An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement

Testimony of Nikitra Bailey

Senior Vice President of Public Policy

Before the U.S. House of Representatives Committee on Financial Services

Subcommittee on Oversight and Investigation

April 5, 2022

I. Introduction

Good afternoon, Chairman Green, Ranking member Emmer, and other distinguished members of the Committee. Thank you for the opportunity to testify during today's hearing on, *An Enduring Legacy: The Role of Financial Institutions in the Horrors of Slavery and the Need for Atonement*. Slavery serves as the foundation of today's financial services sector. Private actors such as banks, other actors in the housing and financial sectors, and the federal government created policies and practices rooted in slavery that rob the descendants of the enslaved from the ability to build and maintain wealth while simultaneously supporting Whites. The erroneous belief that Black people and other communities of color were inferior to people of European descent served as the basis for discriminatory practices that existed for centuries. Despite the Supreme Court of the United States stating, "[n]ational banks are instrumentalities of the federal government, created for a public purpose,"[1] discrimination in financial services continue to undermine equitable opportunities to participate in the promises of America. Pledges made by financial institutions during the recent reckoning on racial injustice provide an opportunity for atonement for the role banks and financial institutions play in perpetuating the legacy of slavery and racial inequality in the U.S.

My testimony today:

- Reviews the direct connection between the institution of slavery and financial services.
- Discusses the competitive advantage banks receive from national charters to operate.
- Explains how banks and financial institutions continue to perpetuate discriminatory practices that contribute to existing disparities in financial services, homeownership, and wealth.
- Elevates Restorative Justice Solutions for atonement.

II. Slavery Undergirds the Financial Health of the New Nation and Its Institutions

Despite our nation being founded on the promise of freedom and liberty for all, the atrocious system of holding Black people against their will in chattel slavery helped establish the U.S. as one of the world's largest economies and most developed nations. The institution of slavery permeated every aspect of the original thirteen British colonies, which created the modern-day United States of America. The institution was also a core component of other colonies established in what is now the United States by France, Spain, Sweden and the Dutch. Extensive research demonstrates that the bodies of enslaved Africans ultimately became more profitable than the colonists' land itself.[2] The free labor of enslaved Africans and their toil served as the foundation of wealth in America undergirding the financial health of the new nation and its institutions. Every American institution stands on this foundation, including the nation's banks where the institution of slavery revolutionized existing credit markets, "creating complex

---

[1] Richard Rothstein, *The Color of Law: A Forgotten History of How our Government Segregated America*, Liverright Publishing Corporation, (2017), p. 109.

[2] Matthew Desmond, *In Order to Understand the Brutality of American Capitalism, You Have to Start on the Plantation,* NYT 1619 Project, (August 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html.

new forms of financial instruments and trade networks through which slaves could be mortgaged, exchanged, and used as leverage to purchase more slaves."[3]

Public policies established agency between financial institutions and governments. In the U.S., bank charters are granted by the government, whether state or federal. These charters create a social contract between financial institutions as private enterprises and the governments, which represent the people's interests.[4] The U.S. banking system offers citizens financial services and the ability to access credit to build and accumulate wealth in exchange for depository insurance which means a bank's failure will be backed by the full faith and credit of the U.S., thereby enabling financial institutions to receive trust in their operations.[5] Early political leaders, including Thomas Jefferson[6], held skepticism about the outsize role banks could play in the nation and sought to limit the overall influence of financial institutions. The foundation of the agency between the U.S. and national banks was developed during America's Civil War, a conflict over whether slavery should expand beyond southern states to newly admitted territories.[7]

A. Slavery and the North/South Conflict Divides America Leading to the Establishment of National Banking Charters and Creation of the Office of the Comptroller of the Currency

Today, the nation's largest financial institutions rarely provide banking services or credit access to Black Americans despite their ability to exist being connected to the legacy of slavery. America's banking charter system, where states and the federal government charter and oversee banks, has its roots in the Civil War.[8] Prior to the war, bank charters were only granted by states. Congress adopted the National Currency Act of 1863 and the National Bank Act of 1864 to permit financial institutions to operate nationally to help finance the war.[9] The federal government also established the Office of the Comptroller of the Currency (OCC), an independent agency of the U.S. Department of Treasury, to provide charters, regulation, and supervision of national banks during this time.

III. Reconstruction and Its Failed Promises

The Reconstruction Era of 1865-1877, granted formerly enslaved Black people promises of freedom that never fully materialized. While the 13th, 14th, and 15th Amendments to the U.S. Constitution officially ended legalized slavery, granted citizenship and equal protection to the formerly enslaved, and provided voting rights to Black males, the vestiges of slavery remained. The ability of new Black citizens to fully participate in America's democracy was eventually thwarted by the realignment of southern and

---

[3] Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap*, The Belknap Press of Harvard University Press, (2017), p. 11.

[4] Mehrsa Baradaran*, How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy*, Harvard University Press, (2015), pp. 14-18.

[5] *Ibid*.

[6] A founding father who authored *The Declaration of Independence* and served as the third president of the U.S. Jefferson also owned enslaved Africans and mortgaged 150 enslaved Africans in the building of his estate at Monticello. See, Desmond, https://www.nytimes.com/interactive/2019/08/14/magazine/slavery-capitalism.html.

[7] *Causes of the Civil War: Learn more about why the war was fought*, Oregon Public Broadcasting, https://www.pbs.org/opb/historydetectives/feature/causes-of-the-civil-war/#:~:text=What%20led%20to%20the%20outbreak,key%20issue%20was%20states'%20rights.

[8] See, Bardaran, *How the Other Half Banks*, pp.36-38.

[9] *Ibid*.

northern interests. It is important to note that glimmers of hope shined during this time, including the passage of the landmark Civil Rights Act of 1866, which was the first time Congress passed federal legislation guaranteeing fair housing to all citizens. It states, "[a]ny citizen has the same right that a white citizen has to make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real and personal property.[10]

A. The Freedman's Bank and the Hope of Inclusion

Despite Lincoln's Emancipation Proclamation, discrimination and segregation continued for emancipated Black people, including Black soldiers fighting on behalf of the Union. In addition to Black soldiers being given subpar supplies, assigned the deadliest of missions, and paid less than White soldiers, they also faced bias from banks and thrifts.[11] Black soldiers were locked out of the financial mainstream left to the abuses of fringe financial service actors or resorting to having to maintain their savings on their person.[12] Following the Union's victory, philanthropists persuaded Congress to establish the Freedman's Savings and Trust Company, which became known as Freedman's Bank, to provide the soldiers and other newly freed citizens a place to place their savings.[13] Instead of providing supervision over the bank by the newly created national bank regulator, the OCC, Congress held this responsibility, appointing a group of White men as trustees to govern the system[14], and provided little oversight which ultimately led to the bank's demise.[15]

