducing into a neighborhood . . . members of any race or nationality . . . whose presence will clearly be detrimental to property values in that neighborhood.” See Gotham, Kevin F., *Race, Real Estate, and Uneven Development: The Kansas City Experience, 1900–2010*. 2014, Albany: State University of New York Press, page 35.

Loan Corporation Act, Indian Removal Act, Dawes Act, National Housing Act, Federal Aid Highway Act, Chinese Exclusion Act, Repatriation Acts, and Housing Act of 1949 all worked to create residential segregation, increase school segregation, put in place restrictive zoning ordinances, support the use of restrictive covenants, create the dual credit market, and entrench inequality. They created systems — still with us today — that are deeply unjust and that drive large-scale disparities.

Segregation is a major reason why where people live determines their outcomes in life. That is because place is inextricably linked to opportunity. Unfortunately, housing segregation remains the primary driver of inequality. It is the bedrock of inequality in the U.S. because neighborhoods of color are more likely to have poorly resourced schools and fewer amenities like healthcare facilities, grocery stores, green spaces, and bank branches. But communities of color are more likely to have hazardous and toxic waste plants and more polluted land, air, and water.



C. Discriminatory Housing Weakens Economic Stability Indicators: Health, Education, and Employment

Our healthcare, education, transportation, food, employment, credit, broadband and Internet systems are not equitably resourced because these benefits, these amenities – the quality and amount of these services--are not the same; they vary based on where people live. These quantitative and qualitative gaps and inequities that impact every aspect of people’s lives.

1. Where You Live Can Lead to Health Inequities

Housing and residential segregation are social determinants of health, and this has been made devastatingly clear during the COVID-19 pandemic. The Centers for Disease Control and Prevention (CDC) found that residential segregation is linked to a variety of adverse health outcomes and underlying

health conditions, which can also increase the likelihood of severe illness or death from COVID-19.⁵⁷ The CDC also points out not just the disproportionate access to healthy food, but also the unequal access to medical facilities. Communities of color have a shortage of hospitals and a shortage of adequate medical treatment. The CDC also briefly discussed that a disproportionate percentage of underlying health conditions are suffered by the Black population, in particular. Some of these underlying health conditions include diabetes, possibly caused by the lack of access to fresh affordable food, and asthma and other respiratory illnesses, possibly linked to harmful environmental factors exacerbated by housing segregation.

Because of the link between COVID-19 and residential segregation today, we face a new, more dangerous housing crisis. This one is not caused by unsafe mortgages and excess leverage in the capital markets. Rather, the COVID-19 pandemic is wreaking havoc on employment and quite literally killing hundreds of thousands of Americans, disproportionately those who are people of color. Yet, like the Great Recession, this crisis has a high potential to damage families and neighborhoods and endanger homeownership opportunities, both now and after the pandemic. Predictably, this crisis, too, is impacting households and communities of color the hardest. This could lead to a widening of the racial wealth and homeownership gaps, further entrenching inequities that threaten our nation's prosperity.

2. Where You Live Can Have Educational Impacts

Where you live impacts your child's ability to attend a well-resourced school with expanded learning opportunities. Across the nation, schools spend \$334 more on White students than students of color, and predominantly White school districts receive \$23 billion more than school districts heavily populated by students of color.⁵⁸ Moreover, schools in predominantly White communities have higher incidents of veteran, highly qualified educators who are teaching in their field of expertise. Further, policies to mitigate the health impacts of COVID-19 have exacerbated the racial education gap. A study estimates the COVID-19 learning loss would exacerbate existing achievement gaps by 15 to 20 percent; contribute to increased dropout rates of Black and Latino students; and potentially cost the US GDP \$173 billion to \$271 billion a year, which will harm US competitiveness.⁵⁹

Furthermore, the inability to build wealth through homeownership prevented people of color from building home equity that could be used to fund higher education. Today, students of color struggle with higher education costs and carry higher debt loads. Instead of being able to pay down their student loan debt post-graduation, Black college graduates see their student loans grow.⁶⁰ Twenty years post-graduation, **the median Black student still owes 95 percent of their student debt** in comparison to six

⁵⁷ *Health Equity Considerations and Racial and Ethnic Minority Groups*, Centers for Disease Control and Prevention (April 19, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/healthequity/race-ethnicity.html#fn10>.

