

THE FAIR HOUSING ACT: REVIEWING
EFFORTS TO ELIMINATE DISCRIMINATION
AND PROMOTE OPPORTUNITY IN HOUSING

HEARING
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THE FAIR HOUSING ACT: REVIEWING EFFORTS TO ELIMINATE DISCRIMINATION AND PROMOTE OPPORTUNITY IN HOUSING

Tuesday, April 2, 2019

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2128, Rayburn House Office Building, Hon. Maxine Waters [chairwoman of the committee] presiding.

Members present: Representatives Waters, Maloney, Velazquez, Meeks, Clay, Scott, Green, Cleaver, Himes, Foster, Beatty, Heck, Vargas, Lawson, San Nicolas, Tlaib, Axne, Pressley, Ocasio-Cortez, Wexton, Lynch, Adams, Dean, Garcia of Illinois, Garcia of Texas, Phillips; McHenry, Wagner, Lucas, Posey, Luetkemeyer, Huizenga, Stivers, Barr, Tipton, Williams, Hill, Zeldin, Loudermilk, Davidson, Budd, Kustoff, Hollingsworth, Gonzalez of Ohio, Rose, Steil, Gooden, and Riggleman.

Chairwoman WATERS. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing."

I now recognize myself for 4 minutes for an opening statement.

Good morning, everyone. Today, the committee convenes for a hearing on the Fair Housing Act to review efforts to eliminate discrimination and promote equal opportunity in housing.

April is National Fair Housing Month, and last April marked the 50th anniversary of the Fair Housing Act, the landmark 1968 legislation that outlawed housing discrimination. But here we are 51 years after the Fair Housing Act became law and housing discrimination remains a widespread problem in this country.

According to the National Fair Housing Alliance, individuals filed 28,843 housing discrimination complaints in 2017. Under the Trump Administration, fair housing protections are under attack.

In 2018, HUD Secretary Ben Carson halted implementation of the Affirmatively Furthering Fair Housing (AFFH) Rule, an important rule finalized by the Obama Administration that provides communities with greater clarity on how to help break down barriers to fair housing opportunity, including by providing local authorities with better data to analyze their housing needs. According to news reports, Secretary Carson proposed taking the words, "free

from discrimination,” out of HUD’s mission statement. He also reportedly halted fair housing investigations and sidelined top advisers at HUD’s Office of Fair Housing and Equal Opportunity.

These are unprecedented attacks on fair housing and must not go unanswered. Let’s not forget that Donald Trump and his father were once charged with violating the Fair Housing Act for discriminating against African-American and Puerto Rican renters. Given that Trump was engaged in housing discrimination himself, it is unsurprising that his Administration has been so hostile to fair housing protections.

My bill, the Restoring Fair Housing Protections Eliminated by HUD Act, is designed to put protections that Ben Carson and the Trump Administration have diminished back in place. The legislation requires HUD to implement the AFFH rule as soon as possible, codifies HUD’s mission statement in statute, and requires HUD to reverse other harmful actions the Trump Administration has taken to weaken fair housing.

It is also important to recognize that as technology has evolved, so, too, have the ways that Americans are searching for and finding housing. A recent study found that 73 percent of all renters use online platforms to find housing. Regulators must be proactive in scrutinizing online platforms where housing is advertised to ensure that the algorithms and targeting tools are not been utilized to discriminate against minority groups.

It is a positive development that, following public pressure from advocates, HUD reversed its decision to halt its investigation into Facebook and allowed HUD’s Office of Fair Housing and Equal Opportunity to charge Facebook with violating the Fair Housing Act. However, much more must be done to ensure that digital platforms are not being used for housing discrimination.

So I look forward to discussing these matters with our panel of experts and hearing their insights on fighting discrimination and ensuring that there are fair housing opportunities for every American.

With that, I now recognize the ranking member of the committee, Mr. McHenry, for 5 minutes for an opening statement.

Mr. MCHENRY. Thank you, Chairwoman Waters.

Achieving fairness in housing entails several dimensions that should be a shared goal.

The first is a legal requirement: our shared commitment to the elimination of discrimination in the sale, rental, and financing of housing, which Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, made unlawful.

Second, is the desire to promote opportunity in housing. Curiously, the phrase “promote opportunity” is not in the Fair Housing Act. In fact, the phrase “equal opportunity” is only mentioned once in the over-11,000 words of the Fair Housing Act, something I will touch on before I end.

One last dimension is the concept of fairness: the very first section of the Fair Housing Act consists of a simple but perhaps inscrutable sentence, “It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.” The Fair Housing Act deputized HUD to lead the effort to enforce the rules and prohibitions on local communities

and provide landlords, sellers, and lenders alike rules and regulations with which they need to abide.

Fifty years later, here is what we know. The efforts to eliminate the sort of discrimination contemplated by the Fair Housing Act, indeed the Civil Rights Act, is and continues to be an issue today, and we should not mistake the clear progress made on that front for success in the overall battle. There is still work to be done, and this hearing is a good opportunity to ask how the Fair Housing Act can be the best tool to advance fair housing in the 21st Century.

The Fair Housing Act is focused on prohibiting certain acts but not necessarily promoting opportunity. If the goal is to build inclusive communities, you need both approaches to be successful.

There is no single greater barrier to fair housing opportunities than poverty, yet it might surprise people to learn that the word "poverty" is not even mentioned once in the Fair Housing Act, nor is "income." An increased focus on fighting poverty would help to promote opportunity.

I am pleased that Secretary Carson has been talking about the need to develop incentives, not just punishments, at the local level to better design and align housing incentives, like opportunity zones which we passed into law just over a year ago. These opportunity zones will help low-income communities the most and that is the intention.

Technology also can and must play a bigger role in how we approach building 21st Century communities. HUD simply cannot do its job by demanding an endless stream of thousand-page reports to monitor local development in New York or Philadelphia or Ashland, Wisconsin, or Asheville, North Carolina. Requiring local communities to spend months compiling lengthy reports and HUD officials to spend weeks reviewing them misses the mark. This approach is too heavy on process and devalues real, recognizable violations standards that demand prompt attention and resolution. Instead, we ought to have a system that prioritizes prompt action for all overt violations of the Fair Housing Act.

In his remarks at the signing of the bill to create HUD, President Lyndon Johnson notes, "Those who do not find new means to respond to new challenges will perish or decay." I concur. President Johnson nailed it with that statement back in 1965, and I think that should be a mindset that we have on this committee, especially when it comes to housing policy.

And with that, I thank Chairwoman Waters for having this hearing and I look forward to hearing from the panel.

Chairwoman WATERS. Thank you.

The Chair recognizes the gentleman from Missouri, Mr. Clay, the Chair of our Subcommittee on Housing, Community Development, and Insurance, for one minute.

Mr. CLAY. Thank you, Madam Chairwoman.

And I look forward to working closely with you as we fight to reform the housing finance system to ensure that underserved borrowers in our more challenged neighborhoods, like many of those in my hometown of St. Louis, have access to mortgages, insurance, and fair appraisals to give them a real chance at homeownership.

Democrats are committed to upholding the Fair Housing Act and fighting for a housing market that is free from discrimination. The

Fair Housing Act, passed in 1968, prohibits discrimination in the housing market, and requires State and local governments and other recipients of Federal housing funding to affirmatively further fair housing.

In January of 2018, Secretary Carson arbitrarily halted implementation of the agency's Affirmatively Furthering Fair Housing rule. And in my role as subcommittee chair, I will be taking action to help restore the hard-fought fair housing protections that the Trump Administration has weakened.

I yield back.

Chairwoman WATERS. Thank you.

Today, we welcome a distinguished panel of witnesses to discuss issues around fair housing: Debby Goldberg, vice president, housing policy and special projects, National Fair Housing Alliance; Cashauna Hill, executive director, Greater New Orleans Fair Housing Action Center; Kierra Johnson, deputy executive director, National LGBTQ Task Force; Skylar Olsen, director of economic research, Zillow Group; and Salim Furth, Ph.D., senior research fellow, Mercatus Center, George Mason University.

Without objection, all of your written statements will be made a part of the record. Witnesses are reminded that your oral testimony will be limited to 5 minutes; when there is one minute left, a yellow light will indicate that you should wrap up your testimony.

Ms. Goldberg, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF DEBBY GOLDBERG, VICE PRESIDENT, HOUSING POLICY AND SPECIAL PROJECTS, NATIONAL FAIR HOUSING ALLIANCE

Ms. GOLDBERG. Thank you, Chairwoman Waters, and good morning. And good morning to Ranking Member McHenry and the members of the committee, and thank you for the opportunity to testify here today.

I am Debby Goldberg, vice president for housing policy and special projects at the National Fair Housing Alliance or NFHA. NFHA is the only national organization solely dedicated to eliminating housing discrimination in the U.S., and we work with our 200-plus members to achieve that goal through a wide variety of activities.

I want to thank you, Chairwoman Waters and Congressmen Green and Clay and Congresswoman Beatty and many other members of the committee for the leadership and support for fair housing that you have shown over many years. Today's hearing looking at our efforts to eliminate discrimination and promote opportunity in housing is a great way to start Fair Housing Month. I hope it will help you identify some of our most urgent fair housing issues and some of the steps that you and Congress can take to address them.

I want to flag two problems that are described in some detail in my written testimony that I don't have time to discuss this morning. One is the need to increase funding for our fair housing enforcement infrastructure. The other is our concern that HUD may effectively eliminate the Affirmatively Furthering Fair Housing or

AFFH rule. This may be our most important tool for overcoming the last harms caused by racial segregation that our Federal Government helped to create.

I urge you to look into both of these problems and I would be happy to answer your questions about them.

Disparate impact is a tool that protects each of us from forms of discrimination that may be hidden or unintended, and are carried out through policies and practices that appear neutral, but have a disproportionately harmful effect on protected classes. Those include an array of policies that among other things make housing unavailable to families with children, force victims of domestic violence, most often women and their children, to choose between being safe and having a home, and prevent people in communities of color from getting mortgages or obtaining homeowner's insurance.

HUD's disparate impact rule takes a measured approach to balancing the justifiable needs of housing providers with the harms of discrimination. The tool itself has been around nearly as long as the Fair Housing Act and is well-established policy with a long history of bipartisan support. It has been affirmed uniformly by Federal Circuit Courts as well as the Supreme Court.

Despite all this, HUD plans to rewrite, and we fear dismantle, this important rule. We urge the committee to investigate HUD's plans for the disparate impact rule and to use its authorities to protect and preserve it.

Finally, I would like to touch on an issue that has emerged as a new frontier in fair housing: the impact of the increasing use of technology, big data and artificial intelligence by housing providers. Problems in this space can be difficult to detect, as the data sets and algorithms used are often proprietary. Some have concluded wrongly that systems built on big data and sophisticated algorithms are objective and make it harder to discriminate. The truth is that if these systems rely on data that reflects historic biases deeply imbedded in our society, the systems themselves may discriminate: bias in, bias out.

We have seen this in the mortgage market, where among other things, discriminatory credit scoring systems can pose a real barrier to homeownership and wealth building for people of color and others. We are also seeing problems surface in the way housing and related services are marketed.

This is illustrated by a case that NFHA recently settled with Facebook. We alleged that Facebook's system for generating and delivering ads allowed providers to prevent members of protected classes—women with kids, people who speak Spanish, people with disabilities, people in specific neighborhoods, and others—from seeing a particular ad. If you never see the ad, you won't ever know what opportunities you have been denied.

Facebook has agreed to change its ad portal to eliminate the possibility that advertisers for housing, employment, and credit can use protected characteristics to limit the distribution of their ads and to take other steps to eliminate discrimination on its platform. We look forward to working with Facebook in that process and hope that our settlement will be a model for others in this space. This too is an area that would benefit from further investigation

by the committee, as well as steps to ensure that other laws such as the Communications Decency Act do not impinge on the protections provided under the Fair Housing Act.

Thank you for the opportunity to testify here today, and I look forward to your questions.

[The prepared statement of Ms. Goldberg can be found on page 75 of the appendix.]

Chairwoman WATERS. Thank you, Ms. Goldberg.

Ms. Hill, you are now recognized for 5 minutes to present your oral testimony.

**STATEMENT OF CASHUANA HILL, EXECUTIVE DIRECTOR,
GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER**

Ms. HILL. Good morning. My name is Cashauna Hill, and I serve as executive director of the Greater New Orleans Fair Housing Action Center. I would first like to thank you, Chairwoman Maxine Waters, for this opportunity to address the committee and to review GNO Fair Housing's efforts to live up to the mandate of the Fair Housing Act. I, along with my staff and our entire community, am immensely grateful for your consistent support on the issue of fair housing, and we have particularly appreciated your commitment to South Louisiana's recovery following Hurricane Katrina.

I would also like to thank Ranking Member McHenry and all of the members of the committee for welcoming us here today to discuss full and effective enforcement of the Fair Housing Act.

The Fair Housing Action Center is a non-profit civil rights organization established in 1995 to eradicate housing discrimination and segregation. I want to begin with a story of one of our clients to emphasize the real-life impacts of the protections afforded by the Fair Housing Act.

In 2014, a nursing student named Marilyn was living in New Orleans and celebrating Christmas with her three-year old son. Marilyn had invited her son's father to visit the child over the Christmas holidays, however, the visit ended with him violently assaulting her. Marilyn was transported to the hospital for treatment while her ex was arrested. After her release from the hospital the next day, she returned home to find a notice on her door, letting her know that she was being evicted and would lose her home because of the complex's zero tolerance policy on domestic violence.

Louisiana's landlord-tenant laws allow evictions with only 5 day's notice, so Marilyn had just a few days to find a new home. When Marilyn found the Fair Housing Action Center, our attorneys on staff, partially funded by HUD's Fair Housing Initiatives Program, took her case for free. Our legal team discovered that Marilyn's landlord, a property management company with over 2,000 rental units in 3 southern States, required their tenants to sign leases agreeing that any participation in a domestic violence incident was grounds for eviction.

To help Marilyn, the Fair Housing Action Center made use of a 2013 HUD rule and legal theory later upheld by the U.S. Supreme Court known as "disparate impact." That theory holds that some policies that seem neutral, like the complex's zero tolerance policy, can unfairly exclude certain groups of people. In this case, the pol-

icy had a disparate impact on women, who are most likely to be victims in domestic violence incidents.

After her case was settled, Marilyn continued to advocate for changes to Louisiana's State law to protect women in similar situations. Due to her efforts, together with GNO Fair Housing's policy staff and a statewide coalition of advocates and domestic violence survivors, the Louisiana legislature passed new protections for survivors in 2015. In addition to showing the impact that enforcement of fair housing laws can have on American families, Marilyn's story is important because chronic underfunding and delays in administration are jeopardizing our ability to enforce the Fair Housing Act. GNO Fair Housing's work to support Marilyn would not have been possible without the FHIP program.

I would now like to turn briefly to Affirmatively Furthering Fair Housing. As the committee is aware, the Fair Housing Act was not implemented solely to prevent individual acts of discrimination, but also to address historic patterns of segregation. The Affirmatively Furthering Fair Housing process is essential because an overwhelming number of studies have shown that where you live determines much about how you will live and even how long you will live. As an example from New Orleans, life expectancies in two of the City's neighborhoods differ by more than 25 years. In the neighborhood in the shadow of the Superdome, a community that is more than 90 percent black, the average resident lives only to the age of 62. Meanwhile, in a community less than 3 miles away that is more than 90 percent white, the average resident lives to be 88.

In October of 2016, New Orleans completed the very first Assessment of Fair Housing, a new fair housing plan required under the Affirmatively Furthering Fair Housing Rule. GNO Fair Housing, with support from philanthropic partners, led the community engagement process for this plan, the transparent collaborative planning process resulted in unprecedented community input that produced comprehensive policy recommendations that provide a clear path forward and have since been lifted up as a model for the nation. Nowhere is the focus on Affirmatively Furthering Fair Housing more important than after life-altering disasters that change the face of entire cities and regions.

As I close, I will note that 10 years after the storm, the City of New Orleans began to publicly discuss policies to address the gentrification that had already begun, and continues to displace many long-term neighborhood residents.

For cities that are in the midst of recovery or will be from future disasters, we cannot afford to wait 10 years before beginning to consider the mandate of the Fair Housing Act. It instead must be a foundational part of disaster recovery. On behalf of the greater New Orleans Fair Housing Action Center, I truly appreciate the opportunity to offer this testimony and I will gladly answer any questions that you may have. Thank you.

[The prepared statement of Ms. Hill can be found on page 108 of the appendix.]

Chairwoman WATERS. Thank you very much.

Ms. Johnson, you are now recognized for 5 minutes to present your oral testimony.

**STATEMENT OF KIERRA JOHNSON, DEPUTY EXECUTIVE
DIRECTOR, NATIONAL LGBTQ TASK FORCE**

Ms. JOHNSON. My name is Kierra Johnson, and I am the deputy executive director of the National LGBTQ Task Force. I want to thank the members of this committee for taking the time to address such a very important issue. As a bisexual person, I especially want to thank the committee for inviting a member of the LGBTQ community here today. It is rare for discussions on housing discrimination to center on the experiences of LGBTQ people, but it shouldn't be.

Housing discrimination complaints are filed by LGBTQ people at a similar rate to race discrimination complaints filed by people of color. And approximately one in four transgender people in the U.S. has experienced some form of housing discrimination because of their gender identity. Courts and State and local legislators have worked to make housing protections for LGBTQ people more explicit, but still, protections are inconsistently applied and enforcement is even more unpredictable.

There are real consequences when we fail in our duty to protect LGBTQ people. For example, nearly one-third of transgender people have experienced homelessness at some point in their lives, and while LGBTQ young people make up maybe 6 or 7 percent of the general population, 40 percent of young people—40 percent—experiencing homelessness identify as LGBTQ.

To be clear, people end up homeless not from a lack of trying, but because they are unable to find or keep housing. So again, as a queer person, I am appreciative to have been asked to be a part of this conversation. As a black queer mother of two, I am also disappointed that it is rare to center the experiences of queer people in conversations about housing.

When the Fair Housing Act was passed in 1968, it promised protections from discrimination in housing on the basis of race, color, religion, and national origin. There wasn't an asterisk at the end of those protections. It didn't say all black people are protected unless you are a woman. It didn't say all Latinx people are protected unless you are living with a disability, and it didn't say all Muslim and Jewish people are protected unless you are gay. But in practice, people who wanted to discriminate sought out gaps in the law and they exploited them.

A landlord could say, "I am not racist, I just don't rent to unwed mothers." A mortgage broker could say, "I am not anti-Semitic, I just think that with his disability, he is too much of a credit risk."

Congress has worked hard to close those gaps over the years. Since 1968, sex, disability, and familial status have been explicitly named in the FHA so that those don't function as gaps in the law, but there is still work to be done. I am a black queer woman with two beautiful, brilliant boys. When a landlord won't call me back or a bank won't approve a loan, I don't know if it is because I am black or because I went to see an apartment with my partner. I don't know if it is because I have two children or because I am a man; I just don't know. And if I try to challenge that decision, there is a good chance I will fail. The landlord knows that because sexual orientation isn't explicitly named in the law, there is a gap

he can exploit, and the chances of him experiencing any consequences from his bias drops significantly.

These are the cracks that the people you represent slip through, everyday people with dreams and families, responsibilities, and a human desire to live with dignity. There are answers to this. The Equality Act would protect LGBTQ people in housing. The Landlord Accountability Act would cover low-income people who have housing vouchers, and the Fair Chance at Housing Act would help formerly incarcerated people secure stable housing. I call on the members of this committee to think about what it means to leave these groups of people without explicit protections.

Do we not care about black and brown people unless they are straight? Do we not care about women unless they have never been so hopeless as to commit a criminal act to survive? Do we not care about people with disabilities unless they have enough money not to need a housing voucher? I hope not.

I thank you for the time you have given me today and the time you take to fight for these protections tomorrow.

[The prepared statement of Ms. Johnson can be found on page 118 of the appendix.]

Chairwoman WATERS. Thank you.

Dr. Olsen, you are now recognized for 5 minutes to present your oral testimony.

STATEMENT OF SKYLAR OLSEN, DIRECTOR OF ECONOMIC RESEARCH, ZILLOW GROUP

Ms. OLSEN. Chairwoman Waters, Ranking Member McHenry, and distinguished members of the committee, it is an honor to appear before you today at this important hearing. My name is Dr. Skylar Olsen, and I am the director of economic research at Zillow.

Zillow Group was founded with the mission to improve transparency in the housing market and is dedicated to empowering consumers with data, inspiration, and knowledge around the place they call home. Zillow Group operates economic research teams at Zillow, Trulia, StreetEasy, and HotPads which leverage available data to produce timely and relevant economic research. We conduct regular analyses on the health of the market, which include housing market dynamics and forecasting, and also tackle specific issues of national interest such as declining housing affordability and homelessness. All of this research is publicly available.

In addition, Zillow makes much of our aggregated data free and downloadable to the public and offers academics and government agencies a public record data set to support our own research. We see our role as using our data to help inform important conversations.

In recent years, Zillow Group has published a growing body of research addressing existing disparities in the housing market. At a high level, our work demonstrates that housing inequities persist across the United States today as reflected in government-reported data, the amenities available in different communities, and in consumers' experiences in their search for housing. I would like to share some of that data with you today.

I will start with homeownership, a key tool for building wealth. In the year 1900, the gap between black and white homeownership

rates was 27.6 percentage points. In 2016, over 115 years later, the gap was actually wider at 30.3 percentage points. At the same time, black borrowers are denied for conventional home loans at approximately 2.5 times more than that of white borrowers. Zillow data has also examined home value appreciation in neighborhoods that were historically redlined based at least in part on the racial composition of those neighborhoods. We found that those areas formerly deemed best and appropriate for lending are now worth 2.3 times those previously marked as hazardous and inappropriate for lending.

Disparities are also visible in the amenities present in local communities. Trulia's research team, with input from the National Fair Housing Alliance and Ohio State University looked at four major metro areas: Atlanta; Detroit; Houston; and Oakland. This research found that predominantly non-white census tracts had 35 percent fewer traditional banking establishments, 38 percent fewer healthcare service establishments, and 34 percent fewer active or healthy lifestyle amenities such as parks, playgrounds, and recreation centers as compared to tracts that were predominantly white.

Finally, we have also engaged in research on consumer experiences and perceptions. According to the Zillow Group Consumer Housing Trends Report, a nationally representative annual survey of consumer sentiment, home buyers of color were less likely than white buyers to say they were satisfied with all aspects of their home buying experience.

Forty-three percent of white buyers reported full satisfaction, compared to only 27 percent of black, 24 percent of Hispanic, and 23 percent of Asian respondents. The survey also revealed that it takes more time for Asian, black or Hispanic home shoppers to have the rental application or offer accepted. On average Hispanic renters submit 5.5 rental applications and Black and Asian renters submit 3.6 before finding a rental home. This is compared with only 2.5 for white applicants.

The perception of housing discrimination is also strong among U.S. adults. In a nationally representative survey conducted last fall, 27 percent of respondents said that they believe they have been treated differently in their search for housing because of their status in a protected group, including because of race, skin color, disability status, and others.

Zillow Group believes that all Americans deserve to find a home free from discrimination in the process, yet these data points help illustrate the breadth of inequities and frustrations that many Americans still experience in their home search and in their communities.

We appreciate the opportunity to share this research with the committee and hope it will help inform the committee's discussions on these important issues.

[The prepared statement of Ms. Olsen can be found on page 124 of the appendix.]

Chairwoman WATERS. Thank you.

Dr. Furth, you are now recognized for 5 minutes to present your oral testimony.

**STATEMENT OF SALIM FURTH, PH.D., SENIOR RESEARCH
FELLOW, MERCATUS CENTER, GEORGE MASON UNIVERSITY**

Mr. FURTH. Good morning, Chairwoman Waters, Ranking Member McHenry, and members of the committee. Thank you for giving me the opportunity to address you today. My name is Salim Furth, and I am a senior research fellow at the Mercatus Center at George Mason University, where I am co-director of the Urbanity Project. I study land use regulations that are barriers to opportunity. My comments today will focus on the details of the Affirmatively Furthering Fair Housing rulemaking.

Contemporary American land use embodies the bad idea that private land use ought to be publicly planned. In practice, these plans routinely exclude low-income families by indirect means, causing income-based segregation.

In this environment, how should Federal policymakers respond? They should resist the temptation to implement anything like nationalized or State-wide zoning. What they can and should do is amend the ways in which Federal policy interacts with local government to encourage and facilitate inclusion and to stop subsidizing extremely exclusionary local policies.

In this spirit, my colleague and co-director Emily Hamilton and I submitted a public interest comment to HUD to suggest specific revisions to the AFFH rule. The 2015 AFFH rule is based in an important but vague admonition in the Fair Housing Act that, “The Secretary shall act in a manner affirmatively to further the purposes of this subchapter.” In layman’s English, I take this to mean that HUD has to abide by the spirit of the law, not just the letter of the law.

Exclusionary zoning seems like a clear example of government violating the spirit of the Fair Housing Act without technically discriminating against any protected class. HUD, under both the current and previous Administrations, seems to agree.

But when HUD makes grants to localities that are actively fighting the construction of modest amounts of rental housing—Cupertino, California, comes to mind—it is not Affirmatively Furthering Fair Housing. The 2015 AFFH rule, however, has not led to any change in HUD’s grant-making behavior. Cupertino is in good standing and has received a Community Development Block Grant (CDBG) to rebuild some sidewalks.

In the year and a half during which the 2015 AFFH rule was used by HUD, a pattern emerged: Entitlement communities would submit a long document. HUD staff would review and send it back for corrections. The document would grow even longer. When it was finally done, the entitlement community would be qualified to receive funding for the next 5 years. The documents typically contained analysis of segregation and demographics as well as some plans to improve policy. There were, however, no teeth, and I am unaware—perhaps people can correct me—of a single local policy that was changed as a direct consequence of this rule.

Ms. Hamilton and I offer three principles for the revision of the AFFH rule: one, the rule should evaluate enacted policies and market outcomes, not plans; two, the rule should be easy to administer; and three, the rule should have real teeth.

Following these principles promotes fair housing more effectively and with less wasted effort.

The AFFH rule made lots of work for planners without taking seriously the elected decision-makers. HUD should reverse this emphasis. To be in good standing with HUD, jurisdictions should be able to point to market outcomes and enacted policies that are consistent with inclusion and strong property rights.

Second, HUD ought to strive for ease of administration. By all accounts, an extraordinary amount of work went into preparing and evaluating the Fair Housing Assessments required by the AFFH rule. But do not mistake administrative burden for policy rigor. Standing in a long line at the DMV doesn't make you a better driver.

Our final principle is that the AFFH rule ought to have real consequences, at least for egregiously exclusive grantees. How can the Secretary of HUD be acting affirmatively to further fair housing when he or she approves grants to jurisdictions that have high and rising rent, issue few housing permits, and are unwilling to change policy to allow more housing construction?

There are many ways to put teeth into AFFH. The most obvious is for highly exclusionary jurisdictions to lose access to CDBG funds for a time. CDBG funds are the ideal carrot or stick because they are rarely used for housing. Under existing statute, however, this is difficult and would probably result in lawsuits. A softer set of teeth would be to require that CDBG funds in highly exclusionary jurisdictions be spent directly on low-income housing.

In our public interest comment, Ms. Hamilton and I outlined one particular approach for the AFFH rule. But there are many ways to implement our principles. With the help of this committee, HUD can and should revise the AFFH rule to focus on enacted policies and market outcomes rather than plans, to ease the costs of administration and to have real financial consequences.

Thank you.

[The prepared statement of Dr. Furth can be found on page 58 of the appendix.]

Chairwoman WATERS. Thank you, Dr. Furth. I now recognize myself for 5 minutes for questions.

Ms. Goldberg, I am concerned that HUD and Congress are woefully behind when it comes to understanding housing discrimination. Today, an astounding 73 percent of renters find housing online and an even higher percentage of millennials do so. While technological advances have expanded access to knowledge and information, these innovations are enabling old discriminatory practices to flourish.

Your organization recently settled its lawsuit with Facebook over the social media company's discriminatory targeting of advertisements. Just last week, HUD announced its own fair housing charges against the company. This was the first Secretary-initiated complaint for the Trump Administration even though previous Administrations regularly brought such cases. Reading the charges, the public may also be surprised to learn that HUD Secretary Carson originally halted this investigation when he took office.

According to the charge, Facebook provided advertisers, including mortgage lenders, real estate agencies, and housing developers,

with a map to exclude people who live in a specified area from seeing an ad by drawing a red line around the area. This is eerily familiar to when the Federal Housing Administration drew red lines around black and brown communities, systematically starving them of access to capital and lending. Today, it seems Facebook is enabling advertisers to write their own discriminatory maps and get paid to do so.

What is troubling is that due to algorithmic black boxes, communities are not always well-positioned to know when this is happening, and accordingly to file complaints regarding online discrimination. Facebook is but one of the many new platforms online, and unfortunately HUD, under this Administration, which is in the position to enforce the law has to be shamed by fair housing advocates into investigating serious violations of the Fair Housing Act.

How can we strengthen enforcement of the Fair Housing Act to ensure that there are safeguards online and that companies like Facebook comply with the law?

Ms. GOLDBERG. Thank you for that question, Chairwoman Waters. I think there are a number of things that Congress can do. One is to increase funding for private, non-profit fair housing groups like the one that Ms. Hill next to me here runs that do investigations. We partnered with several of our members, not in New Orleans, but several others in doing our Facebook investigation.

But resources are always scarce. These investigations take time and money and allocating more money to serve that purpose would be helpful.

I would also add that HUD itself, in its Office of Fair Housing, needs more funding and more staff and greater resources in order to be able to carry out its responsibilities more effectively, one of which should be, along perhaps with several other Federal agencies that have a role to play in the regulation of technology in that space, being more proactive about looking at how these different platforms operate and whether or not the systems that they use are functioning to discriminate. As you know, if you can't see what is going on, if you don't know what the data say or the algorithms do, you don't know whether discrimination is happening. So, greater transparency, greater investigation, I think would be helpful.

The other thing I want to underscore is something that was not particularly relevant to our Facebook case, but is an issue in other online platforms, which is the conflict that exists at the moment between the Communications Decency Act (CDA) and the Fair Housing Act, where courts have interpreted the CDA to trump the Fair Housing Act and allow for discriminatory advertisements to appear on certain platforms in the name of free speech. And we think that is a problem that really needs to be rectified. I don't think it was what was intended, but it is how it stands now.

Chairwoman WATERS. Thank you very much. Let me just follow up for a moment. Did Facebook admit and recognize and make some commitments to change?

Ms. GOLDBERG. Yes. So, I don't believe that in the settlement, Facebook acknowledged doing anything wrong, as is typical of these kinds of settlements. But it did make a number of changes or commitments to make a number of changes including setting up

a new portal for advertisements for housing credit and employment that will not have the discriminatory options that were on its platform in the past.

It will also set up a portal where anybody, anywhere in the country, can look at the housing-related ads that have been posted. So, it gets us past this problem of, you never saw the ad because you weren't targeted for it.

And in addition, because there are concerns about what happens after an ad has been developed, approved, and then gets to be delivered that even though we have taken some of the discriminatory options out of the ad targeting, that the algorithms may themselves generate additional discriminatory patterns, Facebook has agreed to work with us and a range of experts to study those patterns over time and take additional steps to correct it.

Chairwoman WATERS. Thank you very much.

The Chair now recognizes the distinguished ranking member for 5 minutes for questions.

Mr. MCHENRY. I think we all agree—I hope we all agree—that we need the Fair Housing Act. So, let me just go across the panel and let us see if we can get some agreement here.

Do you all agree that we need the Fair Housing Act? Ms. Goldberg?

Ms. GOLDBERG. Absolutely.

Mr. MCHENRY. Ms. Hill?

Ms. HILL. Yes.

Ms. JOHNSON. Yes.

Ms. OLSEN. Yes.

Mr. FURTH. Yes.

Mr. MCHENRY. All right. Well, this is good. It is Washington, so we have to start with some sense of commonality where we can get it.

So, do you believe that in order for the Fair Housing Act to work, we need effective tools to prevent discrimination to eliminate the practice, or rules to eliminate the practice of discrimination?

Ms. HILL. Yes.

Ms. GOLDBERG. Yes. I think that is one part of meeting the goals of the Fair Housing Act.

Ms. OLSEN. Yes.

Mr. FURTH. Yes.

Mr. MCHENRY. Thank you.

Mr. Furth, you outlined in a piece in October of last year entitled, "Ben Carson's Approach to Affordable Housing Might Work"—one quote I pulled from there is, "Carson's HUD suspended the Affirmatively Furthering Fair Housing Rule in 2018 and plans to reframe it to challenge the exclusionary land use regulations of cities and counties that receive HUD funding. This approach is promising and represents an appropriate exercise of Federal power that restores property rights and hopefully will help to reduce poverty."

Dr. Furth, do you believe that the process that resulted in HUD's 2015 Affirmatively Furthering Fair Housing Rule was ineffective, and if so, why?

Mr. FURTH. So, I take your question to mean was the rule itself—

Mr. MCHENRY. Was the 2015 rule ineffective, and if so, why?

Mr. FURTH. It appears to have been ineffective to me. Some people think we should have given it longer to operate before drawing that conclusion and reasonable people can differ on that point.

But to me, it helped jurisdictions that wanted to be inclusive. So, if we look at the New Orleans Assessment of Fair Housing, it is great, it has lots of good of things and they tried to follow up on those policies.

But if we look at communities that didn't want to be inclusive, it didn't force them to do anything other than fill out this report. So, they had to do a bunch of reporting and the staff had to make a lot of plans. But the staff plans don't bind elected officials. We have to take local self-government seriously. It exists.

And these local decisions are made by elected officials who answer to their voters. They don't always make decisions that we agree with. And for HUD, at least HUD should say, if you are going to make decisions that are routinely exclusionary, we are not going to participate.

Mr. MCHENRY. Okay. So, here is a question. Do current HUD rules take into account the cost of local land use regulations?

Mr. FURTH. No. In fact, I believe appropriations bills every year forbid HUD from taking zoning into account.

Mr. MCHENRY. Okay. What effect does that have on the supply of affordable housing across the country?

Mr. FURTH. It is massive. If you look at especially coastal cities where there is a long history of very strict regulation of private land use rights, what we get is a few jurisdictions that have sort of a traditional stock of rental housing and they are willing to build more, not a lot more, but a little bit more.

Mr. MCHENRY. Dr. Olsen, does the Zillow data—is that similar to what you have seen in the data if you have analyzed that component of your data?

Ms. OLSEN. Yes. I think in general, anyone who spends time studying housing markets and how they work and why we do or do not build recognize that a major barrier to adding housing to any community is land use zoning.

So, to make a more tangible example, 75 percent of the City of Seattle is zoned for single-family only. It is generally easy across—

Mr. MCHENRY. How does that compare to other localities?