B. The Demise of the Freedman's Bank and the Assets of America's Newest Citizens

Congress stymied the Freedman's Bank in its charter by limiting its activities to those of a depository institution. By failing to grant the bank the ability to make loans to depositors, customers were not able to control their own "economic destin[ies],"as the managers of the bank lobbied Congress to alter and relax the bank's charter allowing it to operate as an investment bank.[16] Debt bondage replaced physical bondage for many Black people during this time as sharecropping, where each plantation served as "its own system of banking,"[17] became the primary way for Black people to provide for themselves and their families. In addition to never receiving the forty acres promised by General Sherman's Field Order #15[18]Freedman's Bank's customers lost their hard-earned savings to gross mismanagement, self-dealing, fraud, and speculation stemming from the White Trustees' "looting" of the bank.[19] "By 1871, 'there was

---

[10] Pub. L. 102-166, title I, § 101 (Nov. 21, 1991), 105 Stat. 1071.

[11] Lisa Rice, *The Fair Housing Act: A Tool for Expanding Access to Quality Credit*, The Fight for Fair Housing, Routledge, (2018), pp. 88-91.

[12] *Ibid*.

[13] *Ibid.*

[14] Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, (2012), Harvard University Press.

[15] *See*, *Freedman's Bank Demise*, U.S. Department of Treasury, https://home.treasury.gov/about/history/freedmans-bank-building/freedmans-bank-demise

[16] Mehrsa Baradaran, *The Color of Money: Black Banks and the Racial Wealth Gap*, The Belknap Press of Harvard University Press, (2017), p. 33.

[17] *Ibid* at pp. 23-30.

[18] *Ibid*.

[19] *Ibid*.

hardly an officer…who was not connected with some outside interest that borrowed from the bank."[20] This included one of the bank's overseers, Henry Cooke. Henry's brother, Jay Cooke, headed Jay Cooke & Co., a Wall Street investment bank that ultimately came to help finance the Northern Pacific Railroad via railroad bonds. The Cookes also owned a bank, First National. When things began to go south for Jay Cooke & Co. and First National, Henry, Jay, and other managers of the institutions simply transferred the worst liabilities from the companies to the Freedman's Bank exchanging cash from Freedman's for worthless paper from Jay Cooke & Co. and First National. These actions led Frederick Douglass, a prominent Black abolitionist, asked to take over the bank's leadership, to call the Freedman's Bank, "The [B]lack man's cow, but the white man's milk."[21] Douglass could not save the Freedman's Bank and he requested Congress shut its doors leaving 61,131 depositors without nearly $3 million, which was more than half the accumulated wealth of the new Black citizens.[22]

IV. The Federal Depository Insurance Corporation and the Social Contract with Banks

A. Competitive Advantage of Depository Insurance (FDIC)

Since at least the Great Depression, the underlying premise of our modern banking system has been that banks are a fundamental component of a well-functioning economy. They provide access to capital for individuals and businesses, provide liquidity to a range of institutions, and they are a vehicle for implementing monetary policy. Their importance for ensuring a healthy economy means, from a public policy perspective, the government has an interest in creating and maintaining mechanisms to support and sustain the banking sector. One of these is federal deposit insurance, which has both prevented runs on banks and provided depositors with confidence they will be made whole in the event of a bank failure. Another is access to the "lender of last resort," or the Federal Reserve's discount window. A third is a regulatory system that acts as guardrails to prevent insured depository institutions from engaging in practices that may undermine their safety and soundness and should - but do not always - also ensure they do not engage in practices that are harmful to their customers or the communities they are chartered to serve.

E. Gerald Corrigan, former President of the Federal Reserve Bank of Minneapolis, summed it up this way,

> "On close inspection, it becomes evident that these essential functions [transaction accounts, liquidity, vehicle for monetary policy] are highly interdependent and that banks' ability to perform such functions dictates the need for a high degree of public confidence in the overall financial condition of banks — and especially the quality of banks' assets. This dictate has been reinforced by a public safety net — deposit insurance and access to the lender of last resort— which is uniquely available to "banks." The presence of that public safety net implies unique public responsibilities on the part of banks…"[23]

---

[20] *Ibid*.

[21] See, *Freedman's Bank Demise*, U.S. Department of Treasury, https://home.treasury.gov/about/history/freedmans-bank-building/freedmans-bank-demise

[22] *Ibid*.

[23] Corrigan, E. Gerald, *Are Banks Special?*, Annual Report of the Federal Reserve Bank of Minneapolis 1982, https://fraser.stlouisfed.org/files/docs/historical/frbminn/1982_frb_minneapolis.pdf?utm_source=direct_download.

Although banks have long railed against what they often view as the burden of regulation, in fact, for many years our system of bank regulation afforded them a competitive advantage against non-depository institutions that were viewed by the public as riskier. Unfortunately, the record does not suggest that all segments of our society have benefited equally from the "unique public responsibilities" that the public safety net conferred upon insured depository institutions. Borrowers and communities of color have not been served equitable by the institutions in our banking system.

V. Financial Institutions and their Role in Perpetuating Appraisal Bias

Financial institutions have a long history of perpetuating an unfounded association between race and risk by relying on biased appraisals. For example, the 1938 Federal Housing Administration Underwriting Manual stated that "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.... A change in social or racial occupancy generally contributes to instability and a decline in values."[24] From the start, financial institutions relied on an appraisal system that placed the highest value on White, homogeneous neighborhoods, while devaluing communities of color.

As early as the Civil Rights Act of 1866,[25] the civil rights laws established a robust legal framework for addressing appraisal discrimination and the reliance of financial institutions on discriminatory appraisals. The Fair Housing Act of 1968,[26] the Equal Credit Opportunity Act of 1974 ("ECOA"),[27] and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992[28] all prohibit discrimination in appraisals by financial institutions, including by Fannie Mae and Freddie Mac. In particular, the Fair Housing Act regulations prohibit "[u]sing an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin."[29] That is, the regulation explicitly prohibits using a discriminatory appraisal.

Despite this robust legal framework, recent news stories and research are replete with examples of appraisal bias on an individual and systemic basis. We have all heard the shocking stories of appraisal bias from across the country, including stories of "whitewashing," where homeowners of color have had to go through the excruciating experience of removing all evidence of their racial identity just to receive a fair appraisal. From Carlette Duffy in Indiana who received an increase of almost $150,000 after asking a White friend to pose as her brother,[30] to the Austin family in California, who received an increase of almost half a million dollars after asking a White friend to pose as the homeowner,[31] these disturbing

---

[24] *See* Dr. Elizabeth Korver-Glenn, Appraising Value, *Race Brokers: Housing Markets and Segregation in 21st Century Urban America*, at 116-143 (2021).