⁵⁸ *Nonwhite School Districts Get \$23 Billion Less Than White Districts Despite Serving The Same Number of Students*, EdBuild, <https://edbuild.org/content/23-billion>.

⁵⁹ Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, *COVID-19 and student learning in the United States: The hurt could last a lifetime*, McKinsey & Co. (June 1, 2020), available at <https://www.mckinsey.com/industries/education/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>.

⁶⁰ Center for Responsible Lending, NAACP, UnidosUS, et.al., *Quicksand: Borrowers of Color & the Student Debt Crisis* (Sept. 19, 2019), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf>.

percent of White borrowers.⁶¹ Many Latino college students drop out before completing their degree because of the burden of student loan debt.⁶² Students of color are also more likely to be preyed upon by predatory, for-profit institutions that fail to provide them with the necessary training for gainful employment.

3. Where You Live Can Lead to Employment Impacts

There are large income disparities based on race. Higher paying jobs are not located in communities of color. These jobs are located in either core downtown or suburban hubs. Additionally, people of color face higher incidence of discrimination when seeking employment. One study showed that people with “White”-sounding names are contacted 20 percent more than those with “Black”-sounding names.⁶³ Further, small businesses owned by people of color that are more likely to employ people of color were locked out of the first round of the Paycheck Protection Program (PPP). The design of the program, which relied on banks to originate the loans, unfairly put Black, Latino, AAPI, 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. Banks also tended to prioritize larger PPP loans to maximize fees, leaving out the smallest of small businesses from accessing relief.

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, their owners, and the employees who depend on them for their livelihoods. Further, despite the more than \$800 billion funneled to “small businesses” through the PPP, small businesses owned by people of color failed during the pandemic-induced recession. While the PPP will likely go down as one of the nation’s greatest taxpayer-funded transfers of wealth, the program’s administration raises significant fair lending concerns. Many Black, Latino, AAPI, and Native-owned small businesses could not fairly access the program during the first round where banks lent more than \$350 billion to businesses across the nation. Between the start of the pandemic and April 2020, 41 percent of Black-owned businesses and 32 percent of Latino-owned businesses became inactive, while only 17 percent of White-owned businesses ceased to operate.⁶⁴

Furthermore, Asian American-owned small businesses suffered greatly in the face of a rise in hate crimes as public officials scapegoated them, even blaming them for the health pandemic. According to an analysis, the unemployment rate for Asian Americans escalated more than 450 percent between

⁶¹ Laura Sullivan, Tatjana Meschede, Thomas Shapiro, and Fernanda Escoba, *Stalling Dreams: How Student Debt is Disrupting the Life Chances and Widening the Racial Wealth Gap*, Institute Assets on Social Policy, Brandeis University (September 2019), <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/stallingdreams-how-student-debt-is-disrupting-lifechances.pdf>.

⁶² See CRL, et. al, *Quicksand: Borrowers of Color & the Student Debt Crisis* (Sept. 19, 2019), at <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf>.

⁶³ Patrick M. Kline, Evan K. Rose, Christopher R. Walters, *Systemic Discrimination Among Large U.S. Employers*, *National Bureau of Economic Research* (July 2021), <https://eml.berkeley.edu/~crwalters/papers/randres.pdf>.

⁶⁴ Cameron Costa, *Minority entrepreneurs at a tipping point as Black-owned banks dwindle in the U.S.*, CNBC (Aug. 25, 2020), <https://www.cnbc.com/2020/08/25/minority-entrepreneurs-at-tipping-point-as-black-owned-banks-dwindle.html>.