Ms. OLSEN. That is pretty normal to have extensive single-family zoning. The other practice that kind of comes through with land use regulations is that it is easy to add density where density already exists. So, places that kind of already have that element to it kind of get the more density, more rental apartments units and then you have these insular communities that are exclusionary that might have access to really great amenities like great schools where it is harder to add that density, and so it is harder for other communities to access.

Mr. MCHENRY. So, to that point, this is about income segregation based off of this cost structure that local regulations bear out on the cost of housing?

Ms. OLSEN. That is implicitly how things net out at the end. It is basically new land, just current land use regulations, one way to think about it is that it reinforces historical redlining over time.

Mr. MCHENRY. Okay. Thank you all for your testimony. I appreciate it.

Chairwoman WATERS. Thank you.

The gentlewoman from New York, Ms. Velazquez, is recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Madam Chairwoman.

Ms. Goldberg, thank you for the National Fair Housing Alliance's past support of my bill, the Sexual Harassment Awareness and Prevention Act. As you know, sexual harassment is a form of sex discrimination that is prohibited under the Fair Housing Act. However, every day across this country, residents in affordable housing programs face sexual harassment at the hands of landlords, property managers, and others in the housing industry.

Can you speak to how affordable housing residents are particularly vulnerable to sexual harassment and misconduct and how they can often be left homeless because of it?

Ms. GOLDBERG. Thank you for that question, Congresswoman. It is a terrible problem that people face. The supply of affordable housing that we have in this country is extremely limited. The National Low Income Housing Coalition estimates that only one out of every four households that is eligible for assisted housing actually receives that housing.

And the housing in the private market, depending on where you are living, may or may not be affordable or affordable housing may or may not be available in any large numbers in the private market. And so, having a unit that you can afford is a very valuable thing that people are very reluctant to give up, because there is no guarantee that you are going to find another one. And that puts women in particular in a very vulnerable position.

Ms. VELAZQUEZ. And can you speak to the fact that this is a problem that more than just women face? Can you explain how seniors and individuals in the LGBTQ community also face this threat? And I will ask Ms. Johnson to expand on it, too.

Ms. GOLDBERG. Sure. I think you make a very good point, that this is not a—women may be the largest single category of people who experience this kind of discrimination but they are certainly not the only ones. And I will defer to Ms. Johnson to speak more on that.

Ms. JOHNSON. Thank you. One of my colleagues actually said something that stuck with me. They said that deep poverty and homelessness felt to them like the stripping away of all of their choices in life.

They had to take whatever job was available and hang on to it regardless of how degrading and demoralizing, especially when it was freezing cold or pouring rain. They had to sleep in whatever shelter was available regardless of whether that space was safe. They had to hide their inner light because living on the street meant constantly putting on a shroud of toughness. They had to fight to protect themselves. They had to steal to eat. They had to beg to survive.

And I think this story, unfortunately, isn't a rare one. But it does point to when people don't have secure housing, when they are discriminated against in various ways, when they do find housing,

whether it is safe or not, they stay, whether it is degrading or not, whether it is good for their children or not, they stay.

And so, they are putting themselves and their families in precarious situations when affordable good quality housing isn't available.

Ms. VELAZQUEZ. Thank you.

Ms. Goldberg, while it is true that HUD does publish an annual report regarding complaints brought under the Fair Housing Act, this report is not detailed enough for Congress and the public to get a clear portrayal of the complaints brought alleging sexual discrimination or harassment.

The discussion draft of my bill will require HUD to disaggregate this information in several ways including race, gender, family status, those with disabilities, and those who are elderly, as well as by the number of complaints filed by State, residents of certain housing programs, and the number of complaints that allege retaliation.

How will these additional details help HUD address sexual harassment claims brought by residents?

Ms. GOLDBERG. Having additional detail is always helpful because it lets us see where the problems really lie. And one of the points that you have sort of implied but not made explicitly that I think is really important is the intersectionality of some of these issues.

People face discrimination for more than one of their characteristics, which can sometimes make it difficult to understand exactly what is going on. And so, having the kind of data that you are proposing in your legislation would really shine a light on what is going on and help us understand it better.

I would say that we also need ways to make sure that people who may be subject to sexual harassment in housing know what their rights are and know how to pursue them and report them, because as we said, people feel very vulnerable. They are reluctant to come forward and complain because they are afraid they will be evicted.

And so, I suspect that the number of incidents that we see even in the HUD data and the data that our members collect as well is probably, far under-represents what actually happens.

Ms. VELAZQUEZ. I yield back. Thank you.

Chairwoman WATERS. The gentlewoman from Missouri, Ms. Wagner, is recognized for 5 minutes.

Mrs. WAGNER. I thank the chairwoman and I thank our witnesses for testifying today.

It has been 51 years since the passage of the Fair Housing Act, and while many accomplishments have come from its enactment, there is still much work to be done to ensure its effectiveness. I know that Secretary Carson has turned his attention and full examination to the alleged redlining by Facebook. He has also, I know, expanded that in looking into Google and Twitter in this space.

This question is for both Ms. Goldberg and Dr. Furth. Given that the medium for advertising the rental and sale of real estate has changed with trends towards Internet platforms and big data, how

can we ensure that HUD has the tools, including advanced technology, to enforce the law as written?

Ms. GOLDBERG. I would agree that HUD needs—I think this is implied in your question—more resources in order to really be able to understand, evaluate, and where necessary take action to enforce the Fair Housing Act with respect to the kinds of online platforms that you are describing and that is certainly what our case with Facebook illustrates.

Mrs. WAGNER. Thank you, Ms. Goldberg.

Dr. Furth?

Mr. FURTH. I apologize, I have no expertise in this area and I defer to my co-panelists.

Mrs. WAGNER. Dr. Furth, let me ask you this question. In your testimony, and I will change subjects here, you listed three principles for the revision of HUD's 2015 Affirmatively Furthering Fair Housing Rule. One specific principle you mentioned is that the rule should have real teeth.

What sort of changes do you believe would make this rule more enforceable and also result in better outcomes?

Mr. FURTH. My preferred change would be that communities that are extremely exclusionary—and we can debate exactly how to define that, but usually you know them when you see them—should be for a time, a couple of years, or maybe a full 5 years ineligible to receive Community Development Block Grants.

I actually think having said this more since I wrote the public interest comment that that would actually require further legislation from Congress and that HUD cannot under current statute do that. That is what some lawyer friends have told me.

So, I would certainly encourage the committee to consider giving HUD the ability or the instruction to live off places like Brookline, Massachusetts, or Cupertino, California, which are very wealthy, well-resourced communities that are essentially, through loopholes I would call them in the CDBG formula, receiving grants that are intended in statute to be used primarily for low- and moderate-income families, and they are using that to essentially subsidize a local regime of exclusion.

Mrs. WAGNER. I have worked with Congressman Al Green on the other side of the aisle in CDBG DR reform in some of these spaces. I look forward to advancing that legislation at some point.

This rule was not established until 2015. What did communities do up until 2015? Did they operate without standards? Were communities free to do what they wanted?

Mr. FURTH. I think they are still free to operate without standards and do what they want. Up until 2015, there was a process called the analysis of impediments which was a similar but much lighter version, where the staff would sort of put together a little report about how fair housing might be blocked in their community and they would submit the report and it would get filed away and nothing would happen.

Mrs. WAGNER. By not having a rule in place, would you say that HUD was opposed to efforts to further the purposes of the Fair Housing Act, or that HUD was opposed to the Fair Housing Act itself?

Mr. FURTH. No, I don't think so. The Affirmatively Furthering language is tricky. It says that you are supposed to do things affirmatively, go out of your way to further fair housing, and exactly how you go out of your way to do that is a judgment call and I am not calling into question 50 years of HUD directors.

Mrs. WAGNER. Thank you.

And Ms. Goldberg, I think I have a little bit of time left and you may have wanted to finish discussing some of the tools and resources that are necessary in advancing technology and enforcing the law as written, please.

Ms. GOLDBERG. Thank you. I appreciate that. Really two things, one is that I think this is an issue that cuts across more of the Federal Government than just HUD and it is a place where an inter-agency effort would be very helpful. It is not just housing ads but also credit and employment ads that are at play in our Facebook case, for example. And so, I think a broader set of eyes would be helpful.

I would also just say very quickly that I think that focusing on zoning alone in the context of Affirmatively Furthering Fair Housing misses a big part of the puzzle. It may be a very useful piece, but it misses a big part.

Mrs. WAGNER. Thank you, Ms. Goldberg.

My time has expired. I yield back.

Chairwoman WATERS. Thank you.

The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you very much, Chairwoman Waters.

Ms. Hill, let me start with you. In 1968, 51 years ago, the Fair Housing Act was passed, and yet here we are with still this piercing discrimination. What would you say if you had to name one or two or three things, why is that?

I mean, 51 years is a long time, and in those 51 years a ton of resources and money have been put into it, yet this thing is still so alive, this racial discrimination, sexual orientation discrimination. What is going on? What could you say to us that would really put our finger on this problem?

Ms. HILL. Thank you. I certainly appreciate the question. And I would say that a big part of why we have not made maybe as much progress in this area as we would have liked is that prior to the 2015 Affirmatively Furthering Fair Housing Rule, much of the focus in the fair housing conversation was on ending private acts of discrimination.

And we really as a country hadn't gotten to dealing with the history of racist housing policy in this country. We hadn't gotten to addressing the history of segregation and really working to affirmatively further fair housing by creating and opening the door for open and integrated communities.

I will say that we have spent some time this morning talking about what Affirmatively Furthering Fair Housing means, and luckily, we don't have to guess as to how that can happen. We all know that former Vice President Walter Mondale is still with us, and he is one of the original sponsors of the Fair Housing Act and has spoken publicly and been very clear about what that Affirmatively Furthering Fair Housing language meant back in 1968.

And so, we really as a country have to focus on working to end the legacy of segregation.

Mr. SCOTT. So, let me ask you this. We have in place what is called the Housing Choice Vouchers Program. Tell me, is that effective? How does that work?

Ms. HILL. Well, I can certainly talk about the way that the Housing Choice Voucher Program has played out in New Orleans post-Hurricane Katrina, for example. The promise of the program is that people will take these vouchers and be able to find housing in the private market that works best for them and their families.

We know that many public housing authorities across the country shifted to this model of more vouchers and less public housing in order to de-concentrate poverty. Unfortunately, in communities across the country and in New Orleans, we have really just under the voucher system further concentrated poverty, and in New Orleans, voucher holders have been moved across the Mississippi River and canals following Hurricane Katrina and are re-segregated in communities of high poverty.

Mr. SCOTT. Let me ask you this, can these Fair Housing Choice vouchers be used to help pay the rent?

Ms. HILL. Well, yes. And I think there are a few ways to do that. We know that we haven't quite gotten to the point where the vouchers are meeting the goal of providing free choice in the private market in terms of housing.

In New Orleans, our housing authority has been working to roll out a pilot program where the voucher payment standard is adjusted to meet the cost of living in specific neighborhoods.

Mr. SCOTT. I want to make sure I get the right answer here. So, these vouchers can be used to help pay the rent?

Ms. HILL. Well, depending on the neighborhood. And so, it is important, I think, from an on-the-ground perspective for housing authorities to have the flexibility to be able to set the payment standard depending on the actual neighborhood.

Mr. SCOTT. Okay. Thank you.

Ms. Goldberg, you had an interesting comment about, you called it the disparate impact rule. Could you amplify that a bit in terms of its impact on this issue?

Ms. GOLDBERG. In terms of its impact on housing choice vouchers in particular?

Mr. SCOTT. No.

Ms. GOLDBERG. Or on fair housing in general?

Mr. SCOTT. Exactly. You made a very salient point. I remember part of it. But I did remember what you called it, disparate impact rule.

Ms. GOLDBERG. Yes.

Mr. SCOTT. Thank you.

Ms. GOLDBERG. It is a critical tool that has been just fundamental to enforcing the Fair Housing Act, because not all acts of discrimination are blatant and in-your-face. Many acts of discrimination, whether or not they are intentional, are carried out through policies and practices that look neutral, like the situation that Ms. Hill described of the apartment complex that would evict somebody if the police were called to their unit.

That doesn't sound like it is going to discriminate. But in fact, because of who is likely to be the victim of domestic violence, it does have a discriminatory impact, and this rule helps us ferret out and eliminate those kinds of policies.

Mr. SCOTT. Thank you very much.

Chairwoman WATERS. The gentleman from Florida, Mr. Posey, is recognized for 5 minutes.

Mr. POSEY. Thank you very much, Madam Chairwoman, for holding this hearing.

At our recent hearing on Homelessness and Housing Affordability, I pointed out that Secretary Carson has stated that local zoning and building restrictions were among the most important contributors to homelessness and to unaffordable housing.

When we marked up the Homeless Act, I offered an amendment to provide authority for HUD to use incentives to encourage local communities to reduce zoning measures and other land use practices that serve to restrict the supply of the affordable housing in this country, and it passed with bipartisan support much to, I think, everyone's surprise.

Today, three witnesses mentioned exclusionary zoning practices as an obstacle to fair housing and access for protected classes. One of the witnesses found—his testimony on this obstacle recommends strong incentives for eliminating such practices and recommends we look to the market outcomes as metrics to measure the success of our efforts along these lines.

I believe that we know just as reducing zoning restrictions is a path to affordable housing, it is also one of the best practices to ensure fair housing.

Mr. Furth, in your testimony, you say rather than relying on local policymakers with vague and unenforceable commitments to integrate, HUD should tie the disbursement of CDBG grants to clear requirements for already enacted zoning de-regulation reforms to the entitlement process that reduce the cost of building new housing. HUD should set clearly defined metrics which cities should begin permitting more housing if they want to continue receiving grants.

Can you please describe some of those metrics and how they tie into the market outcomes?

Mr. FURTH. Yes. So, market outcomes are essentially when we look at the housing market as it is, what do we see? We see rent levels. We see how rent is changing.

We see whether building permits are being issued and we could see patterns of segregation and other demographics. So, those are the outcomes. Those take time to develop. If you change your policy today, you are not going to see rent or segregation disappear in one month.

So, we should look for the long term, are these policies having an effect on market outcomes? And then when a community, say a Cupertino, California, says, "We have been very exclusionary but we want to keep getting the CDBG money, so we are going to change our policy," we say, "Alright, in terms of the outcomes, you don't look great. Your rent is extremely high and a moderate-income person wishing to live here has extremely few options. But, okay, you are going to legalize accessory dwelling units. You are

going to expand the land in which multifamily housing can be built. You are going to get rid of parking minimums that drive up the cost of constructing housing."

If they do one of those policies, we say, "Alright, we will let you in for now and then we will reevaluate after some years and see if the outcomes match where we hope this policy would get you." And then at least we are creating—I don't think it is a very powerful incentive. I don't think we are taking away local self-government if we enact something like this.

But we are at least saying if a community is exclusionary and unwilling to try to change, then HUD should wash its hands and say we are not subsidizing that.

Mr. POSEY. I concur. So often in this country we measure success by how much money we pour into something, not how effectively we get results, and that is definitely a problem. And I appreciate your comments about Dr. Carson looking into the land planning as an attempt, actually, the first attempt in his job to do that. And we know that it makes no sense for a homeless shelter to require two parking places per resident, to have one bathroom for every resident.

We talked in committee a little bit about how Mother Teresa had a homeless center she was trying to open in New York. And they said well, you can't do it. There are not enough bathrooms, somebody may have to wait in line. So, they continue to use the street and sleep on the street, and that was just a big deficiency of government.

So, you proposed that HUD tie the disbursement of community block grants to a local community meeting clear requirements for re-regulating zoning or reforms to the entitlement process that reduce the cost of building new housings like we just talked about.

Does the use of CDBG grants reach enough communities to broadly and consistently provide incentives or do we need to consider other incentives in addition to those?

Mr. FURTH. That is a great question. And I think one of the best critiques of our proposal is that a lot of very exclusionary communities don't get CDBG. So there are not that many Federal levers right now that are useful and we could certainly consider creating levers, but I would also say fix what you are doing wrong before you create new money pools.

Mr. POSEY. Okay. I didn't have time to ask Ms. Hill a question, but I appreciate your testimony.

Ms. HILL. Thank you.

Chairwoman WATERS. Thank you very much. The gentleman from Missouri, Mr. Clay, who is also the Chair of our Subcommittee on Housing, Community Development, and Insurance, is recognized for 5 minutes.

Mr. CLAY. Thank you, Madam Chairwoman, and let me thank the witnesses for your testimony. The National Community Reinvestment Coalition released a report on March 18th that identified more than 1,000 neighborhoods in 935 cities and towns where gentrification occurred between 2000 and 2013.

In 230 of those neighborhoods, rapidly rising rents, property values, and taxes forced more than 135,000 residents who are often black or Hispanic to move away. Right here in Washington, D.C.,

20,000 black residents were displaced, and in Portland, Oregon, 13 percent of the black community was displaced.

While the study shows the concentration of wealth and the displacement of black and brown people, the study also found that wealth-building investments are increasingly concentrated in the larger cities, while other regions of the country like rural areas and tribal areas languish.

Ms. Goldberg and Ms. Hill, is gentrification of fair housing an issue?

Ms. GOLDBERG. I think gentrification can be a fair housing issue, certainly, if what it entails is the displacement of people who have been living in a community who are members of protected classes and being displaced by others.

What we see I think in some cases is people of color living in a community for many years, and whether market forces or public investment or some combination spurs investment, and makes the neighborhood more attractive, other forces as well, housing prices go up, and the people who have been living there have been forced out.

Where that has a racial impact or an impact based on national origin or any other protected class, that can be a fair housing issue.

Mr. CLAY. Let me ask Ms. Hill, what tools exist at the Federal level that can help local jurisdictions think through these equity issues so that they can begin to address them?

Ms. HILL. I do just want to quickly say that in New Orleans, we are seeing climate gentrification that has been fueled by a flight to higher ground. And we know that white residents have been far more likely to have the resources to buy land in high-ground areas following Hurricane Katrina.

African-Americans, who before the storm had been living in these high-ground neighborhoods bordering the Mississippi River, have now been easily displaced by those increasing rents. And so, I think it is important to at the Federal level have some oversight that ensures that local communities are not spending Federal disaster dollars in a way that will fuel gentrification and displacement or in a way that perpetuates segregation.

Mr. CLAY. Thank you for that response. And Ms. Olsen, has Zillow done research on this issue directly or with relation to market trends broadly that can shed light on this topic?

Ms. OLSEN. Yes. I think in looking at gentrification and where the market pressure is, currently, for example, if I looked at a major metropolitan area and I wanted to understand where home values have grown the most in the past, it was generally close to the job centers, because you have this greater concentration of people flowing into an area.

It was hard to add housing into those areas because of just all sorts of things, so land use restrictions and kind of different barriers there that cause home values and rents near job centers to increase and we find generally lower-income households and often communities of color or individuals of color are then pushed further and further out.

So then commutes increase, generally other amenities in that space from my earlier testimony kind of highlights there is disparate access there. So for sure, this is kind of a common dynamic

and it comes down to many factors that influence that development.

Mr. CLAY. Thank you for that. And Ms. Johnson, are there any particular impacts gentrification with displacement is having on the LGBTQ community?

Ms. JOHNSON. Thank you for your question. The reality is that LGBTQ people, especially queer women, transgender people, and LGBTQ people of color are more likely to live in poverty and are more likely to be incarcerated.

So for example, up to 40 percent of women in incarceration identify as LGBTQ. So when we are looking at gaps, and we are looking at gentrification, when people who are reentering society after imprisonment can't find stable housing, they are forced out of the community. And so that is just one example of where those intersections come together and affect the LGBTQ community.

Mr. CLAY. Thank you. And I yield back.

Chairwoman WATERS. The gentleman from Texas, Mr. Williams, is recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Madam Chairwoman. I thank all of you for being here today. Secretary Carson asked for comments to change the Obama Administration's Affirmatively Furthering Fair Housing regulation.

This was not an arbitrary decision. President Obama's own Council of Economic Advisors had doubts that the way the regulation was written could effectively combat discrimination in the housing market.

So, Dr. Furth, can you explain the shortcomings of the previous Administration's Affirmatively Furthering Fair Housing regulation, and in addition, was there a consensus when this rule was introduced back in 2015 that this would end discrimination?

Mr. FURTH. Thank you so much. So in my view, it was a well-intentioned rule and it had two primary shortcomings.

The first is that it was very costly to administer, particularly for small communities. So if you don't have a dedicated planning staff, you are going to be looking at paying a consultant \$50,000 to complete an assessment of fair housing.

And if you are the type of community that is inclusive and isn't putting up barriers to housing, that seems like punishing someone just for showing up and wanting to participate in HUD's program, and I don't think it makes sense to kind of push these communities through a process which might be helpful to some, but is costly for virtually everyone and it turned out to be very costly for HUD's staff.

They did it for a year and a half and the career staff said, "We are exhausted, we can't keep up the pace of this with running through all of our communities." So that was the first shortcoming.

The second was, despite the good intentions and the ample amount of work by many parties that went into it, it didn't change policy. So, it shined some light on problems and it was certainly much better than the analysis of impediments as a research method. And as a researcher, I appreciate people working hard to understand problems and documenting things really carefully, and it is great if HUD wants to make information available to communities that they don't have the resources to study this data themselves.

But if you are going to do all that work, there should be some change. So if you look in the mirror and you walk away and don't change anything, that is a fundamental flaw. And so I think that the rule can be improved without abandoning it or giving up any idea that HUD can interact with municipalities. Thank you.

Mr. WILLIAMS. Thank you. The economy is currently firing on all cylinders, I would say, and there are more job openings than people to fill them. Wage growth came in at 3.2 percent last year, which is the highest number in over a decade, and unemployment is at 3.8 percent.

So capitalism really is an amazing thing. Dr. Olsen, would you agree with me? Are you a capitalist?

Ms. OLSEN. Well, I am an economist. Like many in my profession, I believe that perfect free markets are a gorgeous, beautiful thing. But also, as an economist I recognize that there are common market failures such as information asymmetries, positive and negative externalities, and concentrated market power. If these are operating in a market to a strong degree then the market will either over- or under-produce.

Mr. WILLIAMS. Okay. Let me ask you a question. In your testimony, there is a graph on homeownership between different races of individuals.

Ms. OLSEN. Yes.

Mr. WILLIAMS. What do you believe is the biggest contributing factor for all of these disparities even though, as Federal Reserve Chairman Jay Powell stated in front of this committee in February, the economy is in a very healthy place?

Ms. OLSEN. Well, that is I think one of the upsetting parts about this and why affirmatively was a part of the wording here is that it has roots in historical policies that come back to redlining.

If you can imagine how homeownership kind of reinforces itself over time, the biggest barrier to homeownership is that down payment, in order to make that down payment, people often turn to their communities, their families and friends for a loan or a gift.

So for example, currently, 51 percent of first-time home buyers need that kind of assistance from their communities. Back then, it was probably similar. If you didn't get that resource over time, you can't make homeownership work. So if I start from a situation where we had redline areas, communities of color that were barred from access to homeownership, that would have a chain reaction that flowed all the way down to today that would continue that barrier.

Mr. WILLIAMS. Okay. I am a capitalist who knows that free markets work. So Dr. Furth, before I continue this question, are you a capitalist?

Mr. FURTH. Sure.

Mr. WILLIAMS. As a small business owner, I have seen the effects of the government policies, the current issue for example, if interest rates go up, it could keep somebody from buying, \$50 a month could change their ability to buy a car.

So can you give us quickly some specific examples of policies that are preventing the free market from dealing with affordable housing?

Mr. FURTH. A great one is parking minimums in big cities.

Mr. WILLIAMS. Thank you. I yield back.

Chairwoman WATERS. Thank you. The gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, is recognized for 5 minutes.

Mr. GREEN. Thank you, Madam Chairwoman. I especially thank you for the opportunity for us to move from talking points with reference to invidious discrimination to action items.

We have several pieces of legislation that will afford us the opportunity to do so. I am going to call to your attention H.R. 149, the Housing Fairness Act. Very simply put, it seeks to codify and standardize two programs into one: the Fair Housing Initiative Program; and the Fair Housing Assistance Program.

In so doing, it will legitimize further to a greater extent the process of testing, a process that is utilized to acquire empirical evidence to support discrimination contentions, we can now with this evidence have facts that we can utilize to go forward.

So Ms. Goldberg, let me start with you, if I may. Could you kindly tell me where the testing can be beneficial if we do it on a standardized nationwide basing or the testers themselves have been trained to do so with the greater degree of expertise?

Ms. GOLDBERG. Absolutely. Testing is a critical tool for fair housing enforcement. And I am sure Ms. Hill could speak to this as well. It has been used by our organization and many other organizations around the country.

It has been upheld by the Supreme Court as a valid and necessary tool for fair housing enforcement because it lets you run essentially a controlled experiment. You send out two people who look the same in all relevant characteristics but one is, for example, African-American, one is white, one is a woman, one is a man, one is a family with kids, one without kids.

And you give them comparable characteristics, a comparable profile so that they appear to be equally qualified. In fact, usually the tester who is a member of a protected class is a little bit better qualified than the other. And you see what happens to them. And if they are treated differently because they are comparable in all relevant criteria, you can determine whether the difference in treatment is based on that protected class characteristic. No other tool that we have is so valuable for figuring out whether discrimination is occurring.

Mr. GREEN. Would someone else care to give a comment?

Ms. HILL. I would, if I may.

Mr. GREEN. Ms. Hill, thank you.

Ms. HILL. Thank you, I very much appreciate it. What I will mention is that testing is oftentimes the only way to discover whether discrimination is happening and whether people are being kept out of a certain community.

We were able to bring litigation because we had analyzed some census data with regard to a community in the suburbs of New Orleans, and we found that the area surrounding one particular neighborhood was very racially mixed, but on the census data map this certain community was very white, and when we zeroed in, we found that it was a large multi-block apartment complex and there were no people of color living there.

We sent some testers out and all of the black testers were denied. Now the property manager was very nice about it, she didn't say they couldn't have access to that space because they were black, but that is what was happening.

When we got into litigation, the property manager who had been managing that space for 32 years admitted under oath that in 32 years she had never rented to an African-American resident. And so we know that for decades, black people were excluded from this community where many of them had hoped to live. Without testing, we would not have been able to uncover that discrimination, because nobody came in and made a complaint to us about that particular place.

Mr. GREEN. Moving on to some statistical information—the staff has done a great job, and I want to compliment the staff—the indication is that 71 percent of the reported housing discrimination complaints have been handled by the Fair Housing Initiative Program, and this was in 2017.

And that the fair Housing Assistance Program handled 23 percent, that HUD handled 4.5 percent, and the DOJ 0.1 percent. These numbers seemed to indicate that the Fair Housing Initiative Program, which is an NGO-based program, and the Housing Assistance Program, these two entities seemed to be handling the lion's share of these complaints. Ms. Goldberg, has that been your experience?

Ms. GOLDBERG. Yes. I think that pattern has held true over quite a long time.

Mr. GREEN. And finally, let me just close with a word—I hear many people rail and complain about invidious discrimination, perhaps not in the terminology that I have just utilized, but they do.

They complain, but when given the opportunity to do something about it, they don't seem to have the energy to do so. I think that this is a great opportunity for us to go from talking points about invidious discrimination to action items. Thank you Madam Chairwoman, I yield back.

Chairwoman WATERS. Thank you. The gentleman from Arkansas, Mr. Hill, is now recognized for 5 minutes.

Mr. HILL OF ARKANSAS. I thank the Chair, and appreciate this good hearing today and I appreciate the witnesses for being here. I have been involved around the housing policy area for a long, long time. I was a young staffer back in the 1980s on the Senate Housing Subcommittee, so I certainly am familiar with the legacy of some of these challenges that we talk about today.

And Ms. Hill, thank you for your work in South Louisiana. I was a volunteer with Rotary International and we rebuilt about 60 houses in Lecompte after Katrina using Bush-Clinton Katrina money, and that is why I am so supportive of Al Green and Anne Wagner's efforts at CDBG-DF reform. I know it is controversial in Congress but we saw families be given the money to raze their homes in Lecompte, which is on the north side of Lake Pontchartrain, in an unincorporated area, and the money didn't go into razing their homes. So they will just be back in the same situation in a future high-water event along Lake Pontchartrain, and that is why the after-action auditing there shows almost \$800 million was allocated through CDBG-DF but was not spent properly for home

razing. That is why we really need reforms in that area to make sure that money gets to the homeowners, and is spent by the homeowners for the purpose that it was intended so that they have a much safer, dryer place in the future. So, thanks for your work.

I was intrigued listening to the conversation back and forth about HUD's discoveries at Facebook and we are in a new era of discrimination when we go digital and go social media. So that was interesting to me. The Chair and the Ranking Member have been talking about forming a taskforce on on financial technology, Fintech, and of course, Zillow is on the cutting edge of Fintech as well as Facebook.

So I am very interested in not only how we can cut compliance costs for market participants, improve access to the unbanked and things of that nature through Fintech, but also sort out at a lower cost discrimination through the use of big data.

So to help me learn a little bit more about this, who wants to answer the question, how did HUD learn about this Facebook ad presentation issue? Who is the best one, Ms. Goldberg, should you tackle that?

Ms. GOLDBERG. I think I could answer that. I believe HUD learned about it the same way we did, which was through some amazing investigative reporting done by ProPublica.

Mr. HILL OF ARKANSAS. Okay. Good. And once that was identified, what was the methodology then for tracking that and discovering it, and is that open source type data that could be used by financial institutions, for example, or tell me how then HUD went on to the next level to build the case if you will?

Ms. GOLDBERG. I can't speak to what HUD has done, it has issued a charge which tells you what it found but I am not sure what its methodology was. I can tell you what we did if that would be of interest, which is that we created for the purposes of this test, what is the word that I want, a management company.

And we said to Facebook that we had apartments we wanted to rent, we went on their site, to their ad portal and looked at the characteristics that they let us use to either include people who would see that ad or to exclude people who would not see that ad. We were able to get ads approved by Facebook that included the use either to exclude people and primarily included the use of protected categories under the Fair Housing Act.

And so, it was a form of testing in a way. We were able to see for ourselves by posing as a potential landlord that the tools that Facebook made available enabled us to discriminate.

Mr. HILL OF ARKANSAS. Dr. Olsen, do you want to add to that from Zillow's point of view of looking at big data, do you have any thoughts on that? On how best for HUD, for example, to root out using social media or big data?

Ms. OLSEN. You know, I don't think we have. As an economist, I really don't have a lot of insight into what HUD could do in order to explore. I can say that the purpose of the finding was to solve for information asymmetries by putting all available listings online for everyone to search and sort through. And that kind of finding is important to this kind of idea.

Mr. HILL OF ARKANSAS. Thank you, Madam Chairwoman. I yield back.

Chairwoman WATERS. The gentleman from Illinois, Mr. Foster, is recognized for 5 minutes.

Mr. FOSTER. Thank you, Madam Chairwoman, and thank you for this hearing. You know, I represent the second, third, and fourth largest cities in Illinois: Joliet, Aurora, and Naperville.

And rolling through here on the screens are these redlining pictures, and I remember trembling with rage when I saw the redlining pictures of Joliet and Aurora from the 1930s, and then driving through those neighborhoods and seeing how their futures have been determined by these bigoted, racist policies.

I also represent Naperville, which until well into the 20th Century was what was called the “sundown town,” so they didn’t have any redlining issues there. But it has gotten better. It has really gotten better in Joliet, in Naperville, and in Aurora. And a part of that, a big part of that were the Federal policies that leaned heavily against this.

And I was reading through the complaint against Facebook, which sort of brought that same level of rage. I don’t think this was intentional, but it just underlines the danger in the power that has been given to these companies, that although Facebook themselves probably didn’t deliberately do this, I am convinced there are many landlords out there that would take advantage of the ability to do that.

And it underlines the fact that Congress hasn’t been paying enough attention to the power of tech on this. But then on the other side is, what could you do to actually fix this and use the power of tech for a positive way? I guess, Ms. Goldberg or Ms. Hill, I can’t remember, was talking about doing electronic testing, essentially simulating landlords.

I mean, you could potentially have access to when someone puts out an ad and say, okay, it is fine that you set this criteria but this criteria will discriminate against X, Y, and Z, and let the person thinking about putting that ad out there get immediate feedback from Facebook that this is a discriminatory set of criteria that you have.

Is Facebook, to your knowledge, talking about that sort of immediate feedback so that even say an individual landlord will not inadvertently do this?

Ms. GOLDBERG. I can speak to that. What Facebook has done is committed to taking off of its platform, creating a new portal for people who want to advertise services related to housing, employment, and credit so that they will create ads through a different mechanism than other people who are creating ads for other kinds of goods and services, and that employment and credit portal will not offer the options of any categories that you can either include or exclude that reflect—

Mr. FOSTER. But the number of proxies that you can generate is—

Ms. GOLDBERG. It is a lot. And we will be working with them and monitoring what they do over the next 3 years to ensure that all of the categories that might have a discriminatory effect are removed.

I would say two things if I could in response to your question further. One is that in the context of Facebook, the problem is not just

in the ad creation to begin with, that was clear and that is what some of the main provisions of our settlement agreements speak to. But a problem that neither we nor Facebook actually knows how to figure out, but will be looking at over the next 3 years, is the way that its algorithm delivers ads to people even when those ads don't have any discriminatory targeting based on the other information that Facebook has about people, and who it thinks will be most likely to respond to an ad, and other ad campaigns that may be running which reflect the historic discrimination in our society.

So it is a real problem, and we are hopeful that by working together we will be able to get to the bottom of it. I would just say if I could that I think the Facebook problem is a big one and I hope that we are on a good path to tackling that, but it is not the only one and the way we see algorithms and big data work for example in the mortgage lending space is a little bit different. And so it is going to take a little bit different kind of tools to address that.

Mr. FOSTER. And then on the other side, you can imagine the situation, we spend a whole lot of money trying to subsidize socioeconomic integration in our communities. I mean, it is a really good thing, it is a better outcome for the whole community.

And so have people ever thought we have all this big data? So that for example just paying, say Facebook, if their ad results in a placement of a family in a neighborhood which increases socioeconomic integration, that somehow, they get rewarded for that monetarily. Is that sort of idea ever been talked about, to just use these big datasets for good? If you could answer that for the record, I would appreciate it. I yield back.

Chairwoman WATERS. The gentleman from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Madam Chairwoman, and thank you for convening the hearing today. I also want to thank the witnesses for appearing this morning.

Dr. Furth, in your testimony, especially in your written testimony, you go into some discussion about Community Development Block Grants. We all know the Community Development Block Grant program is one of the oldest programs under HUD. It is also frankly probably one of the most popular with our local mayors and local elected officials.

In your written testimony, you discussed withholding some of the CDBG funding to encourage, if you will, local communities to better incentivize fair and equal housing access. Can you explain, if you could, why withholding these CDBG funds from communities would, in fact, better incentivize better housing and land use policies?