[25] 42 U.S.C. §§ 1981-1982.

[26] 42 U.S.C. § 3601, *et seq.*

[27] 15 U.S.C. § 1619(a).

[28] 12 U.S.C. § 4545.

[29] 24 C.F.R. § 100.135(d)(1).

[30] 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.

[31] Fair Housing Advocates of Northern California, *Discrimination Lawsuits Filed Alleging Discrimination in Home Appraisal Process*, Press Release (Dec. 2, 2021),

and even heartbreaking stories have shone a light on the serious shortcomings of the current appraisal process.[32]

While some may say the whitewashing stories are probably attributable to just "a few bad apples" in the appraisal profession, researchers from a variety of backgrounds using a variety of datasets and methodologies all come to the same conclusion: the current appraisal system leads to adverse outcomes for consumers of color on a systemic basis.

- The Federal Housing Finance Agency recently analyzed appraisal reports and found that thousands of the reports contained descriptions based on race, ethnicity, and religion, even though it is illegal to base a valuation on those protected classes.[33]
- In a groundbreaking study, researchers at Freddie Mac analyzed more than 12 million 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").[34] The study showed the *majority* of appraisers in the study demonstrated this appraisal gap for communities of color.
- In another comprehensive study, researchers at Fannie Mae analyzed 1.8 million appraisals submitted for refinancing transactions and found appraisers were more likely to overvalue White-owned homes in majority-Black neighborhoods.[35]
- Finally, a 2018 Brookings Institution study of American Community Survey homeowner estimates and Zillow data found 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.[36] The study estimated homes in majority-Black neighborhoods were undervalued by $48,000 per home on average, leading to a $156 billion cumulative loss in value nationwide.

---

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/.

[32] *See* 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.

[33] 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.

[34] 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.

[35] Jake Williamson and Mark Palim, *Appraising the Appraisal*, Fannie Mae Working Paper (Feb. 2022), https://www.fanniemae.com/media/42541/display.

[36] 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. 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).

Study after study shows the current appraisal system fails to provide fair values for consumers of color. So far, these racial and ethnic disparities cannot be explained by legitimate non-discriminatory factors.

Financial institutions have the legal responsibility to ensure their lending processes do not rely on discriminatory appraisals. It is clear from the recent stories and research that financial institutions must do more to ensure their lending decisions do not perpetuate an unfounded association between race and risk, which deprives creditworthy consumers of color of opportunities in homeownership and wealth building.

VI. CRA and the False Promise of Financial Inclusion

One of the mechanisms we have used to effectuate banks' "unique public responsibilities" is the Community Reinvestment Act (CRA). As the Federal Reserve Board recounted in a recent Advance Notice of Proposed Rulemaking on CRA, "Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities. Many believed systemic inequities in credit access—due in large part to a practice known as ''redlining''—along with a lack of public and private investment, was at the root of these communities' economic distress. Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods comprised largely of African American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside of those neighborhoods."[37]

Senator William Proxmire, sponsor of the CRA legislation, articulated this clearly in the floor debate over the bill, "By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood."[38]

This understanding of both the harms caused by banks' failure to fulfill their unique public responsibilities in an equitable fashion and the need for government action to address this failure is reflected in the text of the Act, which states Congress' findings that, "(1) Banks and savings associations (collectively, banks) are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[39]

A. Regulation and Insurance in Exchange for Serving Underserved Communities

[37] 12 CFR Part 228 [Regulation BB; Docket No. R–1723] RIN 7100–AF94 Community Reinvestment Act, 71 Fed. Reg. 66410, October 19, 2020.

[38] Id.

[39] Id.

The CRA was one in a remarkable series of laws passed by Congress between 1964 and 1977, intended to end racial and other forms of discrimination, expand access to opportunity for everyone in this country and redress the harms caused by the discriminatory policies and practices of both the government and the private sector. The first of this series of laws was the Civil Rights Act of 1964, a broad statute that prohibits discrimination in employment, public accommodations and federally funded programs, among other areas, but does not have provisions specific to housing or lending. It was followed by a series of statutes that do apply to these markets. The first of these was the Fair Housing Act[40], which bans discrimination based on race, national origin, and other characteristics in all types of housing transactions, including mortgage lending. The Fair Housing Act also imposes an obligation on all federal agencies – including agencies with regulatory authority over financial institutions - to administer their programs and activities in a manner "affirmatively to further" fair housing. This provision was intended to eliminate discrimination in federal programs and activities related to housing, and also to spur efforts to dismantle residential segregation and overcome its deleterious effects. In 1974, Congress passed the Equal Credit Opportunity Act (ECOA)[41], which bans discrimination based on race and other characteristics in all credit transactions, including but not limited to credit for housing and small businesses. In 1975, Congress enacted the Home Mortgage Disclosure Act (HMDA)[42], requiring lenders to make public information about their mortgage lending activities. Finally, in 1977, Congress passed the Community Reinvestment Act (CRA)[43].

B. The Need for Inserting Race Consciousness into CRA

Although the text of the CRA does not call out the credit and deposit services needs of classes protected under these other statutes, it must be understood as a civil rights law, intended to eliminate the barriers to credit not only in low- and moderate-income communities, but also in communities of color and other underserved areas that had been erected by redlining and disinvestment.

As Senator Proxmire made clear, the CRA was intended as an antidote to redlining, a practice that was largely based on the racial and ethnic composition of the population in the affected neighborhoods. Despite the fact the legislative history is clear about the intended scope of the Act, its implementation by the federal financial regulatory agencies has focused almost exclusively on the needs of low- and moderate-income people and communities. As a result, while the CRA has been an important mechanism for increasing the flow of credit into low- and moderate-income communities, it has failed to facilitate the same access to credit and other banking services in other underserved communities. Key among these is communities of color.

To correct this deficiency and fulfill Congress' intention of ending and remediating redlining and the segregation and other inequities it engendered, the federal banking regulatory agencies must incorporate consideration of banks' performance in serving the credit and other banking needs of people and communities of color – including people with limited English proficiency - throughout the entire regulatory and supervisory framework for CRA. This includes where banks locate their branches, how they delineate their communities, the extent to which both their suite of retail products and their

---

[40] 42 U.S.C. §§ 3601-19.
[41]15 U.S.C. §§ 1691 *et seq.*
[42] 12 U.S.C. §§ 2801 *et seq.*
[43] 12 U.S.C. §§ 2901 *et seq.*

community development investments serve these market segments, their actual lending performance, their record of loan servicing and the results of their fair lending examinations. The regulators must adopt an explicit requirement for banks to identify and help meet the needs of communities of color in order to fulfill their ongoing and affirmative obligations under the Act. This must include *all* communities of color, including but not limited to those that happen to be low- and moderate-income, as evidence shows that people in higher income communities of color also face significant barriers to credit access. For example, low-income White individuals have higher homeownership rates than more affluent Black individuals.