February and June of 2020, with the authors noting that the drastic decline correlated to increased xenophobia targeted at Asian Americans and their businesses.⁶⁵

D. Housing Tax Policies Worsen Wealth Inequality

The nation's tax policies favor property owners over renters, positioning wealthy homeowners in a more secure economic position. For instance, the mortgage interest deduction is by far the largest housing subsidy. Although the subsidy was projected to drop significantly from \$60 billion in 2017 to \$40 billion in 2018 because of the 2017 Tax Cut and Jobs Act, most of the subsidy still benefits upper income families who are disproportionately White.⁶⁶

IV. COVID-19 Policies Exacerbate Housing Inequality

The CARES Act's \$2.2 trillion in economic relief was designed to provide unemployment assistance and stimulus checks to aid families hardest hit by COVID-19. However, this aid pales in comparison to other actions taken by the federal government supporting people with assets and wealth. Over the course of the pandemic, more than \$4 trillion has been disbursed through Congress. But several of the federal initiatives funded by these dollars have most benefitted those in the strongest financial position leading into the pandemic, people who are disproportionately wealthy and White.

In March 2021, the Consumer Financial Protection Bureau (CFPB) reported that Blacks and Latinos were more than twice as likely to report being unable to meet their monthly housing payments.⁶⁷ Nine percent of renters reported the likelihood of evictions, and 28 percent of residents in manufactured housing reported an inability to pay rent, compared to 12 percent of single-family home residents and 18 percent of residents in small multi-family units.⁶⁸ As of February 2021, more than two million borrowers (4.23 percent) were seriously delinquent on their mortgages, meaning they were more than 90 days past due or in the foreclosure process.⁶⁹ This rate is more than five times the level seen before the pandemic. At 11.4 percent, the serious delinquency rate is highest for FHA borrowers who are disproportionately first-time homebuyers or households of color and is nearly the highest rate for FHA

⁶⁵ Meera Jagannathan, *Asian-American businesses are dealing with two viruses: Reeling from racist incidents, many are hurting financially during COVID-19*, CNBC (Feb. 17, 2021), <https://www.marketwatch.com/story/asian-american-businesses-are-dealing-with-two-viruses-reeling-from-racist-incident-many-are-hurting-financially-during-covid-19-11613610159>.

⁶⁶ Jenny Schuetz, *Under US housing policies, homeowners mostly win, while renters mostly lose*, Brookings Institution (July 10, 2018), <https://www.brookings.edu/research/under-us-housing-policies-homeowners-mostly-win-while-renters-mostly-lose/>; Chye-Ching Huang And Roderick Taylor, *How the Federal Tax Code Can Better Advance Racial Equity*, Center on Budget and Policy Priorities (July 25, 2019), available at <https://www.cbpp.org/research/federal-tax/how-the-federal-tax-code-can-better-advance-racial-equity>.

⁶⁷ *Housing insecurity and the COVID-19 pandemic*, Consumer Financial Protection Bureau (March 2021), available at https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.

⁶⁸ Ibid.

⁶⁹ *Black Knight February 2021 Mortgage Monitor*, Black Knight, April 2020, https://cdn.blackknightinc.com/wpcontent/uploads/2021/04/BKI_MM_Feb2021_Report.pdf.

loans ever.⁷⁰ In contrast, the serious delinquency rate is 2.78 percent on GSE loans (the Government Sponsored Enterprises)—Fannie Mae and Freddie Mac.⁷¹ The states with the highest share of foreclosures or delinquent loans are Mississippi, Louisiana, Hawaii, Oklahoma, and Maryland.⁷² States with significant numbers of loans with negative equity include Mississippi, Illinois, Iowa, and Connecticut.⁷³ Metropolitan regions with significant concentrations of delinquent FHA loans, in particular, include Atlanta, Houston, and Chicago.⁷⁴ Public data on mortgage performance does not include the race or ethnicity of delinquent borrowers. Still, household surveys allow us to understand which categories of borrowers are having trouble making mortgage payments. While these surveys find different overall levels of hardship, each shows that Black and Latino homeowners are having the most difficulty paying their mortgages.

Persistent homeownership gaps mean families of color are overwhelmingly renters as opposed to homeowners. Since the beginning of the pandemic, millions of renters who suffered a decrease in hourly wages and loss of employment have faced eviction. According to the U.S. Census Household Pulse Survey in August 2021, 3.5 million people faced eviction.⁷⁵ As of October 2021, though the number of eviction filings was half the rate of those filed prior to the start of the pandemic, evictions were starting to increase due to the U.S. Supreme Court invalidation of the CDC’s eviction moratorium.⁷⁶ Moreover, many states struggled with disbursement of the CARES Act’s Emergency Rental Assistance (ERA) funding that Congress provided to help keep renters housed during the COVID-19 pandemic. It has been reported that more than \$30 billion of the \$46.5 billion of ERA funds were unspent as of late October 2021.⁷⁷ Unlike homeowners who could tap into their home’s equity by refinancing to offset economic disruption, renters typically have few savings.