Mr. FURTH. Certainly, thank you. So CDBG money is not a big part of any community's budget unless they are in the disaster program. But it is a very popular part because every mayor kind of gets this little pool of money. It is often like a million bucks to do a project that they don't have local budget for, so this isn't usually used to just pay for standard things, it is used to pay for kind of really fun one-offs. Unfortunately, it is frequently used to directly give to local businesses, which seems like a really, really poor use of Federal money to me.

And so, mayors love it, right? It gives them a ribbon cutting. It gives something that they couldn't have gotten through the local taxing authority, that their voters wouldn't necessarily have approved.

So, that is a great lever. It doesn't hurt renters, right? So if we said, okay, if you don't comply with some inclusion, we are going to withhold your home funds. Well, the home funds actually support low-income renters. So the pain there is felt by the people we are trying to help.

CDBG hurts mayors if you take that away. That is the—I joke that it is a French abbreviation for mayor's ribbon cutting slush fund. And I think that is how it gets used and that is why it is a good lever, although it doesn't hit every community.

Mr. KUSTOFF. If I could follow up on CDBG, and I didn't state this to the witnesses before, but in my district, I represent West Tennessee, so I have part of Memphis, part of the City of Memphis, the City of Jackson, Dyersburg, and rural parts of West Tennessee.

Memphis is a community that uses CDBG grants quite a bit. As it relates to the formula, and I know I am getting a little bit in the weeds, but the formula B if I could, which in part is based on—as I understand it, 1940s housing data or 1940s data is weighted at around 50 percent appropriation.

So some older suburbs benefit from the pre-1940 or the 1940 formula even though they are kind of low-need communities. So my bottom line question is, should HUD look at redoing the formula, reformulating it in order to better distribute funds?

Mr. FURTH. Yes. Well, HUD can't. But I would urge this committee to revisit the formulas. They were written in the 1970s when an old house was a bad house, right? So, the assumption in the formula was that if you lived in a 50-year-old house, it must be falling apart.

And now we know if we go to the most exclusive addresses and zip codes, the houses are often very old and very, very nice. And that is no longer a good proxy for need. So, I think we could very easily rewrite the formula to much better target Congress' original intent and what this Congress would also intend for using that program. I would applaud that.

Mr. KUSTOFF. And you think it is something that can be done and could be done during this Congress?

Mr. FURTH. Well, every other Congress since then has not wanted to touch it because there is a fixed pot of money and if a little less goes to Brookline, Massachusetts, instead going to Memphis or Allentown, then somebody squeals and the people who squeal have Representatives in this body and redistributing money across cities is going to hurt somebody.

But if we can put aside that parochialism or even to say within your district that there are communities that are really well-resourced and there are communities that aren't. And right now, even within your district they are probably funneling that money poorly.

Mr. KUSTOFF. Thank you, Dr. Furth.

And I yield back the balance of my time. Thank you.

Chairwoman WATERS. Thank you.

The gentleman from Washington, Mr. Heck, is recognized for 5 minutes.

Mr. HECK. Thank you, Madam Chairwoman, indeed, thank you for holding a hearing on a matter is as important as this.

Dr. Olsen, welcome to Washington, D.C., again, I think as an economist I have some questions I would like to ask you, specifically following up on Mr. Clay's questions regarding gentrification, which I thought were fascinating and provocative.

And Ms. Hill, thank you so much for reminding me that gentrification can occur for reasons other than just lack of supply, i.e., flight to higher ground. That was a paradigm-shifting reminder for me and I appreciate it very much.

But Dr. Olsen, is it not only obvious that discrimination occurs everywhere, but with respect to gentrification, is it also true that it can often be especially propelled by supply considerations?

Ms. OLSEN. Yes. Yes, definitely, of course. When we think about displacement, what is happening is that demand is overwhelming supply and the current way that we do not up-zone.

Mr. HECK. Do not up zone. We have had that conversation.

Ms. OLSEN. We have had that conversation before, yes. It definitely exacerbates this problem and has barriers to kind of successful or affluent communities.

Mr. HECK. So, in a community like Seattle, for example?

Ms. OLSEN. Yes.

Mr. HECK. Where in particular, high-tech companies like Google and Facebook and Zillow and, of course, Amazon, bring in not just thousands but tens of thousands of people, it creates a supply problem on the housing side leading to gentrification.

Ms. OLSEN. Yes.

Mr. HECK. And gentrification has multiple and insidious effects on people of color, does it not? They are pushed out of homes that they can no longer afford, leaving them to confront secondarily, where am I going to live when I am confronted with additional discriminatory barriers? Is that a fair statement?

Ms. OLSEN. Something that I often say when I am talking to groups around the country about housing supply and land use is to say in one way or another, your community is going to change.

If the housing stock does not evolve, if you do not allow it to evolve or become more dense, then the people who live there, the makeup of them, what they look like, the kind of jobs they have is going to become, that is what is going to change, right?

You are going to have people with lower incomes moving out. If you allow the built environment to change, then it is more likely that the diversity within the set of people will change.

Mr. HECK. There are two dimensions to this that I want to quickly introduce and get your reaction to.

Ms. OLSEN. Yes.

Mr. HECK. As it relates to the gentrification or supply in general.

Ms. OLSEN. Sure.

Mr. HECK. It seems to me that when demand exceeds supply, you basically have given additional power to landlords over tenants, that if they have a product that is in short supply you have, in fact, tilted a little bit of the power equation, which then represents yet another way in which people who are traditionally discriminated

against have even less leverage as it were. Is that not just basic economic common sense?

Ms. OLSEN. Yes, I think a way to make that more tangible is to say in an environment where demand is overwhelming supply and I have an open listing, say five people show up at the exact same time, I get to choose which one.

Mr. HECK. So finally, and this is the one that on some level bothers me the most, homeownership in this country has declined and is at its relative lowest level in quite some time. We know that people of color are discriminated against with respect to lending and with respect to purchasing.

But given that homeownership, which still is aspired to by the overwhelming percent of Americans, is the single largest net worth-building asset to the average American, homeownership, then discrimination when it occurs as a consequence of all these factors has an especially long-term structural debilitating economic effect.

Does it not, Dr. Olsen?

Ms. OLSEN. Yes. I think homeownership is one of the biggest ways that you have intergenerational transfers of wealth and then for yourself to also build wealth over time.

Mr. HECK. And supply plays an important consideration in all that. Thank you.

I yield back, Madam Chairwoman.

Chairwoman WATERS. Thank you.

The gentleman from Kentucky, Mr. Barr, is recognized for 5 minutes.

Mr. BARR. Thank you, Madam Chairwoman, and thank you to the witnesses for your testimony today on the very important subject of fair housing. I want to talk a little bit about disparate impact.

The Supreme Court's decision in inclusive communities held that, disparate impact liability must be limited so employers and other regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free enterprise system.

But the 2013 version of the HUD rule required defendants to prove that the practice at issue was necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

Dr. Furth, this question is for you. Did the 2013 version of the HUD regulation have the effect of discouraging these employers and regulated entities from making practical business decisions out of fear that they might result in a lawsuit, notwithstanding otherwise being perfectly legitimate and good faith decisions?

Mr. FURTH. I apologize, Congressman, I have no expertise in that area.

Mr. BARR. Dr. Olsen, do you have a view on that?

Ms. OLSEN. I also don't think I can comment with my expertise.

Mr. BARR. Do any of the other witnesses have an opinion about that?

Ms. HILL. I can speak to it, not in the employment context, but as a fair housing advocate and a civil rights attorney who has litigated these cases. What I can say as someone who runs a fair housing advocacy group, is that we have used the disparate impact

theory to positively benefit the residents of South Louisiana, most recently in the direct aftermath of Hurricane Katrina where we brought litigation against a local government, a community that passed a law that would require that homeowners who wanted to rent their homes in their community could only rent to people who were related to them by blood. At the time since the State approved that 93 percent of the homeowners in that parish were white, it would directly follow then that the majority of their blood relatives were white.

And so, even though that law did not on its face exclude people of color, it had the effect of prohibiting people of color from renting in that community.

Mr. BARR. So I want to maybe ask the question a little bit differently to get at the question that I am concerned about. The Supreme Court, in the *Inclusive Communities* case, what the Supreme Court held was that a disparate impact claim cannot be based solely upon a showing of statistical disparity.

Given that the HUD rule on disparate impact does not conform—I am talking about the 2013 rule—with the Supreme Court decision in 2015, shouldn't we agree that a revised rulemaking is appropriate?

Dr. Furth?

Mr. FURTH. I can't speak to your premise. But clearly, if the rule is ruled unconstitutional, then it must be revised.

Mr. BARR. Right. And so, HUD has released a proposed revised rule that conforms to the Supreme Court *Inclusive Communities* decision, does anybody have a problem with that?

Ms. HILL. Well, I would just say that I don't believe that the *Inclusive Communities* decision spoke to the 2013 HUD rule and I don't believe that there has been any court finding that the HUD 2013 rule is—

Ms. GOLDBERG. Well, to the contrary, courts have found that there is no conflict between the 2013 rule and the ICP case decision. And based on that, there is no reason to go back and revisit this issue which is a rule that has been in effect or excuse me a doctrine that has been in place, a tool that has been available to us almost as long as the Fair Housing Act, has been upheld all the Federal Circuit Courts that have—

Mr. BARR. Reclaiming my time, and I apologize for cutting you off because I know you are making a point, but in my remaining time, what I am concerned about is that the 2013 rule may be well-intentioned, but the concern I have is that it would actually have the unintended effect of reducing access for the very classes that the Fair Housing Act is trying to protect, because it is going to encourage housing providers to just simply withdraw for fear of litigation.

And so, I think when we talk about an inadequate supply of housing and the negative impacts that has on vulnerable communities, we need to be very, very careful about HUD regulations that would create a litigious environment that would discourage the provision of housing.

Ms. GOLDBERG. So, can I just say that the 2013 rule did not change the landscape in any significant way compared to what it had been for many decades before that, and we have not seen a

withdrawal of landlords from the market in fear of litigation. So, I think that your concern is—

Mr. BARR. My experience is different. I yield back.

Chairwoman WATERS. The gentleman from Florida, Mr. Lawson, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Madam Chairwoman, and welcome to the committee, witnesses.

Ms. JOHNSON, I was very interested in your presentation. I know it has been 50 years since the Fair Housing Act was implemented, a couple of days in 1968 after Martin Luther King's assassination.

And I would like for you to elaborate a little bit more on access for the LGBTQ community of projects that are funded by HUD, because according to this information, there was a final rule in 2016 about access, and then it was alleviated in 2017.

Could you express a little bit more from your presentation what kind of effect that this has had on the LGBTQ community?

Ms. JOHNSON. Sure. Thank you so much for your question. I think what is so important to me, in the conversation about Facebook and the conversations that we have had is that this is about ending systemic discrimination.

And what we are seeing, how LGBTQ people are impacted is that they are people of color. They are people living with disabilities. They are coming from and returning citizens from prison.

And overwhelmingly, we are seeing this kind of discrimination impacting young people. Again, as I said in my presentation, 40 percent of young people living in homelessness are LGBTQ people.

So there was a statement about the importance of owning a home and the discriminatory barriers to that. But there are discriminatory barriers to renting homes, and to getting into homeless shelters, so, there are multiple levels of discrimination before these young people or couples or families can even get to the point of owning a home.

So, I think it is important that in addition to what has happened since 1968, we have seen gender added. We have seen familial status added. But we have more work to do.

In addition to doing the testing around current protected statuses, we also need to be expanding who the protected classes are, or reaffirming who those protected classes are, which again around sexual orientation, around people returning from prison, around people who have housing vouchers.

We have made a lot of advances but there, again, there is just, I think it is important for Congress to continue its work to recognize that discrimination is still present. We have to acknowledge it and we have to continue to do our due diligence or this affirming work to name it, to find it, and to prevent gaps in the law for creating, allowing for that kind of discrimination.

Mr. LAWSON. Okay. Thank you.

Ms. Hill, how have credit scores discriminated against people who are trying to enter the housing market?

Ms. HILL. Well, I think it is clear that there is a problem. There are gaps in access and the National Fair Housing Alliance has actually taken the lead on bringing this conversation to the forefront nationally.

We know that people in communities of color are underbanked and oftentimes referred to the subprime lending market. And so, there are a variety of ways in which access to credit leads to discriminatory outcomes, the credit scoring system and the algorithms that are used as we talk more about this conversation around data, definitely does have some discriminatory impacts on communities of color.

Mr. LAWSON. Ms. Goldberg, I have a few more seconds. Can you comment on that too, please?

Ms. GOLDBERG. Absolutely. One of the problems that we see is that the credit scoring systems that are used depend on the results of many, many decades' worth of segregated and discriminatory patterns. And so, the access that people of color in particular have had to mainstream credit from banks and savings and loans that look good on your credit record that boost your credit score has been limited.

And instead, folks have been relegated to the fringe market with payday lenders and subprime lenders and title lenders, et cetera, who don't report positive payment history to the credit bureaus but do report if you fail to pay.

And so your good payment history doesn't work for you, but your bad payment history, should that happen, works against you. And that is one of the things that has gotten baked into the system.

Chairwoman WATERS. The gentleman from Ohio, Mr. Stivers, is recognized for 5 minutes.

Mr. STIVERS. Thank you, Madam Chairwoman, for holding this important hearing, and I would like to thank the witnesses for being here. My first question is to Dr. Furth. I represent among other places Franklin County, Ohio, Columbus, Ohio, where we have a shortage of 50,000 affordable housing units at this point. And that shortage seems to be getting worse. Do you think any of these bills would help us create a supply that would fix that backlog?

Mr. FURTH. In my brief reading of the bills that were introduced ahead of this hearing, I saw lots of valuable and well-intentioned things, but I don't think any of them would help increase supply.

Mr. STIVERS. I actually agree, and I think that is our biggest problem, that and affordability.

Dr. Olsen, I want to take off on some questions that the gentleman from Missouri and the gentleman from Washington asked about gentrification. And I am curious if maybe our passion and upset feelings on gentrification might be slightly misplaced.

Let me just ask you a couple of questions. Does gentrification help renters or homeowners?

Ms. OLSEN. I think one of the reasons, and if I can—

Mr. STIVERS. No, can you just answer the question? I don't have a lot of time, ma'am. Does it help renters or homeowners? Do property values go up or down when you have gentrification.

Ms. OLSEN. I think you first have to define what you mean by the word, "gentrification."

Mr. STIVERS. Other people have described gentrification, do property values go up or down during gentrification? If you can't answer it, we can move on.

Ms. OLSEN. We can move on.

Mr. STIVERS. Okay. Thank you very much. And I do have one more question for you, Dr. Olsen. So, you testified that minority homeowners have more frustrations with their home searches. Can you describe what those frustrations are related to?

Ms. OLSEN. I can describe what the exact questions are that we ask, so such questions are full satisfaction with the home search process. We ask if finding the right agent is “very difficult” or “difficult.”

We know about the number of offers they submit in order to win a bid on a home during a forced sale process as well as the number of rent applications they need to submit. We also ask about perceptions of discrimination, so do you feel that you have been treated differently due to, and we ask questions about race, sexual orientation, Section 8 voucher holding, religion, veteran status, gender identity, and gender itself. In all of those questions, you can see a consistent pattern where people of color and other protective classes generally more frustrations in that part of the search process.

Mr. STIVERS. Do you think any of these bills would alleviate some of those frustrations and how so?

Ms. OLSEN. As an economist who studies housing markets broadly, I don’t have a lot of good insight into the specifics of policy.

Mr. STIVERS. Okay. No problem.

Ms. Johnson, you had brought up earlier the issue of homelessness, and I know a lot of folks in the LGBTQ community face homelessness. And one of the things that you may be surprised to know is that the Housing and Urban Development Department does not include anyone who is under age 18 in their definition of homelessness.

Do you think if they would change that definition to include folks under 18, it would help people in the LGBTQ community?

Ms. JOHNSON. Can you hear me?

Mr. STIVERS. I can now.

Ms. JOHNSON. Can you hear me now? I think recognizing homelessness of all folks, in particular, again, yes, under 18, I think that is an important focus in the community and I also think it is important for us to really look at what is offered in these shelters, and again, what is offered in renting for these young people as well. I think it could potentially be helpful.

Mr. STIVERS. Thank you. And one last question. Dr. Furth, under the policy proposal to use CDBG grants to incentivize community behavior, what metric would you use to evaluate whether a community is exclusively exclusionary?

Mr. FURTH. Thank you. I don’t think one metric is going to be sufficient. We have to look at a bunch of things. The level of rent is probably primary, and then within that, if you are a high-rent place, is rent growing even higher and are you issuing building permits? Those are key.

Do you have a record of judgments against you in discriminatory legal actions is something that I would certainly include. So I think that to be careful—and I have run the numbers a few times on different things—you need to have a multiple element definition.

Mr. STIVERS. If you want to expand on that, if you could submit it for the record, if you want to include any of those elements, that

would be very helpful to this committee, I believe. I yield back the balance of my time.

Mr. LYNCH [presiding]. The gentleman yields back.

The gentlewoman from New York, Ms. Ocasio-Cortez, is recognized for 5 minutes.

Ms. OCASIO-CORTEZ. Thank you, Mr. Chairman.

I have some questions, particularly when we see how redlining functioned. It was in many ways and as we know now a very racially targeted policy. But it was kind of coded into an economic language and an economic policy.

So it was racially targeted but it was economic in its implementation. And so, in having that result as you had mentioned, Dr. Olsen, that it created a situation where some communities were more accessible to investment than others.

And that has had intergenerational consequences. So would you say that the practice of redlining and making some communities with different racial makeups more able to easily access capital and lending contribute to a racial wealth gap today?

Ms. OLSEN. Yes. I think if I understand, so let me break it apart, into two parts. So one, when they redline, they did look at kind of contextual element, this has a school, this has parks, but it was pretty explicit too.

There are people of color and there are immigrants here. And so, it got a lower rating and is hazardous for lending. I think to your, maybe one of the ways that I can get at kind of looking at your questions is could you, for example, change some of the ways that you access credit or maybe you measure credit scores so that you can make this more balanced and provide more credit to people of color, that could lay, kind of not resolve because we have a long road ahead of us in order to fix these problems.

So, for example, one of the barriers to having a good credit score, access to credit is that you regularly pay your rent on time, regularly pay utility bills, regularly pay the cell phone bill, those are not currently included and standardized, just the credit scores. Let us say you did, then you could balance it back.

Ms. OCASIO-CORTEZ. Just to reclaim my time very quickly, would you say that government policy, particularly centered around redlining, has contributed to the racial wealth gap?

Ms. OLSEN. Oh, yes.

Ms. OCASIO-CORTEZ. I have a question. So we now kind of have this problem where there is an enormous racial wealth gap as a consequence of discriminatory public policy. I am curious to see if there are other policies or other practices that whether intentionally or unintentionally are kind of this economically coded, yet discriminatory or compounding policy.

In New York City, we have a really big issue with predatory equity. It is a practice whereby real estate speculators spend exorbitant sums to buy up affordable housing all over New York. The buildings that are bought become at risk of default and tens of thousands of families stand to lose their homes in addition to tens of thousands of affordable apartments.

Ms. Goldberg, I have a quick question. We are seeing in my home district of Queens that landlords are using harassment tactics to push tenants of color, immigrants, and others out of rent-stabilized

buildings using overcharges on keys, rewriting leases, illegally raising rents, refusing to make repairs, fraudulent major capital improvements, and even turning off the heat during winter. What is the Fair Housing Act's role in mitigating a problem happening on this scale?

Ms. GOLDBERG. The Fair Housing Act may be one tool, I suspect other tools are also needed, but if what is happening is affecting people of color, families with kids, people with disabilities, members of protected classes disproportionately, then the disparate impact rule under the Fair Housing Act can be a tool to force the landlords to change their practices.

Ms. OCASIO-CORTEZ. So we can use the disparate impact rule to highlight some of these practices? What about what we are seeing here is, I represent one of the densest immigrant communities in the country, and what we are also seeing is that landlords are leveraging a tenant's immigration status as a way to exploit money out of them. Sometimes, they will increase their security deposits and say, "You need to give me another \$300 or I am going to report you to ICE." What under the Fair Housing Act can we use to make sure that things like that don't happen?

Ms. GOLDBERG. Ms. Hill might also weigh in on this, but I would suspect that you could show that that would be discrimination based on national origin, which is a protected class under the Fair Housing Act.

Ms. OCASIO-CORTEZ. Thank you. Ms. Hill, do you have any—

Ms. HILL. I would agree with that in the interest of time.

Ms. OCASIO-CORTEZ. Thank you very much. I yield back.

Mr. LYNCH. The gentlewoman yields back. The gentleman from Wisconsin, Mr. Steil, is recognized for 5 minutes.

Mr. STEIL. Thank you. Thank you all for being here and testifying. I look at a lot of our housing and think, where are there areas where we can drive the cost down? In particular, we see onerous local restrictions becoming a major macroeconomic concern across the United States.

And, Dr. Furth, in your testimony, I thought you thoughtfully pointed out some of the restrictions that are in place. You identified Silicon Valley, saying it has a small proportion of the United States population in 1990 than today, heavily based on local zoning and restrictions.

And you see these impacts in areas where we have high cost of housing which seems to correlate with some of our other discussions here on homelessness in particular. And the heavy-handed regulations in particular in Los Angeles, San Francisco, and New York City have a significant impact on our overall economy. Can you comment and quantify some of those impacts?

Mr. FURTH. I have seen three good macroeconomic papers that quantify the total impact of regulation in our kind of most regulated high-wage coastal cities. And those impacts range from something like our GDP would be one or two percent larger, that is overall U.S. income, would be one or two percent larger if we, if those cities instead had average levels of regulation. And then the most, I don't know if it is optimistic or pessimistic, says it would be more like nine or nine percent larger.

And I think it is also important to note, most of that GDP gain would be going to people who are currently excluded from those job markets. So we should think of cities as metro, metro areas as fundamentally about job access. Right? People move to places, apart from some retirees, primarily because they want to work there. And when you say, oh, if you want to work in Silicon Valley, you need to be able to drop \$1.4, \$1.5 million on a starter home, you are excluding most people with middle-skill levels from accessing those great job opportunities.

Mr. STEIL. So you are identifying whom it would hurt. The corollary of that is who is it helping then? Who are these local restrictions benefiting?

Mr. FURTH. So you really benefit if you were lucky enough to buy a home in one of these elite districts in 1960 or 1970. If you were sitting on that, especially in California where a State tax law prevents taxes from growing for longstanding homeowners, the sort of the home voter, the person who is in their house says, "I have it made and I don't want anybody else to come in and mess this up," they are the primary beneficiaries of the exclusion.

Mr. STEIL. Thank you. I want to jump over into your proposed test as we look at your proposed replacement of some of the fair housing. And in particular in the market test, you drive into outcomes rather than inputs.

Mr. FURTH. Right.

Mr. STEIL. And in particular you are looking at how do we analyze potential rent decline, giving more people access to affordable housing, could comment on that test?

Mr. FURTH. Yes. So if you are a community—say you are in a really expensive metro area, rent is going to be high, right? So let us say that Mountain View, California, decided that "We are going to be the NIMBY capital of Silicon Valley. We are going to build like crazy and have a huge diverse housing stock." Rent would still be high because it is in a very expensive metro area, but you would probably see rents starting to decline in that area.

We see this already in D.C., where I live, where in the Navy Yard and H Street where there has been extensive building, rent has fallen and vacancies have gone up and that changes, as Dr. Olsen said, the balance of power between landlords and tenants. The best tool you have in your hand when you go to talk to a landlord is if their unit is vacant and they don't have somebody else to rent to.

Mr. STEIL. I appreciate you taking the time to examine where these outputs are and how we would measure declining rents and bringing people in. I appreciate your testimony today. I yield back the balance of my time.

Mr. LYNCH. The gentleman yields back. The gentlewoman from North Carolina, Ms. Adams, is recognized for 5 minutes.

Ms. ADAMS. Thank you very much, Mr. Chairman. And I want to thank the chairwoman for putting this together. Thank you all for your testimony. Fair housing and housing and affordable housing is a particularly concerning issue for my district, the 12th District in Charlotte. We're getting a lot of people in, we have a lot of buildings going up, and nobody can afford to live in them.

But let me ask you about the NIMBYism question, and I want to direct this to Ms. Hill because of your background as an attorney. Everybody supports fair and affordable housing as long as it is not in my backyard. So wealthier, more affluent communities understand oftentimes how to manipulate the zoning laws and prevent rezoning efforts in their neighborhoods. It is also why the 2015 Affirmatively Furthered Fair Housing rule was so important. Could you speak to how HUD's rollback of Fair Housing regulations will allow NIMBY policies to continue to maintain segregated housing in many of our communities?

Ms. HILL. Absolutely. I think without the planning process that requires local governments to ensure that people have equal access to communities, then we will continue to see exclusionary actions by communities that are opposed to people of color as well as lower-income residents moving in.

In New Orleans, we find as we have been talking here today about income-based segregation, we are actually dealing—again, as someone on the ground doing this work every day, we are dealing in that community with not just income-based segregation but entrenched deep racial segregation.

We know that after Hurricane Katrina, black renters in South Louisiana found out the same communities that provided working class whites with an affordable suburban housing alternative as well as an exit strategy to avoid school integration went to great lengths to ban or restrict rental housing in their neighborhoods. So income-based segregation is not necessarily the problem that we face, it is still deeply entrenched racial segregation, and NIMBYism does perpetuate that.

Ms. ADAMS. Yes. Ms. Goldberg, would you like to respond?

Ms. GOLDBERG. I think Ms. Hill said it all.

Ms. ADAMS. Okay. Let me move to Ms. Johnson. There has been a lot of interest from this committee in the LGBTQ community. I have a very large community in my district, too. So let me ask about the housing protections that we already have that do apply to homeless shelters and services for people who are experiencing homelessness that receive Federal funds. So in your opinion, are the protections adequate to ensure that the LGBTQ people can get shelter and services when they are experiencing homelessness, and if not, why not?

Ms. JOHNSON. Thank you so much for your question, Congresswoman. The short answer is no, unfortunately not. As we highlighted in the written testimony, LGBTQ people and especially transgender people are often turned away from shelter services altogether. An enforcement of the protections, while the policy exists, the enforcement is so often inconsistent and frankly, many LGBTQ people are fearful to even file a complaint against a service provider, because they have a fear that they won't get services. And so, again, like we were saying, it is important to have a policy, but the enforcement of those policies is critical.

Ms. ADAMS. Thank you. Ms. Goldberg, redlining, we have talked a lot about it. Does it continue to manifest in other ways? You have talked about some of them in terms of the practices, but it appears that it has not ended. So are there other ways that it continues to manifest itself?

Ms. GOLDBERG. It does seem to continue in multiple forms, doesn't it? We still see kind of your garden variety discrimination that keeps people of color out of other communities, out of white communities, or integrated communities because real estate agents won't show them houses there and things like that. So, you have that. But some of the ways that the advertising for housing works as we talked about in relation to our Facebook case and others, and particularly some of the ways that we have touched on a little bit in the hearing today about the kind of economic legacy of segregation, and what that means for the kinds of financial services that people of color used as compared to whites continues to disadvantage people in their search for a mortgage.

Ms. ADAMS. Thank you, ma'am. I yield back, Mr. Chairman.

Mr. LYNCH. The gentlelady yields back. The gentlewoman from New York, Mrs. Maloney, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, is now recognized for 5 minutes.

Mrs. MALONEY. Thank you. I thank my friend for yielding and I apologize to my colleagues that I was in another hearing and could not be here for a lot of the important discussion on this critically important topic.

My first question is for Ms. Goldberg. As you know, one of the most important aspects of the Fair Housing Act is that it allows for so-called disparate impact claims, which prohibit practices that have "disproportionately adverse effects on minorities," and can't be justified by any other legitimate rationale.

So this allows us to root out unconscious bias or even bias that is unconscious but well-hidden. I have signed multiple amicus briefs supporting the use of disparate impact claims. And in fact, the Supreme Court explicitly upheld disparate impact claims under the Fair Housing Act in 2015.

But now, the Trump Administration is reportedly trying to weaken the disparate impact rule and we know that HUD has recently submitted proposed changes to this rule to OMB. Are you concerned that weakening HUD's disparate impact rule will allow clear housing discrimination to go unpunished?

Ms. GOLDBERG. Thank you for that question, Congresswoman. We are very concerned. You know, as we have talked over the course of this hearing about many different ways that disparate impact has protected all sorts of people from policies that appear neutral on their face, but work to the disadvantage of members of protected classes. And that kind of discrimination is every bit as harmful to the people who suffer from it as the more blatant, kind of in your face I am going to rent to you because of, plug in your characteristic there.

So having access to this tool is enormously important in preserving the Fair Housing rights of people in this country. It is long-established, it has been supported by courts all across the country. It has had bipartisan support, and as far as we can see there is no good reason to go back to the drawing board and try to rewrite this rule altogether. In fact, there will be some real disruption I think and costs to industry to have to accommodate changing to comply with a new rule.

And it seems to be driven in part by some industry concerns, I would just say the insurance industry in particular, has been trying for many, many years to get out from coverage under the Fair Housing Act and the disparate impact rule in particular.

Mrs. MALONEY. Thank you. And, Ms. Goldberg, while we know there have been substantial technological shifts in the housing market, we don't know much about how these shifts are affecting fair housing enforcement. Is there currently a way to know how many fair housing complaints related to online platforms have been filed with HUD or other reporting agencies, and do you think HUD should report this data and if it is not being collected, should we be collecting this data, and how would this—how would reporting this data to HUD help fair housing enforcement? And I think we know, with all the changes, this is an important goal we need to look at.

Ms. GOLDBERG. Right. I do not believe that HUD collects information on fair housing complaints based on online platforms. Given what we learned in our Facebook case, I think that it would be unlikely for people to know that they had not been shown an ad, because at least in the Facebook context, the way the platform operated meant that certain ads never got in front of certain people. And if you don't know that you have been discriminated against, you are unlikely to file a complaint. And I think that is a real challenge that we face and requires a different approach to enforcement.

Mrs. MALONEY. Okay. Ms. Johnson, you mentioned in your testimony the LGBTQ community experiences unusually high rates of homelessness. And what I found particularly troubling is the survey you cited which found that nearly one-third of transgender people who tried to access a shelter were turned away due solely to their transgender status. You mentioned that HUD's equal access rule which was just finalized in 2016 is intended to ensure equal access to shelters for transgender people. So my question is, is HUD's equal access rule working? Is it actually ensuring that transgender people have equal access to shelters and if not, what can be done to strengthen this rule?

Ms. JOHNSON. Thank you. And again, enforcement around, well, one it is important, again, to say we have to explicitly name sexual orientation as a protected class. We have to do it. And that is the first place that we can go, and so I just wanted to be really clear that we need to do that before enforcement to the degree it needs to be can even happen.

I think the other piece of this is that in addition to people who are turned away from shelters and homelessness that they are receiving is that because of homelessness, so many people are being, are also incarcerated and so we are also dealing with multiple forms of discrimination so based on gender, sexual orientation, but often spurs into other types of discrimination.

Mrs. MALONEY. Thank you.

Mr. LYNCH. The gentlelady yields back. The Chair now recognizes the gentleman from Illinois, Mr. Garcia, for 5 minutes.

Mr. GARCIA OF ILLINOIS. Thank you, Mr. Chairman. Good afternoon to all of the panelists. We have heard how redlining and housing discrimination persists 50 years after the Fair Housing Act and

as an example, Latinos and African Americans are more than twice as likely as whites to be denied mortgage credit or fear that they will be denied if they applied for a loan. The Robert Wood Johnson Foundation and the Harvard T.H. Chan School of Public Health found that one out of three Latino adults reported having personally experienced discrimination in trying to rent a room or apartment or buy a house.

Ms. Goldberg, I would like to ask you a question. Your organization conducted an analysis of staffing at the Office of Fair Housing and in 1994, there were about 740 staff people in that office. They have declined since then. As of 2018, the number of employees in their office is about 480. What funding and resource challenges do HUD officials face in enforcing the Fair Housing Act, one, and 2, given the clear and significant challenges we face with housing discrimination, how can the Fair Housing Act be enforced if there is no one to enforce it?

Ms. GOLDBERG. Thank you for that question, Congressman. I would agree that the Office of Fair Housing and Equal Opportunity at HUD needs greater resources, it needs more people. It needs more training for its staff. It needs the kind of technological resources necessary to confront the challenges in the marketplace today, and all of that, I guess the bottom line comes down to money. And we would encourage more of that.

I would also say that what we have seen and other members of the committee have alluded is that the frontlines of defense in this fight for fair housing really rest with organizations like Ms. Hill's and many other across the country that are in their community. They know their community, they are doing education in their community so people are aware of their rights and know what to do if they think their rights have been violated, and that help people through that process of vindicating their rights. And so more funding for the groups on the ground is also really critical to accomplishing that goal.

Mr. GARCIA OF ILLINOIS. Thank you. Mr. Chairman, at this point, I would ask unanimous consent to enter a 2013 report from the Equal Rights Center into the record.

Mr. LYNCH. Without objection, it is so ordered.

Mr. GARCIA OF ILLINOIS. Ms. Goldberg, continuing, can you describe the role of testing and how important it is in combatting discrimination in housing?

Ms. GOLDBERG. Sure. We talked about this a little bit earlier. Testing is a vital tool to use to ferret out discriminatory practices, discriminatory behavior because it lets you determine that the, whether or not I should say, the protected characteristic of a person is the key factor in their lack of access, their being denied for a unit whether that is to buy a home, to rent a place et cetera, et cetera. It really lets you control all of the factors in the equation except for their race or their national origin or the fact that they have kids or a disability. And without it, it would be very difficult in many cases to determine whether or not discrimination is happening.

Mr. GARCIA OF ILLINOIS. Thank you. One last question. BuzzFeed reported on December 14, 2018, that loan officers at banks were instructed by HUD personnel to not approve loans for DREAMers or

the class of young people known as DACA, individuals whom, as you know, qualify for these loans. And I quote, in a—the story in Chicago specifically had 42 FHA bank loans approved for DACA recipients in recent years, about 10 percent of this total client base. HUD officials advised the bank that DACA recipients are not eligible for these loans. In four separate phone calls in a recent month to the FHA hotline for lenders, the loan officer said he was told that the agency would no longer ensure that DACA recipients received home loans. Has HUD provided any guidance on this issue?

Ms. GOLDBERG. In our conversations with HUD, they tell us that they have not changed the policy, and that while DACA recipients were eligible for FHA loans before and as far as the folks at the top are concerned, they are eligible for them now. But as you report, and as I have seen others reporting as well, that is not the message that is getting out in the field. And I think that what is needed is for HUD to make a very official and very firm and clear statement that policy has not changed and that DACA recipients are eligible to receive FHA loans.

Mr. GARCIA OF ILLINOIS. Thank you. I yield back my elapsed time, Mr. Chairman.

Mr. LYNCH. The gentleman yields back. The gentlewoman from Pennsylvania, Ms. Dean, is recognized for 5 minutes.