The long-standing and on-going systemic inequity in access to credit for people and communities of color is one of the most pressing challenges currently facing our nation. This inequity imposes significant costs and burdens on our nation and our economy, as Raphael Bostic, President and CEO of the Federal Reserve Bank of Atlanta noted in a recent blog. Reflecting on the protests then taking place throughout the country, he wrote,

> "These events are yet another reminder that many of our fellow citizens endure the burden of unjust, exploitative, and abusive treatment by institutions in this country. Over the course of American history, the examples of such institutionalized racism are many, and include slavery, federal law (consider the Three-Fifths Compromise our founding fathers established to determine federal representation), sanctioned intimidation during Reconstruction, Jim Crow laws in southern states, redlining by bankers and brokers, segregation, voter suppression, and racial profiling in policing. These institutions hurt not only the African Americans they've targeted, but the systemic racism they've codified also hurt, and continues to hurt, America and its economy. By limiting economic and educational opportunities for a large number of Americans, institutionalized racism constrains this country's economic potential. The economic contributions of these Americans, in the form of work product and innovation, will be less than they otherwise could have been. Systemic racism is a yoke that drags on the American economy. This country has both a moral and economic imperative to end these unjust and destructive practices."[44]

With changes to its implementing regulations to more effectively address banks' unique public responsibilities, including their responsibilities to people and communities of color, CRA has the potential to be a tool both for redressing past harms and fueling future growth in all of our communities, to the benefit of our entire nation.

VII. Redlining and the Legalization of Alternative Financial Services

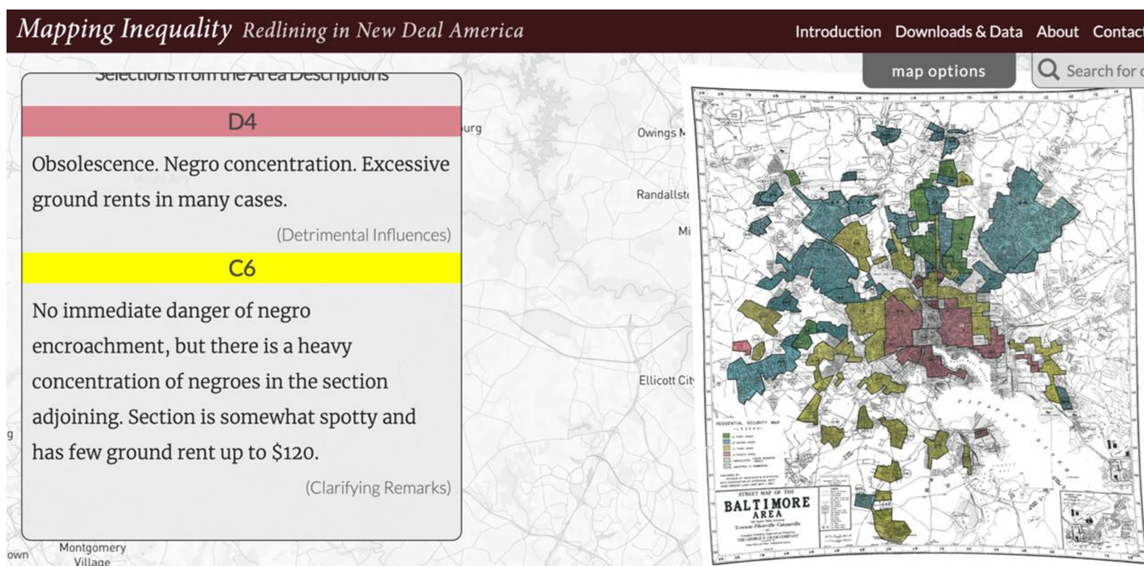
A. America's Dual Financial System

For centuries, laws and policies enacted to create land, housing, and credit opportunities were race-based, denying critical opportunities to Black, Latino, Asian American and Pacific Islander ("AAPI"), and Native American individuals.[45] These policies were developed and implemented in a racially discriminatory manner despite our founding principles of liberty and justice for all.

[44] Bostic, Raphael, *A Moral and Economic Imperative to End Racism*, Federal Reserve Bank of Atlanta, June 12. 2020, https://www.frbatlanta.org/about/feature/2020/06/12/bostic-a-moral-and-economic-imperative-to-end-racism

[45] *See* Lisa Rice, *The Fair Housing Act: A Tool for Expanding Access to Quality Credit,* The Fight for Fair Housing: Causes, Consequences, and Future Implications of the 1968 Federal Fair Housing Act (Gregory Squires, 1st ed.

In particular, 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 perpetuating a system that included race as a fundamental factor in determining the desirability and value of neighborhoods.[46] As shown in the graphic below, the HOLC created appraisal maps that were color-coded to evaluate, grade, and indicate the value of neighborhoods. Communities of color – and even neighborhoods with small numbers of Black residents – were coded as "hazardous" as signified by red shading on the map and were assigned the lowest value despite the reality that families who could afford mortgage loans resided within those communities.[47] Moreover, areas adjacent to communities with Black residents could be downgraded simply based on their proximity to a community of color. Notably, the data used to create the maps were not just collected randomly, but 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, these policies and procedures helped systematize redlining as well as the unfounded association between race and risk in the U.S. housing and financial services markets.



Source: Mapping Inequality

These discriminatory policies, segregation, and disinvestment have led to the FHA enforcing credit discrimination and the creation of the dual credit market. The graphic below illustrates this concept with non-traditional, poorly regulated and often less safe "fringe" financial institutions reflected on the green

2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality).

[46] 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.*

[47] *See* 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=3/41.245/-105.469&text=intro.

side of the graphic and safer, more regulated "mainstream" financial institutions reflected on the blue side.

It can be challenging for lower-income borrowers and borrowers of color to access mainstream financial institutions for several reasons. First, borrowers of color are limited by the geographic location of mainstream financial services. Banks and credit unions are concentrated in predominantly White communities, while fringe financial services, such as payday lenders, check cashers, and title money lenders, are concentrated in predominantly Black and Latino communities. This, of course, is a legacy of our nation's long history of redlining and lending discrimination that continues today. An analysis by Trulia showed that communities of color had 35 percent fewer mainstream lenders than predominantly White communities.[48] The study further noted there were twice as many fringe financial institutions, such as payday lenders and check cashers, in communities of color. Even more alarming, this pattern holds true even in high-income majority Black communities. According to one analysis by Standards and Poor's, banks today are closing their branches in high-income, affluent Black neighborhoods at a higher rate than they are closing branches in low-income non-Black areas.[49] Thus, the access to physical branches cannot be explained by income alone.