Since the start of the COVID-19 pandemic, the Federal Reserve Board’s \$120 billion in monthly bond purchases, including \$40 billion per month in agency mortgage-backed securities, has allowed current homeowners to see their home equity grow by more than \$2.9 trillion since the second quarter of 2020.⁷⁸ Additionally, the Federal Reserve’s actions to mitigate the economic impacts of COVID-19

⁷⁰ *FHA Single Family Loan Performance Trends: February 2020 Credit Risk Report*, U.S. Department of Housing and Urban Development (February 2020),

https://www.hud.gov/program_offices/housing/hsgroom/loanperformance.

⁷¹ *Foreclosure Prevention Refinance and FPM Report Fourth Quarter 2020*, Federal Housing Finance Agency (March 25, 2021), <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/4Q2020FPR.pdf>.

⁷² *Black Knight February 2021 Mortgage Monitor*.

⁷³ *Homeowner Equity Insights: Data through Q4 2020*, CoreLogic, 2021,

<https://www.corelogic.com/insightsdownload/homeowner-equity-report.aspx>.

⁷⁴ Ed Pinto and Tobias Peter, *Nowcast: 10 Metros Most Threatened by High Numbers of FHA Delinquencies*, American Enterprise Institute (October 2020), <https://www.aei.org/nowcast-10-metros-most-threatened-by-highnumbers-of-fhadelinquencies-october-2020-update>.

⁷⁵ *Measuring Household Experiences during the Coronavirus Pandemic*, U.S. Census Bureau (2021), <https://www.census.gov/data/experimental-data-products/household-pulse-survey.html>.

⁷⁶ Sophie Kasakove, *With Cases Piling Up, an Eviction Crisis Unfolds Step by Step.*, New York Times (November 7, 2021), <https://www.nytimes.com/2021/11/07/us/evictions-crisis-us.html>.

⁷⁷ Annie Nova, *Billions in aid still available to struggling renters*, CNBC (Oct. 26, 2021),

<https://www.cnbc.com/2021/10/26/billions-in-aid-still-available-to-struggling-renters.html>

⁷⁸ See CoreLogic, *Homeowners Gained \$2.9 Trillion in Equity in Q2 2021*, CoreLogic Reports (Sept. 23, 2021) <https://www.corelogic.com/press-releases/homeowners-gained-2-9-trillion-in-equity-in-q2-2021-corelogic-reports/>.

resulted in lowering the federal funds rate, which helped mortgage interest rates remain at historic lows and stimulated home purchasing and refinancing. However, Federal Reserve researchers found that these benefits did not benefit the whole housing market equally.⁷⁹ The analysis showed that the median Black and Latino mortgage borrowers accumulated significantly less equity. Moreover, only 6 percent of Black borrowers and 9 percent of Latino borrowers refinanced, as compared to 12 percent of White borrowers.

V. Race-conscious Solutions are Needed to Build Equity and Spur Economic Growth

Racist housing policies created today's disparities, and only race-conscious policy solutions can remedy them. Innovative race-conscious policies, such as Special Purpose Credit Programs (SPCPs) and Targeted First Generation Downpayment Assistance (DPA), can help begin to address existing racial homeownership and wealth gaps.

Fair lending laws⁸⁰ allow lenders to design SPCPs in a tailored way to meet special social needs and benefit economically disadvantaged groups, including groups that share a common characteristic, such as race, national origin, or gender.⁸¹ Properly designed, SPCPs can play a critical role in promoting equity and inclusion, building wealth, and removing persistent barriers that have contributed to financial inequities, housing instability, and residential segregation. Current credit scoring models embed and reflect the nation's history of discrimination in financial services. Race-conscious SPCPs can be used to create alternative credit scoring systems to allow underserved groups to qualify for a mortgage loan more fairly.