Ms. DEAN. Thank you, Mr. Chairman. Like the gentlewoman from New York, I apologize for not being here before. I was also in another committee, and I find it fascinating that it was such a related conversation. I was in the Judiciary Committee and we were talking there about the Equality Act, H.R. 5. And so, Ms. Johnson, as you very aptly said, we must name sexual orientation as a protected class.

The conversation in these two committees is going in the right direction, as frustrating as it is to run between the two. So please forgive me, but know that I also want to note, I am new here, but this majority and these two committees are tackling very important issues of equality and fairness. And boy, I am glad to be a part of those conversations.

Ms. Goldberg, I was thinking about you and I read your testimony and the issue of disparate impact. And I say that because I represent Montgomery County, Pennsylvania, Norristown specifically, and just to go back into the issue of disparate impact, I know you have talked about it with some others but I am worried about something you said in your testimony, that it is possible that that rule would be eviscerated.

Let me just tell you quickly the story and I hope I am not repeating anything about what happened to the woman in Norristown. We know that disparate impact claims are paramount to allowing victims of discrimination to challenge policies that wrongly keep from obtaining safe housing, or worse, endanger them or their loved ones. Specifically, attorneys use these rules to fight unintended consequences of nuisance ordinances.

For example, in my district in Montgomery County, Pennsylvania, in Norristown specifically, Latisha Briggs was a domestic violence survivor who had sustained life-threatening injuries from being beaten by her boyfriend and was simultaneously threatened with eviction after the police were called to her apartment the

third time under a nuisance ordinance. Her injuries were so horrific that neighbors called the police and she had to be airlifted to the hospital and treated.

The case provides an important example of how disparate impact claims are imperative to helping domestic violence survivors and particularly women. So, Ms. Goldberg, under the Trump Administration and the possible threatening of evisceration of the rule, can you just speak to us about what the Administration seems to be signaling they want to do with the rule and the grave dangers of that?

Ms. GOLDBERG. Thank you for that question, and thank you for that story. I hope that the woman you talked about survived and recovered.

Ms. DEAN. She has survived.

Ms. GOLDBERG. That is a perfect one of many, many examples of the way that disparate impact has protected people in their housing. So we don't know exactly what the Trump Administration is going to propose, because we have yet to see the proposed rule. It is, as far as we know, sitting right now at OMB awaiting approval to be published for public comment, but what we do know is what HUD asked about in its advance notice of proposed rulemaking (ANPR) last summer.

And I would, for more detail, refer you to the comments that we and a long list of other organizations filed in response to that ANPR. Several of the issues that HUD raised as questions that it was considering, which makes you think that these may be directions it wants to take in changing the regulation, are very, very concerning. For example, should there be a wholesale exemption for certain types of businesses? Our read of the language they used was that there is a question about whether homeowners' insurance should be exempted whole hog because it is subject to regulation at the State level and kind of alleging, the industry for many years has alleged conflict between the Fair Housing Act and the McCarran-Ferguson Law.

So there are several other things like that that are in the ANPR that just raised huge red flags for us about the direction that the Administration might take, that would really make this rule unworkable and unable to protect women like your constituent.

Ms. DEAN. Thank you very much.

And, Ms. Johnson, I was thinking maybe you could help me, I am listening to testimony in the other hearing room about LGBTQ housing, not just shelter but sometimes in shelter, and the great fear that a transgender person might get into a shelter and assault women. Would you like to speak to that kind of phantom fear-mongering? Sorry, I did just speak to it, didn't I? I just editorialized my own question, that is not right.

Would you like to speak to the reality of LGBTQ issues in shelters? And then also in housing discrimination in a larger sense, not just in shelters?

Ms. JOHNSON. Thank you so much. We know that transgender people, particularly transgender people of color, are more likely to experience poverty and homelessness because of systemic discrimination. And access to emergency shelter is critical to ensuring the health and safety of everyone facing housing insecurity.

The reality is that we are seeing one in four transgender people who are homeless at some point in their lives. What is never okay is flat-out denying people places to live. And this is something that we really have to address. We have to be talking about gender identity. We have to be talking about sexual orientation and we have to acknowledge that there is real discrimination happening for people who are same-sex loving, who do identify as transgender. And many of those people are also people of color, right? So the different types, the overlapping amounts of discrimination are also very real and create even more undue burden when you are trying to have and keep secure housing.

Ms. DEAN. Thank you very much.

And I see my time has expired. I seek unanimous consent to introduce an article for the record. It is an NPR report on the woman that I talked about in Norristown. and I offer that up for the record.

Mr. LYNCH. Without objection, it is so ordered.

Ms. DEAN. Thank you, Mr. Chairman.

Mr. LYNCH. The gentlewoman yields back.

And the gentlewoman from Texas, Ms. Garcia, is recognized for 5 minutes.

Ms. GARCIA OF TEXAS. Thank you, Mr. Chairman.

And I, too, apologize to the whole panel. I, too, was sitting in Judiciary this morning. And I sometimes feel like I should be an octopus so that I could just have my hands in everything but that is not possible.

But to add to my colleagues' comments, help is on the way. I think we will successfully get the Equality Act on the committee and then we will face the challenge of the votes in the House, and then the Senate, of course. But I I wish it could be simpler, that we could just have one statement that said, no discrimination, period, but it is not that way. And we all have to deal with it.

So, for me, and especially coming from Houston and I wanted to start with Ms. Hill, I believe it was you who had the study, or no, actually, it was Dr. Olsen.

I don't know why anybody did a study on the inequities in terms of facilities that are found in metropolitan areas because I could have saved you all the dollars, living in Houston. And it seems to me that it is more than just what you are mentioning in here. You say that local establishments and amenities including banks and other institutions and recreational facilities are less prevalent in communities of color than in white communities.

I think it is more than that. Did you also look at healthcare and educational facilities and employment centers? It seems to me that it is more than just that because it is, and it goes to the heart of a good quality of life and our own well-being and our capacity to get a real fair shot at the American Dream, doesn't it?

Ms. OLSEN. Yes. And we have looked at, so financial services, both traditional and alternative. We looked at healthcare facilities. We looked at healthy food like grocery stores where you can find whole foods, and then also recreational amenities like playgrounds for kids. Not just that, there are also gyms and parks of different kinds, so there were great disparities.

And Houston actually had kind of the strongest disparity, particularly in the financial establishments, so traditional banking, and then also alternative finance. Houston was probably where there was the greatest divide between predominantly white communities and predominantly black or Hispanic communities.

Ms. GARCIA OF TEXAS. Right. So I guess I was trying to figure out just how something in fair housing would really help that because to me sometimes it really is about incentives that we can provide for economic development, incentives that we could provide for businesses moving into communities of color. I just wondered how we really connected that and that is a question for anybody on the panel, so you might want to take a stab at that one?

Ms. OLSEN. I probably would like to make this more tangible. So the inspiration for this research is very much in recognition of the fact that place matters so much to so many other economic outcomes.

Ms. GARCIA OF TEXAS. Because the point is, ultimately, it is who you are and what you are able to do.

Ms. OLSEN. Right, exactly. Your social mobility, your ability to start as a low-income family, say, end up in the middle class one day, so all of these things, place is so very, very, very important, so why this study, why this amount of research? Because I think when you say that to someone that place matters so much, sometimes you need to take that next step and make it more tangible, right?

Like what is actually, this really gets at the experiential difference that you can see and observe, but there are many other differences and disparities between communities of color and, say, predominantly white. And we measure those sorts of things too in terms of affordability differences—

Ms. GARCIA OF TEXAS. But what I am driving at is, what comes first, the affordable housing that the developer is building, or do the amenities that come with it and how you can get the two together?

Ms. OLSEN. Yes. I think where it comes first goes back 100 years in terms of redlining and then perpetuated through land use and regulation zoning.

Ms. GARCIA OF TEXAS. I wanted to ask about the redlining, but quickly, Ms. Hill, if you can add to that?

Ms. HILL. Yes, I would just say that it is important to think about all things happening at once, rather than one thing happening first because we know that it is going to take a multitude of policy changes and a wide-ranging approach in order to bring about true equitable access to housing.

Ms. GARCIA OF TEXAS. Because it impacts everything, the job opportunities, how much you earn, whether you have daycare, what schools you have. I was just totally confounded with your whole Facebook case. And what really struck me was your words when you said, they looked at the no-discrimination options. I mean why did they even have options? I find it baffling that you are actually talking about removing discriminatory options.

Ms. GOLDBERG. It is an excellent question, and I wish I had an answer. Can I just add one thing on your last question? I know time is up but the Affirmatively Furthering Fair Housing Rule that

we have been talking about was designed to get at exactly what you are talking about, what kinds of investments do we need in communities in terms of all of that kind of economic engine components and what do we do about housing? And where across the metro, where across the city do we make affordable housing available? Do we need to target it to low-income communities, do we need to target it elsewhere?

The answer in each community will be different. But that is what the rule was intended to focus on, both of those things.

Ms. GARCIA OF TEXAS. Thank you.

Thank you, Mr. Chairman.

Mr. LYNCH. The gentlelady yields back.

And the gentleman from Guam, Mr. San Nicolas, is recognized for 5 minutes.

Mr. SAN NICOLAS. Thank you, Mr. Chairman. And I appreciate everybody being present here today. I particularly appreciate the committee for holding this hearing entitled, "The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing."

Well, there has been a lot of talk about redlining and the devastating effects that it has had on communities of color. But one of the most unfortunate facts that we deal with today, that I think this country is very blind to, is the fact that our territories are grossly redlined. They are very grossly redlined.

I represent the territory of Guam, and 91 percent of our population would qualify as minorities in this country. In listening to the conversation of all the members of the panel, it sounds like everybody here is very much against the idea that we are going to be excluding anybody based on protected classes.

And unfortunately, political jurisdiction is not a protected class. That being the case, as much as we have champions here on the panel, there are just certain things that I, in searching throughout the discussion uncovered, that just kind of highlight why territories need to be taken into very fair consideration.

Dr. Olsen, I really appreciated your testimony. I went to zillow.com and I punched in Guam and there is no Guam. Guam has 160,000 people in its 210 square miles, compared to Fairfield, California, with 116,000 people in 41 square miles, and Fairfield, California, is on zillow.com.

When I punched in on Zillow loans, none of the territories are able to access any of the Zillow loans.

Ms. Johnson and Ms. Goldberg, you represent national organizations and I wanted to ask, do your national organizations also include research on the territories with the respect to the groups that you represent?

Ms. GOLDBERG. That is an excellent question.

Mr. SAN NICOLAS. It is one of the reasons why I am on this committee.

Ms. GOLDBERG. And I have to confess that I am truthfully not a data person, and I am not clear about the data that we have for Guam and other territories that would help guide some of this conversation.

I can say we do not have a member there. It is one of many places where we don't, so that is not a function necessarily of being

a territory or we would say that about South Carolina, which doesn't have a fair housing organization either.

But I think you raised an excellent question. We see parallels in some ways I think to what has been going on in Puerto Rico, for example, post-hurricane there, and in other ways as well. And I think it is one that we need to take back and take a close look at it and figure out how we can help.

Mr. SAN NICOLAS. Thank you, Ms. Goldberg.

Ms. Johnson?

Ms. JOHNSON. We have done some research with the trans discrimination survey in Puerto Rico but for the most part we have done organizing work and less research, and we actually don't do on-the-ground work in any of the territories.

Mr. SAN NICOLAS. I appreciate everybody's candor. And the reason why I wanted to raise this issue was I really think that the time has come for this country to stop neglecting the territories. Everyone here on this panel, I know are good people. No one is intentionally doing it.

I wrote down a quote, I think from you, Ms. Goldberg, earlier, "Many acts of discrimination are carried out by policies and procedures that might be unintentional." And I think that is definitely a circumstance that we are dealing with here today.

Our territories are predominantly minorities. We can talk about trying to address minority disparities in various districts across the country, but our territories are mostly minorities, concentrations of minorities. And so, if we are really looking to address the disparities with respect to access to credit, access to information about housing, access to data about what the conditions are in our areas, we need to make sure that we are not forgetting our territories when we go about our work.

Thank you, Mr. Chairman, and I yield back.

Mr. LYNCH. The gentleman yields back.

The Chair now recognizes the gentlewoman from Massachusetts, Ms. Pressley, for 5 minutes.

Ms. PRESSLEY. Thank you. So when President Johnson signed the Fair Housing Act into law he stated, "Now with this bill, the voice of justice speaks again. It proclaims that fair housing for all, all human beings who live in this country, is now a part of the American way of life.

"Housing is a human right. Housing is a critical determinant of health, of economic opportunity, of social mobility."

In my district, the Massachusetts 7th, an urban district that spans from Cambridge to Roxbury housing and income disparities have led to a gap in median income of \$50,000. As a result, the life expectancy rate drops from 92 years old in the Back Bay to 62 years old in Roxbury.

Though the housing market has recovered from the 2007 recession, low-income minority communities are still recovering from being the victims of rampant foreclosures and predatory subprime lending. They still face immense barriers to homeownership, discriminatory practices, with minority homeownership rates continuing to lag and our affordable rental prices is only worsening.

And yet in the face of this blatant deterioration of American families and of the housing market, we find ourselves stuck with an

Administration that deliberately works to reinstate the very housing discriminations that we sought to dismantle through the 1968 Fair Housing Act.

I am delighted to see all of you here today as witnesses, but I must admit I wish Secretary Carson were here.

I know we have a chairwoman who has a gavel and is not afraid to use it. So I look forward to him joining us one day, soon.

As someone who was raised by a tenants' rights activist in a low-income neighborhood, I witnessed firsthand the challenges faced by those of us who were left out of the housing conversation.

I am, again, grateful for each and every one of you today. And I want to get in the balance of my time into some questions specifically around the Housing Choice Voucher Program.

Ms. Goldberg, the Housing Choice Voucher Program is the largest source of Federal rental assistance and has a great potential to help families choose where they want to live. However, a recent report by the Poverty and Race Research Action Council and the Center on Budget and Policy Priorities found that families using a voucher in metropolitan areas are disproportionately concentrated in low-opportunity and racially segregated neighborhoods.

In the Boston area, just 14 percent of families with children using a Housing Choice voucher are living in high-opportunity neighborhoods.

How can the Housing Choice Voucher Program be improved to increase access to opportunities for families and reducing poverty?

Ms. GOLDBERG. Thank you for that question. It can be a very important tool to expanding choice for families, but it needs some tweaking.

HUD has taken some first steps at that although I will say this Administration tried to delay the rule, they have moved that ahead, and only reinstated it after being sued.

But Ms. Hill started to talk about this a little bit earlier that housing prices vary by geographic area, and the way that the housing voucher has worked is that we set one rent limit, and then the voucher will pay for the amount of that rent that is above 30 percent of your income, you as the tenant. And so that lets you afford apartments in some neighborhoods, the neighborhoods where rent are lower, but not in neighborhoods that are higher, which are often the ones with good schools and good transportation, and all of those things that we all look for in a neighborhood.

There is the opportunity to adjust those rent limits to conform with the rents in a smaller area than the whole metropolitan area. And now, there is the mobility project that HUD has authorized for I believe it is 24, that HUD is now requiring in 24 metropolitan areas around the country. It can be done voluntarily in others. And that is the kind of change that lets Housing Choice Voucher—

Ms. PRESSLEY. I'm sorry, reclaiming my time.

Ms. GOLDBERG. Sorry.

Ms. PRESSLEY. I am running out of time. Yes or no, is there an argument to be made that race and not income can better explain the disparities we see in access to opportunity?

Ms. GOLDBERG. Yes. I think that is an excellent question. And yes, I would say.

Ms. PRESSLEY. Okay.

Ms. GOLDBERG. Because we see discrimination against people of color, for example, at all income levels; it is not just a question of income.

Ms. PRESSLEY. Very good, okay.

Ms. GOLDBERG. It is also a question of race.

Ms. PRESSLEY. Thank you. Reclaiming my time, the Massachusetts 7th Congressional District is home to the largest public housing authority in New England. How does the FHA ensure protection from housing discrimination for vulnerable groups and what does this practice look like? I have 8 seconds.

Ms. GOLDBERG. I am not sure I am the best person to answer that. I know that there have been a number of different kinds of housing—

Ms. PRESSLEY. I am directing that to Ms. Hill.

Ms. GOLDBERG. I'm sorry.

Ms. PRESSLEY. Yes?

Ms. HILL. So the question is about public housing authorities?

Ms. PRESSLEY. Yes. And how do we protect vulnerable groups?

Ms. HILL. I do think that working with housing authorities to ensure that they are administering the voucher program in a way that de-concentrates poverty but truly allows access to neighborhoods of opportunity is a great place to start.

We know that across the country there has been a trend toward getting rid of the traditional public housing developments and moving public housing residents to the voucher system. And so, with the majority of folks in that system rather than living in public housing we have to ensure that we are administering the voucher program in a way that does give access to these high-opportunity neighborhoods.

Ms. PRESSLEY. And it seems since our population is aging, the Baby Boomers are booming, what are we doing specifically or what can we do to protect the retirees—am I out of time?

Mr. Chairman, I'm sorry. I must have gotten the wrong clock here. I yield back. Thank you.

Mr. LYNCH. The gentlelady yields back.

The gentlewoman from Michigan, Ms. Tlaib, is recognized for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman.

I want to thank all of you so much for your continued advocacy to also work extremely hard to put a human face behind some of these legal terminologies that are I think are in place here.

It is very odd because Secretary Ben Carson and I went to the same high school. I mean, I remember as a 16-year-old girl in high school, when he came in and he was phenomenal. He had just written a book about his historic surgery in separating twins. It was phenomenal. And he actually said, "It doesn't matter how you grew up, if you work hard enough, you will succeed."

So it is really troubling that in January 2018, under Secretary Carson's leadership, HUD halted implementation of the agency's Affirmatively Furthering Fair Housing rule. Under his leadership, he reportedly proposed removing the words, "free from discrimination," from HUD's mission statement.

In March, 2017, under Secretary Carson's leadership, HUD withdraw a Federal Register notice regarding the proposal to require

owners and operators of HUD-funded homeless shelters to post a notice informing individuals of their rights under HUD's "easy access in accordance with an individual's gender identity and community planning development programs."

Even though we have seen a huge hike, I think the LGBTQ youth in the U.S. are 120 percent more likely to experience homelessness than non-LGBTQ youth, and 94 percent of the service providers report working with LGBTQ youth today.

I come from a community in which literally every corner is a reminder of the civil rights movement. I remember in college signing up for Fair Housing in Detroit as a secret shopper, and I was very good at it. I took great notes and came back and talked about watching these slides, talking about little notes or little questions they would ask you, do you have children and things like that.

They are getting savvy in how they go around this and that is why disparate impact is so important. Many of you know I intend to introduce the Justice for All Civil Rights Act. In over 50 years, they have whittled the courts. Everyone has watered down and gone around this idea around having to show intent, when they are like, no, they are working the system and now they are going around and showing—and that is why the disparate impact is so important, looking at the implementation of these policies and what they result in.

And so, I want to know from all of you, give me some examples of just how creative they are in getting around that. And especially because many of my residents going door to door, especially my colleague from Massachusetts, I think we talked about this before, of women, women with children being targeted now.

Give me some examples of what you have actually seen them use, some terminologies getting around this, and why disparate impact is so important?

Ms. JOHNSON. I wasn't planning a personal story, but I will tell one. I am a single mom of two and I wanted to live in D.C. I was looking for a neighborhood where I could feel good about where my kids went to public school. I went to public school, and I wanted them to go to public school. I was looking to rent a house.

The landlord met my kids. I am who I am. My partner came and visited one of those times and the landlord said, "I am not sure this is going to work for you." And I said, "It is four people in a three-bedroom house that is three levels, that is walking distance to the school." So language like that, a landlord where it is coded language, "I am not sure this is going to work for you." It was like a smack in the face, like I didn't even know what to do with that. And I am in a privileged place. And so, that is one example of the many, many ways we see coded language used.

Ms. TLAIB. One of the things that I have also been hearing, coming from Detroit, Wayne County, which still contains very segregated communities to this day, you know, 51 years after the passage of the Fair Housing Act, the historic, what we call the Detroit Eight-Mile Wall that was erected to separate blacks and whites still exists. It is still the symbol. When I drive by, it is still there.

Will addressing restrictive zoning policies alone eliminate Fair Housing concerns in residential re-segregation? I know it is a tough question but it is important.

Ms. HILL. I would say, absolutely not. It is one important tool, but it is not going to get the job done. We need to attack this on all fronts and just changing the zoning, there is no one magic bullet, if there were we would have found it already. As you have mentioned, it has been 51 years and we haven't solved the problem yet. That one solution will not do it.

Ms. GOLDBERG. I would just add to that if I could, changing zoning does not make housing affordable. Or it depends perhaps on affordable to whom? You need to be clear. So if you are talking about people who are low- and moderate-income, no housing that you construct in this day and age, even if you can lower some of the costs through zoning changes is going to make the housing affordable.

It is like putting water in a trough but you can't make the horse drink. You can't make the developer build it.

And as Cashuana said, it only gets at one small piece of the problem. We have many more other parts of it that need to be addressed as well.

Ms. TLAI. Thank you all.

And, Mr. Chairman, if possible, I would like to submit for the record a March 21, 2019, article in the Detroit Free Press talking about few black people getting home mortgages in Detroit, and it is showing the data of literally half of the home mortgages loans in 2017 were white residents in Detroit, and I would like to submit this for the record.

Mr. LYNCH. Without objection, it is so ordered.

The Chair now recognizes himself for 5 minutes.

First of all, I want to thank all of the panelists for your remarkable testimony and for helping the committee with its work.

Ms. JOHNSON, I have a question. In your testimony, you mentioned that there are 21 States, including the District of Columbia, that have language that prevents discrimination against LGBTQ persons in housing. Do we have comparative data to strengthen the argument on the national level that we should adopt this nationally? Are there examples where the data shows that this is a great thing, it is working and it will help more families if we go nationally?

Ms. JOHNSON. I am sure we could get some data to the committee that could help you with that.

Mr. LYNCH. Yes. That would be enormously helpful, I think. And I am sure it exists. It is just that it hasn't been collected or quantified yet.

My own situation, I grew up in public housing. My dad says there were times in our lives when we had to save up to be poor. And I first got involved in housing representing families in the old Coney housing projects. That is sort of how I got elected here, just cases on lead paint, asbestos, six kids and a mom living in an apartment with one bedroom and one bathroom, those type of things.

But the world has changed, even the process of searching for and acquiring an apartment, everything is mobile now.

And I know, Ms. Hill, in some of your testimony and others, you talked about how Facebook and others have sort of manipulated this in a way that furthers discrimination.

The democratization of the housing process through mobile should actually be, could be an instrument of equality rather than discrimination. And I am just wondering if—I know Zillow has really gotten into this big time in terms of offering apartments to rent and to buy.

Is there any recommendation that you would, any of you would make with respect to sort of the digitization, the social media aspect of this in terms of just transforming the whole rental process, especially for young people, they are all on mobile, everything is on their phones and Smartphones. So our regulations are set up for the old world, they really are, and we don't really get at this.

And I am just wondering, in your experience, if you would offer some recommendations in how we might better protect people from discrimination in housing?

Ms. GOLDBERG. Is that directed to any particular one of us?

Mr. LYNCH. Okay, anyone, yes. Dr. Olsen?

Ms. OLSEN. I think one of the ways I can respond, as someone who is—I mean, I study housing markets at Zillow but someone who has worked at Zillow now for over 6 years, that a big part of our overall philosophy is to try and provide that information in a way that is easily consumable, both for renters and buyers on our site in order to do as you say, to democratize the access to that information, to solve for a lot of those information asymmetries.

But I think that as this panel has also acknowledged, there is still a lot of room to grow, there are a lot of things that we need to recognize when we put these kinds of things in place. And my organization is dedicated to looking at those issues. We have formed working groups in order to try and tackle concerns that this panel has had.

I can't, as not, looking at this issue really deeply in terms of the policy perspective of it but I could say this is central to our value system and it is an important thing for everyone to be looking at.

Ms. GOLDBERG. I would just add to that if I could that I think you are completely right, that mobile gives a lot of opportunities or possibility for democratization. But if the systems that are utilizing that mobile technology are built on discriminatory data and reflect the biases that are inherent and historic in our society, then it is not going to work the way we would all hope it would work. And so, we need more transparency, we need better oversight, and we need to make sure that the laws that govern the use of that kind of technology like the Communications Decency Act don't impede our ability to use the Fair Housing Act to make sure that discrimination is not taking place on mobile platforms or anything else.

Mr. LYNCH. Right. Thank you very, very much.

I see my time has expired.

I would like to thank all of our witnesses for their testimony today.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And this hearing is now adjourned. Thank you.

[Whereupon, at 1:05 p.m., the hearing was adjourned.]

A P P E N D I X

April 2, 2019



TESTIMONY

EXPANDING HOUSING OPPORTUNITY IN AN ENVIRONMENT OF EXCLUSIONARY REGULATION

Salim Furth

Senior Research Fellow, Mercatus Center at George Mason University

House Committee on Financial Services

April 2, 2019

Good morning, Chairwoman Waters, Ranking Member McHenry, and members of the House Committee on Financial Services. Thank you for giving me the opportunity to address the committee today.

My name is Salim Furth and I am a senior research fellow at the Mercatus Center at George Mason University, where I am codirector of the Urbanity project. I study land use regulations that are barriers to opportunity. My comments today will focus on the details of the Affirmatively Furthering Fair Housing (AFFH) rulemaking; but first, please allow me to frame one of the fundamental problems in the US housing market.

THE EXCLUSION PROBLEM IN URBAN PLANNING

Contemporary American land use law embodies the bad idea that private land use ought to be publicly planned. In practice, these plans routinely exclude low-income families by indirect means, causing income-based segregation.

Exclusion is widespread: most jurisdictions, through zoning ordinances, ban apartments and manufactured homes in all but a few locations. Single-family homes are usually allowed, but only in specified areas and often on lots larger than many buyers want.

As a consequence, those states that give the most power to planners and the least authority to property owners have abysmal housing growth rates. When wages rise in those states, rents and home prices soar.

Some of the most vibrant economies in the United States have housing growth rates comparable to the Rust Belt. As I note in previous research, “The median census tract growth rate in [the] Los Angeles, San Diego, and San Francisco [metro areas] was about the same as in struggling Rochester and Buffalo, New York.”¹ Silicon Valley has a smaller share of the US population now than it did in 1990.² These places are practicing so much small-scale exclusion that it amounts to a regional crisis of housing affordability.

¹ Salim Furth, “Housing Supply in the 2010s” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2019), 39.

² Silicon Valley is defined here as San Mateo and Santa Clara counties. Data are from US Census, Decennial Census 1990 and Population Estimates 2017.

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The standard defense of zoning is that it addresses spillovers from growth (that is, externalities). This is true. But it removes more positive than negative externalities. There are fewer noise violations and fewer parking crunches thanks to zoning, but there are also fewer job opportunities, fewer neighborly friendships, and fewer escapes from poverty. Density has many spillovers, and most of those spillovers are positive.

THE ROLE OF FEDERAL GOVERNMENT

Although restrictions on housing production do not originate with the federal government, federal policymakers ought to be concerned about them. For one thing, local restrictions have become a major macroeconomic concern. For another, federally supported housing has to abide by these rules as well. When land is artificially scarce, federally funded housing construction and rent support are more expensive and less effective.

In this environment, how should federal policymakers respond?

Policymakers should resist the temptation to implement anything like nationalized or state-wide zoning. What they can and should do is amend the ways in which federal policy interacts with local government to encourage and facilitate inclusion and to stop subsidizing extremely exclusionary local policies.

In this spirit, my colleague and codirector Emily Hamilton and I submitted a public interest comment to the US Department of Housing and Urban Development (HUD) to suggest specific revisions to the AFFH rule.³ That comment is submitted as an attachment to this testimony.

The 2015 AFFH rule is based in an important but vague admonition in the Fair Housing Act that “the Secretary” shall act “in a manner affirmatively to further the purposes of this subchapter.”⁴ In layman’s English, I take this to mean that HUD has to abide by the spirit of the law, not just the letter of the law.

Exclusionary zoning seems like a clear example of government violating the spirit of the Fair Housing Act without technically discriminating against any protected class. HUD, under both the current and previous administrations, seems to agree.

But when HUD makes grants to localities that are actively fighting the construction of modest amounts of rental housing—Cupertino, California, comes to mind—it is not affirmatively furthering fair housing. The 2015 AFFH rule, however, has not led to any change whatsoever in HUD’s grant-making behavior. Cupertino is in good standing and has received a Community Development Block Grant (CDBG) to rebuild some sidewalks.

In the year and a half during which the 2015 AFFH rule was used by HUD, a pattern emerged: Entitlement communities would submit a long document. HUD staff would review and send it back for corrections. The document would grow even longer. When it was finally done, the entitlement community would be qualified to receive funding for the next five years. The documents typically contained analysis of any segregation and demographics as well as some plans to improve policy. There were, however, no teeth, and I am unaware of a single local policy that was changed as a consequence of the rule.

³ Salim Furth and Emily Hamilton, “Conditioning HUD Grants on Housing Market Outcomes Furthers Fair Housing” (Public Interest Comment, Mercatus Center at George Mason University, Arlington, VA, October 3, 2018).

⁴ Fair Housing Act, 42 U.S.C. § 3608(e)(5) (2018).

Hamilton and I offer three principles for revision of the AFFH rule:

1. The rule should evaluate enacted policies and market outcomes, not plans.
2. The rule should be easy to administer.
3. The rule should have real teeth.

Following these principles promotes fair housing more effectively and with less wasted effort.

The AFFH rule made lots of work for planners without taking seriously the elected decision makers. HUD should reverse this emphasis. To be in good standing with HUD, jurisdictions should be able to point to market outcomes or enacted policies that are consistent with inclusion and strong property rights.

Second, HUD ought to strive for ease of administration. By all accounts, an extraordinary amount of work went into preparing and evaluating the Fair Housing Assessments required by the AFFH rule. But do not mistake administrative burden for policy rigor. Standing in a long line at the DMV doesn't make somebody a better driver.

Our final principle is that the AFFH rule ought to have real consequences, at least for egregiously exclusive grantees. How can the secretary of HUD be acting "affirmatively to further fair housing" when he or she approves grants to jurisdictions that have high and rising rent, issue few housing permits, and are unwilling to change policy to allow more housing construction?

There are many ways to put teeth into AFFH. The most obvious is for highly exclusionary jurisdictions to lose access to CDBG funds for a time. CDBG funds are the ideal carrot or stick because they are rarely used for housing. Under existing statute, however, this is difficult and would result in lawsuits. A softer set of teeth would be to require that CDBG funds in highly exclusionary jurisdictions be spent directly on low-income housing.

In our public interest comment, Hamilton and I outline one particular approach for the AFFH rule. But there are many ways to implement our principles. With the help of this committee, HUD can, and should, revise the AFFH rule to focus on enacted policies and market outcomes rather than plans. This would ease the costs of administration and to have real financial consequences.

ATTACHMENT

Salim Furth and Emily Hamilton, "Conditioning HUD Grants on Housing Market Outcomes Furthers Fair Housing" (Public Interest Comment)



MERCATUS CENTER
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Bridging the gap between academic ideas and real-world problems

PUBLIC INTEREST COMMENT

CONDITIONING HUD GRANTS ON HOUSING MARKET OUTCOMES FURTHERS FAIR HOUSING

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Affirmatively Furthering Fair Housing: Streamlining and Enhancements
US Department of Housing and Urban Development
Proposed: August 16, 2018
Comment Period Closes: October 15, 2018
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Thank you for the opportunity to comment on the Department of Housing and Urban Development's (HUD's) proposed rule, Affirmatively Furthering Fair Housing: Streamlining and Enhancements. The Mercatus Center at George Mason University is dedicated to bridging the gap between academic ideas and real-world problems and to advancing knowledge about the likely consequences of proposed regulation for private markets. Accordingly, this comment represents the views of no particular party or interest group.

HUD has an opportunity to reform the 2015 Affirmatively Furthering Fair Housing rule to encourage local land use regulations that facilitate the agency's statutory mandate. This comment assesses opportunities for HUD to use its Community Development Block Grant (CDBG) program as a tool to encourage local reform that will permit more housing construction in locations where demand is high.

The mission of HUD to support affordable housing in the locations where economic opportunities are located is among the most important issues facing policymakers today. But HUD cannot achieve its mission without reform of the local land use regulations that stand in the way of new housing construction. The Fair Housing Act requires HUD grantees to affirmatively further fair housing. Today, many grantees have enacted zoning ordinances that prevent private property owners from providing abundant, low-cost housing to low- and moderate-income Americans.

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The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

Not only are HUD grantees failing to affirmatively further fair housing, but in many cases they enforce land use regimes that specifically prevent the construction of housing affordable to low- and moderate-income households. The burden of land use regulation falls disproportionately on black and Hispanic residents.

Rising home prices in cities with growing populations are not a law of nature. In *Living Downtown*, Paul Groth describes how low-cost apartments, long-term hotel rentals, and single-room occupancies provided affordable housing for low-wage workers in America's fast growing cities in the past.¹ Today, single-family zoning, minimum unit size requirements, and single-room occupancy prohibitions have largely eliminated new construction of these market-rate affordable housing typologies.

In contrast, cities that have continued to allow new housing construction have avoided skyrocketing prices. Houston has exemplified a pro-housing regulatory approach, voting down zoning,² shrinking minimum lot sizes,³ ending parking minimums downtown,⁴ and fast-tracking permitting.⁵ During a period of high demand, while the city's population increased by half a million people, median Houston home prices topped out at \$235,000, less than the national median.⁶ As a result of pro-housing policy, Houston households across a broad range of incomes can find housing that they can afford.

Economist William Fischel hypothesizes that prior to 1970, enough municipalities in growing metropolitan areas were open to new greenfield development that as some suburbs began rejecting development, developers could simply move on to another suburb.⁷ He posits that the emergence of the environmental movement in the 1970s provided a reason homeowners could organize against new development in their neighborhoods and cities while pretending not to benefit their narrow financial self-interest.⁸ Over time, this opposition resulted in regions where very little housing construction has been permitted, and increases in demand have driven prices up as a result.

The federal government has a clear interest in promoting economic growth and mobility. Policies that prevent low-income people from moving to pursue economic opportunity strain federal safety net programs and limit HUD's effectiveness.⁹ Within constitutional and statutory limits, the federal government has an interest in promoting and rewarding promarket land use policy. This public interest comment proceeds as follows:

- Section I provides an overview of current housing market conditions, the regulatory environment that constrains housing construction, and the erosion of local federalism in strictly regulated areas.

¹ Paul E. Groth, *Living Downtown: The History of Residential Hotels in the United States* (Berkeley, CA: University of California Press, 1994), 306–10.

² John F. MacDonald, "Houston Remains Unzoned," *Land Economics* 71, no. 1 (Feb 1995): 137–40.

³ Nunu Chang, "Planning the Houston Way, Part II: Special Minimum Lot Size," *OffCite*, March 21, 2018.

⁴ City of Houston, *Chapter 26 Summary of Changes*, February 22, 2013.