In addition, borrowers who access credit through fringe lenders do not receive the benefits of paying on time, which can trap borrowers in these fringe systems. For one, credit scoring systems often penalize borrowers who access credit from fringe lenders, even if the borrower always pays their bill on time. In

---

[48] Cheryl Young and Felipe Chacon, *50 Years after the Fair Housing Act – Inequality Lingers*, Trulia Special Report (April 19, 2018) https://www.trulia.com/research/50-years-fair-housing/.

[49] Zach Fox, Zain Tariq, Liz Thomas, and Ciaralou Palicpic, *Bank Branch Closures Take Greatest Toll on Majority-Black Areas*, S&P Global Market Intelligence (July 25, 2019), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/bank-branch-closures-take-greatest-toll-on-majority-black-areas-52872925.

addition, fringe lenders do not usually report positive credit payments to credit reporting agencies. This means other creditors cannot see positive payment history and the credit score cannot improve. Oftentimes, these consumers remain "credit invisible" because it appears they lack sufficient credit data to generate a score. People of color are disproportionately represented among the credit invisible.

However, many underserved consumers have nontraditional credit, like timely rental housing payments, or other compensating factors, like residual income, that soundly demonstrate their ability to pay a mortgage obligation. Moreover, the current system relies heavily on debt-to-income ratio requirements that disproportionately affect consumers of color. However, debt-to-income ratio requirements have been shown to be poor predictors of risk[50]– particularly for borrowers who are used to paying higher percentages of their income on rental housing payments. As a result, not only do these standards disadvantage borrowers of color, but they are also suboptimal for achieving their intended purpose of managing risk.

Today, while many policies and guidelines may not be explicitly discriminatory on their face, many generate widescale disparate outcomes based on race. For example, credit overlay policies, an overreliance on outdated credit scoring systems and lending policies linked to debt-to-income ratios or loan to-value ratios are all highly correlated to race and national origin and disproportionately disadvantage Latinos, Native Americans, Blacks, and certain segments of the Asian-American and Pacific Islander populations. Algorithm-based systems, like automated underwriting systems and risk-based pricing systems, manifest and perpetuate these biases.[51]

Additionally, credit borrowers face discriminatory roadblocks when trying to access car loans. An investigation by the National Fair Housing Alliance revealed consumers of color with better financial profiles than their White counterparts were more often charged higher interest rates, received more costly options, presumed to be less qualified than they actually were, taken less seriously as buyers, and were more likely to be subjected to disrespectful treatment.[52] Sales people and finance officers at the dealerships where the investigations took place were much more likely to work with White consumers to bring prices down, sometimes through breaking policies, rules, and procedures or by making an extra effort to give the White consumer better pricing.[53]

B. *Greater Transparency is needed in HMDA*

We cannot watch for discrimination we cannot see. HMDA data enable fair housing organizations, other community-based organizations, local officials, and others to determine what types and how many mortgage loans are available, on what terms, to which borrowers, in which neighborhoods, and from which institutions. HMDA data allow users to monitor trends over time and to compare the lending

---

[50] *NFHA Comments on the CFPB's Advance Notice of Proposed Rulemaking for the Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)*, National Fair Housing Alliance, September 16, 2019, https://nationalfairhousing.org/wp-content/uploads/2020/11/NFHA-QM-Comments-Final.pdf.

[51] Robert Bartlett, Adair Morse, Richard Stanton, and Nancy Wallace, *Consumer-Lending Discrimination in the FinTech Era,* University of California, Berkeley, November 2019, https://faculty.haas.berkeley.edu/morse/research/papers/discrim.pdf.

[52] Lisa Rice and Erich Schwartz, Jr., *Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience,* National Fair Housing Alliance, January 2018, https://nationalfairhousing.org/wpcontent/uploads/2018/01/Discrimination-When-Buying-a-Car-FINAL-1-11-2018.pdf.

[53] *Ibid.*

records of one institution to its peers and the market as a whole. They are a critical tool in the fair housing/fair lending toolkit. After the 2008 financial crisis, in which the lack of timely and comprehensive data on mortgage market trends was one of the factors that impeded early action to fend off the crisis, Congress expanded the data required to be reported under HMDA. Since then, Congress itself, along with the CFPB, have rolled back the reporting requirements and made it harder for the public to access the data. The CFPB must reverse course and make financial institutions' HMDA data readily available in granular form to local residents and policy officials. And it is important that, going forward, this concept of providing broad access to granular data in easily accessible formats guides the decisions the CFPB makes about how to manage HMDA data, and other data, as well.

C. *Exclusionary Lending Cements America's Racial Wealth Divide*

Given this troubled history of inequity and continuing discrimination, it is not surprising the homeownership and wealth gaps remain large and persistent. Black homeownership, the primary asset of Black families, is at levels similar to when the Fair Housing Act was passed in 1968.[54] Currently, the White homeownership rate is 74.1 percent, compared to 44.2 percent for Black households and 48.4 percent for Latino households.[55]

In addition, because home value has been the cornerstone of intergenerational wealth in the United States, the historical lending and appraisal practices have had long-term effects in creating some of the current wealth inequalities. White wealth has soared while Black wealth has remained stagnant. In 2019, White household wealth sat at $188,200 (median) and $983,400 (mean).[56] In contrast, Black households' median and mean net worth were $24,100 and $142,500, respectively.[57] Moreover, overall White households held 10 times more wealth than Black households and seven times more than Latino households in 2016[58] with one study finding homeownership accounted for 27 percent of the Black-White wealth gap.[59] These wealth disparities, in turn, reflect intergenerational transfer disparities: 29.9 percent of White households have received an inheritance, compared with only 10.1 percent of Black households.[60]

---

[54] Alanna McCargo and Jung Hyun Choi, *Closing the Gaps: Building Black Wealth Through Homeownership*, 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.

[55] US Census Bureau, *Homeownership Rates by Race and Ethnicity of Householder*, Annual Statistics: 2021 (2021).

[56] 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.

[57] *Id.*

[58] Rakesh Kochhar and Anthony Cilluffo, *How Wealth Inequality Has Changed in the U.S. since the Great Recession, by Race, Ethnicity and Income* (Nov. 1, 2017), https://www.pewresearch.org/fact-tank/2017/11/01/how-wealth-inequality-has-changed-in-the-u-s-since-the-great-recession-by-race-ethnicity-and-income/.

