NATIONAL FAIR HOUSING ALLIANCE

Testimony of Lisa Rice
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A Strong Foundation: How Housing is the Key to Building Back a Better America

I. Introduction

Good morning, Chairwoman Waters, Ranking Member McHenry, and other members of the United States House Financial Services Committee. I am Lisa Rice, President and CEO 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 200 fair housing organizations throughout the U.S.

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

My testimony today shows that there is strong support among most Americans for a substantial investment in housing as a critical part of the infrastructure and reconciliation bills. I'll briefly review the nation's history of discriminatory federal housing investments and the legacy of economic exclusion that it created. I'll conclude by showing how a substantial investment in housing can help to deliver on President Biden's promise to Build Back Better, spur economic growth, and promote racial justice and equity during this once-in-a-generation opportunity.

II. Americans Across the Political Spectrum Support Stronger Housing Investments

The Bipartisan Policy Center's Morning Consult Poll published on September 23, 2021, shows that most Americans, including a majority of Republicans, Independents, and Democrats, support funding for public housing repairs, tax credits to develop and renovate homes in distressed communities, down payment assistance for first-time and first-generation homebuyers, funding for energy efficient and disaster resilient home improvements, and tax credits to develop low-income affordable housing units.[1] More than 80 percent of all Americans — including 93 percent of Democrats, 85 percent of Independents, and 82 percent of Republicans — believe in the American value that every child and family should have access to a safe, decent, and affordable home.[2] Most Americans view today's affordable housing challenge as a crisis that needs immediate action, and nearly 90 percent — including

[1] BPC/Morning Consult Poll on Recent Housing Issues, Bipartisan Policy Center, September 23, 2021, available at https://bipartisanpolicy.org/blog/bpc-morning-consult-2021-housing/.
[2] Ibid.

76 percent of Republicans — believe that the government has a role to play in creating affordable housing solutions and want to see their elected officials take action.[3]

A. Housing Is a Fundamental Value and Human Right That Requires Significant Reinvestment

For most Americans, housing is seen as a fundamental value and human right, and there is a long American tradition of local, state, and federal programs and investments that have improved quality and access until relatively recently in our nation's history. Housing is so essential to opportunity that a myriad of local, state, and federal laws have been enacted starting with the Civil Rights Act of 1866[4], which outlawed housing discrimination for formerly enslaved Africans who received citizenship under the Fourteenth Amendment. This landmark legislation was followed by local housing ordinances requiring safety for tenants starting in New York City in 1867.[5] Localities like Milwaukee followed with the nation's first public housing project.[6] New York was next, and created the nation's first affordable housing subsidy program.[7] Roosevelt's New Deal created the Federal Housing Administration (FHA) to subsidize the cost of mortgage loans to help expand the American middle class through suburbanization.[8] The Housing Act of 1937 followed and created public housing for low-income Americans.[9] Congress followed this action by creating the GI bill to provide loan guarantees to make homeownership affordable for veterans.[10] In 1965, Congress established the Department of Housing and Urban Development (HUD) as a cabinet level agency to help the federal government play a leading role in addressing poor housing conditions throughout the nation.[11] Then in 1968, merely days after the assassination of Dr. Martin Luther King, Jr., Congress passed the Fair Housing Act to outlaw housing discrimination, redress segregation, and create thriving and inclusive communities. Congress continued to prioritize housing, creating advancements for women, people with disabilities, families with children, domestic violence survivors, and is currently working on protections for people that identify as LGBTQIA with its ongoing debate on the Equality Act. After the 2008 financial collapse, unsustainable mortgage features were prohibited to safeguard homeowners from abuse and the economy from further collapse. More recently, housing has been so central to individual well-being and our nation's economy that evictions and foreclosures were prohibited in the majority of properties at the start of the COVID-19 pandemic.

Housing is also viewed as a human right in our nation. This view was initially adopted in federal policies during President Roosevelt's 1944 State of the Union address that declared that there is a Second Bill of Rights, which included housing.[12] Further, the United States recognized adequate housing as a human right when it signed the Universal Declaration of Human Rights in 1948.[13] Other treaties have been

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[3] Public Opinion Polling on Housing Affordability and Policy in June/July 2021, The Tarrance Group, June 28 – July 1, 2021, available at https://www.opportunityhome.org/wp-content/uploads/2021/09/Tarrance-NLIHC-Poll-Fact-Sheet.pdf.

[4] https://www.thenation.com/article/archive/americas-housing-history/

[5] Act of April 9, 1866 (Civil Rights Act), Public Law 39-26, 14 STAT 27.

[6] 151 Years of America's Housing History, The Nation, May 24, 2018, available at https://www.thenation.com/article/archive/americas-housing-history/.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Eric Tars, Housing As a Human Right, 2020 Advocates' Guide, National Low Income Housing Coalition, January 6, 2021, available at https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf.