⁵ http://www.houstontx.gov/planning/DevelopRegs/offstreet/docs_pdfs/Chapter26_Summary-of-AmendmentsOverview.pdf.

⁶ City of Houston Planning and Development Department, *Planning and Development Expedited Review Guidelines*, May 15, 2018.

⁷ Olivia Pulsinelli, "Houston's Median Home Prices Hit All-Time Record, Leases Skyrocketed in May," *Houston Business Journal*, June 13, 2017.

⁸ William A. Fischel, "An Economic History of Zoning and a Cure for Its Exclusionary Effects," *Urban Studies* 41, no. 2 (2004): 317–40.

⁹ Fischel, "An Economic History of Zoning."

⁹ David Schleicher, "Stuck! The Law and Economics of Residential Stagnation," *Yale Law Journal* 127, no. 1 (2017): 78–154.

- Section II examines the 2015 Affirmatively Furthering Fair Housing (AFFH) rule, and the consequences of its focus on plans rather than concrete reforms.
- Section III lays out HUD's statutory authority to encourage local land use regulation reform and the benefits and drawbacks of CDBGs as a reform incentive.
- In Section IV we develop a market test for jurisdictions that should be flagged for reform in order to receive ongoing CDBG funding and specific policy reforms that must be implemented in jurisdictions that fail the market test in order to receive ongoing CDBG grants.
- Finally, Section V distinguishes between the "entitlement communities" that receive CDBG funding and the public housing authorities and state governments that the 2015 AFFH rule also covers.

SECTION I: BACKGROUND: HOUSING MARKETS IN THE 21ST CENTURY

On the 50th anniversary of the Fair Housing Act, America's housing markets are more segregated by income than at any time since the act was passed and possibly in the history of the nation.¹⁰ Housing is increasingly bundled with community amenities including schools, access to employment opportunities, public services, and neighborhood peer effects. This has occurred because local governments, including many CDBG entitlement communities, prohibit housing construction in the quantity that would serve low-income families.

The rising inequality in cost between metro areas now overshadows the inequality within most metro areas. For instance, metro Dallas has maintained affordability even in desirable suburbs, while the San Francisco Bay Area has allowed rent to skyrocket even in poor areas. Thus, Zillow data shows that the median two-bedroom rental listing in Frisco, Texas—an affluent suburb of Dallas with an excellent school system—is \$1,600 per month.¹¹ In Oakland, California, where three out of four school children qualify for free or reduced price meals on account of their low family incomes, the median is \$2,895 per month.¹²

The policy approach taken by HUD and most state welfare agencies to address lack of housing access has been to subsidize housing for the lowest-income families through programs such as HOME Investment Partnerships, or by imposing rent control. These approaches can backfire—by bidding up the price of a stock of apartments fixed by restrictive zoning and by inducing landlords to remove units from the rental market.¹³

¹⁰ Kendra Bischoff and Sean F. Reardon, *Residential Segregation by Income, 1970-2009* (Providence, RI: Project US2010, 2013), 4, figure 2; Ann Owens, Sean F. Reardon, and Christopher Jencks, "Income Segregation between Schools and School Districts," *American Education Research Journal* 53, no. 4 (2016): 1159-97; Douglas Massey, "The Age of Extremes: Concentrated Affluence and Poverty in the Twenty-First Century," *Demography* 33, no. 4 (1996): 395-412.

¹¹ Zillow Research, Median Rent List Price (\$), 2-Bedroom (dataset, July 2018 data), accessed September 7, 2018, <https://www.zillow.com/research/data/>.

¹² Education Data Partnership, "Oakland Unified," accessed September 7, 2018, <http://www.ed-data.org/district/Alameda/Oakland-Unified>.

¹³ Scott Susin, "Rent Vouchers and the Price of Low-Income Housing," *Journal of Public Economics* 83, no. 1 (2002): 109-52; Gabrielle Fack, "Are Housing Benefit an Effective Way to Redistribute Income? Evidence from a Natural Experiment in France," *Labor Economics* 13, no. 6 (2006): 747-71; Michael D. Eriksen and Amanda Ross, "Housing Vouchers and the Price of Rental Housing," *American Economic Journal: Economic Policy* 7, no. 3 (2015): 154-76; Robert Collinson and Peter Ganong, "How Do Changes in Housing Voucher Design Affect Rent and Neighborhood Quality?," *American Economic Journal: Economic Policy* 10, no. 2 (2018): 62-89; Blair Jenkins, "Rent Control: Do Economists Agree?," *Econ Journal Watch* 6, no. 1 (2009): 73-112.

Government intervention may be necessary to provide housing to the very poorest families, but the costs of affordable housing programs in terms of both money and efficiency mount if the intervention expands to include a larger share of the market. It is only recently, and only in antigrowth coastal metropolitan areas, that market-provided housing has become unaffordable to working-class families.

Institutional Structure of Land Use Policy

Any solution to America's rent crisis must first recognize how localized the problem is and that it is fundamentally caused by constraints that erode clear property rights in a market that would otherwise provide far more housing to meet the demand. Furthermore, it must grasp that those constraints are layered, substitutable, and polycentric.

Land use decisions in US cities and suburbs are asymmetric. Landowners or managers can generally decide to shrink their supply of housing or other land uses unilaterally.¹⁴ But intensifications or use-changes of land require the explicit permission of several other semi-independent institutions.

The incentives facing landowners are generally aligned with the goals of the Fair Housing Act: where demand is high, landowners have an incentive to use land more intensively, building smaller, denser units that accommodate more residents.¹⁵ As long as the expected net present value of future rent exceeds the cost of construction and land, economic theory predicts that housing supply will expand. Edward Glaeser, Joseph Gyourko, and Raven Saks argue that construction is a very competitive industry that should be expected to bring residential real estate prices down close to costs. They refer to the difference between construction costs and prices as a city's "zoning tax," which amounts to 57 percent of the cost of housing in Manhattan.¹⁶

Incentives facing actors in the other institutions, which can potentially veto expanded housing supply, are not aligned with the goals of the Fair Housing Act. Local government officials are averse to projects that will lead to net fiscal costs for local government—and they zone accordingly.¹⁷ Neighbors bear the costs of disruptive construction and future traffic and may dislike a possible change in the "character" of a neighborhood.

Local government land use institutions are far from monolithic. A landowner interested in providing more housing may have to deal with a professional planning department, a zoning board made up of citizens, a historical commission, a neighborhood commission, public hearings, a state environmental review board, and a city department that licenses rental units.

From a bundled property rights perspective,¹⁸ the institutional failure in urban land use is not that landowners' rights are too narrow but that too many institutions and actors have the right of

¹⁴ The fact that housing is physically durable makes this rare. See Edward Glaeser and Joseph Gyourko, "Urban Decline and Durable Housing," *Journal of Political Economy* 113, no. 2 (2005): 345–75.

¹⁵ Gilles Duranton and Diego Puga, "Micro-Foundations of Urban Agglomeration Economies," in *Handbook of Regional and Urban Economics*, ed. J. Vernon Henderson and Jacques-François Thisse, vol. 4 (Amsterdam: Elsevier, 2004), 2063–2117.

¹⁶ Edward L. Glaeser, Joseph Gyourko, and Raven Saks, "Why Is Manhattan So Expensive? Regulation and the Rise in House Prices" (NBER Working Paper No. 10124, National Bureau of Economic Research, Cambridge, MA, November 2003).

¹⁷ Robert Maddox, "The Assessor's Role in Planning and Zoning," *Zoning Digest* 15, no. 4 (1963): 89–120.

¹⁸ Edella Schlager and Elinor Ostrom, "Property-Rights Regimes and Natural Resources: A Conceptual Analysis," *Land Economics* 68, no. 3 (1992): 249–62.

exclusion. Any one of these institutions can stop a project; none of them can initiate the construction of new housing.

The multiplicity of semi-independent institutions means that opponents to growth use different processes to prevent growth in different contexts.

As HUD approaches this complex problem, it should be aware that institutions can and do respond to new mandates with policies of their own. For example, Massachusetts municipalities may have used new designations of conservation land and wetlands to evade the state's "anti-snob zoning act."¹⁹ Likewise, "inclusionary zoning" mandates make multifamily projects less financially viable, and in some places have the effect of increasing average rent or exacerbating patterns of segregation.²⁰ State or federal inclusionary zoning mandates may induce unenthused municipalities to make all development more difficult.

More generally, top-down land use requirements can be a poison pill that causes markets or local policymakers to shut down development altogether. Thus, HUD must carefully consider the political equilibrium as well as the market equilibrium when it considers how to affirmatively further fair housing.

Federalism

Charles Tiebout was the James Madison of economics, crafting a theory of federalism that has endured for generations.²¹ In Tiebout's model, individuals can choose among local jurisdictions to match their own ideal tradeoff between taxes and the provision of public goods. Competition among localities effectively solves the "free rider" problem without infringing drastically on anyone's freedom: those who want more or less government can vote with their feet.

In the postwar era, Tiebout's tradeoff described the world reasonably well: most Americans could choose among ever-evolving cities, established towns, and rapidly-growing new suburbs. A generation of urban planners was taught that while NIMBYism prevailed in the suburbs, the corrupt "growth machine" of politicians and developers ran the big cities.²²

But in the 21st century, Tiebout federalism has broken down owing to the extreme cost of housing. Low- and moderate-income Americans, who are disproportionately racial minorities, are excluded from affluent cities and suburbs by governmental regulations that keep prices high by preventing new construction. For this reason and others, low-income Americans are very immobile.²³

¹⁹ Christophe Courchesne, "What Regional Agenda?: Reconciling Massachusetts's Affordable Housing Law and Environmental Protection," *Harvard Environmental Law Review* 28, no. 1 (2004): 215–47.

²⁰ Robert C. Ellickson, "The Irony of Inclusionary Zoning," *Southern California Law Review* 54 (1981): 1167–1216; Antonio Bento et al., "Housing Market Effects of Inclusionary Zoning," *Cityscape* 11, no. 2 (2009): 7–26; Jenny Schuetz, Rachel Meltzer, and Vicki Been, "Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States," *Urban Studies* 48, no. 2 (2010): 297–329; Constantine E. Kontokosta, "Mixed-Income Housing and Neighborhood Integration: Evidence from Inclusionary Zoning Programs," *Journal of Urban Affairs* 36, no. 4 (2014): 716–41.

²¹ Charles M. Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64, no. 5 (1956): 416–24.

²² Harvey Molotch, "The City as a Growth Machine: Toward a Political Economy of Place," *American Journal of Sociology* 82, no. 2 (1976): 309–32. NIMBY stands for "not in my back yard."

²³ Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality* (Chicago: University of Chicago Press, 2013).

The new exclusionism arises from a distaste for suburban sprawl,²⁴ intent to raise prices by suppressing supply,²⁵ a desire to prevent low-income students from attending schools,²⁶ environmentalism,²⁷ and the rise of regional governments.²⁸ Restoring Tiebout federalism in the rich coastal metro areas requires a general decrease in rent and home prices. The rise in home prices is recent enough in most places that many of their residents could not afford to “buy into” the neighborhood now. Without reform, these places will become less diverse and more exclusive over time, as the remaining moderate-income families gradually filter out and are replaced by uniformly high-income neighbors.

Conservatives have long, and rightly, praised localism as an alternative to large, centralized government.²⁹ But the local-government advantage diminishes as the ability to choose among locations is limited.³⁰ (Enthusiasts for regionalism should also note that choice also loses its power if competing jurisdictions all have similar policies.)

SOLUTIONS

The housing crisis can and must be solved principally by local and state policy reform. Municipalities, counties, and states can affirmatively further fair housing by clarifying and expanding property rights. In practice, that means respecting “by right” projects—rapidly approving them and making clear to neighbors that they do not possess the right of veto. It means expanding the scope of “by right” development and legalizing the subdivision of existing units for rent. It means ending the abuse of environmental protection statutes. It means moving beyond the use of zoning as a tool to limit access to jurisdiction based on income or race.

The federal role in local land use policy can and should be limited. First of all, the federal government should continue to guarantee individual rights. As Antonin Scalia noted in 1982, “federalism” cuts both ways, and the forbidding of excessive local regulation is a legitimate use of federal power.³¹

At a minimum, the federal government should not subsidize exclusionary policy. Why should national taxpayers foot the bill for rent subsidies where the rent is artificially high as a result of unreasonable limitations of private property rights? Why should HUD invest in communities that refuse to accept private housing investment? Cupertino, California, with a median family income of \$172,000 and the headquarters of the world’s most valuable company,³² received a Community

²⁴ Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck, *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* (New York: North Point Press, 2000).

²⁵ Bruce W. Hamilton, “Zoning and the Exercise of Monopoly Power,” *Journal of Urban Economics* 5, no. 1 (1978): 116–30.

²⁶ Salim Furth, “The Two-Board Knot: Zoning, Schools, and Inequality,” *American Affairs* 1, no. 4 (2017): 3–18.

²⁷ William Fischel, *Zoning Rules!: The Economics of Land Use Regulation* (Cambridge: Lincoln Institute of Land Policy, 2015), 203–5.

²⁸ Fischel, “Zoning Rules!,” 205–7.

²⁹ See, e.g., Antonin Scalia, “The Two Faces of Federalism,” *Harvard Journal of Law and Public Policy* 6 (1982): 19; Gilbert Keith Chesterton, *The Napoleon of Notting Hill* (London: The Bodley Head, 1904); Malcolm Tait and Andy Inch, “Putting Localism in Place: Conservative Images of the Good Community and the Contradictions of Planning Reform in England,” *Planning Practice and Research* 31, no. 2 (2016): 174–94.

³⁰ Emily Hamilton, “The Case for Preemption in Land-Use Regulation,” Mercatus Center at George Mason University, July 20, 2017.

³¹ Antonin Scalia, “The Two Faces of Federalism.”

³² US Census Bureau, “Selected Economic Characteristics, 2012–2016 American Community Survey 5-year Estimates, Cupertino city, California,” accessed September 10, 2018; Seung Lee, “Apple Becomes First U.S. Company to Hit \$1 Trillion Market Value,” *The Bulletin*, August 2, 2018.

Development Block Grant to build sidewalks.³³ At the same time, the city maintains rigid single-family zoning in most of its land area and has approved building permits at a pedestrian rate despite rocketing demand.

In the final sections of this comment, we will propose a framework for enforcing the Fair Housing Act's mandate that participating communities affirmatively further fair housing by leveraging CDBG funding as an incentive for locally chosen policy reforms.

SECTION II: PROGRESS UNDER THE AFFIRMATIVELY FURTHERING FAIR HOUSING RULE

The 2015 AFFH rule required policymakers in jurisdictions receiving HUD funding to examine segregation in their jurisdictions and opportunities for state and local reform. The program identified several major cities that were required to create plans for reform based on their levels of housing and service segregation. Identification of these segregated jurisdictions and creating these plans required extensive resources from both HUD and the municipalities. However, there is little to no evidence that these planning efforts have increased access to housing in exclusionary neighborhoods for low-income people or minorities.

Kansas City, Missouri, is one jurisdiction that was identified as needing a plan to improve integration under the AFFH rule, and it complied by working with the local Mid-America Regional Council (MARC) to submit a report.³⁴ One of the plan's stated goals is to "develop model zoning code for smaller homes on smaller lots and small (4-12 unit) multifamily."³⁵ The plan was published in 2016, so it may be too soon to evaluate whether or not the region will carry out its goal to upzone, but so far, it has not. In commenting on the report, MARC staff member Marlene Nagel emphasized a shortage of federal funds for affordable housing rather than focusing on the potential for localities to upzone themselves. She said, "Everyone says we don't have the resources to address the challenges [described] in the plan. I think that attitude hasn't changed, because they are feeling like we are all doing as much as we can do with the resources we have."³⁶ Under the AFFH rule, the Kansas City region met the requirements to receive ongoing HUD funding by publishing this report whether or not it achieves any of the goals in the report.

Rather than relying on local policymakers' vague and unenforced commitments to integrate, HUD should tie the disbursement of CDBG grants to clear requirements for already-enacted zoning deregulation or reforms to the entitlement process that reduce the cost of building new housing. HUD should set clearly defined metrics at which cities must begin permitting more housing, if they want to continue receiving grants. Past HUD efforts to use AFFH to increase access to opportunity, while well intentioned, have failed to induce the deregulation needed to open up exclusionary jurisdictions.

The 2015 AFFH rule required cities and counties to use a software package to estimate their level of racial and income integration in housing and services. However, rather than requiring specific reforms, such as upzoning, that would allow more lower-income people to access exclusionary neighborhoods and school districts, the rule required jurisdictions to create plans for

³³ US Department of Housing and Urban Development, "Integrated Disbursement and Information System, Expenditure Report, Use of CDBG Funds by CUPERTINO, CA from 07-01-2016 to 06-30-2017," June 19, 2018.

³⁴ *Plan for Affirmatively Furthering Fair Housing* (Kansas City, MO: Mid-America Regional Council, 2011).

³⁵ *Plan for Affirmatively Furthering Fair Housing*.

³⁶ Jake Blumgart, *Fair Housing at 50* (Chicago: American Planning Association, 2018).

integration. Because current local policies allow new housing construction to be vetoed at so many points, a plan for more integration could easily be blocked by other policies. For example, a city could reform zoning to allow multifamily housing in all neighborhoods, seemingly a big step toward allowing income integration. But the city could then put so many exactions on multifamily housing that none of it ever gets built.

Thus, we concur with the sense of the Advance Notice of Potential Rulemaking that the AFFH rule should be revised to require less administrative burden, to focus on clear outcomes rather than resource-intensive planning and reporting.

SECTION III: REFORMING AFFH TO REQUIRE OUTCOMES RATHER THAN PLANS

In order to incentivize actions rather than plans, HUD should revise the 2015 rule to make CDBG funds contingent on clear policy requirements and market outcomes for states and entitlement communities. The 2015 rule would have withheld all HUD funds from grantees that failed to make plans to affirmatively further fair housing. Under this policy, residents in an exclusionary jurisdiction could be further harmed by the withdrawal of HUD funds through the HOME Investment Partnerships Program (HOME), Emergency Solutions Grants, and Housing Opportunities for Persons with AIDS. Unlike CDBG, these other programs are used almost exclusively to provide direct support to house low-income people. Thus, we recommend withholding only CDBG funding from jurisdictions that fail HUD's test.

We take as given the current statutory requirements that determine HUD's authority and funding formulas, but this should not be taken as an endorsement of the current programs or their formulas. Within this framework, leveraging grants is one of the few ways HUD can encourage local reform, and CDBG is the funding tool most likely to encourage local policy reform. To be sure, CDBG is not an ideal incentive for reform, because small, highly exclusionary jurisdictions may not receive CDBG funding. Furthermore, because exclusionary zoning correlates with high incomes and large tax bases, exclusionary jurisdictions may prefer to opt out of HUD funding rather than affirmatively further fair housing.

Although CDBG funding is not proportionate to the need for upzoning, it is nonetheless a good tool for encouraging local government reform. The stated purpose of CDBG is to support housing, economic development, and infrastructure.³⁷ The funds come with few restrictions on how they can be used. Potential uses for CDBG funds include public services, acquisition of real property, and public facilities and improvement.³⁸

In part because the funds can be used so flexibly, CDBG enjoys broad popularity with local government officials who can use the funds to support their priorities.³⁹ CDBG funds have been used to support brew pubs, historic sites, and marinas.⁴⁰ In most cases, cutting CDBG funding to entitlement communities that use land use regulation to obstruct HUD's objectives will not directly harm residents who are struggling to afford housing. However, according to a Politico poll,

³⁷ US Department of Housing and Urban Development, "Community Development Block Grant Program - CDBG," accessed September 11, 2018, https://www.hud.gov/program_offices/comm_planning/communitydevelopment/programs.

³⁸ US Department of Housing and Urban Development, *Guide to National Objectives & Eligible Activities for Entitlement Communities*, chapter 2, 2-2.

³⁹ *CDBG Works: How Mayors Put CDBG to Work* (Washington, DC: United States Conference of Mayors, 2017).

⁴⁰ Scott Shackford, "The Community Development Block Grant Program Is Awful and Should Be Cut," *Reason*, March 16, 2017.

63 percent of mayors said that losing CDBG funding would be “devastating” for their communities, a higher percentage than said the same for federal funding for housing, education, transportation and infrastructure, public safety, or legal aid for low-income residents.⁴¹

A municipality’s eligibility for CDBG funding under current formulas is not a guarantee that they will receive these funds. The Fair Housing Act gives HUD the mandate to enforce the goal of affirmatively furthering fair housing, so the agency has the statutory ground to withhold funds from jurisdictions that stand in the way of the goal. Jurisdictions that use land use regulations to shut out low-income residents should not receive subsidies from a program with the objective of “providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons.”⁴² If jurisdictions with exclusionary zoning put CDBG funds to use in a way that increases the amenity value of their region, CDBG-funded projects may lead to an increase in house prices, further restricting access for low-income households and actively working against the program’s goal.

Conditioning CDBG grants on reform would not preempt local regulations. CDBG grants can serve as an incentive for municipalities to reform exclusionary zoning without requiring them to do so. Using CDBG funding as an incentive for land use reform furthers HUD’s mission without violating the freedom for policy experimentation at the state or local level.

Preemption of local land use regulations is, however, a legal recourse of state governments because municipalities are “creatures of their states.” Economist Michael Farren has argued that, while federalism serves citizens best when rulemaking is devolved as far as possible, higher level governments maintain a role to protect property owners’ rights from over-regulation at the local level.⁴³ This principled case for preemption rests on the state’s duty to protect property owners’ rights to determine the best use of their land.

Rather than providing a check against exclusionary zoning, the states where low- and moderate-income people have the least access to housing have largely upheld complete local control, or even added further potential vetoes to projects on environmental grounds.⁴⁴ Local policymakers have proved to be highly responsive to local nuisance concerns—to the detriment of the property rights of landowners and the concerns of rent-burdened residents.⁴⁵ In keeping with its mission to advance housing affordability, HUD should also consider withholding CDBG grants to states that have used their preemptive power to erode rather than protect individual rights as they pertain to housing supply.

While local government restrictions on housing construction are the primary policy cause of housing supply restriction and high and rising prices, past federal government policies have exacerbated housing shortages. Under the Housing Act of 1937, federal transfers to localities

⁴¹ Aidan Quigley, “Why Trump’s Budget Terrifies America’s Mayors,” *Politico Magazine*, April 24, 2017.

⁴² US Department of Housing and Urban Development, “Community Development Block Grant Entitlement Program,” <https://www.hudexchange.info/programs/cdbg-entitlement/>.

⁴³ Michael Farren, “Nirvana’s Night Watchman: A Response to Adam Thierer,” Mercatus Center at George Mason University, July 26, 2017.

⁴⁴ Fischel, *Zoning Rules!*, 54–7; Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, *In the Name of the Environment: How Litigation Abuse under the California Environmental Quality Act Undermines California’s Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse* (California: Holland & Knight, 2015).

⁴⁵ David Schleicher, “Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law,” *Journal of Law and Politics* 23, no. 4 (2007): 419–73.

provided the funds for slum clearance and urban renewal projects that eliminated hundreds of thousands of urban housing units, primarily units occupied by low-income tenants.⁴⁶ While these programs may have improved the average quality of the remaining housing stock, they left low- and moderate-income people to compete for a reduced stock of housing that they could afford. The effects of these programs are still felt today in high-cost cities.⁴⁷

Given the history of federal programs making housing conditions worse for the country's most vulnerable populations, the first principle for reforming AFFH should be "do no harm." Regulators should proceed with caution and a hyper-awareness of potential unintended consequences based on the past outcomes of federal intervention in land use policy.

SECTION IV: RECOMMENDATIONS FOR REFORM: ENTITLEMENT COMMUNITIES

HUD should replace the Assessment of Fair Housing (AFH) tool with an evaluation that is simple, transparent, and qualifies communities based on their outcomes and policies rather than their good intentions.

We recommend a two-part test, holding communities to account for market outcomes and requiring that expensive, slow-growing communities move policy in a direction that affirmatively furthers fair housing. In order to receive CDBG, HOME, or other funding as an entitlement community, each jurisdiction would need to pass one of the two tests.

Market Test

The market test would verify that if a community faces high housing demand, it is meeting at least some of that demand through increased housing in some form. Formally, a community must be able to answer "yes" to at least one of the following four questions:

1. Is rent below the US median?
2. Is rent below the average in its metropolitan area?
3. Did real rent decline, on net, over the past five years?
4. Did the jurisdiction or its constituent parts issue net building permits for new housing units equal to at least 5 percent of its housing stock over the past five years?

For the purposes of questions 1 and 3, "rent" is Small Area Fair Market Rent for a three-bedroom unit as calculated by HUD, averaged across the ZIP codes that constitute the jurisdiction in question. For question 2, HUD publishes a ZIP/CBSA ratio that indicates whether local Fair Market Rent is above or below the metropolitan average; this should be averaged across ZIP codes in a jurisdiction. "Net building permits" denotes the number of residential units permitted for construction minus the number of residential units permitted for demolition.

The first three questions allow municipalities with low or falling rent to qualify: they may face low demand or a recession. Such communities are likely to have high rates of poverty and fewer local resources to address challenges.

⁴⁶ William J. Collins and Katherine L. Shester, "Slum Clearance and Urban Renewal in the United States" (NBER Working Paper No. 17458, National Bureau of Economic Research, Cambridge, MA, November 2012).

⁴⁷ Groth, *Living Downtown*.

The fourth question gets to the heart of the housing crisis: where rent is high and rising, are governments allowing the private sector to do its part in alleviating rent burdens?

We expect that in high-cost coastal markets a substantial fraction of entitlement communities will fail the market test. In less-costly and fast-growing areas, a few particularly exclusive jurisdictions would fail the test, many of which are not CDBG entitlement communities in any case.

Policy Test

Jurisdictions that fail the market test can maintain their entitlement community status by passing the policy test, which would require each community to document at least one step it has taken in the past five years to affirmatively further fair housing by reforming public institutions in ways that clarify and strengthen property rights and promote market affordability. HUD would provide a list of qualifying policy reforms, such as the following:

Expand by-right housing development

- Expand multifamily zoned areas by at least 1 percent of the land area of the jurisdiction
- Allow duplexes, triplexes, or fourplexes in at least one-fourth of areas zoned primarily for single-family residential
- Allow manufactured homes in at least one-fourth of areas zoned primarily for single-family residential
- Allow multifamily development in retail and office zones
- Allow single-room occupancy development wherever multifamily housing is allowed
- Reduce minimum lot sizes by at least 50 percent in at least 25 percent of residential zoned areas
- Reduce the number of buildings protected by historic preservation by at least 25 percent
- Increase allowable floor area ratio (FAR) by at least 25 percent in multifamily areas that must cover at least 5 percent of the land in the jurisdiction
- Create transit-oriented development zones that account for at least 5 percent of the city's residential zones and allow for a FAR of 10 or greater

Reduce costs of development

- Eliminate parking minimums
- Adopt parallel-process permitting
- Establish one-stop permitting
- Allow prefabricated construction
- Eliminate minimum unit size requirements
- Eliminate architectural standards other than those required for safety

Expand use rights in existing building stock

- Allow conversion of office units to apartments

- Allow subdivision of single-family homes into duplexes
- Allow accessory dwelling units (including detached accessory dwelling units) on all lots with single-family homes
- Allow detached (attached) accessory dwelling units at single-family homes that already have an attached (detached) accessory dwelling unit
- Legalize short-term home rentals
- Legalize home-based businesses
- Legalize single-room-occupancy boarding houses

Revolutionize local land use institutions

- Adopt land value taxation
- Adopt additive zoning
- Adopt form-based zoning
- Adopt non-zone-based regulatory framework
- Adopt pre-approved plans for accessory dwelling units, single-family homes, duplexes, triplexes, and fourplexes
- Reform subdivision regulations to allow for traditional mixed-density and mixed-use neighborhoods in new development

In addition, where a locally originated idea achieves similar goals, the applicant can submit the policy with a brief justification. HUD should put a tight limit on length—perhaps 2,000 words—and take a good-faith view of submissions. The primary requirement is that the policy must be in effect—not merely introduced, proposed, or planned—at the time of submission.

In application, HUD will have to attach some limits to these reforms: a reform is not a reform if it only applies to a small site, requires onerous fees or permitting time, or if it is offset by countervailing policy in another area. Reforms that reverse a restriction instated in 2018 or later should not qualify. However, some amount of system-gaming will have to be tolerated to keep the reporting requirements from becoming a burden in themselves.

Since this test is conceived as a five-year retrospective evaluation, it should be phased in. Communities that fail to pass either part of their test in the first five years after the final rule is promulgated should forfeit CDBG funding on a prorated basis until their next authorization. That is, a community that fails the test four years after the final rule is promulgated should lose 80 percent of its CDBG funding until it reauthorizes itself as an entitlement community.

SECTION V: HUD FUNDING OUTSIDE OF ENTITLEMENT COMMUNITIES

While the 2015 rule required HUD grantees, including public housing authorities (PHAs) and states, to conduct an Assessment of Fair Housing to submit to HUD, the above test for CDBG entitlement cities and counties receiving CDBG funding cannot and should not be applied directly to other grantees.

PHAs should be exempted from the assessment process entirely. We know of no allegation that public housing authorities are systematically engaged in exclusionary practices. These

agencies exist to serve low-income tenants. Nationally, 84 percent of public housing residents earn less than 50 percent of the median income, and their average annual income is \$14,922.⁴⁸ Forty-two percent of public housing residents are black and 19 percent are Hispanic, compared to about 12 percent each for the country as a whole.⁴⁹

Because PHAs typically have little or no influence over the rules that stand in the way of access to housing that serves low- and moderate-income people, HUD does not need to implement a time-consuming assessment process aimed at PHAs. Of course, PHAs remain obligated to comply with the Fair Housing Act and all other civil rights statutes.

With respect to the CDBG State Program, however, HUD should withhold funds from grantee states that stand in the way of affirmatively furthering fair housing. Real estate market outcomes will naturally vary widely across states, so the market and policy tests developed above cannot reasonably be applied at the state level. Rather than using a quantifiable metric to establish state eligibility for CDBG funding, HUD should consistently monitor state policy for violations of affirmatively furthering fair housing. If state policies are found to stand in the way of HUD's mandates, their CDBG funds should be withheld.

State policies that prevent housing construction that serves low- and moderate-income people may include rules that create additional veto points for new development, rules that prevent development directly (such as statewide growth management), or discriminatory tax policy that discourages new housing construction.

For example, the California Environmental Quality Act (CEQA) introduces a state-level veto point for new development. The law allows residents to sue to block development based on any environmental concern, such as carbon emissions or loss of animal habitat. While CEQA provides a tool for any state resident to delay or prevent new development,⁵⁰ it may actually harm environmental quality if it is used to displace development from dense parts of the state to California areas or other states where housing construction faces fewer obstacles but per capita carbon emissions are higher.⁵¹

State tax laws may also discourage development. For example, property tax caps shield homeowners from being taxed proportionate to their home value. As a result, these caps lower the cost of holding on to a property rather than selling it to someone who may redevelop the site to provide housing for more people.⁵²

Proposition 13, another California example, has particularly pernicious consequences for housing construction. The law limits annual property taxes to 1 percent of a property's value, and it limits assessments to increasing at a rate of 2 percent per year from 1975 as long as the property's ownership doesn't change. Under the rapid property appreciation that many California homeowners have enjoyed, Proposition 13 privileges taxpayers who happened to purchase their homes before others who now have to pay higher rates. Proposition 13 benefits are even inheritable

⁴⁸ US Department of Housing and Urban Development, "Resident Characteristics Report," accessed September 13, 2018, https://www.hud.gov/program_offices/public_indian_housing/systems/pic/50058/rcr.

⁴⁹ US Department of Housing and Urban Development, "Resident Characteristics Report."

⁵⁰ Mac Taylor, *California's High Housing Costs: Causes and Consequences* (Sacramento, CA: Legislative Analyst's Office, May 17, 2015), 18, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>.

⁵¹ US Energy Information Administration, *Energy-Related Carbon Dioxide Emissions by State, 2000-2015*, September 13, 2018.

⁵² Mac Taylor, *Common Claims about Proposition 13* (Sacramento, CA: Legislative Analyst's Office, September 2016), 34, <https://lao.ca.gov/reports/2016/3497/common-claims-prop13-091916.pdf>.

for children and grandchildren of homeowners, so the antidevelopment consequences can carry on even beyond the death of a beneficiary.⁵³

The mandate to affirmatively further fair housing gives HUD reason to withhold CDBG funds from states that discourage housing construction through property tax caps. In cases where states fund public works projects with CDBG because they refuse to rely on their own tax base, the nexus for withholding support is even clearer.

CONCLUSION

HUD has an opportunity to use CDBG grants to entitlement communities and states as a tool to encourage land use policy that advances its mandate to affirmatively further fair housing. CDBG funds are highly popular with those policymakers who are in a position to reform land use policy to allow for more construction. Setting market and policy tests that limit this funding source to the jurisdictions that make it possible to affirmatively further fair housing for low- and moderate-income residents who are disproportionately racial minorities is statutorily appropriate and has the potential to improve outcomes.

⁵³ Liam Dillon and Ben Poston, "California Homeowners Get to Pass Low Property Taxes to Their Kids. It's Proved Highly Profitable to an Elite Group," *Los Angeles Times*, August 17, 2018.



Fair Housing in America and the Challenges Ahead

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United States House of Representatives

Committee on Financial Services

**“The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote
Opportunity in Housing”**

April 2, 2019

Introduction

Good morning, Chairwoman Waters, Ranking Member McHenry, and members of the Committee. My name is Debby Goldberg, and I am Vice President for Housing Policy and Special Projects at the National Fair Housing Alliance.

The National Fair Housing Alliance is the nation's only national civil rights organization dedicated to eliminating all forms of housing discrimination and ensuring equal housing opportunity through leadership, education, outreach, membership services, public policy initiatives, community development, advocacy, and enforcement. NFHA is a trade association comprised of over 200 members located throughout the United States.

I want to thank you for the opportunity to testify today, and I commend the Committee for holding this hearing to review our efforts to eliminate housing discrimination and promote opportunity in housing. April is Fair Housing Month, and it is both timely and appropriate to begin the month by reviewing our efforts to protect the rights afforded to each of us under the Fair Housing Act and to promote opportunity. It is also a good time to assess how well positioned we are as a nation to tackle some of the threats to fair housing that arise from the use of technology, big data and artificial intelligence, which are shaping the housing market in ways that none of us could have anticipated in 1968, when the Fair Housing Act was passed.

The topic before the Committee today has many facets. My testimony will focus primarily on three of them: the status of our fair housing infrastructure, the importance of preserving key tools to ensure fair housing, including two important regulations that are currently under attack by HUD, and the fair housing issues associated with the growing use of technology and big data in the housing market.