[59] Thomas Shapiro, Tatjana Meschede, and Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy, Brandeis University (Feb. 2013), https://community-wealth.org/content/roots-widening-racial-wealth-gap-explaining-black-white-economic-divide.

[60] 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-the-2019-survey-of-consumer-finances-20200928.htm.

D. Exclusionary Lending Allows Banks to Capture Profits from the Sale of FHA-Insured Homes in Suburbia Ultimately Reducing Housing Costs for White Individuals

While HOLC institutionalized racial segregation in mortgage lending, it also guaranteed banks and financial institutions profits from the loans being made to White suburban borrowers in developments that emerged during the New Deal. This financial capture allowed banks to transfer private risk to the federal government through FHA's federally backed loans. A benefit of this outcome is that cheaper mortgage credit became more accessible, driving investor demand for more mortgages, "because capital was so richly rewarded, it increased banks' profits."[61] These profits extended to the government sponsored enterprises, and because of the market's manipulation, White homeowners received mortgages with low down payments, reduced interest rates, and extended terms driving segregated affordable housing developments in suburban communities across the nation and limiting prosperity to Whites.[62] The ongoing impact is that White individuals typically breathe less toxic air, have a stronger revenue base to fund education and other critical community infrastructure needs such as parks and recreation.

E. The Federal Housing Administration's Exclusionary Policies Perpetuate Disparate Credit Outcomes for People of Color

Since the federal government absorbed all the mortgage risk for loans to White individuals, it played a role in driving up the cost of credit in Black neighborhoods and other communities of color. This action forced consumers of color to pay more for mortgage loans and other consumer credit sold by financial institutions. "The FHA cared more about the race of the borrowers than their creditworthiness, so the [B]lack middle class was left to find mortgage loans in the private market."[63] The FHA's actions created a self-fulling prophecy of lower credit ratings for consumers of color who end up paying more for basic financial services and are relegated to fringe markets and predatory lenders as described earlier. FHA's action's also allowed banks that served other underserved ethnic groups to integrate into the financial mainstream. Specifically, Bank of America, once known as the Bank of Italy because of a predominant supply of financial services to Italian Americans, used FHA's guarantees to increase its profits by 40% from 1935 to 1936.[64] Essentially, FHA's New Deal policies financed through banks expanded the definition of "Whiteness" to include European immigrants who were previously deemed inferior such as individuals who identified as Italian, Irish, Polish, and Jewish.[65] Moreover, FHA's actions allow financial institutions to benefit from the lower credit ratings for families of color. A study of Black homeowners by MIT shows that financial institutions operating as mortgage loan originators benefit from risked-based pricing imposed by FHFA in the form of Loan Level Price Adjustments (LLPAs) on loans with lower down payments and lower credit scores.[66] LLPAs can have a disparate impact on families of color by unfairly placing the burden of a potential future catastrophic downturn on borrowers who were hardest-hit during the Great Recession of 2008. Less discriminatory alternatives for pricing mortgages should be considered.

---

[61] See, Baradaran, *The Color of Money*, pp. 107.

[62] See, Baradaran 107-111.

[63] Ibid at 111.

[64] *See*, Baradaran at p. 126

[65] *Ibid*.

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

F. The Subprime Swindle Cost Consumers of Color $1 Trillion

Compounding the effects of the discriminatory polices described above, Black and Latino consumers were then devastated by the subprime lending boom in the early 2000s, in which lenders sold millions of families abusive loans that were not sustainable despite many subprime borrowers qualifying on credit that was safer and more affordable.[67] Because of these lending practices, Black and Latino families lost over $1 trillion dollars in wealth during the crisis.[68] Further, 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.[69]

VIII. Despite Important Public Interest Mandates, The GSEs, Banks, and CDFIs Fail to Equitably Serve Borrowers of Color

a. The GSEs Fail to Meet Their Duty to Ensure Liquidity in All Markets at All Times

Data from the Home Mortgage Disclosure Act and the 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, and only 2.6 percent and 2.5 percent of refinance loans.[70] 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.[71]

FHFA must take swift and bold action in creating affordable housing goals and ensuring racial equity is built into the GSEs' Equitable Housing Finance Plans, which can help return the GSEs to former periods when their purchases were much stronger. A key goal of the affordable housing goals must be to help build toward more racial equity in homeownership. The GSEs should focus explicitly on addressing racial homeownership gaps; marginal improvements are insufficient given the GSEs' charters that cite the GSEs' responsibility to underserved communities and borrowers of color, including to "minority census tracts." Moreover, the GSE's Equitable Housing Finance Plans should address barriers such as LLPAs, credit scoring, lack of collateral and appraisal issues, and discrimination.[72] The GSE should also be

[67] Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li Center, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending (May 31, 2006), https://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf; Rick Brooks and Ruth Simon, *Subprime Debacle Traps Even Very Credit-Worthy*, Wall Street Journal (December 2007), https://www.wsj.com/articles/SB119662974358911035.

[68] 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.

[69] 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.

[70] HFA Annual Housing Report 2021 at 68, Appendix E (October 2021), https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/Annual-Housing-Report-2021.pdf.

[71] *Ibid*.

[72] A fuller discussion of NFHA's priorities for the GSEs' Equitable Housing Finance Plans can be found here: https://nationalfairhousing.org/wp-content/uploads/2021/10/FHFA-Equitable-Housing-Finance-Plans_NFHA-et-al_FINAL2_2021-10-25.pdf.

required to insert fair housing protections into the eligibility guidelines of all of its affordable housing programs including the Low-Income Housing Tax Credit, State Housing Finance Agency, and other programs. This would include an affirmative obligation to build housing in accordance with the accessibility requirements required by fair housing laws as well as an affirmative obligation to further fair housing.

b. Banks Rescued During the Great Recession Close Off Access for Borrowers of Color

Most large financial institutions that received taxpayer bailouts as part of the Troubled Asset Relief Program (TARP) during the Great Recession added overly restrictive credit overlays such as LLPAs, which caused mortgage loans to become costlier for borrowers with less wealth during the COVID-19 housing boom. Additional price segmentation was added despite the Financial Crisis Inquiry Commission finding that Wall Street's appetite for excessive profits and lax regulation led to the global meltdown that was totally avoidable.[73] These actions locked the health pandemic's hardest-hit families out of the ability to refinance a mortgage to save on their housing costs during this unprecedented period of historically low interest rates.

Since the onset of the health pandemic, the Federal Reserve Board has invested $120 billion in monthly bonds, including $40 billion each month in agency mortgage-backed securities, which has primarily benefited existing homeowners who have seen their home equity grow by more than $3.2 trillion dollars since the fourth quarter of 2021.[74] Additionally, the Federal Reserve's actions to mitigate the economic impacts of COVID-19 have 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 these benefits did not benefit the whole housing market equally.[75] The analysis showed that the median Black and Latino mortgage borrowers accumulated significantly less equity. Moreover, only six percent of Black borrowers and nine percent of Latino borrowers refinanced, as compared to 12 percent of White borrowers.