[13] Ibid.

passed since then that the U.S. signed and has yet to ratify. However, the U.S. ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which creates a right for all people to be free of discrimination in housing.[14] Most recently, our nation committed to "guarantee the right by all residents in the country to adequate housing."[15]

In our country, housing is the bedrock of opportunity, and 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. Our education system, our transportation, healthcare, food, employment, credit, broadband, and Internet systems are not equitably resourced because the quality and amount of these services are not the same; they vary based on where people live. For example, the same flood and storm protection systems in predominantly White communities in Houston, New Orleans, and many other cities do not mirror the systems that are in predominantly Black communities in those same cities. The grocery stores and health facilities in predominantly White communities do not look like grocery stores and health facilities in predominantly Black communities. The quality of amenities in Black and Brown neighborhoods is not as high as the quality of the same amenities found in White communities, and people of color have fewer options. Accordingly, we have these quantitative and qualitative gaps and inequities that impact every aspect of people's lives. The following graphic explains just how significant these disparities are. Why where you live matters is explained further in Section III.

[14] Ibid.

[15] ibid.

A substantial investment in housing infrastructure creates the opportunity to address persistent gaps in other priorities for people's lives, such as health disparities, unemployment, and poor educational outcomes that all stem from a lack of housing equity.

B. Housing is Infrastructure and Critical to the Economy

While investing in housing from a human rights perspective is critical, it is equally important from an economic standpoint. The nation's economy is stronger when all families have access to safe and affordable housing. Today, in the U.S. housing accounts for nearly 20 percent of the overall gross domestic product (GDP) with $885 billion spent on residential fixed investment and $2.8 trillion spent on housing services, including rent and utilities.[16] According to the Congressional Research Service, owner occupants reside in nearly 65 percent of the nation's housing units, home equity accounts for a significant portion of household wealth, and housing construction plays a significant role in creating employment opportunities, creating 872,000 employees as of March 2021.[17] 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 homeowners to see their home equity grow by more than $1.5 trillion dollars.[18] This increase in household wealth has indirect effects on the economy because increases in housing prices cause consumers to have stronger confidence in

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[16] Lida R. Weinstock, Introduction to U.S. Economy: Housing Market, Congressional Research Service, May 3, 2021, available at https://sgp.fas.org/crs/misc/IF11327.pdf.

[17] Ibid.

[18] Ibid; Home Equity Continues to Soar: Homeowners Gained Over $1.5 Trillion in Equity in 2020, CoreLogic, available at https://www.corelogic.com/press-releases/home-equity-continues-to-soar-homeowners-gained-over-1-5-trillion-in-equity-in-2020-corelogic-reports/.

the economy.[19] Additionally, the Federal Reserve's actions to mitigate the economic impacts of COVID-19 resulted in it lowering the federal funds rate, helping mortgage interest rates remain at historic lows and stimulating home purchasing and refinancing. In fact, 70 percent of all household debt is mortgage debt, and in 2020, sales of homes increased by 25 percent.[20] However, this support is mostly being felt by wealthier families with the most pristine credit profiles.

1. Housing Creates Jobs

Furthermore, the impact of housing on job creation cannot be overstated. According to the National Association of Home Builders (NAHB), building just 1,000 single-family homes generated nearly 3,000 jobs, $162 million in wages, $118 million in business revenues, and $111 million in taxes for localities, states, and the federal government in 2014, with half the jobs being in the construction industry.[21] The NAHB also estimated that construction of 1,000 rental units produced 1,130 new jobs and that $100 million in home renovations will create 890 jobs.[22]

C. The COVID-19 Pandemic Illustrated Why Housing Must Be Included in Infrastructure[23]

Housing and residential segregation are 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.[24] 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 Black and Brown. 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

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[19] Weinstock at 1, available at https://sgp.fas.org/crs/misc/IF11327.pdf.

[20] Ibid, page 2.

[21] Drivers of Job Creations, United States Senate Committee on Banking, Housing and Urban Affairs Subcommittee on Economic Policy, 113th Cong. (May 7, 2014) (Testimony of Dr. Robert Dietz), available at https://www.banking.senate.gov/imo/media/doc/DietzTestimony5714EP.pdf.
https://www.nahb.org/news-and-economics/housing-economics/housings-economic-impact/housing-equals-jobs-resonates-with-lawmakers

[22] Ibid.

[23] This section draws heavily from a joint paper with the National Community Stabilization Trust, Julia Gordon, David Sanchez, Lindsay Augustine, et.al., Protecting Homeownership From the Impact of COVID-19, May 10, 2021, available at https://nationalfairhousing.org/wp-content/uploads/2021/05/2021.05.04-Protecting-Homeownership-from-the-Impact-of-COVID-19-NCST-NFHA-edits-accepted-and-formatted.pdf.

[24] 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/health-equity/race-ethnicity.html#fn10.

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.