Background

"It is the policy of the United States to provide, within constitutional limits, for fair housing throughout the United States."¹

Achieving this goal that Congress set out in the Fair Housing Act requires us to do three things. First, we need to take stock of our history and understand how problems of the past affect our current landscape. Second, we must bolster the infrastructure we have created to provide fair housing and ensure that all of its components have the tools and resources needed for success. Third, we must consider the changes underway in the housing market and the new or revised tools we may need to ensure that those changes do not enable new forms of housing discrimination. NFHA's 2017 report, "The Case for Fair Housing: 2017 Fair Housing Trends Report,"² describes the role played by the federal government in creating the segregated communities that we see today in all of

¹ 42 U.S.C. §3601

² National Fair Housing Alliance, "The Case for Fair Housing: 2017 Fair Housing Trends Report." Washington, DC. 2017. <https://nationalfairhousing.org/2017-fair-housing-trends-report/>

our cities, and in making it possible for White families to climb the path to the middle class, achieving economic prosperity and stability, while preventing families of color from following that same path. As that report notes, the federal government was not the only player in this saga, but the importance of its role and the negative impact of its policies cannot be overemphasized. It begins in the early days of our country and our policies and practices with respect to granting land ownership to White families but not families of color.³ It continues with some of the policies of the New Deal era, when the Home Owners Loan Corporation institutionalized a methodology for rating the level of risk associated with investing in particular neighborhoods that was based on the racial composition and homogeneity, or lack thereof, of those neighborhoods. That methodology ranked as the most risky neighborhoods in which African Americans, other people of color, people of certain faiths, and immigrants from certain countries. Also at the bottom of the ranking were neighborhoods that were integrated, or at risk of “infiltration” by racial, ethnic and religious groups deemed undesirable. This methodology, and the so-called “residential risk” maps upon which it was encoded, guided the policies of other federal agencies involved in the mortgage market, including the Federal Housing Administration and the Veterans’ Administration, and were a major determinant of which neighborhoods and which borrowers would have access to affordable mortgage credit and which would not.

Over many decades, these policies and practices, in concert with others adopted by state and local governments, shaped the residential patterns of our cities, creating neighborhoods that were segregated by race and other national origin. In many places, those patterns persist to this day. NFHA’s 2017 Trends report goes on to describe in detail the impact of those segregated living patterns on individuals – their educational attainment, health and well-being, access to transportation, involvement with the criminal justice system, employment opportunities, access to homeownership and ability to build wealth – and on the communities in which they live. The disparities are stark, and they work to the detriment of our nation’s stability, vitality and prosperity.

The prologue to NFHA’s 2018 report on trends in fair housing illustrates how important effective enforcement of the Fair Housing Act is, and why, as a nation, we must not only care about fair housing but be vigorous in defending and enforcing it.

“Imagine the house you grew up in, the local pool you swam in, shopping in a grocery store full of fresh fruits and vegetables, the great school you attended with your friends, and the doctor nearby who took care of you when you were sick. That’s how all of us would like to remember our childhoods and think of our communities. But for many people, the experience of their neighborhood is nothing like that. Where you live determines your access to good schools, parks and recreation, quality health care, fresh food, clean air, affordable credit, and even how long you are likely to live.

Not all neighborhoods were created the same. The long history of housing discrimination and segregation in the U.S. has created neighborhoods that are unequal in their access to opportunities. They are not unequal because of the people who live there. They are unequal because of a series of public and private institutionalized practices that orchestrated a system of American apartheid in our neighborhoods and communities, placing us in separate and unequal spaces. These practices and systems resulted in the

³ Rice, Lisa. “*Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies*,” ShelterForce, February 15, 2018. <https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need-intentional-policies/>

development of neighborhoods of color that have been starved of investment, affordable credit, good schools, quality health care, fresh food, and much more. It also resulted in the creation of thriving, predominantly White communities with abundant resources, federal support, and quality amenities and services. While many low-income communities, no matter their racial composition, suffer from disinvestment and lack of resources, even wealthier, high-earning communities of color have fewer bank branches, grocery stores, healthy environments, and affordable credit than poorer White areas.

Imagine now that every neighborhood was a place of opportunity, no matter the race or ethnicity of the people who lived there and that people were not illegally barred from moving to a community because of a protected characteristic. If everyone had access to affordable housing, fair credit, a good school, healthy food, a decent job, green space, and quality health care, how would our nation and economy look then? Better, by every meaningful measure. Better for all of us, because this is not a zero-sum game in which providing opportunity to one person or in one neighborhood means taking it away from another. Rather, ensuring that every community has the resources and amenities its residents need to thrive results in a win-win outcome, exponentially increasing our chances for a stronger, more robust economy.

If we make quality credit available to people of color and in neighborhoods of color, the prospects of those people and those neighborhoods improve. They accumulate more wealth, they pay more taxes, and they invest more in the community. If people are given the opportunity to live near their jobs, regardless of their race or income, we reduce carbon emissions, costly transportation infrastructure, and time spent away from helping kids with their homework and preparing healthy meals. If we send kids to a quality school, they are more likely to graduate from high school and go to college or trade school, equipping them with the knowledge and skills they need to fully participate in a global economy. If people breathe the clean air, eat healthy food, and have a place to exercise and relax, we reduce health care costs for all. It is not just individuals who pay the price when people and communities are unfairly deprived of these opportunities, but our nation as a whole suffers as well.

How do we ensure that future generations of all backgrounds live in neighborhoods rich with opportunity? Fair housing. Fair housing can ultimately dismantle the housing discrimination and segregation that caused these inequities in the first place.”⁴

This is what Congress set out to accomplish in enacting the Fair Housing Act, adopting it as the policy of the United States to provide for fair housing and employing a two-pronged approach to implementing this policy. First, it laid out a set of specific requirements and prohibitions designed to ensure that providers of housing and housing-related services do not discriminate against people seeking housing based on a set of protected characteristics. Those include race, color, religion, sex, national origin, familial status and disability. These protections recognized the discriminatory policies and practices, with which our communities have been rife, that can impede people’s ability to gain access to the housing they seek and for which they qualify. Fully enforced, these provisions should ensure that protected characteristics do not disadvantage individuals and families in their efforts to obtain housing. They would eliminate the barriers that discrimination has created for members of protected classes.

⁴ National Fair Housing Alliance, *“Making Every Neighborhood a Place of Opportunity: 2016 Fair Housing Trends Report.”* Washington, DC. 2018. <https://nationalfairhousing.org/reports-research/>

But Congress recognized that eliminating discrimination alone would not be sufficient to create truly open housing markets. Eliminating those barriers would not level the playing field, because the field itself is distorted. Over many decades, through a series of policies and practices carried out by the private sector and by government at all levels – with the federal government playing a prominent role – we have deeply entrenched segregated living patterns in our communities. Eliminating those, and overcoming the lasting harms they have produced, requires additional, deliberate efforts. Therefore, in the Fair Housing Act, Congress also mandated that HUD and other federal agencies involved in housing and urban development activities undertake those efforts. This mandate is embodied in the “affirmatively furthering fair housing” (AFFH) provisions of the Act.⁵

Below we discuss in more detail the infrastructure created to ensure the goals of the Fair Housing Act are achieved and how it can be bolstered, the critical tools needed to protect all of us from discrimination and the need to preserve them, and some of the fair housing challenges ahead that arise from technological developments that are changing the way the housing market operates.

Strengthening Our Fair Housing Infrastructure

The infrastructure for fair housing enforcement in the U.S. has three key components, one at the federal level, which consists of HUD and DOJ. The second two components operate at the state and local level. One consists of state and local government civil and human rights agencies with fair housing enforcement responsibilities. The other consists of local, private, non-profit fair housing centers that provide a variety of fair housing services in their communities.

At the federal level, HUD has several roles. One is to receive, investigate and adjudicate complaints submitted by those who believe they may have encountered illegal discrimination. HUD also has the responsibility to ensure that its own programs comply with the Fair Housing Act, as well as the programs of the cities, counties, states and other entities to which it provides funding for housing and community development activities. HUD also administers the Fair Housing Initiatives Program (FHIP), which is the only federal source of funds for private enforcement of the Act, and the Fair Housing Assistance Program (FHAP), which reimburses state and local civil and human rights agencies that investigate fair housing complaints. DOJ’s principal role is to bring suit on behalf of individuals whose cases have been referred to it by HUD. HUD makes such referrals after it has concluded that there is reasonable cause to believe that discrimination has occurred in a particular case, it has issued a “charge” of discrimination, the case has been heard before an administrative law judge, and one or the other party elects to have the case referred to DOJ. DOJ also has sole authority in cases involving a pattern or practice of discrimination, or when HUD receives a complaint that concerns zoning issues.

The other two components of the fair housing infrastructure operate at the state and local level. Of these, state and local government civil and human rights agencies enforce laws that are substantially equivalent to the federal Fair Housing Act, and are responsible for resolving housing discrimination complaints. With agencies that it deems substantially equivalent, HUD enters into a memorandum of understanding under which those state and local agencies process complaints of housing discrimination

⁵ 42 U.S.C. §3608 (d) and (e).

within their jurisdictions. This partnership allows federal and state agencies to coordinate investigations and avoid duplication of effort. These agencies receive complaints from the public, initiate investigations, conciliate agreements and litigate fair housing allegations in their respective jurisdictions. They are allowed to take these actions for complaints received within 180 days of the alleged incident. All complaints that are received outside of the 180-day time limit are referred to HUD for processing. HUD may also refer complaints filed through its own administrative complaint system to FHAP agencies which serve the area from which a complaint is made. HUD reimburses these agencies for expenses associated with processing housing discrimination complaints through the FHAP program.

The third component of our fair housing enforcement infrastructure consists of local private, non-profit fair housing organizations in many cities and states across the country. Most of them receive their primary funding from HUD through the FHIP program⁶, which was created in 1987 with broad bipartisan support and the endorsement of Presidents Ronald Reagan and George H.W. Bush. With FHIP, Congress recognized the need to support the development of experienced, private, nonprofit fair housing organizations to foster compliance with the Fair Housing Act; complement the work of local and state government agencies and the federal government; and assist the public in better understanding its rights and local housing providers in complying with civil rights laws.

FHIP provides unique and vital services to the public and the housing industry by supporting a network of private-public partnerships with local nonprofit fair housing organizations working in their communities to carry out fair housing enforcement and education. These are the only private organizations in the country that educate communities and the housing industry and enforce the laws intended to protect us all from housing discrimination. They form an essential component of the nation's fair housing education and enforcement infrastructure. The FHIP program saves the federal government taxpayer dollars through the unique services in which its grantees specialize and it ensures a high standard of relief to victims of discrimination and the communities that it harms.

FHIP agencies are uniquely suited to provide a first line of defense against housing discrimination: they are the mostly likely to receive a complaint of housing discrimination from the public given their local presence and effective public education strategies, and they advocate on behalf of victims of discrimination throughout the administrative complaint processes. For every individual conciliation or settlement stemming from an action initiated by a FHIP-grantee, many more housing units that would have otherwise been kept off the market for persons in protected classes are made available through improvements in policies and practices that increase housing choice. Families with children and people with disabilities are among the most likely persons to file complaints of discrimination, and the FHIP program is absolutely vital to protecting their freedom of housing choice. The primary reason these groups file the most complaints is that discrimination against these persons is often obvious or stated by housing providers, such as statements that a housing complex limits occupancy to one person per bedroom or that a request for a reasonable accommodation for a service animal is denied.

FHIP-funded organizations work at the national, regional, and local levels to expand fair housing opportunities for all Americans at all income levels. These organizations:

⁶ For more information about the FHIP program, see the testimony of Keenya Robertson, President & CEO of the Housing Opportunities Project for Excellence (HOPE) Fair Housing Center, Inc. before the House Appropriations Committee Subcommittee on Transportation, Housing and Urban Development and Related Agencies, February 27, 2019.

- Train local housing providers on how to avoid running afoul of the Fair Housing Act;
- Educate consumers about their rights and how to recognize and report situations that appear to violate the law;
- Provide direct assistance to victims of discrimination;
- Work with leaders and public officials at the local level to create and expand the availability of safe, affordable, and decent housing;
- Work with stakeholders at the local level to ensure that every community has access to important opportunities like quality schools, healthcare, jobs, transportation, food, credit, etc.; and
- Engage in efforts to stabilize neighborhoods and strengthen communities.

While this fair housing infrastructure has proven very effective, it is significantly under-resourced. This lack of resources undermines its ability to fully meet our country's fair housing needs. These include ensuring that both the public and housing providers are aware of their rights and responsibilities under the Fair Housing Act, monitoring practices in the housing market to identify those that may be discriminatory and taking appropriate steps to eliminate them, and responding to the complaints of discrimination that are reported by individuals searching for housing.

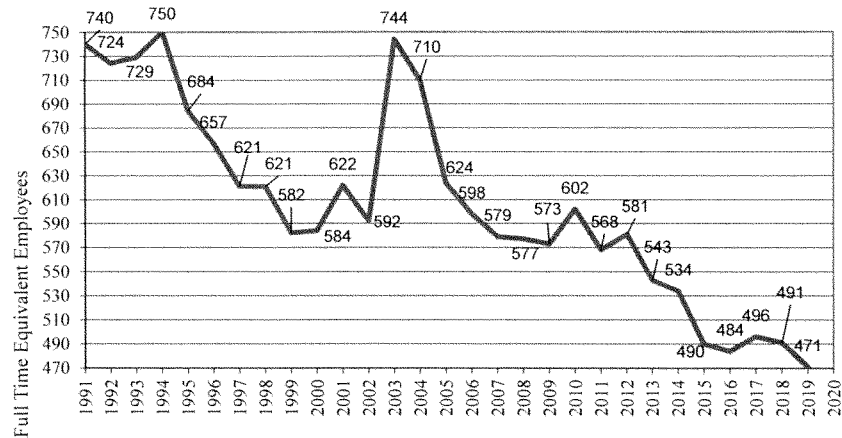
At the state and local level, the FHIP program needs additional funding to enable fair housing groups to meet the needs in their communities and to enable new fair housing groups to be established in communities where they do not currently exist. The program is currently funded at \$39.2 million for FY19. NFHA recommends that funding be increased to \$52 million, and we are grateful to Congressman Al Green and Congresswoman Barbara Lee for their leadership and support in requesting this level of funding for FHIP for FY 20. In addition, the program needs better management by HUD to ensure that the funding stream is consistent, timely and reliable.

Federal Fair Housing Funding Levels FY12-FY20

HUD Line Item	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	President's FY20 Request	NFHA FY20 Request
FHIP	\$42.50	\$40.30	\$40.10	\$40.10	\$39.20	\$39.20	\$39.60	\$39.60	\$36.20	\$52
FHAP	\$28.40	\$27	\$25.60	\$23.30	\$24.30	\$24.30	\$23.90	\$23.40	\$24.30	\$35.20
FHEO Salaries + Expenses	\$71	\$73	\$68.20	\$68	\$72	\$72	\$69.80	\$72	\$69.60	\$102

At the federal level, HUD's Office of Fair Housing and Equal Opportunity lacks the staff, funding, technology and other resources it needs to carry out its responsibilities, including smooth and effective management of the FHIP program.

Staffing Levels (FTEs) for HUD's Office of Fair Housing & Equal Opportunity 1991-2019*



* Data drawn from HUD Congressional Budget Justifications, FY1992-2020.

These resource constraints at HUD have serious implications for the effective operation of the FHIP program and other HUD fair housing-related functions. Over the past several years, FHIP-grantees have observed a deterioration in the management and implementation of the Fair Housing Initiatives Program. Constant delays in Notices of Funding Availability, award decisions, and timing of payments to grantees have resulted in serious damage to long-established fair housing organizations that often are the only agency serving their housing market, or even state. Additionally, FHIP-grantees have observed challenges in the use of excess funds that remain unspent after the completion of stated grant goals, and wide variation in grant payment protocols among HUD regions.

With each new fiscal year, HUD pushes back the FHIP grant process, leaving private nonprofit fair housing organizations that deliver critical direct services at risk of closure. For example, in 2016, many three-year PEI grants were scheduled to begin their second or third year on November 1. However, grant recipients were not informed until October 31 that the second or third years of their three-year grants would not commence on November 1 but instead would commence later. FY17 awards were not officially announced until March 2018, well over five months after the end of the fiscal year for which the awards were intended. For FY18, HUD opened the FHIP NOFA on October 29, 2018 with an application deadline of December 19, 2018. HUD has yet to award new grants for FY18, leaving several private fair housing organizations with funding gaps that again will affect their ability to provide direct fair housing services in their housing markets. In each of these instances, similarly-situated organizations had different start dates for grants that began or were to continue during the same fiscal year, and each FHIP agency has had to spend considerable time and energy to secure reasonable grant start dates. This has been especially harmful to the work of agencies that experienced delays while in the middle of existing three-year grants, which have work planned for each year.

The result of these delays has been devastating for many organizations. Many private fair housing organizations have been forced to take out lines of credit – for which they must pay interest – to complete existing work, continue paying employees, and maintain basic operations. Some have been forced to shut their doors for a period of time, impacting existing investigations upon which potential victims of discrimination were relying. Without consistent and timely release of the FHIP NOFA and awards, organizations are forced to use reserve funding that is intended serve as a last resort to weather the gap, jeopardizing the long-term health of their organization.

FHIP-funded agencies are the first line of defense for victims of discrimination for entire housing markets, states, and sometimes regions. Each time the FHIP NOFA and awards are delayed HUD runs the risk of jeopardizing the key services that private fair housing organizations provide to victims; the localized expertise they can employ to examine or address persistent housing discrimination or the impacts of residential segregation; and the testing and vetting of complaints that FHAP agencies and HUD receive as cases. Additionally, local housing providers, real estate agents, lenders, and insurers rely on training and education from private nonprofit fair housing organizations which is interrupted by lapses in FHIP funding. As of today, HUD has yet to make new FY18 awards or issue an FY19 FHIP NOFA.

Recent program and policy reversals at HUD are causes for concern

In addition to these damaging delays in funding its fair housing programs, HUD has taken a number of other actions that are cause for concern. For example, in 2017 HUD announced a 2-year delay in implementation of the Small Area Fair Market Rent (SAFMR) regulation, an important tool for enabling low- and moderate-income tenants with Housing Choice Vouchers to afford housing units in lower-poverty, higher-resourced communities. Advocates successfully sued HUD to reverse this decision, which would have dealt a major setback to efforts to expand access to opportunity.

In January 2018, HUD effectively suspended its Affirmatively Furthering Fair Housing (AFFH) regulation after only a year and half of implementation.⁷ Discussed in more detail below, the AFFH rule was adopted in 2015, nearly half a century after the Fair Housing Act itself, and represented HUD's first meaningful effort to implement the AFFH provisions contained in the 1968 statute. The rule was the result of a lengthy and deliberative process that included extensive stakeholder consultation, multiple opportunities for public input and substantial field testing. In suspending the rule, HUD has instructed its grantees to return to a fair housing planning process that has been found ineffective by the Government Accountability Office, HUD itself, and its grantees. In May 2018, NFHA and other advocates sued HUD over the suspension. The case was initially dismissed for lack of standing, but it has been refiled and remains pending.

Last summer, in June 2018, HUD issued an Advance Notice of Proposed Rule Making on disparate impact, signaling its intent to rewrite its disparate impact (or discriminatory effect) regulation. Also discussed in more detail below, that regulation reflects long-standing HUD policy and well-established jurisprudence, including decisions in 11 district courts and the Supreme Court. Disparate impact is a critical tool for protecting all of us from forms of illegal discrimination that may be difficult to detect.

⁷ 83 FR No. 4, p. 683 et. seq.

The notion that HUD would dismantle this tool is extremely troubling and bodes ill for our continuing ability to identify and eliminate discrimination in housing.

Beginning in 2012, HUD issued a series of rules that focused on ensuring equal access to HUD-assisted housing, regardless of sexual orientation, gender identity, nonconformance with gender stereotypes, or marital status. In doing so, HUD extended fair housing protections to people who identify as LGBTQ and who live in HUD-assisted and FHA-insured housing,⁸ as well as in HUD's Native American and Native Hawaiian programs.⁹ It also required that individuals have equal access to HUD-assisted shelter programs in accordance with their self-identified gender identity.¹⁰ We are concerned about HUD's implementation of the aforementioned rules and encourage this Committee to fully examine the Department's overall enforcement of its Equal Access Rule and shelter guidance.

Each of these actions is cause for concern. Together, they paint an alarming picture of HUD's efforts to ensure that we have the tools necessary to secure fair housing throughout the United States. We encourage the Committee to examine them closely and take any corrective actions that may be needed.

Preserving Critical Fair Housing Tools: AFFH and Disparate Impact

Affirmatively Furthering Fair Housing

Two of the most important tools we have for eliminating discrimination from our housing market and for promoting access to opportunity currently appear to be at risk of being weakened or even dismantled by HUD. One of these is its 2015 Affirmatively Furthering Fair Housing (AFFH) regulation, which established a new process for fair housing planning. It established a robust community engagement process, and provided grantees with a format for their fair housing plan, known as an Assessment of Fair Housing (AFH), along with an analytical framework, a substantial set of relevant data and the capacity to create maps that display that data geographically. The regulation required that the AFH contain goals and priorities, with metrics and timetables for measuring progress, and that these be reflected in the grantees' subsequent spending plans, known as Consolidated Plans. AFHs were to be conducted every 3-5 years, in advance of the Consolidated Plan, and submitted to HUD for review and acceptance. This process allowed HUD to provide feedback and highlight any specific changes that might be needed to make a plan acceptable. HUD also created a detailed guide to help grantees through the planning process, with illustrative examples for each step along the way.

⁸ 24 CFR Parts 5, 200, 203, 236, 400, 570 574, 882, 891, and 982, "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity," February 2012.

⁹ 24 CFR 5, 1000, 1003, 1005, 1006, and 1007, "Equal Access to Housing in HUD's Native American and Native Hawaiian Programs – Regardless of Sexual Orientation or Gender Identity," November 2016.

¹⁰ 24 CFR Part 5, "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs," September 2016.

The 2015 regulation replaced an earlier regulation that required HUD grantees to conduct a periodic Analysis of Impediments to Fair Housing Choice, also known as an AI. While HUD published a fair housing planning guide to assist grantees in conducting an AI, it never provided regulatory guidance or parameters. Thus, there was no required format, content or community input for the document, nor was there any requirement for it to contain priorities, goals, metrics or timetables. There was no schedule by which the AI was to be completed, it was not submitted to HUD for review, and it was not connected to any other planning the grantee might conduct, including its Consolidated Plan for spending HUD funds over the subsequent three to five year period.

As NFHA commented in its response to HUD's 2018 ANPR on the 2015 AFFH rule, this rule "represents an extremely important and long overdue effort by HUD to take meaningful steps to implement the affirmatively furthering fair housing provisions of the 1968 Fair Housing Act. It was the result of several years of consultation with many different stakeholders, including program participants of various types, sizes and geographic locations, fair housing organizations and others. It went through the required public comment process, during which HUD received over 1,000 comments.¹¹ These included comments from housing providers, trade associations, government jurisdictions and agencies, and fair housing and civil rights advocates. Through this long and deliberate process, HUD was able to strike a fine balance between the real concerns of government entities that would be subject to the rule, as well as their constituencies who are directly impacted by decisions concerning the use of housing and community development dollars in their communities. That rule was extensively vetted internally at HUD, and field tested in 74 jurisdictions through the Sustainable Communities Initiative. It was a careful, inclusive and deliberative rulemaking process that produced a regulation that is flexible enough to accommodate a wide variety of local circumstances, clear and structured enough to provide program participants with the direction and guidance they sought, and rigorous enough to ensure that jurisdictions make meaningful progress in addressing some of the most pressing problems – problems that government had a role in creating and perpetuating – that plague our society."¹²

One of the very important aspects of the 2015 rule is its definition of "affirmatively furthering fair housing." As our comments on the AFFH ANPR explained, "Previously, HUD's definition of AFFH was tied to the AI, which itself lacked definition, structure and standards. This left program participants with tremendous uncertainty about how to ensure that they were fulfilling their AFFH obligations and in compliance with the law. The definition in the 2015 rule eliminates that uncertainty, replacing it with the clarity that program participants sought, stating:

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 and ethnically concentrated areas of poverty into areas of opportunity, and fostering and

¹¹ See Regulations.gov at <https://www.regulations.gov/document?D=HUD-2013-0066-0001>.

¹² See comments of the National Fair Housing Alliance on FR-6123-A-01, "Affirmatively Furthering Fair Housing: Streamlining and Enhancements," October 15, 2018.

maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.¹³

This definition clearly states that AFFH requires program participants to go beyond just making plans; they must take meaningful steps to implement those plans. It lays out the necessary balance between the need to take action to dismantle the barriers of segregation by expanding access to housing in high opportunity areas and *also* by uplifting disinvested neighborhoods to ensure that their residents have equitable access to opportunity. The definition also clarifies the scope of the AFFH obligation, noting that it is not limited to the expenditure of federal funds, a point that is underscored in the section of the regulations that addresses certification requirements. Additionally, the definition requires program participants to engage in activities that promote compliance with fair housing and civil rights laws, including working with stakeholders to combat illegal discrimination.

Further, the sections of regulation that deal with certification requirements note the comprehensive nature of the AFFH obligation. A program participant cannot fulfill that obligation if it takes appropriate actions in some of its programs or policies while taking other actions that are inconsistent with its obligations under the Fair Housing Act. In other words, it cannot give with one hand and take away with the other. Those sections state, "Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in the AFH conducted in accordance with the requirements of 24 CFR §5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing."¹⁴ This definition, in combination with other provisions of the rule and the Assessment Tool, provides program participants the clarity they need to understand their AFFH obligations and take meaningful steps to fulfill them. Such clarity was lacking in the AI process, which created confusion about what program participants should do to fulfill their AFFH obligations. As the result of that confusion, and their subsequent failure to take effective steps to affirmatively further fair housing, some jurisdictions found themselves subject to various sorts of enforcement actions under the Fair Housing Act and other laws. The clarity provided in the 2015 rule is reinforced by the requirement that AFHs be submitted to HUD for review and acceptance, and the provision for HUD to reject initial submissions that it deems unacceptable while also offering specific guidance about revisions jurisdictions can make to correct those shortcomings. These are critical components of the rule and must be preserved.

While the rule provides clarity and direction, it does not take a "one size fits all" approach. It establishes a robust process through which community input must be solicited and considered, so that the AFH reflects local concerns. Based on that input, jurisdictions then identify their most pressing fair housing problems, set their own goals and priorities, and design their own strategies for achieving those goals. Nowhere does the rule state that program participants must address any particular fair housing issue, set any particular goal or number of goals, or take any particular action to overcome barriers to fair housing choice. The rule combines the structure that program participants need to analyze fair housing issues effectively, with the flexibility that is also needed to accommodate a diversity of local conditions.

¹³ See 24 CFR §5.152.

¹⁴ See 24 CFR §91.225; also §91.324 and §91.425

HUD Has Mischaracterized the Early Results of the 2015 Rule, Which Were Promising

In suspending the AFFH rule, HUD asserted that the rule was essentially unworkable. It pointed to the number of jurisdictions that were unable to produce an AFH that was accepted upon initial submission to HUD. What HUD failed to acknowledge was that this was a new regulation, establishing a process with which grantees were not yet familiar, and that HUD itself had anticipated that not all AFHs would be acceptable on the first go around. In fact, the regulation itself accounted for this, providing for back and forth between HUD and grantees to identify and rectify any shortcomings in their AFHs while still allowing for timely submission. And, while 63% of the initial 49 submissions were deemed unacceptable by HUD, by HUD's own accounting, 65% were deemed acceptable after the grantees made the changes that HUD indicated were needed, and some additional number – which likely would have achieved the same success – were never modified because HUD suspended the rule.¹⁵ Rather than taking the prudent course of continuing to implement the 2015 regulation while providing additional feedback and support to its grantees, HUD instead instructed them to revert to the old AI process.

In 2010, the Government Accountability Office found the AI process was not an effective means for HUD to fulfill its own statutory obligation to affirmatively further fair housing or for HUD to ensure that its program participants were fulfilling their AFFH obligations.¹⁶

Too often, AIs were done without input from fair housing organizations, members of protected classes, or other stakeholders. They lacked a consistent format and often lacked a fair housing focus. Many failed to consider the barriers facing members of key protected classes under the Fair Housing Act, including people of particular races and ethnicities, families with children, and people with disabilities. Most did not contain concrete goals for addressing local barriers to fair housing, nor did they include specific steps to be taken, timelines for taking those steps, or metrics for assessing progress. Without a clear timeframe for conducting AIs, many were out of date. Without a requirement that they be updated when there is a material change in local conditions, such as the two hurricanes that have devastated large parts of the Southeast United States within the last few months, some were irrelevant. Without a direct link to the jurisdiction's Consolidated Plan, they had little, if any, impact on decisions about how to use housing and community development resources. Because they were not required to be submitted to HUD for review, HUD had no way to ensure their timeliness, monitor their content, or assess their impact. In sum, the AI process was a failure that the AFFH rule had intentionally set out to correct with extensive input from stakeholders and program participants.

The early results under the 2015 rule were extremely promising, contrary to HUD's erroneous and unfounded characterization of them as, "highly prescriptive regulations [that] give participants inadequate autonomy in developing fair housing goals as suggested by the principles of federalism."¹⁷ In fact, there were a number of extremely positive aspects of the AFH process conducted by the initial cohorts. For example, they undertook more robust community engagement efforts, offering more opportunities for public input and involving a larger number and wider range of stakeholders than was

¹⁵ See FR-5173-N-17, "Affirmatively Furthering Fair Housing: Withdrawal of the Assessment Tool for Local Governments," <https://www.regulations.gov/document?D=HUD-2018-0039-0001>.

¹⁶ See GAO-10-905, Housing and Community Grants: HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans," October 14, 2010.

¹⁷ See HUD's ANPR on the AFFH rule at 83 FR 40713.

typical under the AI process.¹⁸ Jurisdictions analyzed residential patterns and trends through a focused, fair housing lens, assessing the extent to which members of protected classes have equitable access to important community assets, resources and opportunities. They set priorities for addressing their particular local (and in some cases, regional) fair housing problems, and adopted concrete goals, with metrics and milestones to measure their progress toward achieving those goals.¹⁹ The Committee will hear more about this from Cashauna Hill, Executive Director of the Greater New Orleans Fair Housing Action Center, who is also testifying today. Ms. Hill was deeply engaged in the development of the AFH in New Orleans, which was one of the first jurisdictions to go through the process under the 2015 rule.

These initial AFHs were a substantial improvement over the Analyses of Impediments to Fair Housing Choice AIs) which preceded them, and to which HUD has now returned.

For all of these reasons and more, HUD's suspension of the 2015 AFFH rule is cause for great concern. Just as HUD was beginning to take the first meaningful steps to fulfill the mandate that Congress gave it more than 50 years ago to dismantle the structures of segregation and use its programs to ensure equitable access to opportunity, HUD has stopped that effort in its tracks. This year and next, according to information provided by HUD, some 1,061 jurisdictions that receive funding under the Community Development Block Grant and other HUD programs are scheduled to submit to HUD their Consolidated Plans, which detail how they intend to spend those funds. Had HUD not suspended the rule, each of these jurisdictions would be conducting fair housing planning first. They would be engaging local residents in analyzing the barriers to fair housing that exist in their communities, identifying the forces that created and perpetuate those barriers, setting priorities for the most pressing issues to address, developing goals with associated timelines and metrics for addressing those priorities, and incorporating those goals into their Consolidated Plans. Over the subsequent five years, each of those jurisdictions would implement those strategies and report, to both HUD and the public, on their progress in doing so. This would represent concrete progress toward increasing access to opportunity in communities across the country. But because HUD has suspended the AFFH rule, it does not know and we cannot say which, if any, of those jurisdictions are undertaking meaningful efforts to affirmatively further fair housing in compliance with their statutory obligation to do so.

This reversal on HUD's part represents the enormous loss of an opportunity to make real progress toward achieving the Fair Housing Act's goal of eliminating segregation and overcoming the harms it has caused to both individuals whose lives it has constrained and our society as a whole.

¹⁸ See Been, Vicki and Katherine O'Regan, "The Potential Costs to Public Engagement of HUD's Assessment of Fair Housing Delay," NYU Furman Center, March 9, 2018.

¹⁹ See, for example, the research of Justin Steil and Nicholas Kelly, "The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance," Working Paper for the Future of Housing Policy in the U.S. Conference, University of Pennsylvania, September 15, 2017.

Disparate Impact

In 1968, Congress envisioned the Fair Housing Act as a treaty with the American people which essentially stated that housing discrimination, whether overt or seemingly unintentional, would not be tolerated in this country.²⁰ Not only does the Act prohibit blatant acts of discrimination but it also allows individuals to challenge unjustified policies or practices that appear facially neutral but have a discriminatory effect on protected classes by using the disparate impact doctrine. Transcending party lines, this doctrine has been used by both Democratic and Republican Administrations. Upheld in every federal circuit court and by the Supreme Court, it has been a longstanding enforcement tool used to challenge some of the most impactful discriminatory practices affecting everyday people. This is because disparate impact is a tool that gets at the heart of a multitude of discriminatory outcomes that people experience.

Examples of policies or practices that the disparate impact doctrine is used include instances in which:

- A bank could charge a costly deposit fee to those who seek home mortgage loans. With this high barrier, older Americans, veterans or persons of color with limited means would be forced to take on more risky and costly loans or not have access to financing at all.²¹
- An apartment building could restrict occupancy to one person per bedroom. Families with children would be barred from renting or would be forced to rent more costly multi-bedroom apartments.²²
- An insurance company could refuse to insure homes under a certain dollar value. In many communities, this would exclude homes in neighborhoods of color, and would prevent homeowners in those neighborhoods from fully protecting their homes from damage due to fire, hurricanes or other hazards.²³
- A landlord could evict a tenant if police were called to that tenant's unit numerous times, even if that tenant was the victim of abuse seeking protection from their abuser. This would place women—the primary victims of domestic abuse—and their children at risk of homelessness and further violence.²⁴

²⁰ Amicus Brief of current and former Members of Congress, *Texas Dept. of Housing and Community Affairs v. Inclusive Communities*, available at https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/13-1371_amicus_affirmance_Congress.authcheckdam.pdf (disparate impact was a part of the 1968 and 1988 Congressional record).

²¹ See e.g. *United States v. Countrywide Corporation, Countrywide Home Loans and Countrywide Bank*, 2011, available at <https://www.justice.gov/opa/pr/justice-department-reaches-335-million-settlement-resolve-allegations-lending-discrimination>.

²² See e.g. *United States v. Badgett*, 976 F.2d 1176 (8th Cir. 1992), available at <https://openjurist.org/976/f2d/1176/united-states-v-i-badgett>.

²³ See e.g. *National Fair Housing Alliance, Inc. v. Prudential Ins. Co. of America*, 208 F. Supp. 2d 46, 58-60 (D. D.C. 2002), available at <https://casetext.com/case/national-fair-housing-alli-v-prudential-ins-co>.

²⁴ See e.g. *Hope Fair Housing Center v. City of Peoria, Illinois*, available at https://www.relmanlaw.com/media/cases/46_Complaint.pdf.