During the COVID housing boom, White homeowners were able to net a savings of $3.8 billion dollars from loan refinances compared to just $198 million for Black homeowners since 2020, which was less

---

[73] The Financial Crisis Inquiry Commission, Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, at 27 (January 2011), available at https://www.gpo.gov/fdsys/pkg/GPOFCIC/pdf/GPO-FCIC.pdf.

[74] Nicole Friedman, U.S. Housing Wealth Skewed Even More Toward Affluent Over Past Decade, The Wall Street Journal, March 9, 2022, https://www.wsj.com/articles/u-s-housing-wealth-skewed-even-more-toward-affluent-over-past-decade-11646838000.

[75] 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), *available at* https://www.bostonfed.org/publications/current-policy-perspectives/2021/racial-differences-in-mortgage-refinancing-distress-and-housing-wealth-accumulation-during-covid-19.aspx.

than 4% of overall savings.[76] As a result of this disparity, Federal Reserve data showed the Black/White wealth gap has widened by $20 trillion by the end of September 2021.[77]

The Federal Reserve's policies have staved off a foreclosure-fueled recession but exacerbated wealth disparities for Black households and other communities of color. The same Federal Reserve study found the typical refinance reduced a borrowers' monthly payment by $279, resulting in $5.3 billion in savings each year for households that refinanced. When the authors of the report controlled for lower credit scores and higher Loan-to-Value (LTV) ratios, they found that before the pandemic Black and White borrowers were equally likely to refinance, but after the pandemic Black homeowners were 40% less likely than White homeowners to refinance at the new historically low rates. The report also noted that because Black homeowners on average have less home equity than White borrowers, they are at higher risk of foreclosure when forbearance plans expire and foreclosure proceedings begin.

C. Bank's Administration of the Paycheck Protection Program's Disadvantaged Small Businesses of Color

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 Paycheck Protection Program (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 taxpayers 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.[78] The design of the program, which relied on banks to originate the loans, unfairly placed 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.

D. Banks Bear Responsibility for the Harm Incurred from the Discriminatory Maintenance and Marketing of Foreclosed Homes in the Wake of the Foreclosure Crisis

Compounding the household wealth loss born significantly by communities of color in the foreclosure crisis, in its aftermath, large lenders gained sizable portfolios of these foreclosed homes, referred to as Real Estate Owned ("REO") properties. The National Fair Housing Alliance ("NFHA") coordinated with

---

[76] Shawn Donnan, Ann Choi, Hannah Levitt and Christopher Cannon, *Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom*, Bloomberg, (March 11, 2022), https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/.

[77] *Ibid.*

[78] 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-banksdwindle.html.

twenty local fair housing centers to conduct a nationwide investigation of whether these lenders maintained and marketed for sale homes in Black and Latino neighborhoods in a comparable manner as they did homes in White neighborhoods.[79] Unfortunately, NFHA found that several large lenders engaged in these REO maintenance and marketing practices in a discriminatory manner, not sufficiently engaging in routine practices like mowing the grass, picking up trash, securing doors, and other practices in Black and Latino neighborhoods that, taken together, added blight and disrepair to Black and Latino neighborhoods across the country.[80] While some entities like Wells Fargo and Fannie Mae have resolved these claims by dedicating millions of dollars to community relief efforts in the impacted neighborhoods, entities like Bank of America and Deutsche Bank continue to litigate these allegations of discrimination.[81] Instead of working to redress the alleged harm from these practices, Bank of America and Deutsche Bank challenge the very protections residents have under the Fair Housing Act.

E. CDFIs Miss the Mark on Racial Equity and Inclusion

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 as explained in the section discussing CRA.[82] These outcomes are driven by the Treasury's desire to support projects that promise higher profits and maintain less risk.[83] According to the Hope Policy Institute analysis of CDFI Fund recipients, White-led CDFIs held approximately $13 billion, or 72%, of the total assets reported in FY2014 despite having a lower asset size than minority controlled CDFIs.[84] 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 FDIC to act to preserve minority ownership of minority financial institutions.[85]

F. Investors Profit While Concentrating Purchases in Neighborhoods Devastated by Subprime Lending

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

---

[79] *Zip Code Inequality: Discrimination by Banks in the Maintenance of Homes in Neighborhoods of Color*, NFHA Report, 2014, available at: https://nationalfairhousing.org/wp-content/uploads/2022/02/2014_08_27_NFHA_REO_report.pdf.

[80] See e.g., Complaint at 2–3*, Nat'l Fair Hous. All. v. Fed. Nat'l Mortgage Ass'n*, No. 3:16-cv-06969 (N.D. Cal. 2016).

[81] See e.g. *NFHA Reaches Historic Settlement with Fannie Mae*, new release, February 7, 2022, available at: https://nationalfairhousing.org/nfha-reaches-historic-settlement-with-fannie-mae/.

[82] *See*, Baradaran at 232.

[83] *Ibid*.

[84] *Closing the CDFI Asset Gap, Hope Policy Institute,* April 21, 2020, http://hopepolicy.org/blog/closing-the-cdfi-asset-gap/.

[85] *Ibid* at 224-232.

investors,[86] driving up purchase prices to record highs of up to 32% in some cities,[87] who outbid would-be owner-occupants. Most of the homes were in Black neighborhoods ravaged by the previous foreclosure crisis in southern and post-industrial Midwest cities.[88] The growth of investor single-family purchases is placing homeownership further out of reach for families ready for homeownership, preventing them from generating wealth that could be invested in education, small businesses, or passed on to the next generation.

Not only do investor purchases of single-family homes extract wealth-building opportunity in communities of color, they perpetuate our nation's history of relegating people of color to subpar housing conditions in rental units across the nation. By March 2021, nearly 40% of rental units throughout the nation were owned by anonymous shell entities,[89] and the experiences of renters in these properties in the Twin Cities, Minnesota – which has the nation's largest racial homeownership gap[90] - offer a glimpse into the failures of investors as landlords. The Urban Institute conducted an analysis of the increases in investor-owned single-family rental properties in the Twin Cities and noted that many renters living in investor-owned properties have reported subpar housing conditions, unexpected fees, and unresponsive management staff.[91]

IX. The Case for Atonement: Restorative Justice Solutions

A. Financial Institution's Racial Reckoning Promises Still in Need of Action

Following the 2020 murders of Mr. George Floyd and Ms. Breanna Taylor, financial institutions made significant promises to begin to rectify the harms to Black people caused by unfair and inequitable financial and lending practices. According to a Washington Post analysis,[92] the nation's 50 largest companies and foundations committed at least $49.5 billion to address racial inequality. Most of these investments were made by the nation's largest financial institutions.