1. The Pandemic Has Disproportionately Harmed the Health and Economic Security of Households and Neighborhoods of Color

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.[25] 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.[26] 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.[27] 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 loans ever.[28] In contrast, the serious delinquency rate is 2.78 percent on GSE loans (the Government Sponsored Enterprises—Fannie Mae and Freddie Mac).[29] The states with the highest share of foreclosures or delinquent loans are Mississippi, Louisiana, Hawaii, Oklahoma, and Maryland.[30] States with significant numbers of loans with negative equity include Mississippi, Illinois, Iowa, and Connecticut.[31] Metropolitan regions with significant concentrations of delinquent FHA loans, in particular, include Atlanta, Houston, and Chicago.[32] 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 mortgage.

2. Policy Solutions to Mitigate COVID-19 Produced Declines in Mortgage Credit Availability

Before COVID-19, even as the credit box widened somewhat, mortgage credit had never bounced back to pre-financial crisis levels, even for safe products.[33] Data show that due to COVID-19, mortgage credit

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[25] 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.
[26] Id.
[27] Black Knight February 2021 Mortgage Monitor," Black Knight, April 2020, https://cdn.blackknightinc.com/wpcontent/uploads/2021/04/BKI_MM_Feb2021_Report.pd.
[28] 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/hsgrroom/loanperformance.
[29] 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.
[30] Black Knight February 2021 Mortgage Monitor.
[31] Homeowner Equity Insights: Data through Q4 2020," CoreLogic, 2021, https://www.corelogic.com/insightsdownload/homeowner-equity-report.aspx.
[32] 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-high-numbers-of-fhadelinquencies-october-2020-update/.
[33] Urban Institute, Housing Credit Availability Index, January 2021, https://www.urban.org/policy-centers/housing-financepolicy-center/projects/housing-credit-availability-index.

has tightened for both FHA and GSE originations.[34] Among FHA endorsements, in particular, there has been a shift toward higher credit score borrowers. More generally, there has been an uptick in average credit scores for purchase and refinance loans. In February 2021, Ellie Mae reported that the average FICO score on all closed loans for the month was 753, compared to 738 at the start of 2020.[35] Overall originations have been growing for both home purchase loans and refinance; 68 percent of all closed loans in February 2021 were refinanced loans compared to 50 percent in January 2020.[36] However, much of this increase was driven by higher-balance loans that are more likely taken out by high-income households.[37] Tightening of mortgage credit is likely to have a disparate impact on households of color, who tend to have lower credit scores and live in communities with fewer bank branches and mortgage brokers.

III. Housing is the Bedrock of Opportunity in America

Homeownership has long been a path into the middle class and economic security for families in America. Unfortunately, America's long history of discriminatory housing policies has created distinct advantages for White families, leading to massive homeownership, credit, and wealth gaps that persist today. 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.[38] Most alarmingly, this gap is wider than it was when race-based discrimination against homebuyers was legal.

A. Federal Housing Investments Establish America's Middle Class

In order to grow America's middle class, we must ensure access to homeownership and mortgage credit on fair terms for all creditworthy borrowers, regardless of their race, national origin, gender, disability, familial status, or other protected characteristics. Such non-discrimination is required under existing statutes and regulations and is essential to closing the homeownership and wealth gaps that have long plagued America's housing finance system.

Ensuring a fair and equitable national housing market also makes good business sense. The demographics of the nation are undergoing a dramatic shift, and the majority of new households formed over the next decade will be households of color.[39] Moreover, research has shown that

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[34] Michael Neal, Linna Zhu, and Faith Schwartz, "During the Pandemic, Policymakers Should Maintain Forbearance but Fix Its Costs," Urban Institute, September 2020, https://www.urban.org/sites/default/files/publication/102891/during-thepandemic-policymakers-should-maintain-forbearance-but-fix-its-costs_0.pdf.

[35] February 2021 Origination Insight Report," Ellie Mae, February 2021, https://static.elliemae.com/pdf/origination-insightreports/ICE_OIR_FEB2021.pdf.

[36] Ibid.

[37] Mortgage Applications Decrease in Latest MBA Weekly Survey," Mortgage Bankers Association, September 30, 2020, https://www.mba.org/2020-press-releases/september/mortgage-applications-decrease-in-latest-mba-weekly-surveyx272988.

[38] *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.

[39] *See* Laurie Goodman and Jun Zhu, *The Future of Headship and Homeownership*, Urban Institute (Jan. 2021), https://www.urban.org/sites/default/files/publication/103501/the-future-of-headship-and-homeownership.pdf (estimating that between 2020 and 2040, there will be 6.9 million net new homeowners comprised of 4.8 million more Latino homeowners, 2.7 million more Asian and other homeowners, and 1.2 million more Black homeowners but 1.8 million fewer White homeowners); Janie Boschma, et al., *Census Release Shows America Is More Diverse and More Multiracial Than Ever*, CNN (Aug. 12, 2021), https://www.cnn.com/2021/08/12/politics/us-census-2020-data/index.html.

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.

B. Prior Discrimination in Federal Housing Investments Entrenched Residential Segregation

For much of America's history, communities of color were systematically excluded from economic opportunities through explicit policy decisions.[40] In fact, many of our laws — Indian Removal Acts, Slave Codes, Fugitive Slave Acts, Repatriation Acts, Chinese Removal Act, Black Codes, Sundown Ordinances, Japanese Internment Act, Racially Restrictive Covenants, and much more — were explicitly and purposefully designed to provide opportunities to Whites and to simultaneously deny opportunities to people of color.