Since the early days of the Act, disparate impact claims have been used to challenge policies with discriminatory effects, beginning in the early years under the Act with a case against the City of Black Jack, Missouri, brought by the Department of Justice under President Richard Nixon. The case challenged an exclusionary zoning ordinance that had the effect of excluding African-American residents in the newly-created community in St. Louis County, MO.²⁵ Since that time, subsequent Republican and Democratic administrations have used the doctrine.

Over the next several decades, every Circuit Court that considered the question of whether or not disparate impact claims are cognizable under the Fair Housing Act affirmed its validity. However, they applied different pleading standards, burdens of proof, and other procedural requirements to bring and defend against a disparate impact claim. To address the lack of standardization across Circuit Courts in 2013 HUD issued an important rule that created a unified standard for bringing and defending against a disparate impact claim. And in 2015, the Supreme Court heard arguments in *Inclusive Communities Project v. Texas Department of Housing and Community Affairs* about the use of disparate impact in fair housing cases. The Court's decision in that case, written by Justice Kennedy, held that the disparate impact doctrine is a necessary and viable means to challenge policies or practices with a discriminatory effect under the Fair Housing Act.

Despite the well-established validity of the disparate impact doctrine, the insurance industry has made attempts at every possible turn to challenge its applicability to its business. Recently, and troublingly, it appears the federal government may adopt to the insurance industry's spurious arguments. In October 2017, the Treasury Department issued a report that recommended HUD reconsider its use of the disparate impact rule as applied to the insurance industry and to consider whether the rule is consistent with the McCarran-Ferguson Act²⁶ and state law.²⁷ Yet, in the thirty years since the Fair Housing Act was amended and HUD issued interpretive regulations, the many courts that have considered that specific issue have all held that the Fair Housing Act prohibits acts of discrimination by homeowners insurers²⁸ and that this prohibition is not in conflict with the McCarran-Ferguson Act or state law. In its 2013 rulemaking HUD took an appropriately nuanced position on this matter that is consistent with the McCarran-Ferguson Act itself:

²⁵ *United States v. City of Black Jack, Missouri*, 508 F. 2d 1179. See Myron Orfield, "Symposium: Romney was right about disparate-impact," SCOTUSblog, January 8, 2015, accessible at <https://www.scotusblog.com/2015/01/symposium-romney-was-right-about-disparate-impact/>.

²⁶ The McCarran-Ferguson Act at a basic level states that regulation of the insurance industry is retained at the state level. See 15 U.S. Code § 6701.

²⁷ U.S. Dept. of Treasury Report, "A Financial System That Creates Economic Opportunities: Asset Management and Insurance," available at: <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset-Management-Insurance.pdf>.

²⁸ See, e.g., *Ojo v. Farmers Group Inc.*, 600 F.3d 1205, 1208 (9th Cir. 2010); *Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1360 (6th Cir. 1995); *United Farm Bureau Mut. Ins. Co. v. Metropolitan Human Relations Comm'n*, 24 F.3d 1008, 1016 (7th Cir. 1994); *NAACP v. American Family Mut. Ins. Co.*, 978 F.2d 287, 301 (7th Cir. 1992); *Nevels v. Western World Ins. Co.*, 359 F. Supp. 2d 1110, 1117-1122 (W.D. Wash. 2004); *National Fair Hous. Alliance v. Prudential Ins. Co. of America*, 208 F. Supp. 2d 46, 55-9 (D.D.C. 2002); *Lindsey v. Allstate Ins. Co.*, 34 F. Supp. 2d 636, 641-43 (W.D. Tenn. 1999); *Strange v. Nationwide Mut. Ins. Co.*, 867 F. Supp. 1209, 1212, 1214-15 (E.D. Pa. 1994).

“The case-by-case approach appropriately balances [insurance industry] concerns against HUD’s obligation to give maximum force to the Act by taking into account the diversity of potential discriminatory effects claims, as well as the variety of insurer business practices and differing insurance laws of the states, as they currently exist or may exist in the future.”²⁹

Despite the insurance industry’s repeated protestations otherwise, HUD’s current disparate impact rule is consistent with long-standing jurisprudence.

In response to the Treasury Department’s request for reconsideration of its disparate impact rule, HUD issued an Advanced Notice of Proposed Rulemaking (ANPR) in the summer of 2018 suggesting that possible changes may be considered to the rule. The types of questions that HUD posed in the ANPR, the Department of the Treasury’s stance, and the repeated challenges to the rule all suggest that the rule may be in grave danger of evisceration. Among the questions the ANPR asked was whether there should be any blanket safe harbors or defenses to disparate impact claims, suggesting possible carve-outs for the insurance or lending industries.³⁰

Some have erroneously characterized HUD’s disparate impact rule as being in conflict with the Supreme Court’s decision in the *Inclusive Communities Project* case. In November 2017, a small group of Republican congressional representatives wrote to HUD and incorrectly asserted that the Disparate Impact Rule is inconsistent with recent Supreme Court precedent. In actuality, the disparate impact rule was implicitly adopted in the *Inclusive Communities* decision. Recently, the 2nd Circuit held in *Mhany Mgmt., Inc. v. Cty. of Nassau* that in *Inclusive Communities* “[t]he Supreme Court] implicitly adopted HUD’s approach.”³¹ Following that decision, in June 2017, the Northern District of Illinois issued a decision that analyzed the relationship between the Rule and the Supreme Court decision and concluded that, “[i]n short, the Supreme Court in *Inclusive Communities* expressly approved of disparate-impact liability under the FHA and did not identify any aspect of HUD’s burden-shifting approach that requires correction.”³² In short, as federal courts have recognized, nothing in the *Inclusive Communities* decision—in its holding or dicta—necessitates any reconsideration of the current Disparate Impact Rule.

When defending the Disparate Impact Rule in a challenge by an insurance trade group subsequent to *Inclusive Communities* in August 2016, HUD itself argued that the Supreme Court’s decision is “fully consistent with the standard that HUD promulgated” relying on existing jurisprudence.³³ Again in March 2017, in response to the insurance trade group’s motion to file an amended complaint against the Rule, HUD stated that the Rule is wholly in line with the *Inclusive Communities* decision:

“[T]he Supreme Court’s holding in *Inclusive Communities* is entirely consistent with the Rule’s reaffirmation of HUD’s longstanding interpretation that the FHA authorizes disparate impact claims. 135 S. Ct. at 2516-22. And the portions of the Court’s opinion cited by

²⁹ Implementation of the Fair Housing Act’s Discriminatory Effects Standard; Final Rule (Feb. 8, 2013) [78 Fed. Reg. 11459, 11475 (Feb. 15, 2013)].

³⁰ See Reconsideration of HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, Docket No. FR-6111-A-01.

³¹ *MHANY Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 618 (2d Cir. 2016).

³² *Prop. Cos. Insurers Ass’n of Am. v. Carson*, 2017 WL 2653069 at *8 (N.D. Ill. June 20, 2017).

³³ Defendants’ Memorandum in Support of Their Motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary Judgment, ECF No. 65, at 33, *AIA v. Dep’t of Hous. & Urb. Dev.*, No. 1:13-cv-00966-RJL (D.D.C.).

[PCIA]—which discuss limitations on the application of disparate impact liability that have long been part of the standard—do not give rise to new causes of action, nor do they conflict with the Rule. *See id.* at 2522-25 (“[D]isparate-impact liability has always been properly limited in key respects...”). Indeed, nothing in *Inclusive Communities* casts any doubt on the validity of the Rule. To the contrary, the Court cited the Rule twice in support of its analysis. *See* 135 S. Ct. at 2522-23.”³⁴

The proposition raised by the insurance industry that *Inclusive Communities* requires HUD to reconsider the Disparate Impact Rule is simply erroneous. Leading fair housing scholars echo the consensus that *Inclusive Communities* is consistent with the current Disparate Impact Rule. Tulane University Law School Professor Stacy Seicshnaydre, whose scholarship on the subject was cited by Justice Kennedy in the *Inclusive Communities* decision,³⁵ looking to both the language of the opinion and its overarching message about the integration imperative of the Fair Housing Act, writes that the decision is in concert with the HUD rule.³⁶ Additionally, University of Kentucky School of Law Professor Robert Schwemm summarized, “the fact that HUD described [the Disparate Impact Rule] as analogous to the Title VII-*Griggs* standard suggests that it is consistent with the Court’s views in *Inclusive Communities*.”³⁷

However well-established the disparate impact doctrine is, HUD’s rule is in danger of being stripped of its teeth by insurance industry-driven advocacy and Congress should be concerned about the openness of this Administration to ignore the Judicial Branch’s repeated affirmations of the doctrine. Relying on inaccurate representations of landmark Supreme Court rulings would directly contradict HUD’s mission to fully and effectively enforce the Fair Housing Act and would compromise consistent adherence to a long-accepted legal standard.

Ensuring Robust Fair Housing Enforcement in a Changing Housing Market

Big Data and Fair Housing

50 years ago, when the Fair Housing Act was passed, there was no way of knowing how the housing market would develop, especially with respect to technological advances and the extent to which the market has begun to leverage powerful online platforms. It was unimaginable that advertisements could target specific affinity groups on social media platforms or that pricing rates could be calibrated regionally on the basis of inputs that fluctuate daily. Similarly, it is difficult to predict what changes in the housing market may result over the next half century; however, as one looks at the horizon, it is clear that big data will reshape how housing, lending, and insurance products are advertised, priced, and managed in a number of ways.

³⁴ Defendants’ Opposition to Plaintiff’s Motion for Leave to Amend Complaint, ECF. No. 122, at 9, *PCIA v. Carson*, No. 1:13-cv-08564 (N.D. Ill.).

³⁵ Stacy Seicshnaydre, *Disparate Impact and the Limits of Local Discretion after Inclusive Communities*, 24 Geo. Mason L. Rev. 663 (2017).

³⁶ Robert Schwemm, *Fair Housing Litigation After Inclusive Communities: What’s New and What’s Not*, 115 Colum. L. Rev. Sidebar 106 [now: CLR Online] (2015).

³⁷ *Id.*

Built in biases in the analysis of big data create biased outputs

There is growing attention among advocates regarding the role that big data and related algorithms play in marketing and pricing services in the housing, employment, and credit access markets.³⁸ Unfortunately, the tools used to harness these data to make predictive decisions, from review of users' web browsing practices or from other third-party data sources such as credit repositories, may result in discriminatory outcomes.

In short, artificial intelligence systems mimic societal biases. Analyzing data from an information landscape that derives from the long history of housing discrimination and bias against all protected classes, absent specific fair housing controls, creates an automated system of bias. These outcomes can result from the data sources entered into the predictive tools that reinforce historic patterns of segregation, the generalization used in processing the data that can be laden with discriminatory assumptions, and additional inputs from users that may be imbued with both overt and implicit bias.

For example, the lending industry has identified that the use of big data and artificial intelligence can be powerful tools for quickly detecting and reacting to schemes hatched by wrongdoers.³⁹ However, "fraud screening" models may result in biased outcomes if one of the strong indicators of fraud is a proxy for a protected class, such as language preference, applications emanating from a particular zip code, or even particular ethnic groups. Regulators should be more active in evaluating the variables that lenders, insurance providers, and other housing-service providers use in mining big data to target their services.

The civil rights community is committed to researching and investigating these practices. In June 2016, academic researchers, computer scientists, and journalists filed a lawsuit in the U.S. District Court for the District of Columbia against DOJ, to challenge the constitutional reach of the Computer Fraud and Abuse Act, which makes it a crime to exceed the authorized access of private websites.⁴⁰ The suit alleges that the statute prohibits researchers and others from engaging websites to analyze discrimination on the internet. In March 2018, the court denied in part and granted in part the government's motion to dismiss, allowing the case to proceed for the researchers to address the merits of one of the First Amendment claims.

Big data cannot be allowed to undermine the application of fair housing principles in housing and related transactions. Both industry leaders and advocates must be mindful of the intentional and implicit bias big data may contain. This will clearly be an issue to address in the next 50 years under the Fair Housing Act.

³⁸ See e.g., Brookland Manor Litigation Fact Sheet. Washington Lawyers Committee for Civil Rights and Urban Affairs, 26 Aug. 2016, www.washlaw.org/news-a-media/506-brookland-manor-litigation-fact-sheet#_ftn12.

³⁹ See BizTech, Phil Goldstein, "How Will AI Affect the Mortgage Lending Process?," Nov. 30, 2018, <https://biztechmagazine.com/article/2018/11/how-will-ai-affect-mortgage-lending-process>.

⁴⁰ *Sandvig v. Lynch*, No. 16-1368 (D.D.C. 2016), available at: https://www.aclu.org/sites/default/files/field_document/cfaa_complaint_0.pdf.

Credit Scoring Companies and Toxic Big Data

The concentration of consumer data at the credit repositories and other big data companies is of concern. Our current credit-scoring systems have a disparate impact on people and communities of color.⁴¹ Many credit-scoring mechanisms include factors that do not just assess the risk characteristics of the borrower; they also reflect the riskiness of the environment in which a consumer is utilizing credit, as well as the riskiness of the types of products a consumer uses.

The use of credit scoring and its disparate impact go far beyond the lending sector, affecting access to many other financial products and services. Employers use credit and other scoring mechanisms to evaluate job applicants, insurers use them to determine auto, life, and homeowners insurance, and landlords use them to screen tenants. Credit-scoring modelers and companies are finding even more creative ways to broaden the use of these systems, such as using credit scores to determine utility rates.⁴² Credit scores are even being used to determine which patients are more likely to take their medication as prescribed.⁴³

The information used to build credit-scoring models comes from a variety of sources; however, modelers tend to rely heavily on credit-reporting data from credit bureaus. The quality or accuracy of the scoring model is intrinsically tied to the quality of data upon which the model is based: the better the data quality, the better the scoring system. If modelers rely on limited or inaccurate data, they will develop scoring models that are less effective and have limited predictive power and market applicability. The less predictive a scoring model, the greater the likelihood for miscalculating risk.

Expanding access to quality, sustainable credit comprises much of NFHA's work since this issue has profound implications for communities of color and other classes protected by our nation's anti-discrimination laws and because the use of consumer credit data has spread precipitously. Businesses use credit data for decision-making in employment, housing, lending, insurance, medical, utility and other areas. The information captured by the credit repositories is being used for more than determining whether a person can obtain a loan or how much a consumer will be charged for a credit card. This information is also being used to determine whether a consumer can receive insurance, obtain a job, rent an apartment, or secure utility services.

While credit repositories capture all types of data from myriad sources, they do not capture information that explains the impact of discrimination and racial inequities that are replete throughout our markets and society. Moreover, repositories adopt policies that favor the provider of the credit data over the consumer, even when the entity has engaged in discriminatory or fraudulent conduct. This makes it

⁴¹ Lisa Rice and Deidra Swesnik, Discriminatory Effects of Credit Scoring on Communities of Color, Suffolk University Law Review, http://suffolklawreview.org/wp-content/uploads/2014/01/Rice-Swesnik_Lead.pdf.

⁴² See Jim Stillman, Your Credit Score Determines the Availability of Credit . . . and the Cost, YAHOO! VOICES (June 20, 2007), <http://voices.yahoo.com/your-credit-score-determines-availability-creditand-392590.html>.

⁴³ See Tara Parker-Pope, Keeping Score on How You Take Your Medicine, N.Y. TIMES WELL BLOG (June 20, 2011, 5:23 PM), <http://well.blogs.nytimes.com/2011/06/20/keeping-score-on-how-you-take-your-medicine>. Insurers and medical-care facilities use the FICO Medication Adherence Score to identify patients who need follow-up services to ensure they take their medication.

difficult for people to illustrate why a negative entry on their credit report may be erroneous. Further, repositories do not collect alternative or non-traditional credit information that can result in expanded access to quality, sustainable credit for under-served groups.

Discrimination in the marketplace taints the data collected by credit repositories; thus, data can be extremely harmful. Discrimination in the employment, housing, credit, health and other sectors impacts the type and quality of data reflected in our credit repository system. How that data is ultimately used by credit modelling agencies can exacerbate disparities and negatively affect the racial wealth gap, which is getting worse.⁴⁴ Credit scores, which are fundamentally built upon the data housed in the credit repositories, are to a large degree a function of wealth as opposed to willingness or ability to pay a debt. But credit scoring systems behave as though wealth is a function of personal or individual performance when it is, rather, determined by policies that have systemic manifestations – policies that help some and inhibit others. Although discrimination is a common occurrence, it is not accounted for in the way credit data is collected or utilized.

When credit repositories gather data, they do not simultaneously ascertain if a consumer has obtained credit from a predatory, discriminatory or abusive debtor for the purposes of ameliorating any negative fallout. Data is captured as if it is innocuous and benign when the opposite is the case. Data is infused with the discrimination replete throughout our society. When credit repositories collect data, without any assessment of the quality or legitimacy of that data, they help perpetuate the inequities that harm under-served consumers.

Some have attempted to mitigate bias in our markets by moving toward automated systems lulled by the myth that data is blind. Data is not blind, nor is it harmless. It can be dangerous and toxic particularly when it manifests the discrimination inherent in our systems. Researchers at the University of California at Berkeley have found that FinTech lenders that rely on algorithms to generate decisions on loan pricing discriminate against borrowers of color because their systems “have not removed discrimination, but may have shifted the mode.”⁴⁵ It is estimated that borrowers of color are being overcharged by \$250 million to \$500 million per year just in the FinTech space alone. The data gleaned from credit reporting agencies that go into the credit scoring algorithms do not exist in isolation. Each piece of information has appended to it other bits of data that is inherently connecting risk to race. In essence, these data systems manifest systemic and institutional racism.

Credit repositories should adjust their systems and practices to account for how discrimination impacts consumers. For example, there is clear evidence that subprime loans were targeted toward borrowers of color who qualified for prime credit and that these borrowers faced higher instances of delinquency and default because they received unsustainable subprime loans. There is also clear evidence of a pattern of discriminatory pricing behavior toward borrowers of color.⁴⁶ However, settlements for consumers

⁴⁴ Anzilotti, Ellie, “The racial wealth gap is worse than it was 35 years ago,” Fast Company, January 15, 2019, Available at: <https://www.fastcompany.com/90292185/the-racial-wealth-gap-is-worse-than-it-was-35-years-ago>.

⁴⁵ Bartlett, Robert P. and Morse, Adair and Stanton, Richard H. and Wallace, Nancy E. 2017. *Consumer Lending Discrimination in the FinTech Era*. UC Berkeley Public Law Research Paper. Available at SSRN: <https://ssrn.com/abstract=3063448> or <http://dx.doi.org/10.2139/ssrn.3063448>.

⁴⁶ See *United States v. Countrywide, United States, et al. v. Wells Fargo, United States v. Suntrust Bank, United States v. PrimeLending, United States v. National City Bank, United States v. Sage Bank*, and more at <https://www.justice.gov/crt/recent-fair-lending-cases-0> and <https://www.justice.gov/crt/housing-and-civil-enforcement-section>.

experiencing discrimination or predatory lending typically did not include having their credit information corrected. When settlements did call for this correction, many victims of discrimination could not be found to take advantage of the correction. This glaring oversight calls for the development of a mechanism to mitigate discrimination in the marketplace within our credit reporting system.

One asymmetry in the credit reporting world occurs when certain creditors do not report favorable consumer data to the credit repositories but do report unfavorable data. Another area where this happens is with rental housing payment information most of which is not captured by repositories. This is unfortunate since rental payment information can be highly predictive of future performance particularly in the mortgage lending context. The Urban Institute completed an analysis⁴⁷ which found that credit risk assessments for renters are being conducted improperly, and that by capturing this information, renters could get a boost when they apply for mortgage credit. This could be a tremendous benefit for borrowers who are credit invisible or unscorable. Less than 1% of credit files contain rental payment information. TransUnion, Equifax and Experian will include rental payment entries if they receive the data. Given the positive benefit many consumers can receive from the reporting of rental payment information, it is imperative to develop a system for easily tracking and reporting this data. Simultaneously, we must create increased protections for tenants so they are not taken advantage of by unscrupulous actors.

Currently, our credit reporting system rates consumers, placing the onus for performance on them. The system does not rate creditors, leaving them off of the hook for discriminatory, fraudulent, and other poor behavior. The discriminatory, fraudulent or harmful behavior of the creditor is reflected, incorrectly and unfairly, in the consumer's credit data.

Credit-scoring mechanisms are negatively affecting the largest growing segments of our population and economy. America cannot be successful if increasing numbers of our residents are isolated from the financial mainstream and subjected to abusive and harmful lending practices. Credit scores have an increasing impact on our daily activities and determine everything from whether we can get a job, to whether we will be able to successfully own a home. The current credit-scoring systems work against the goal of moving qualified consumers into the financial mainstream because they are too much a reflection of our broken dual credit market. This paradigm must change.

In addition to posing accuracy and access challenges, credit-scoring mechanisms lack transparency. The formulas are proprietary and not disclosed to the public. While there are a number of individual factors that help determine the score, only some of them are public. There are potentially thousands of variables that can be included. These variables can be comprised of individual and combined components, including such elements as the number of late payments, inquiries, inquiries by subprime lenders, open trade lines, late mortgage loan payments, or installment loans. Making the scoring systems more transparent will help consumers better manage their financial affairs. It will also help advocates, financial institutions, federal regulators, and legislators.

⁴⁷ Goodman, Laurie, Jun Zhu, Rental pay history should be used to assess the creditworthiness of mortgage borrowers, Urban Institute, April 17, 2018. Available at: <https://www.urban.org/urban-wire/rental-pay-history-should-be-used-assess-creditworthiness-mortgage-borrowers>.

Online Advertising Platforms and Data-based, Discriminatory Targeting

Another arena in which the use of big data may be harnessed to discriminate against housing consumers is online advertising. Online advertising is a form of marketing and advertising which uses the Internet to deliver promotional marketing messages to consumers. Online advertising platforms, like Facebook, compile large troves of data on individual users and allow advertisers to target their advertisements to specific users on the basis of interest, specific location, Internet usage practices, and a variety of other criteria derived from user data, including: race, familial status, sex, religion, and other protected classes. These platforms make the ability to target advertisements with this data “the product” sold to advertisers.

The Fair Housing Act prohibits discrimination in the advertisement of housing and housing-related opportunities. Under the Act, it is illegal to specify a preference or limitation or to change the terms and conditions of housing based on someone’s protected characteristics. It is similarly illegal to target or distribute ads on the basis of protected class. These can include expressing a restriction against renting to families with children or advertising a housing opportunity using phrases like “English speaker only,” for example.

Online advertising platforms have been the subject of much concern among fair housing advocates. In the rental space, enforcement actions against Craigslist⁴⁸ and Roommates.com⁴⁹ for allowing the posting of discriminatory advertisements have put online platforms on the radar as the public increasingly turns to the Internet to begin the search for a new home. Notably, in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, the Ninth Circuit held that immunity under the Communications Decency Act did not apply to Roommates.com’s online housing ad platform – as an interactive online operator – whose questionnaire asked whether housing providers accepted tenants by gender, sexual orientation, and whether they are families with children violated the Fair Housing Act. Despite Communications Decency Act defenses, online publishers may be subject to fair housing liability where they exert some editorial control over the marketing and content of the advertisement.

In October 2016, ProPublica published an article reporting that Facebook’s online platform enabled advertisers to exclude Facebook users assigned Black, Hispanic, and other “ethnic affinities” from seeing advertisements in the housing category published through its advertising portal.⁵⁰ NFHA and other civil rights partners engaged Facebook to indicate that its advertising features appeared to violate the Fair Housing Act and state laws. In February 2017, Facebook issued a statement committing to end the use of “ethnic affinity marketing” for ads that it identified as offering housing, employment, or credit. Facebook also said it would require housing, employment, and credit advertisers to “self-certify” that their ads complied with antidiscrimination laws.⁵¹

⁴⁸ See Julie Bosman, “Craigslist is Accused of Bias in Housing Ads,” *The New York Times*, Feb. 23, 2006, available at <https://www.nytimes.com/2006/02/23/business/media/craigslist-is-accused-of-bias-in-housing-ads.html>.

⁴⁹ For information on *Fair Housing Council of San Fernando Valley et al v. Roommates.com, LLC*, see <https://caselaw.findlaw.com/us-9th-circuit/1493375.html>.

⁵⁰ Julia Angwin and Terry Parris Jr., Facebook Lets Advertisers Exclude Users by Race, *ProPublica.org* (Oct. 28, 2016), <https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race>.

⁵¹ Improving Enforcement and Promoting Diversity: Updates to Ads Policies and Tools, *newsroom.fb.com*, (Feb. 8, 2017), <https://newsroom.fb.com/news/2017/02/improving-enforcement-and-promoting-diversity-updates-to-ads-policies-and-tools/>.

In November 2017, more than a year after its original report, ProPublica published a second story revealing that Facebook continued to create content enabling housing advertisers to exclude users by prohibited categories, such as race and national origin.⁵² ProPublica reported that it had bought dozens of rental housing ads on Facebook and asked that they not be shown to certain categories of users, such as African Americans, mothers of high school kids, people interested in wheelchair ramps, Jews, expats from Argentina, and Spanish speakers. Facebook had approved all of these ads.

In light of Facebook's broken promises, NFHA and three of its partners – the Fair Housing Justice Center in New York, Housing Opportunities Project for Excellence, Inc. in Florida, and the Fair Housing Council of Greater San Antonio – conducted an investigation of Facebook. Based on the results of the investigation, the organizations filed a lawsuit against Facebook, Inc. in federal court in New York City in March 2018, alleging that Facebook's advertising platform enables landlords and real estate brokers to exclude families with children, women, and other protected classes of people from receiving housing ads. As the complaint explains, while Facebook had previously removed some of the discriminatory options identified by ProPublica, it continues to violate fair housing laws that prohibit discrimination in other ways. With almost 2 billion users, Facebook customizes the audience for its millions of advertisers based on its vast trove of personalized user data.

NFHA and its partners created a non-existent realty firm and then prepared dozens of housing advertisements that they submitted to Facebook for review. Facebook's advertising platform indicated specific audience groups that could be excluded from receiving the ads, including families with children, moms with children of certain ages, women or men, and other categories based on sex or family status. The lawsuit alleges that Facebook created pre-populated lists that make it possible for its housing advertisers to exclude home seekers from viewing or receiving rental or sales ads because of protected characteristics, including family status and sex. The investigations also revealed that Facebook allows housing advertisers to exclude users of certain interest categories from receiving ads. For example, if Facebook users demonstrate an interest in disability-based pages and topics, such as disabled veterans or accessible parking permits, an advertiser can exclude them from viewing a housing ad. Similarly, if Facebook users demonstrate an interest in pages and topics that relate to national origin, such as English as a second language, advertisers are able to exclude these users as well. Both disability and national origin are protected classes under the Fair Housing Act.

Making housing options unavailable to members of these protected classes would violate the Fair Housing Act. NFHA and its partners alleged in their lawsuit that Facebook's practices violate federal and local fair housing laws that bar discrimination in housing advertising, and they ask the court to: declare that the practice of excluding Facebook users from receiving housing ads on the basis of sex, family status, and any other legally protected categories violates the Fair Housing Act and the New York City Human Rights Law; issue an injunction barring Facebook from continuing to engage in discriminatory housing advertising; and require Facebook to change its advertising platform and its practices to comply with fair housing laws, including by eliminating checkboxes, selection categories, and other content that enable advertisers to restrict access to housing advertisements.

⁵² Julia Angwin, Ariana Tobin and Madeleine Varner, Facebook (Still) Letting Housing Advertisers Exclude Users by Race, *propublica.org* (Nov. 21, 2017), <https://www.propublica.org/article/facebook-advertising-discriminationhousing-race-sex-nationalorigin>.

Last month, in March 2019, NFHA and its local fair housing center partners settled a historic lawsuit with Facebook that will drive unprecedented and sweeping changes across its advertising platform. The settlement will set new standards across the Tech industry concerning company policies that intersect with civil rights laws.

Under the terms of the fair housing centers' settlement:

- Facebook has now agreed to establish a separate advertising portal for advertisers seeking to create housing, employment, and credit ads on Facebook, Instagram, and Messenger. The portal will limit advertisers' targeting abilities to prevent them from illegally discriminating. Housing advertisers will no longer be allowed to target consumers based on protected classes. Housing advertisers will also be prevented from advertising based on zip code. Instead, they will be permitted to advertise based on a 15-mile radius from a city center or address.
- Facebook will restructure its "Lookalike Audience" feature, which formerly allowed advertisers to target ads to Facebook users who were similar to an advertiser's existing customers. Moving forward, Facebook will restructure and rename this tool so that it will not consider users' age, relationship status, religious or political views, school, interests, zip code or membership in "Facebook Groups."
- Facebook will also create a page for consumers to view all housing ads placed on its platform, post a self-certification agreement that advertisers must agree to regarding all anti-discrimination laws, provide anti-discrimination and civil rights educational materials to advertisers, and work with scholars, organizations, experts, and researchers to examine algorithmic modeling and its potential for discriminatory impact and bias.
- NFHA will work with Facebook to develop an in-house fair housing training program for Facebook leadership and staff in a number of departments. NFHA and the co-plaintiffs will monitor Facebook's advertising platform on a continual basis for the next three years. NFHA will meet with Facebook and others every six months over the next three years to study the platform and consider further changes.

This settlement positively impacts all of Facebook's 210 million users in the U.S. since everyone is protected by our nation's fair housing laws. As the largest digitally-based advertising platform and a leader in Tech, Facebook has an obligation to ensure that the data it collects on millions of people is not used against those same users in a harmful manner. Facebook took in \$8.246 billion in advertising revenue in the U.S. and Canada alone, in the fourth quarter of 2018.

Our settlement agreement with Facebook sets a significant and historic precedent for Big Data and Tech companies throughout the country. As more consumers rely on Big Tech in their daily lives, it is important that companies abide by and enforce civil rights laws across their platforms. Big Tech and Big Data companies must not allow their platforms to become tools for unlawful behavior, including segregation and discrimination in housing and beyond.

Beyond the scope of changes agreed to under the settlement, further analysis will need to be undertaken to assess whether demographic reflection can happen regardless of whether details about protected class features like race are overtly specified by users anywhere on Facebook. Facebook's extensive data about its users may include proxies for protected class membership, and these proxies can lead to a Lookalike Audience whose protected status traits match those of the source audience. One study found that that racially-homogeneous source audiences tended to result in racially-homogeneous Lookalike audiences.⁵³ The researchers concluded that there is a strong inference that "the [Lookalike] audience feature in Facebook is able to both capture the biases in a source audience and propagate the biases to the larger audiences it helps construct."

The National Fair Housing Alliance and our partners look forward to continuing our work with Facebook to ensure that housing discrimination comes to an end and civil rights are upheld for all. Under the settlement, Facebook is removing the directly discriminatory categories for creating a customer base or delivery group and minimizes the indirect effects, but once Facebook changes the customized audience tool, as it has agreed to do, then it will be important to evaluate what impact that is having on the delivery outcomes.

Moving forward, Facebook agreed in the settlement to engage academics, researchers, civil society experts, and privacy and civil rights/liberties advocates to study the potential for unintended biases in algorithmic modeling. Specifically, Facebook will study how the "Lookalike Audience" tool impacts delivery of advertisements in its separate housing, employment, and credit "ad flow" and to study the potential for unintended bias with respect to the tool generally. Facebook has agreed to meet with the National Fair Housing Alliance and others on a regular basis over the next three years to discuss the findings of their studies and any potential modifications to the tool as part of its ongoing commitment to nondiscrimination in advertising on its platform.

Last week, on March 28, HUD announced that it is charging Facebook with violating the Fair Housing Act by encouraging, enabling, and causing housing discrimination through the company's advertising platform. According to HUD's Charge, Facebook enabled advertisers to exclude people based on interests that closely align with the Fair Housing Act's protected classes and based upon their neighborhood by drawing a red line around those neighborhoods on a map. The Charge further asserts that Facebook also uses the protected characteristics of people to determine who will view ads regardless of whether an advertiser wants to reach a broad or narrow audience. Through its Charge, HUD seeks to address unresolved fair housing issues regarding Facebook's advertising practices and to obtain appropriate relief for the harm Facebook caused and continues to cause.

Fair Housing Issues in the Online Shared Economy

Constant innovations are being made to the ways in which housing providers sell, rent, and advertise. The digital age has brought with it changes in every corner of the housing market, reshaping how providers market opportunities and select potential tenants and purchasers.

⁵³ Till Speicher, et al., Potential for Discrimination in Online Targeted Advertising, <http://proceedings.mlr.press/v81/speicher18a/speicher18a.pdf>.

AirBnB is an online community marketplace that connects people looking to rent their homes with people who are looking for accommodations, allowing users to lease and rent short-term housing in more than 65,000 cities and 191 countries. Following a 2015 study by Harvard Business School researchers, however, Airbnb came under scrutiny because the platform allows its hosts to potentially reject renters based on race, gender, and other factors that are protected under the Fair Housing Act. The study examined a sample of properties in the United States, found that Airbnb users with distinctly African American names were 16 percent less likely to be accepted relative to users with distinctly White names.⁵⁴ Users also shared their stories of discrimination on social media using the tag #AirbnbWhiteBlack, generating attention to the prevalence of the discriminatory practices of many Airbnb hosts.

As a result of these findings and related advocacy, Airbnb has adopted a number of changes and rules to combat discrimination by its hosts. These measures include requiring all rental hosts to agree to a “community commitment” and nondiscrimination policy as of November 2016. Airbnb also released a report outlining its plans to address discrimination.⁵⁵ Accompanying the release of the report, Airbnb’s CEO Brian Chesky stated: “Bias and discrimination have no place on Airbnb, and we have zero tolerance for them.”

In April 2017, AirBnB entered into a settlement agreement with the California Department of Fair Employment and Housing to resolve a Department-initiated complaint alleging that AirBnB engaged in acts of housing discrimination and failed to prevent discrimination against Black guests in violation of California civil rights laws.⁵⁶ Under its terms, AirBnB hosts and guests in California are required to accept a recently implemented nondiscrimination policy as a condition for participating in AirBnB. The Department will conduct fair housing testing of AirBnB hosts in the state, and AirBnB California employees will receive fair housing and discrimination training. AirBnB has designated a unit to investigate all discrimination complaints, and this unit will submit periodic reports to the Department. AirBnB has also agreed to develop a progressive system of counseling, warning, and discipline for hosts and guests when unlawful discrimination occurs.

Online Advertising Reform and Amending the Communications Decency Act

Seventy-two percent of those searching for an apartment utilize the Internet as the starting point of their search, and 90 percent of home buyers search online at some point in the home buying process.⁵⁷ This makes it increasingly important to ensure that adequate safeguards exist to ensure online ad platforms are subject to fair housing and fair lending laws.

⁵⁴ Benjamin Edelman, Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment, <http://www.benedelman.org/publications/airbnb-guest-discrimination-2016-09-16.pdf>.

⁵⁵ https://blog.airbnb.com/wp-content/uploads/2016/09/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf.