---

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

[87] Chris Arnold, Ari Shapiro, *U.S. home prices went through the roof in 2021*, All Things Considered, National Public Radio WAMU 88.5, (December 28, 2021), available at https://www.npr.org/2021/12/28/1068587824/u-s-home-prices-went-through-the-roof-in-2021.

[88] *See* Press Release, National Fair Housing Alliance, *NFHA Reaches Historic Settlement with Fannie Mae*, (February 7, 2022), available at https://nationalfairhousing.org/nfha-reaches-historic-settlement-with-fannie-mae/.

[89] D. Victoria Baranetsky, Y*ou should have the right to know your landlord's name*, *Star Tribune*, (March 2, 2021), *available at https://www.startribune.com/you-should-have-the-right-to-know-your-landlords-name/600029330/?refresh=true.*

[90] Jung Hyun Choi, et al., *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities across Local Markets*, Urban Institute, (October 2019), *available at https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf.*

[91] *Urban Institute*, *How We Used Open Data to Identify Investor-Owned Single-Family Rental Properties*, (July 1, 2021), *available at https://urban-institute.medium.com/how-we-used-open-data-to-identify-investor-owned-single-family-rental-properties-lessons-learned-6b452a950ad3.*

[92] Tracy Jan, et al., *Corporate America's $50 Billion Promise*, *The Washington Post*, (August 24, 2021), *available at* https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/.

Financial institutions must do more to fully invest in Black people and communities as they continue to benefit from profits derived from slavery. Financial institutions with ties to slavery should, at a minimum:

1. Conduct a transparent and publicly available Racial Equity Audit to determine the extent to which it may contribute to racial discrimination and what remediation may be necessary to reverse the harm.
2. Create or expand access to quality, sustainable mortgages, through first generation downpayment assistance programs targeted to Black and other people of color who, based on analyses of institutional lending data.
3. Consider race to the greatest extent possible when designing downpayment assistance and other programs intended to close the racial homeownership and wealth gaps.
4. Prioritize the use of grants instead of loans to increase access to homeownership for Black and other borrowers of color.
5. Provide downpayment assistance of at least 5% to help Black borrowers who are more likely to have a higher LTV, empowering them to make more competitive offers on homes as sale prices continue to rise.

B. Race Conscious Remedies Are Needed to Build Equity and Spur Economic Growth

Racist policies and practices created today's disparities, and only race-conscious solutions can dismantle structural barriers that create and perpetuate bias and replace them with fair and equitable systems. U.S. systems are deeply inequitable and both private market players and government must be aligned in deconstructing unfair systems and bringing on board unbiased structures that provide access to a full range of housing and financial services that have been too long denied to people. 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 laws[93] 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.[94] Properly designed, SPCPs can play a critical role in promoting equity

---

[93] 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.

[94] 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.

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.[95] With a $100 billion investment in down payment assistance (DPA) for first-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.[96] 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 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

---

[95] *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; 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/urbanwire/down-paymentassistance-focused-first-generation-buyers-could-help-millions-access-benefitshomeownership.

[96] Alanna McCargo, *America's Persistent Racial Homeownership Gaps*, Urban Institute, https://www.nar.realtor/sites/default/files/documents/policy-forum-2020-presentationracialhomeownershipgaps-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-hispanichomeownershipreport.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.

(NAR) estimates the economic impact of a typical home sale in 2020 was $93,800.[97] 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.[98] Even more starkly, the same study projects the Black homeownership rate will fall even further by 2040, with the decline particularly pronounced for households aged 45 to 74. This is an economic disaster for the Black families who will be unable to achieve homeownership, but it is also a moral and economic problem for the country. The safety and soundness of the future mortgage market depends on there being consumers who can access safe and responsible loans. Acting now to increase homeownership among underserved communities is a cost-effective solution to strengthen the middle class and grow the economy.[99] 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.

C. Reallocating VA Home Loan Benefits to Descendants of Veterans

Discriminatory housing policies were not limited to the Federal Housing Administration, 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

---

[97] *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-estateactivity-united-states-of-america-3-31-2021.pdf.

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

[99] 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/ourinsights/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-onthe economy.html#:~:text=Morgan%20Stanley%20says%20racial%20inequality,five%20million%20from%20owning%20homes.

the first three years of the program.[100] Since VA benefits were not equitably distributed, a proposal has called for the reallocation of those benefits to advance the goal of addressing homeownership disparities for Black mortgage ready consumers.[101] Based on the proposal, transferring VA benefits to the descendants of veterans will allow, "12,649,337 descendants of African American veterans with newly created eligibility to use the VA home loan benefit program under the proposal."[102] The proposal builds off the precedent set when education benefits were allowed to be transferred under The Post-9/11 Veterans' Educational Assistance Act of 2008.[103]

X. Conclusion

We have all read recent news stories of discriminatory treatment Black people face while banking. These incidents highlight the enduring legacy of slavery's role in financial services. Many of the economic challenges facing our nation—the racial wealth gap, income and homeownership gaps; the racial health disparities resulting from the COVID-19 pandemic; the disparate outcomes of COVID-19's economic impacts; inequities in credit access—have their origins in discriminatory lending policies implemented from the colonial period through present times. While we have passed civil rights laws designed to stop discriminatory actions and create a fairer society, we have never fully enforced those statutes. Instead, legislators and special interest groups have spent enormous resources chipping away at civil and human rights protections. Instead of undoing segregation and its harms, when civil rights laws were passed, they did not include comprehensive provisions to dismantle the structures of inequality that had been put in place. There is no mechanism in our laws to deconstruct the dual credit market.

The inability to stop discrimination and overhaul unfair systems is crippling this nation. 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. Banks must be held accountable for their role in creating disparities and should be partners in advancing racial equity helping expand people's access to safe and affordable financial services. Doing so would strengthen our neighborhoods, communities, and the broader society and position us better to compete on a global level. Our diversity, it turns out, is our strength. Access to opportunity is not a zero-sum game. Rather, broadening opportunities provides exponential benefits to everyone.

---

[100] 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.
[101] Mitria Wilson-Spotser, *Honoring America's Promise: How Passing Unused VA Loan Benefits Down to Veteran's Descendants Could Narrow the African-American Homeownership Gap*, Consumer Federation of America, March 2022, https://consumerfed.org/wp-content/uploads/2022/03/Housing-African-American-VA-Home-Loan-Benefits-Report.pdf.
[102] *Ibid.*
[103] *Ibid*.