Moreover, NFHA and the Center for Responsible Lending (CRL) designed a targeted, first-generation down payment assistance program to help the Biden administration and Congress close the wealth and homeownership gaps.⁸² With a \$100 billion investment in down payment assistance (DPA) for first-

⁷⁹ Kristopher Gerardi, Lauren Lambie-Hanson, and Paul Willen, *Racial Differences in Mortgage Refinancing, Distress, and Housing Wealth Accumulation during COVID-19*, Federal Reserve Banks of Atlanta, Philadelphia, and Boston (June 2021), <https://www.bostonfed.org/publications/current-policy-perspectives/2021/racial-differences-in-mortgage-refinancing-distress-and-housing-wealth-accumulation-during-covid-19.aspx>.

⁸⁰ 15 U.S.C. § 1691-1691f; *Office of General Counsel 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*. U.S. Department of Housing and Urban Development (Dec. 6, 2021). https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf.

⁸¹ The Equal Credit Opportunity Act (ECOA) allows both non-profit and for-profit organizations to utilize SPCPs to meet borrowers' unique credit needs that meet qualifications to include:

- The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and
- The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

⁸² See Nikitra Bailey, Tucker Bartlett, Mike Calhoun, et.al., *First Generation: Criteria for a Targeted Down Payment Assistance Program*, National Fair Housing Alliance (May 21, 2021), <https://nationalfairhousing.org/wpcontent/uploads/2021/06/crl-nfha-first-generation-jun21.pdf>;

generation homebuyers, Congress can create millions of new homeowners of color. This type of commitment would deliver on President Biden’s promise to Build Back Better. Moreover, every \$30 billion dedicated to DPA funding for first generation homebuyers adds more than 500,000 new Black and Latino homeowners, increasing the homeownership rates for both groups respectively by one percentage point. There are more than eight million mortgage-ready Black and Latino potential homebuyers in the U.S.; this program would help them get over the biggest hurdle they face in buying a home.⁸³ At this level, DPA would help 288,208 Black families; 223,649 Latino families; 88,000 Native American families, Asian American and Pacific Islander families; and 249,398 White families achieve homeownership.

Lack of down payment is a major barrier to homeownership for families. Many Black and Brown consumers have sufficient income to pay a monthly mortgage obligation; however, they lack intergenerational wealth because exclusionary federal housing policies prevented their families from being able to access homeownership. These families have been unable to give a down payment to successive generations. Consumers who are the first generation of would-be homeowners face significant challenges because their families lack the wealth that homeownership can provide, but they often cannot rely on guidance, networks, and assistance from family to access homeownership opportunities. By investing \$100 billion in DPA programs that assist first-generation homebuyers, we can take a significant initial step toward closing the racial wealth and homeownership gaps. A \$100 billion DPA investment that assists first-generation homebuyers will provide housing stability and wealth-building opportunities for five million families and their local economies. The National Association of Realtors (NAR) estimates that the economic impact of a typical home sale in 2020 was \$93,800.⁸⁴ A \$100 billion investment in DPA funding for first-generation homebuyers will leverage roughly \$500 billion in additional economic impact. A \$30 billion investment in DPA for first-generation homebuyers will leverage roughly \$141 billion in additional economic impact.

The Urban Institute projects that, over the next 20 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.⁸⁵ 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 aged 45 to 74. This is an

Jung Hyun Choi and Janneke Ratcliffe, *Down Payment Assistance Focused on First-Generation Buyers Could Help Millions Access the Benefits of Homeownership*, Urban Institute (April 7, 2021), <https://www.urban.org/urban-wire/down-paymentassistance-focused-first-generation-buyers-could-help-millions-access-benefits-homeownership>.

⁸³ Alanna McCargo, *America’s Persistent Racial Homeownership Gaps*, Urban Institute, <https://www.nar.realtor/sites/default/files/documents/policy-forum-2020-presentation-racialhomeownershipgaps-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-homeownershipreport.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 8 (May 2019), https://www.urban.org/sites/default/files/publication/100204/building_black_ownership_bridges_1.pdf.