1. New Deal Policies Cemented Today's Inequities

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.[41] 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.

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. 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

[40] *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. 2017) (providing a detailed explanation of how federal race-based housing and credit policies promoted inequality).

[41] 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=3/41.245/-105.469&text=intro.

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.[42] 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 people of color.

2. Underwriting and Appraisal Policies Equated Race with Risk

Underwriting and appraisal policies and guidance manuals also systematized the unsupported notion of a connection between race and risk. Some examples include:

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 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."

1967: American Institute of Real Estate Appraisers ("AIREA") Manual, 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."

1973: AIREA 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."

After decades of these explicitly discriminatory policies, in 1977, the U.S. Department of Justice ("DOJ") filed suit against the AIREA and three other defendants for violations of the Fair Housing Act, alleging that the defendants had caused lenders and appraisers to treat race and national origin as negative factors in determining the value of dwellings and in evaluating the soundness of home loans.[43] The AIREA 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.

C. Prior Discriminatory Policies Created Today's Homeownership and Wealth Gaps

These 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

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[42] *See* 3 Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017).

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

wealth versus $149,703 for the median White household.[44] In 2019, White family wealth sat at $188,200 (median) and $983,400 (mean). In contrast, Black families' median and mean net worth were $24,100 and $142,500, respectively. 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.[45]

This bevy of laws, regulations, and policies created structural inequities and systemic bias that is still being manifest in our society. 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.

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 we 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.

IV. Segregation Remains a Major Driver of Inequality

In this nation, where you live matters. As stated above, 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,[46] as well as private actors.[47] As explained above, hundreds of laws, policies, and ordinances such as the Land Grants Act, Homestead Act, Home Owners

[44] *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-black-households/.

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

[46] 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.

[47] 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.

A. COVID-19's Disparate Impacts re Rooted in Discrimination and Segregation

Discrimination and segregation lie at the root of the disparities we see related to the COVID-19 pandemic during which Black,[48] Latino,[49] and Native Americans[50] are hospitalized for and dying from the coronavirus at 2 to 4 times the rate of Whites. These groups also have lower vaccination rates.

Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity

Rate ratios compared to White, Non-Hispanic persons	American Indian or Alaska Native, Non-Hispanic persons	Asian, Non-Hispanic persons	Black or African American, Non-Hispanic persons	Hispanic or Latino persons
Cases[1]	1.7x	0.7x	1.1x	1.3x
Hospitalization[2]	3.7x	1.0x	2.9x	3.1x
Death[3]	2.4x	1.0x	1.9x	2.3x

Race and ethnicity are risk markers for other underlying conditions that affect health, including socioeconomic status, access to health care, and exposure to the virus related to occupation, e.g., among frontline, essential, and critical infrastructure workers.

Chart prepared by the Centers for Disease Control

Residential segregation is the bedrock of this inequality because it serves as the basis for determining which communities will receive certain resources and which areas will be deprived or starved of critical investments. The effects of redlining, residential segregation, discriminatory policies, and disinvestment have created a scenario in which people of color do not live in areas with ample access to healthcare facilities, green and healthy environments, clean water, quality credit, healthy foods, high-performing schools, and other important amenities that people need to thrive. These structural factors, coupled with implicit and overt bias in our healthcare system, are driving horrible outcomes related to the COVID-19 crisis.

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[48] Scott Neuman, "COVID-19 Death Rate For Black Americans Twice That For Whites, New Report Says," August 13, 2020. NPR. Available at https://www.npr.org/sections/coronavirus-live-updates/2020/08/13/902261618/covid-19-death-rate-for-black-americans-twice-that-for-whites-new-report-says.

[49] "Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity," March 12, 2021. Centers for Disease Control. Available at https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigationsdiscovery/hospitalization-death-by-race-ethnicity.html.

[50] Ibid.

When you look at our residential and lending patterns, we are a century behind where we need to be. The racial wealth and homeownership gaps are growing. In fact, the Black/White racial homeownership gap — at more than a 30-percentage point difference — is larger today than it was when redlining was legal. According to the U.S. Census, the homeownership rate for Whites is roughly 74.5 percent. Comparatively, the rate for Blacks and Latinos, is 44.1 percent and 49 percent, respectively. The rate for Native Americans, Asian Americans, Hawaiian Natives, and Pacific Islanders combined is 59.5 percent. Our markets are not fair. They do not work for people of color, women, and people with disabilities. Whites have 10 times the wealth of Blacks and eight times the wealth of Latinos. Lending redlining is flourishing, and housing discrimination is still the norm in too many communities.

The bias in our markets is not a bug but a feature. They were built that way and intended to operate in a discriminatory fashion. They will continue to do so until we make systemic and cultural changes. From the inception of this nation, our housing and finance policies were explicitly discriminatory. They created biased systems that still exist today — residential segregation, the dual credit market, and other unfair systems. We continue to see disparities and discrimination because we have not dismantled structures of inequality.

B. Housing Segregation and Discrimination Created Inequitable Credit Access

Consumers in the U.S. do not have equal or equitable access to the financial markets. Centuries of discriminatory policies, segregation, and disinvestment have led to the creation of the dual credit market in which banks and credit unions are concentrated in predominantly White communities, while payday lenders, check cashers, title money lenders, and other non-traditional financial services providers are concentrated in predominantly Black and Latino communities. An analysis by Trulia revealed stark disparities in where financial services are located. The research showed that communities of color had 35 percent fewer mainstream lenders than predominantly White communities. Moreover, there were twice as many alternative financial institutions — like payday lenders and check cashers — in communities of color. This, of course, is a legacy of our nation's long history of lending redlining and discrimination. However, current practices are contributing to the growing disparity in credit access. For example, today, according to one analysis by Standard and Poor's, banks 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. What this means is that borrowers of color disproportionately access credit outside of the financial mainstream with payday lenders, title money lenders and other creditors who typically do not report timely payments to the credit repositories.

Today, while many policies and guidelines may not be explicitly discriminatory on their face, many generate wide-scale 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]

Our current financial system relies on assessments that can unfairly lock underserved groups out of the opportunity to access credit. For example, credit scores are a requirement for automated underwriting

[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

and risk-based pricing systems and matrices.[52] Yet roughly one-third of Black and Latino borrowers don't have credit scores[53] because they disproportionately access credit outside of the financial mainstream. One of the reasons consumers of color disproportionately access credit through non-traditional credit providers (who typically do not report timely payments to the credit repositories) is because banks are sparsely located in Black and Brown communities. In fact, high-income Black neighborhoods are losing more bank branches than low-income non-Black areas.[54] An analysis by Standard & Poor's found that between 2010 and 2018, majority-Black neighborhoods lost more branches than majority-White, Latino, and Asian neighborhoods. Median household income did not help explain the pattern since majority-Black areas with median household incomes above $100,000 were as likely to not have a branch as low-income areas.[55]

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,[56] — 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.

Because the U.S. lending and housing markets are so exclusionary, a disproportionate percentage of Black, Latino, and Native American borrowers are turned down for mortgage credit each year. NFHA's analysis of 2019 HMDA data reveals that Black applicants are denied for mortgage loans at almost twice the rate of White applicants. Latino consumers are denied at almost 1.5 times the rate of White applicants. These trends have persisted over decades. (See chart below.)

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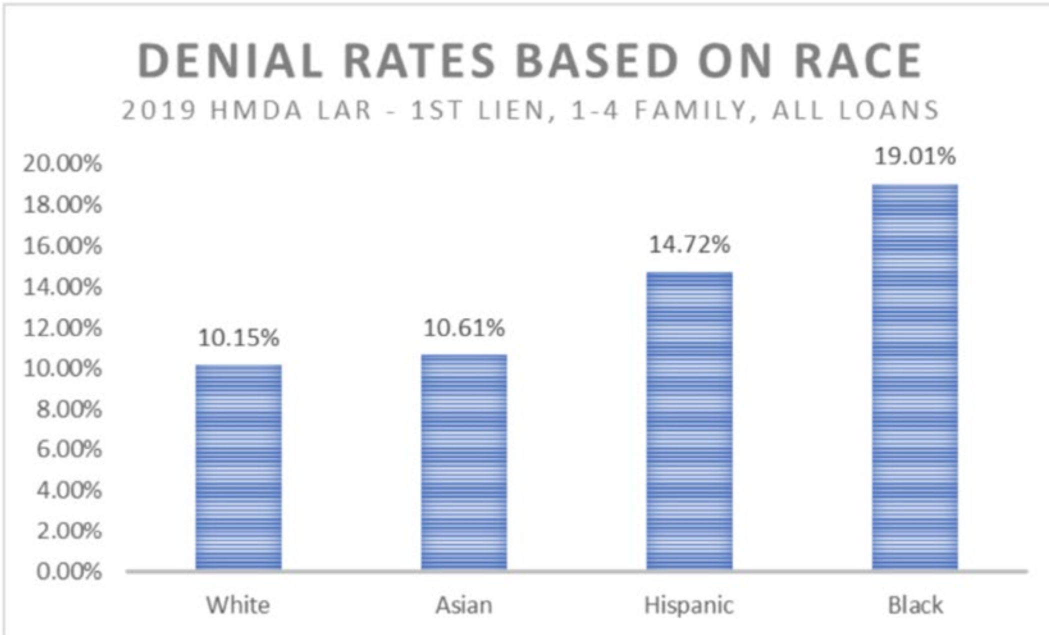
[52] "Loan-Level Price Adjustment Matrix," Fannie Mae, October 21, 2020, https://singlefamily.fanniemae.com/media/9391/display; "Credit Fee in Price Matrix," Freddie Mac, September 24, 2020, https://guide.freddiemac.com/euf/assets/pdfs/Exhibit_19.pdf.