⁸⁴ *The Economic Impact of a Typical Home Sale in the United States*, National Association of Realtors (March 31, 2021), <https://www.nar.realtor/sites/default/files/documents/2020-state-by-state-economic-impactof-real-estate-activity-united-states-of-america-3-31-2021.pdf>.

⁸⁵ Laurie Goodman and Jun Zhu, *By 2040, the U.S. Will Experience Modest Homeownership Declines. But for Black Households, the Impact Will Be Dramatic*, Urban Institute (Jan. 21, 2021), <https://www.urban.org/urban-wire/2040-us-will-experience-modest-homeownership-declines-black-householdsimpact-will-be-dramatic>.

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.⁸⁶ Increasing homeownership opportunities helps strengthen family wealth, spurs economic growth, improves health and educational opportunities for children, and promotes racial justice.

NFHA applauds Representative Waters' leadership as Chairwoman of the House Financial Services Committee in introducing the Downpayment Toward Equity Act (DTE). This historic legislation could provide an initial first step to remedying past federal discriminatory housing policies and create racial equity. Companion legislation was introduced in the Senate by Sen. Raphael Warnock. A significant investment in DPA must pass as part of the Build Back Better Act.

VI. Less Discriminatory Alternatives to Biased Algorithms Should Be Adopted to

The touchstone of disparate impact law has always been that an entity must adopt an available, less discriminatory alternative (LDA) to a practice that has discriminatory effect, so long as the alternative can satisfy the entity's legitimate needs. Consistent with this central requirement, responsible financial institutions routinely search for and adopt LDAs when fair lending testing reveals a disparate impact on a prohibited basis. But not all do. In the absence of a robust fair lending compliance framework, the institutions that fail to search for and adopt LDAs will unnecessarily perpetuate discrimination and structural inequality. Private enforcement against these institutions is difficult because outside parties lack the resources and/or transparency to police all models across all lenders. Given private enforcement challenges, consistent and widespread adoption of LDAs can only happen if the federal financial regulators conduct a rigorous search for LDAs and expect the lenders to do the same as part of a robust compliance management system.

VII. Conclusion

When we passed our nation's civil rights laws, we failed to reverse structural inequities. Now, those systemically unfair systems that we left in place are doing their job; they are performing their function. Even before the COVID-19 pandemic, America faced an affordable housing crisis. Most hardworking families are paying upwards of 30 percent of their incomes on rent, with some paying as high as 50 percent. The reality is that there is no city in our nation where someone making the current minimum wage can afford to live in a two-bedroom apartment. The current health pandemic made it clear that housing is essential and fundamental. The Build Back Better Act can lead our nation forward through

⁸⁶ Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, *The Economic Impact of Closing The Racial Wealth Gap*, McKinsey & Company (Aug. 13, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap>; Dana M. Peterson and Catherin L. Mann, *Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, Citi Global Perspectives & Solutions (September 20, 2020), https://ir.citi.com/NvIUklHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHVYk75VKeHCMI%3D; Jeff Cox, *Morgan Stanley Says Housing Discrimination Has Taken A Huge Toll On The Economy*, CNBC (Nov. 13, 2020), <https://www.cnbc.com/2020/11/13/morgan-stanley-says-housing-discrimination-has-taken-a-huge-toll-on-the-economy.html#:~:text=Morgan%20Stanley%20says%20racial%20inequality,five%20million%20from%20owning%20homes.>

substantial investment in housing. By achieving recognition that housing is a fundamental component of our nation's infrastructure, it is finally clear that housing's rightful place is among the various infrastructure investments central to a well-functioning society and economy. The public is keenly aware of the importance of federal housing investments to their bottom line. According to a recent Bipartisan Policy Center/Morning Consult poll on housing issues, Americans across the political spectrum overwhelmingly believe that every child should have access to safe, decent, and affordable housing, and that ZIP Codes or where we live should not determine success in life. The same poll showed that the large majority of respondents, Republicans and Democrats, support increased funding for housing. We commend Speaker Pelosi, Chairwoman Waters, and other members in the House for passing this critically important bill that includes \$150 billion, including the largest ever investment in local fair housing enforcement, First Generation Downpayment Assistance, the Neighborhood Homes Investment Act, and so much more. The Senate should act without delay and pass President Biden's historic Build Back Better Act.