[53] Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman, and Caitlin Young, "Explaining the Black-White Homeownership Gap: A Closer Look at Disparities Across Local Markets," Urban Institute, October 2019, https://www.urban.org/sites/default/files/publication/101160/explaining_the_blackwhite_homeownership_gap_a_closer_look_at_disparities_across_local_markets_0.pdf; "Who Are the Credit Invisibles? How to Help People with Limited Credit Histories," Consumer Financial Protection Bureau, December 2016, https://files.consumerfinance.gov/f/documents/201612_cfpb_credit_invisible_policy_report.pdf.

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

[55] Fox, "Bank Branch Closures Take Greatest Toll on Majority-Black Areas."

[56] "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.



Source: Home Mortgage Disclosure Act Data via Compliance Tech. NFHA Calculations.

Additionally, programs designed to extend credit to businesses owned by people of color have lackluster performance. The Paycheck Protection Program (PPP) developed to help businesses impacted by the COVID19 pandemic has provided minimal benefits to companies owned by Blacks and Latinos. The Center for Responsible Lending estimated that during the first round of the PPP program, when support for small businesses was most critical, only about 5 percent of Black-owned and 9 percent of Latino-owned businesses would be able to access the program.[57] Its projections were borne out. One analysis revealed that a disproportionate majority of PPP loans went to businesses in majority-White communities, while a disproportionately small share of loans went to those located in majority-Black or majority-Latino areas.[58]

Additionally, borrowers of credit face discriminatory roadblocks when trying to access car loans. An investigation by the National Fair Housing Alliance revealed that consumers of color with better financial profiles than their White counterparts were more often charged higher interest rates, received more costly options, were presumed to be less qualified than they actually were, were taken less seriously as buyers, and were more likely to be subjected to disrespectful treatment.[59] Salespeople and finance officers at the dealerships where the investigations took place were much more likely to work with

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[57] Tommy Beer, "Minority-Owned Small Businesses Struggle to Gain Equal Access to PPP Loan Money," Forbes, May 18, 2020, https://www.forbes.com/sites/tommybeer/2020/05/18/minority-owned-small-businesses-struggleto-gain-equal-access-to-ppp-loan-money/#3dff24c75de3

[58] Jason Grotto, Zachary R. Midler, and Cedric Sam, "White America Got a Head Start on Small-Business Virus Relief," Bloomberg, July 30, 2020, https://www.bloomberg.com/graphics/2020-ppp-racialdisparity/?sref=437r7DCu&utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axios marke ts&stream=business.

[59] 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.

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.[60]

In many respects, the cards are stacked against underserved borrowers. Maintaining the status quo will never provide these families and consumers with the opportunities they need and deserve to access credit or secure housing stability. While building more affordable housing is critically necessary and may help expand equal housing opportunities, increasing affordable housing units alone will not address the racial inequality gap.[61]

V. A Substantial Investment in Housing Is Paramount to Building Back Better And Creating Equity

For years, housing and community development advocates and policymakers have recognized that our nation faces significant disparities in homeownership rates, a housing shortage in all areas of the market except luxury housing, a worsening homelessness crisis, and deteriorating public housing, all of which disproportionately affect Black and Brown communities. President Biden campaigned on a promise of unity, focusing on these issues, and pledging to make meaningful changes to our nation's economy to better address these longstanding crises and inequities, and the Build Back Better Act is a once-in-a-lifetime opportunity to achieve these goals. Housing is foundational to opportunity, and it will be impossible to achieve President Biden's or Congress's goals without securing significant investments in strong civil rights compliance requirements that ensure all housing and community development programs are implemented equitably; significant funding for first-generation down payment assistance that helps mortgage-ready Black and Brown families achieve homeownership and build intergenerational wealth; an infusion of resources to support and grow our nation's fair housing enforcement infrastructure to ensure fairness in the housing market; and increased resources for rental assistance and affordable housing options that provide stability for families in need.

A. Targeted Down Payment Assistance Will Create Racial Equity and Ignite the Economy

The nation's legacy of housing discrimination must be addressed. The Biden Administration has the opportunity to change history by helping to eliminate the largest racial homeownership gap since redlining was legal.[62] The National Fair Housing Alliance and the Center for Responsible Lending designed a targeted first-generation down payment assistance program to help the Biden Administration and Congress close the wealth and homeownership gaps.[63] With a $100 billion investment in down payment assistance (DPA) for first-generation homebuyers, Congress has the ability to 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-

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[60] Rice, "Discrimination When Buying a Car: How the Color of Your Skin Can Affect Your Car-Shopping Experience."

[61] Reprinted from blog by Lisa Rice: "Using Special Purpose Credit Programs to Expand Equality," November 4, 2020. Available at: https://nationalfairhousing.org/using-spcps-blog/

[62] See, 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 (February 14, 2017), https://www.urban.org/urbanwire/are-gains-black-homeownership-history.

[63] 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, available at https://nationalfairhousing.org/wp-content/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, available at https://www.urban.org/urban-wire/down-payment-assistance-focused-first-generation-buyers-could-help-millions-access-benefits-homeownership.

generation homebuyers adds more than 500,000 new Black and Latino homeowners, increasing the homeownership rates for both groups respectively by 1 percentage point. There are more than 8 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.[64] At this level, DPA would help 288,208 Black families; 223,649 Latino; 88,000 Native American, 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, based on data from the Urban Institute.[65] A $100 billion DPA investment that assists first-generation homebuyers will provide housing stability and wealth-building opportunities for 5 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.[66] 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.[67] 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 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-

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

[65] 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, available at https://www.urban.org/urban-wire/down-payment-assistance-focused-first-generation-buyers-could-help-millions-access-benefits-homeownership.

[66] The Economic Impact of a Typical Home Sale in the United States, National Association of Realtors, March 31, 2021, available at https://www.nar.realtor/sites/default/files/documents/2020-state-by-state-economic-impact-of-real-estate-activity-united-states-of-america-3-31-2021.pdf.

[67] 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, January 21, 2021, available at https://www.urban.org/urban-wire/2040-us-will-experience-modest-homeownership-declines-black-households-impact-will-be-dramatic

class and grow the economy.[68] Increasing homeownership opportunities helps strengthen family wealth, spurs economic growth, improves health and educational opportunities for children, and promotes racial justice.

The National Fair Housing Alliance applauds Chairwoman Waters' leadership 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 Senator Raphael Warnock. A significant investment in DPA must be part of the final reconciliation bill.

B. The Build Back Better Act Should Create Infrastructure for Fair Housing Enforcement

This reconciliation package must invest in efforts to reverse our nation's history of racial exclusion and remediate the systems that supported it. That involves investing in our nation's fair housing enforcement capacity to defend the public's fair housing and lending rights and assist victims who have experienced discrimination. Two programs are essential targets for investment: The Fair Housing Initiatives Program (FHIP), which funds local nonprofit fair housing enforcement organizations that investigate discrimination and educate the public about their rights and housing providers about their responsibilities under the Fair Housing Act; and the Fair Housing Assistance Program (FHAP), which supports coordinated intergovernmental enforcement of fair housing laws and provides incentives for states and localities to assume responsibilities for enforcing fair housing laws.

Fair housing and lending enforcement requires highly technically expert staff that employ complex investigation methodologies to unearth and accurately assess discrimination. It takes time and program continuity to ensure reliable results that can be acted on in HUD's administrative complaint process or via the federal courts to achieve justice for victims of discrimination and their communities. Industry practices in the housing and lending markets are changing at an alarming pace, especially through the increased use of third-party service providers that operate biased machine learning systems to help providers make housing and credit decisions. And, in the age of social media, dynamic online platforms like Facebook are playing a larger role in the placement of housing and credit product advertisements. The current funding available to address these challenges is simply not enough and has led to significant strains on our nation's fair housing enforcement infrastructure, delaying justice for countless victims of discrimination. Congress must commit to providing more financial support to challenge pervasive housing and credit discrimination and better implement the nation's fair housing and lending laws.

Specifically, Congress and President Biden must commit to the following levels in the current HFSC bill to support fair housing enforcement.

- $1 billion for the Fair Housing Initiatives Program (FHIP); and
- $250 million for the Fair Housing Assistance Program (FHAP).

NFHA Recommends funding FHIP at $1 billion in the reconciliation package to ensure that grassroots private fair housing enforcement organizations can better address housing and lending discrimination in an increasingly complex housing market. In 2020, there were 28,712 complaints of housing discrimination filed, and private nonprofit fair housing groups investigated 73.5 percent of these complaints, more than three times as many as all local, state, and federal government agencies

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[68] Nick Noel, Duwain Pinder, Shelley Stewart, and Jason Wright, The Economic Impact Of Closing The Racial Wealth Gap, McKinsey & Company (August 13, 2020); Dana M. Peterson and Catherin L. Mann, Closing The Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S., Citi GPS: Global Perspectives & Solutions (September 20, 2020); Jeff Cox, Morgan Stanley Says Housing Discrimination Has Taken A Huge Toll On The Economy, CNBC, November 13, 2020.

combined. Virtually all the fair housing organizations that received complaints were funded primarily by FHIP. FHIP also saves money for the federal government, and for state and local governments. In a HUD study, FHIP was found to provide many benefits for the effective and efficient administration and enforcement of the Fair Housing Act. The study found that FHIP grantees weed out cases that are not covered by civil rights statutes, thereby reducing the cost burden of lawsuits and mediations that clog up the nation's judicial and administrative systems. The vetting of complaints by fair housing organizations saves resources for HUD and state agencies that do not have to investigate these complaints, allowing them to focus their resources on other verifiably illegal activities.[69] HUD relies on local groups to help educate the public about their fair housing rights and responsibilities and to investigate complaints of housing discrimination. Seventy-one percent of the cases in which a FHIP organization is a complainant or co-complainant result in conciliation or a cause finding versus 37 percent of non-FHIP referred cases.[70]

Additionally, NFHA recommends funding FHAP at $250 million to support local and state civil and human rights agencies that handle housing discrimination complaints. FHAP supports important intergovernmental partnerships between local or state civil and human rights agencies and the federal government to support the processing of complaints submitted through HUD's administrative complaint process. At present, FHAP-participating agencies experience significant turnover and reduced capacity at a time when local and state budgets are increasingly tight and unable to better support this important administrative function. Furthermore, the pandemic has impacted state and local governments so much so that advocates expect a decrease in funding availability for these important agencies which already operate on slim margins. Congress must do more to support these local and state government agencies to maintain and expand their operations.

C. Equity Requirements Must Apply to All Housing-Related Programs

The 1968 Fair Housing Act mandates that all federal housing and community development programs; those administered by HUD and those administered by other agencies must be administered in a manner that affirmatively furthers fair housing (AFFH). HUD is the federal agency with rulemaking authority and primary enforcement authority under the Fair Housing Act. It has defined what it means to affirmatively further fair housing: "Affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws…"[71]

To effectuate this mandate, all sections of the reconciliation bill currently under consideration that provide funding for housing and community development must be subject to this AFFH requirement. These are substantial investments in our communities and our economy, and they will have significant impacts throughout the country. It is imperative that we make those investments in ways that do not perpetuate segregation, foster unchecked gentrification, or lead to the displacement of low- and

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[69] *Study of the Fair Housing Initiatives Program*. Prep. for HUD by DB Consulting Group, Inc., Foreword by Raphael Bostic, Assistant Secretary for Policy Development and Research, U.S. Department of Housing and Urban Development. page iii, 2011.

[70] Ibid, page 55.

[71] 24 CFR § 5.151

moderate-income people, families with children, people of color, and people with disabilities from their communities of choice. Segregation and systemic discrimination have already had enormous negative consequences for our country, in both social and economic terms, and conversely, integration provides a substantial economic boost. A recent analysis by Moody's Analytics concludes that, "if communities across the country were to more fully integrate racially so that they were comparable to the nation's most integrated communities, we estimate that the nation's real GDP growth over the next decade would increase from 2.4 to 2.7 percent per annum. This would be an economic game changer."[72] Thus, actions by Congress to ensure that housing and community development funds are spent in ways that overcome segregation and advance racial equity will serve as a force multiplier for those funds, mitigating the harms caused to individuals and families from segregation and discrimination, and boosting the economy to the benefit of all.

D. The Build Back Better Act Must Incorporate Diversity, Equity, and Inclusion (DEI)

The Build Back Better Act stands to be the single-largest social and economic investment since the post-World War II period, creating significant opportunities for construction, rehabilitation, and the provision of housing-related support services in housing markets across the nation. This means that communities across the nation will be flush with new investments that have the potential to support and revitalize local economies. It is imperative the reconciliation package includes strong diversity, equity, and inclusion requirements that create greater contracting opportunities for local businesses that operate in and serve neighborhoods where housing investments are sorely needed, and similarly, that prioritize employment of members of those communities. Creating these requirements can ensure that local economies in all neighborhoods can benefit from the massive investments in the reconciliation package, reduce the risk of hollowing out local businesses that know their communities and employ its members, and that can help achieve long-term resiliency and wealth in every neighborhood.

C. Congress Must Provide Instructions on How to Utilize the Build Back Better Act Funds

It is imperative that the House Financial Services and Senate Banking, Housing, and Urban Affairs Committees use all the tools at their disposal to communicate to HUD, Treasury, and any other affected agency Congress' intent that these dollars must affirmatively further fair housing and that these programs must be implemented so as to advance racial equity. The Committees should issue robust explanatory memos that clearly state this intent and describe the metrics Congress will use to assess the agencies' performance in this regard. They should follow up with comprehensive oversight, including regular requests for information about how funds are being spent and what impact they are having, as well as oversight hearings to obtain formal testimony from agency officials about their implementation of the programs funded and the extent to which they are meeting the benchmarks Congress has articulated. Such accountability mechanisms are critical to ensure that the once-in-a-lifetime investments in housing and community development included in this reconciliation bill have the maximum positive impact in mitigating the racial inequities in our housing market and provide a stable foundation for our country's future prosperity.

VI. Conclusion

When we passed our nation's civil rights laws, we restricted the ability of lenders and housing providers to consider a person's race or national origin when making a decision. But we left the structures of inequality in place. We passed the Fair Housing Act, but we left residential segregation and exclusionary zoning ordinances in place; we passed the Equal Credit Opportunity Act, but we left the dual credit market in place. We passed other civil rights laws, but we left structural racism in place. Well, those

[72] Zandi, Mark, et. al., "The Macroeconomic Benefits of Racial Integration," Moody's Analytics, October 6, 2021.

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 substantial investment in housing. We applaud Chairwoman Waters' tireless efforts to finally address our nation's affordable housing crisis and racial homeownership gap. 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.