⁵⁶ <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/Press-release-4-27-17.pdf>.

⁵⁷ Online Search Behavior and Trends of Apartment Renters, by Apartments.com and Google, http://costarmultifamily.com/google-whitepaper/Apartment_GoogleWhitePaper.pdf.

It is essential that Congress update existing law that has shielded online entities from the requirements of the Fair Housing Act, especially as it relates to advertising content. Congress must amend the Communications Decency Act (CDA)⁵⁸ by expressly stating that the CDA itself, and specifically § 230, does not give immunity from the Fair Housing Act to any platform that allows for the publishing of discriminatory third-party content. In doing so, Congress will effectively ensure that the protections of the Fair Housing Act and other civil rights laws apply to current and future popular forums for housing advertisements, online or otherwise.

HUD, DOJ, the Federal Trade Commission, and the CFPB must also build a strong regulatory framework to better protect consumers against steering and other discriminatory online advertising behaviors by online advertising platforms, mobile app companies, and all other online entities. These agencies should form a joint task force with the advisement of fair housing and civil rights advocates, as well as advertising, privacy, Artificial Intelligence, and machine learning experts, to investigate areas in which online entities may allow discriminatory advertisements and other illegal behavior. This task force must conduct this analysis and offer policy and legislative recommendations to address discriminatory advertisements in housing and other civil rights abuses.

Online advertising platforms, mobile app companies, and all other online entities must also begin to better explain to consumers, in plain language, what their data is used for and how their systems allow for the targeting of ads. They must also expend the necessary resources to closely monitor the language in advertisements and audience targeting or exclusion by third parties that use their services. We are hopeful that the Facebook settlement agreement will serve as an example to others in the industry for proactive steps that can be taken with civil rights partners like the National Fair Housing Alliance to address these issues as they pertain to housing and housing-related services.

Only by initiating these efforts can we as a nation begin to meet the pressing fair housing challenges of the digital age. These efforts include the monitoring of amorphous and multi-service online entities, many of which provide housing or housing-related advertisements. This will require dedication and commitment to transparency, equity, and civil rights from lawmakers and public servants, and strong multi-issue collaboration among fair housing, civil rights, and other advocates.

Responsible Online Advertising Practices for Housing Providers

Publications or online portals must refrain from publishing discriminatory advertisements, and housing and housing-service providers also bear responsibility to refrain from posting discriminatory advertisements. Housing providers themselves must understand that including or excluding certain audiences or neighborhoods in the settings of advertisements may be discriminatory. Micro-targeting on web-based platforms may facilitate discrimination in advertising placements.

Here are guidelines for housing providers to consider when posting online housing advertisements:

- Ensure advertising is compliant with fair housing laws by focusing on the property and the amenities in rental listing description, rather than on who an ideal renter would be.

⁵⁸ Communications Decency Act of 1966, 47 U.S.C. §§ 230, 560, 561 (2006).

- Do not make statements that exclude persons in protected classes or express a preference for one personal characteristic over others.
- Always include the fair housing logo and/or the “Equal Housing Opportunity” slogan in advertising.
- Do not exclude from marketing campaigns persons in protected classes, such as families with children, people of certain racial or ethnic backgrounds, persons with disabilities, etc.
- Do not exclude interest groups that may be affiliated with persons in protected classes.
- Do not target ads geographically to exclude areas populated predominantly by persons in certain protected classes.
- If human models are featured in advertisements, ensure that the images are inclusive and representative of all communities that need access to housing.
- Always give truthful information about the availability, price, amenities, and features of a housing unit.

The best practice in housing advertisements is to develop ad campaigns that are based on a goal of broadening – not restricting – market outreach, to gain critical exposure to consumers.

Recommendations

NFHA offers the following recommendations to Congress for steps it can take to address the concerns we have identified in this testimony.

Recommendations for strengthening our fair housing infrastructure

Congress has an important role to play in ensuring that our fair housing infrastructure is stable, has sufficient resources and is well-managed. Today’s hearing is an important first step in providing the oversight needed to secure our ability to eliminate discrimination in housing and provide access to opportunity for all residents of this country. We encourage Congress to consider the following recommendations to address the various concerns I have laid out:

1. Increase the level of funding for fair housing. NFHA recommends the following specific funding levels:
 - a. FHIP must be increased to \$52 million;
 - b. FHAP should be increased to \$35.2 million; and
 - c. HUD’s Office of Fair Housing and Equal Opportunity be funded at \$102 million to hire a total of 750 FTE staff.
2. Continue its oversight of HUD’s management of its programs to ensure that funds are flowing on a timely and reliable schedule and that program guidelines are administered consistently across HUD regions.
3. Use its authority to ensure that HUD does not weaken or eliminate critical regulatory tools, including the current disparate impact and affirmatively furthering fair housing regulations, and further that HUD vigorously enforces those and all of its fair housing regulations.

Recommendations to address a constant delays in the Fair Housing Initiatives Program.

1. Announce the FY19 FHIP NOFA as soon as possible;
2. Announce the FY20 FHIP NOFA at least six months before the end of the FY for which funds are appropriated;
3. Establish a permanent calendar for the release of each subsequent FHIP NOFA and awards;
4. Form and convene Technical Evaluation Panels prior to the FHIP NOFA application is due to ensure the panel is familiar with the FHIP program and NOFA requirements and can conduct an informed selection process immediately after the application deadline;
5. Announce awards within 30 days of the NOFA application due date;
6. Create a grant management timetable to ensure grant payments are timely made after a grant work cycle begins and report on its compliance with said grant management timetable;
7. Maintain a list of FHIP agencies that are at risk of experiencing funding gaps due to previous or expected FHIP delays;
8. Reallocate any FHIP FY17-19 funds that have been returned to provide gap funding for high performing and qualified nonprofit fair housing organizations that are at severe risk of closure; and
9. Ensure sufficient staff and subcontractor staff are prepared to adequately administer the NOFA process in a timely manner.⁵⁹

Recommendations to address concerns about the fair housing impact of the growing use of Big Data and Artificial Intelligence in housing-related activities.

1. Congress must authorize the creation of a bicameral task force charged with exploring and reporting on the policy challenges to civil rights, consumer, and privacy rights by the proliferation of big data mining, brokering; the use of AI in automated housing transactions and background reporting services; and specifically the role that social media platforms play in this space. The goal of this bicameral task force is to commit to providing legislative recommendations to address the various challenges addressed in this testimony and in other areas identified by the task force.
2. It is essential that Congress update existing law that has shielded online entities from the requirements of the Fair Housing Act, especially as it relates to advertising content. Congress must amend the Communications Decency Act (CDA) by expressly stating that the CDA itself, and specifically § 230, does not give immunity from the Fair Housing Act to any platform that allows for the publishing of discriminatory third-party content.
3. Congress should conduct further hearings gain a deeper level of understanding and effectively assess the nature and operations of artificial intelligence and big data and their impact on our ability to provide for fair housing throughout the nation. Congress should also assess the implications of these new technologies for the level and type of resources needed by HUD, DOJ,

⁵⁹ For more information about the FHIP program, see the testimony of Kenya Robertson, President & CEO of the Housing Opportunities Project for Excellence (HOPE) Fair Housing Center, Inc. before the House Appropriations Committee Subcommittee on Transportation, Housing and Urban Development and Related Agencies, February 27, 2019.

other federal agencies and the fair housing organizations that are the front lines of defense against housing discrimination to do their jobs effectively, and provide additional resources as necessary.

4. Federal regulators should be more active in evaluating the variables that lenders, insurance providers, and other housing-service providers use in mining big data to target their services, to determine if they operate to result in biased outcomes.
5. Credit repositories should take a number of steps to adjust their systems and practices to account for how discrimination impacts consumers, including:
 - Discrimination, fraud, abuse and other harmful acts must be mitigated in consumer credit data. Credit repository agencies should change their contracts to require information providers to immediately correct consumer information if those entities have been found liable for civil rights, abuse, fraud or other violations or have entered into agreements to correct issues related to these practices. Credit repository agencies should also “turn off” negative entries that might be the result of discrimination, fraud, abuse, etc.
 - Rental housing payments should be reflected in the credit repository system. This must be coupled with tenant protection laws to curtail fraud and abuse. Credit repositories can work with technology firms to provide a low-cost, scalable solution to facilitate the reporting of this data which can benefit millions of consumers. At the same time, lawmakers must step up tenant protections to curtail abuse in the rental market.
 - If a creditor is not reporting positive payment history data, negative data emanating from that creditor must not be captured. Credit repositories should reject any negative data that is sourced from a creditor that does not report positive payment information.
6. HUD, DOJ, the Federal Trade Commission, and the CFPB must also build a strong regulatory framework to better protect consumers against steering and other discriminatory online advertising behaviors by online advertising platforms, mobile app companies, and all other online entities. These agencies should form a joint task force with the advisement of fair housing and civil rights advocates, as well as advertising, privacy, Artificial Intelligence, and machine learning experts, to investigate areas in which online entities may allow discriminatory advertisements and other illegal behavior. This task force must conduct this analysis and offer policy and legislative recommendations to address discriminatory advertisements in housing and other civil rights abuses.
7. Online advertising platforms should take note of the Facebook settlement agreement as an example of proactive steps that can be taken with civil rights partners like the National Fair Housing Alliance to address these issues as they pertain to housing and housing-related services.

Recommendations related to enforcement of HUD’s Equal Access Rule and protections for LGBTQ Americans

- Congress must demand that HUD make available all resources related to its Equal Access Rule, and require that in its annual report to Congress that it describe in detail how it is currently handling complaints of discrimination on the basis of sex due to discrimination against gender non-conforming individuals or those who don’t adhere to traditional sex stereotypes.

Recommendations related to enforcement of HUD's Disparate Impact Rule

- Congress must stop reconsideration of its existing Disparate Impact Rule, and Congress must vigorously review and question the process by which the Department has initiated proposed changes to the rule. Congress should pay close attention to whether HUD:
 - Appropriately engaged the public, including industry and consumer and civil rights advocates, in the drafting of the proposed rule; and
 - Designated changes to the Disparate Impact Rule as an “economically significant rulemaking” by appropriately considering the true cost of proposed changes to the Disparate Impact Rule, especially as it relates to the cost of housing discrimination on protected classes and the impact of reducing their ability to successfully bring a disparate impact claim.

Recommendations related to HUD's Affirmatively Furthering Fair Housing Rule

- Congress must scrutinize HUD's decision to rescind its AFFH rule, and take stock of the rationale behind its decision. Specifically, the Committee must question HUD officials about:
 - How the Department is monitoring compliance with the AFFH requirement; and
 - What instructions, if any, the Department has provided jurisdictions about successfully completing an Analysis of Impediments and how to incorporate into the AI the data and mapping systems HUD has stated it will continue to make available, and what connection should exist between the jurisdiction's fair housing plan and its decisions about how to spend housing and community development resources it receives from HUD and other sources.

Recommendations Concerning Legislation Expanding Fair Housing Resources or Protections

NFHA recommends Congress support the following legislation:

- “Veterans, Women, Families with Children, Race, and Persons with Disabilities Housing Fairness Act of 2019” - This legislation supports the need to conduct widespread audit testing to uncover patterns of housing discrimination across all protected classes in the major areas of housing transactions; ensures that only mission-driven not-for-profit qualified fair housing enforcement agencies have access to FHIP program funding; and establishes grant-matching programs to explore solutions to alleviate housing discrimination and segregation.
- “Sexual Harassment Awareness and Prevention Act of 2018” – This legislation supports better documentation of sexual harassment in housing by HUD; requires the Government Accountability Office to study the readiness and efficacy of mechanisms at relevant federal departments that operate or support housing programs to challenge sexual harassment; and establishes an interagency task force to implement recommendations developed by Congress.
- “Equality Act of 2019” – This legislation adds sexual orientation and gender identity protections to the Fair Housing Act and Equal Credit Opportunity Act. However, NFHA warns that this legislation must not move forward should any existing protections in the Fair Housing Act or Equal Credit Opportunity Act be undermined via amendment at any point throughout its consideration of the legislation.

- “Restoring Fair Housing Protections Eliminated by HUD Act of 2018” – This legislation restore HUD’s Equal Access Rule and Affirmatively Furthering Fair Housing Rule; reinstate HUD’s Local Government Assessment Tool in relation to its Affirmatively Furthering Fair Housing Rule; and requires HUD to better report on its enforcement actions and maintain a public database of fair housing complaints.

Conclusion

The National Fair Housing Alliance appreciates the opportunity to address the Committee on the importance of ensuring the Fair Housing Act is effectively enforced and implemented. This nation has powerful protections in place for victims of housing discrimination, but these protections only go as far as the federal government is willing to enforce them or this Congress is willing to provide the necessary funding and support for it to do so. The National Fair Housing Alliance looks forward to working with the Committee to discuss the fair housing issues before it and further develop our recommended solutions to address them.

Statement by

Cashauna Hill, Executive Director

Greater New Orleans Fair Housing Action Center

Before the House Financial Services Committee

The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing

April 2, 2019

Good morning, my name is Cashauna Hill and I am the executive director of the Greater New Orleans Fair Housing Action Center. I first want to thank Chairwoman Maxine Waters for the opportunity to address the Committee and review GNO Fair Housing's efforts to live up to the mandate of the Fair Housing Act. I am immensely grateful for your consistent support and advocacy on behalf of those most impacted by housing segregation and discrimination. We have particularly appreciated your commitment to south Louisiana's recovery following Hurricane Katrina. I would also like to thank Ranking Member McHenry and the members of the Committee for welcoming all us here today to discuss full and effective enforcement of the Fair Housing Act.

The Fair Housing Action Center is a non-profit, civil rights organization established in 1995 to eradicate housing discrimination and segregation. We are based in New Orleans and serve the entire state of Louisiana as the only full-service fair housing advocacy group in the jurisdiction. GNO Fair Housing's work includes education, investigation, enforcement, and policy advocacy activities. We are dedicated to fighting housing discrimination because it is an illegal and divisive force that perpetuates poverty and segregation, and limits access to opportunity.

Fair Housing Act Enforcement and the Fair Housing Initiatives Program (FHIP)

I want to begin with a story of one of our clients to emphasize the real-life impacts of the protections afforded by the Fair Housing Act. In 2014, a nursing student named Marilyn¹ lived in New Orleans and was celebrating Christmas with her three-year-old son. Marilyn invited her ex — the father of her son — over to help decorate the tree and to visit their child; however, he became violent when she refused his advances. He choked Marilyn and threw her into a mirror. A neighbor heard the commotion and called the police. When she returned the next day after being treated for her injuries at a local hospital, the property manager told Marilyn she had to move out because of the complex's "zero tolerance" policy on domestic violence. Because Louisiana's landlord-tenant laws allow evictions with only five days' notice, Marilyn had only a few days to find a new apartment, and when she did, it was more expensive and much

¹ Marilyn's name has been changed to protect her confidentiality.

further from her job and her son's school. She was forced to move to a neighborhood in which she felt less safe, and one night after working a shift at her second job, she was robbed at gunpoint in the parking lot of the new apartment complex.

Marilyn eventually made her way to the Fair Housing Action Center, where our attorneys — partially funded through HUD's Fair Housing Initiatives Program (FHIP) — were able to take her case at no cost. Under the Federal Violence Against Women Act, Marilyn would have been protected had she lived in HUD-subsidized housing. But because she did not have a Housing Choice Voucher or other subsidy, there were no federal or state protections explicitly ensuring that she was not punished for the actions of her abuser. Instead, the Fair Housing Action Center made use of a 2013 HUD rule and legal theory upheld by Supreme Court known as Disparate Impact. That theory holds that some policies that seem neutral — like the complex's "zero tolerance" policy — can unfairly exclude certain groups of people. In this case, the policy had a disparate impact on women, who are most likely to be victims in domestic violence cases.

Marilyn's case eventually settled, but not before she became an advocate for changes to protect other women in similar situations. Due to her efforts, together with GNO Fair Housing's policy staff, the Louisiana Legislature passed new protections for survivors of domestic violence in 2015. Months after its passage, that law prevented the eviction of a recently assaulted pregnant woman and continues to assist survivors across our state.

I share this story because chronic underfunding and delays in administration are jeopardizing our ability to enforce the Fair Housing Act. None of our work to support Marilyn would have been possible without the FHIP program. It was first authorized under President Reagan and supports local efforts to educate the public about fair housing rights and conduct enforcement of the Fair Housing Act. Not only does FHIP provide vital services to the public and the housing industry, but it also saves money by vetting complaints through fair housing organizations, before they reach HUD and state agencies. According to the National Fair Housing Alliance, over 70% of complaints that are vetted by FHIP agencies result in conciliation or a cause finding, compared to just 31% of non-FHIP referred complaints.

The Greater New Orleans Fair Housing Action Center has been highly successful in leveraging FHIP funding to support our clients, but insufficient federal appropriations have eroded fair housing organizations' ability to retain experienced staff and have left over a dozen states without a non-governmental full-service fair housing group. We know the lack of funding significantly impacts our geographic reach because when we have conducted testing in underserved areas or those that are not covered by a fair housing center, we have found alarming rates of discrimination. Testing is a type of undercover investigation in which equally qualified trained investigators, or "testers," mystery shop for housing. The testers' experiences are then compared to understand if some testers are treated differently based on a trait protected by the Fair Housing Act.

As an example, we received a grant to support testing in Jackson, Mississippi in 2016, where no other fair housing group was providing that service. It took significant staff time and resources to recruit and train local testers and to travel between Jackson and New Orleans. When the investigation was complete, we found that black testers faced discriminatory treatment 52% of the time in the Jackson rental market. There are instances of discrimination like this that regularly go unchallenged because FHIP does not currently support enough fair housing centers across the country.

Flat funding of FHIP, along with dramatic decreases in staffing at HUD's Office of Fair Housing and Equal Opportunity, have significantly increased delays in processing cases and impeded enforcement of the Fair Housing Act. FHEO is responsible for administering FHIP; an administrative complaint process through which victims of housing discrimination can access justice without having to seek expensive legal counsel; and it oversees the compliance of HUD's own programs with the Fair Housing Act itself. Regrettably, FHEO has long experienced a shortage in its staff. Chronic understaffing at FHEO has consequences for the quality of services and justice that victims of housing discrimination can achieve.

According to HUD regulations, filed complaints must be investigated within 100 days. When a case investigation goes past 100 days it is considered an "aged" case. In 2017, HUD had 895 cases that became aged during that same year, and it had 941 cases that were already considered aged at the beginning of the fiscal year. During the same time periods, Fair Housing Assistance Program (FHAP) agencies had 3,994 cases that became aged and 1,393 cases that were already considered aged at the beginning of the fiscal year. Practically, what this means for groups like the Fair Housing Action Center is a delay in making victims of discrimination whole, and a delay in correction of housing providers' discriminatory behavior.

As FHEO's staffing has decreased, HUD has become increasingly reliant on FHAP agencies to process filed cases, placing the burden of its understaffing on state and local agencies, at the same time that funding for the FHAP program has decreased. Understaffing at FHEO has also contributed to serious delays in publication of the FHIP Notice of Funding Availability, causing serious funding gaps and delays in the continuation of existing 3-year enforcement grants that FHIP recipients have already planned for. Funding delays make it very difficult for local fair housing centers to retain highly trained staff and continue to offer the services necessary to serve the public. The Housing Fairness Act's goals of authorizing additional FHIP funds and increasing testing efforts nationwide, as well as the Restoring Fair Housing Protections Act's provisions to ensure accurate and accessible tracking of complaints moving through the HUD process, would go a long way toward filling gaps in fair housing enforcement. Increased enforcement by the federal government would send a powerful message about this country's commitment to fulfilling the promise of the Fair Housing Act and ensuring that everyone has equal access to the American Dream.

Affirmatively Furthering Fair Housing

As the Committee is aware, the Fair Housing Act was not implemented solely to prevent individual acts of discrimination, but also to address historic patterns of segregation. These residential patterns are deep, entrenched, and were initiated by government actions that explicitly supported segregation, such as redlining, exclusionary zoning, and restrictive covenants. For many years, scores of research and data have noted the connection between government-sponsored segregation and lack of access to opportunity. In 1968, for example, the Kerner Commission report diagnosed federal housing policy as a driver of the hopelessness and desperation in neighborhoods of color at the time.

The Fair Housing Act, passed shortly after the Kerner report's release, was birthed out of this context and includes an explicit call to undo the harm caused by segregationist policies. The Act mandates that governments must administer their programs and activities in a manner that affirmatively furthers fair housing (AFFH). With the exception of HUD Secretary George Romney's Open Communities campaign in 1970, the AFFH mandate remained largely unenforced until HUD's 2015 AFFH rule.

The 2015 AFFH rule made the law's text real by ensuring that local recipients of federal housing and community development dollars engage in a thorough assessment of existing residential living patterns and set measurable goals for moving toward equitable and integrated communities. This practice is essential, because segregation remains an enormous challenge in most communities and because an overwhelming number of studies show that where you live determines how you live. As an example from New Orleans, in two census tracts a few miles apart, life expectancies in the two neighborhoods differ by more than 25 years. The census tract where the average resident lives to be 88, is more than 90% white. The census tract where the average resident only lives to be 62, is more than 90% black.

New Orleans had the distinction of being in the first cohort of jurisdictions required to submit a new fair housing plan under the AFFH rule. Local leaders relished the opportunity and implemented a collaborative, community-driven process unlike anything New Orleans had ever done before. New Orleans' Assessment of Fair Housing (AFH) was a partnership with the local housing authority, involved the participation of community groups often left out of previous processes, and collected preferences and ideas from hundreds of residents. New Orleans' AFH was the first submitted under the new rule and has since been lifted up as a model for the nation.

GNO Fair Housing, with support from philanthropic partners, led the community engagement process for New Orleans' AFH. The transparent, collaborative planning process resulted in unprecedented community engagement that produced comprehensive policy recommendations that provide a clear path forward. Among the recommendations included in the report are data-driven solutions addressing transit funding and access; fair housing education and outreach efforts; the placement of affordable housing; gentrification and displacement; support for fair housing enforcement; and limiting and addressing exposure to environmental toxins.

GNO Fair Housing has supported and participated in successful AFH plans not only in New Orleans, but in various suburban communities across south Louisiana, including a consortium of Jefferson Parish, the City of Kenner, and St. Charles Parish, as well as in St. Tammany Parish. In these jurisdictions, HUD's interactive data and mapping tool provided invaluable data to local leaders and spurred new conversations about policies and practices.

Unfortunately, the rest of the jurisdictions in Louisiana and those around the country will not have the benefit of this process, due to suspension of the AFFH rule. Local jurisdictions are again left with little information or guidance about how to fulfill their obligation to affirmatively further fair housing. HUD has instead directed jurisdictions to undertake the previous Analysis of Impediments (AI) process, despite the fact that a 2010 Government Accountability Office (GAO) report found the process vague and ineffective.² Previous New Orleans AIs are an excellent example of fair housing plans that fall far short of the standard put forth in the Fair Housing Act. The most recent 2010 AI completely fails to assess local government's role in perpetuating segregation and does not include discussion of any goals to overcome these barriers. The 2016 AFH specifically acknowledges this failure, stating, "The goals in the 2010 Analysis of Impediments were not specific enough to guide targeted action to further fair housing. As a consequence, segregation and concentrated poverty areas appear to have become more concentrated, and some neighborhoods have remained the same." Without the tools of the AFFH rule, jurisdictions may face a similar fate, repeating past mistakes and failing to address and overcome legacies of generational poverty. We strongly encourage the reinstatement of the AFFH rule and the passage of the Restoring Fair Housing Protections Act to ensure all local jurisdictions have access to the Assessment of Fair Housing process.

Equitable Recovery from Disasters

Nowhere is the focus on affirmatively furthering fair housing more important than after life-altering disasters that change the face of entire cities and regions. Before passage of the Fair Housing Act, many communities across the country were planned and built with the same set of segregationist real estate and development practices. We've since outlawed many of those practices, but in very few places have we gone back and examined how to undo their harm and reimagine our communities as places where all children grow up with the same opportunities regardless of their race or zip code.

In the New Orleans area, the development patterns of the region before Hurricane Katrina were the product of redlining maps, highway projects built through black neighborhoods, and later, the white flight that followed the integration of schools. The levee failures and flood that followed Hurricane Katrina was one of the worst

² HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans, GAO, published September 14, 2010. Retrieved from: www.gao.gov/products/GAO-10-905.

tragedies in modern history, but it also offered New Orleans an unusual chance to reimagine how to redesign a city and region to be open to all, and to use federal recovery dollars in a way that ensured equitable recovery and housing choice. Unfortunately, the opposite occurred. As we near 15 years of recovery, New Orleans is still missing nearly 100,000 African American residents who have not returned and the City is now more racially segregated than before the storm. Instead of affirmatively furthering fair housing, policymakers made decisions that further entrenched segregation and poverty.

After Hurricane Katrina, the Housing Authority of New Orleans (HANO)—with permission from HUD and the New Orleans City Council—demolished over 5,000 units of public housing, including many units that were not badly damaged. Another 800 units of smaller scattered-site housing owned by HANO were also taken offline. Under the auspices of deconcentrating poverty, former public housing residents were offered portable Housing Choice Vouchers. But with no citywide comprehensive plan to rebuild or rehab rental housing, 50% of which had been damaged or destroyed, voucher holders were left to compete for the limited remaining supply of rental units and, as low-income individuals, were pushed to the geographic margins of the market.

Public housing before the storm suffered from chronic funding shortfalls, fueling maintenance and repair issues, but the vast majority of public housing residents lived in the urban core of the city, close to jobs and public transit. Today, 90% of HANO's clients receive vouchers because only a fraction of the public housing units has been rebuilt. Of New Orleans' nearly 18,000 voucher households, half have been pushed out of the urban core, across the Mississippi River or canals, to neighborhoods where buses only show up every hour and travel time to hospitality jobs in the French Quarter can be at least as long. Children wait outside in pre-dawn darkness to commute up to three hours round trip to schools across town. On the margins of the city, some individual census tracts contain as many as 800 voucher households, all within a couple dozen square blocks. The data makes it clear that post-Katrina public housing policy did not deconcentrate poverty. Instead, it displaced thousands, fractured support networks, and then reconcentrated low-income households in areas further from jobs, transit, high-performing schools, and other resources.

After the storm, African American renters without vouchers encountered other problems. As they sought to return to the metro area, they also had to contend with neighboring local governments taking actions designed to remind them they were not welcome. These communities, which had previously provided working-class whites with an affordable suburban housing alternative, as well as an exit strategy to avoid school integration, took great lengths to ban or restrict rental housing in the years following Hurricane Katrina. In Jefferson Parish, the Council passed a resolution in 2006 objecting to any developments funded by low-income housing tax credits and then specifically changed the zoning on a property to kill the replacement of 200 apartments. In 2007, the City of Kenner passed a moratorium on all multi-family construction. Perhaps the best-known example of exclusionary housing practices following Hurricane Katrina is St. Bernard Parish's 2006 "blood relative" ordinance,

which prohibited the rental of residences unless to a blood relative.³ At the time the parish enacted the law, 93 percent of parish homeowners were white⁴, which meant the ordinance, in effect, prohibited the rental of housing to non-whites. The Greater New Orleans Fair Housing Action Center brought a suit against the parish to stop implementation of the ordinance, and after a federal judge ruled the ordinance a violation of the Fair Housing Act, the parish was forced to repeal the law. The Parish Council then adopted a ban on the building of all multi-family housing, which, after litigation, was also struck down as an unlawful violation of the Fair Housing Act. However, the Parish consistently defied the federal court's order and conciliation agreements until 2014, when a final settlement was reached.

An additional high-profile example of recovery gone wrong was the federally funded, state-administered Road Home rebuilding program. Homeowners were offered rebuilding grants determined by the lesser of either pre-storm value of their damaged home, or the cost to rebuild. As a result, homeowners in segregated white neighborhoods, which had higher pre-storm values, received higher grant awards than homeowners in predominantly African American neighborhoods. This was true even when the homes were of similar size and age, and the repair costs were similar. In 2008, the Greater New Orleans Fair Housing Action Center led a lawsuit against HUD and the State of Louisiana alleging that the rebuilding grant formula was discriminatory, and had the effect of reinforcing historic patterns of segregation and disinvestment.⁵ HUD agreed to a \$62 million settlement in 2011, but by that time many African American homeowners had already made their decisions not to return based on the lower award amounts offered.⁶

It's worth noting that neither the St. Bernard Parish, nor the Road Home case, would have been possible without application of the Disparate Impact theory. Both cases are textbook examples of facially neutral laws that dramatically discriminated against a protected class of people. Proving intentional discrimination in either of these cases may have been nearly impossible and the result would have been disastrous for the region's recovery.

In February of 2019, HUD sent the Office of Management and Budget (OMB) proposed rule making changes to the existing 2013 Disparate Impact Rule. These changes are likely to make bringing and successfully proving a disparate impact case nearly

³ Seicshnaydre, S. (2011). How government housing perpetuates racial segregation: Lessons from post-Katrina New Orleans. *Catholic University Law Review*, 60(3), 678-81.

⁴ U.S. Decennial Census, 2000.

⁵ Fletcher, M. (2011, July 6). HUD to pay \$62 million to La. homeowners to settle Road Home lawsuit. *The Washington Post*. Retrieved from www.washingtonpost.com/business/economy/hud-to-pay-62-million-to-la-homeowners-to-settle-road-home-lawsuit/2011/07/06/gtQAtsFN1H_story.html?utm_term=.e4475e8a9717; *Greater New Orleans Fair Housing Action Center v. U.S. Dept. of Housing and Urban Development*. Civil Action No. 08-1938 (D.D.C. Nov. 12, 2008). Retrieved from <https://www.clearinghouse.net/detail.php?id=11242>

⁶ Ibid.

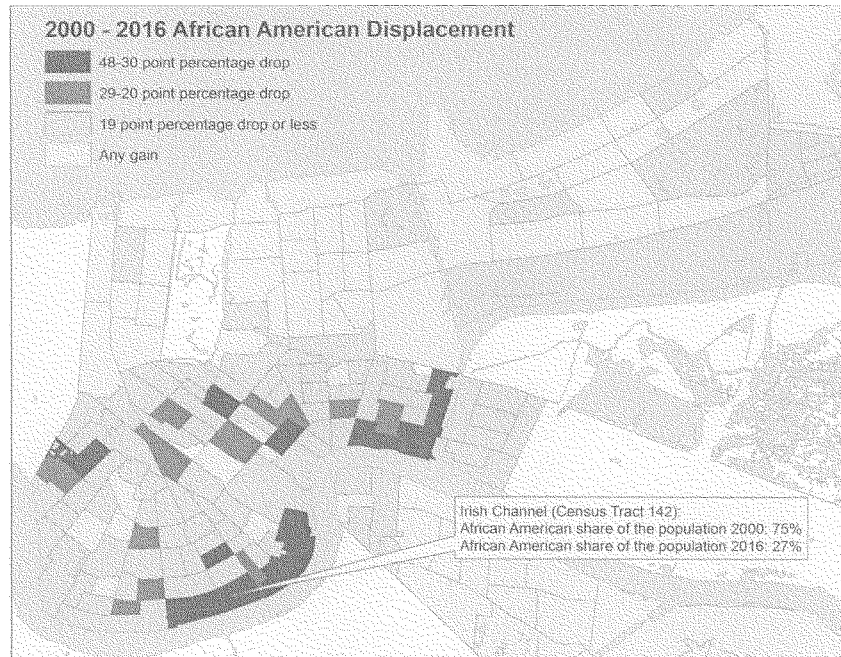
impossible. If this rule moves forward, it could severely weaken the Fair Housing Act and test our nation's commitment to equal treatment under the law.

There's one last lesson from New Orleans inequitable recovery that must not be overlooked: local governments, working hand-in-hand with federal agencies, must be prepared to administer disaster relief dollars with an eye toward preventing the displacement that follows disaster. In New Orleans, this has specifically manifested as climate gentrification, fueled by a fight for higher ground.

After Katrina, disaster and flooding risk were clearly at the forefront of many residents' minds; however, white residents were far more likely to have the resources to secure high-ground real estate. Before the storm, many of the high-ground neighborhoods bordering the Mississippi River had been majority or significantly black (see the areas in darkest red on the 2000-2016 African American Displacement map below). That changed dramatically after Katrina. Most African American renters were easily displaced by rents that doubled and tripled. Even long-time homeowners who managed to navigate the Road Home program faced climbing flood insurance rates and property tax assessments. 10 years after the storm, the City of New Orleans began to publicly discuss policies to address the gentrification that had already and continues to displace many long-time neighborhood residents.⁷ As of 2017, only one East Bank neighborhood along the high ground near the Mississippi River retains a black majority, largely due to a mixed-income public housing development.⁸ New Orleans has made significant public investments in many of these neighborhoods as well, including a new streetcar line, waterfront park, and a number of fresh food retailers. In most cases, those public investments did not include a complimentary investment in affordable housing, and the lack of investment in affordable housing ensured that long-time lower-income residents will not be able to stay in the area and enjoy the new amenities. As whites have returned to the city, African Americans are again being relegated to higher risk neighborhoods further from job centers, where health and life outcomes are worse.

⁷ The City of New Orleans. (2016). *Housing for a Resilient New Orleans*. Retrieved from www.nola.gov/home/buttons/resilient-housing/.

⁸ American Community Survey, 2017.



In the last few years, New Orleans has begun to rethink our housing policy. City officials now take displacement and segregation seriously and are actively crafting multiple local ordinances to address these issues. Still, it has been a slow shift, made possible only by the tools afforded by the Fair Housing Act. Without disparate impact, the city's current positive efforts would be no match for the deep segregation that would have resulted from an unchecked discriminatory Road Home rebuilding formula and the St. Bernard Parish "blood relative" ordinance. Similarly, the AFFH rule and AFH process brought diverse stakeholders together, provided invaluable data, and charted a clear path forward for equitable development.

For cities that are in the midst of recovery or will be from future disasters, we can't afford to wait 10 years before beginning to consider the mandate of the Fair Housing Act. It must be a foundational part of disaster recovery.

At the federal level, and in all communities, we hope to see a recommitment to, and strengthening of, the Fair Housing Act. This commitment and strengthening begins with fully funding enforcement efforts, as well as passage of the legislation before you to restore and add tools to the Fair Housing Act that ensure everyone has a fair chance at finding a place to call home.

On behalf of the Greater New Orleans Fair Housing Action Center, I appreciate the opportunity to offer this testimony and will gladly be a resource on any issues discussed today.

Written Testimony: National LGBTQ Task Force – Kierra Johnson

House Financial Services Committee

The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing

LGBTQ People and the Fair Housing Act: Current State of the Law

Although the Fair Housing Act does not explicitly protect LGBTQ people from discrimination, the Department of Housing and Urban Development (HUD) released the Equal Access Rule in 2012, which requires HUD-funded providers to make housing available to people regardless of perceived or actual gender identity or sexual orientation.ⁱ Several courts across the country nationwide have agreed with HUD's determination, laid out in the Equal Access Rule, that the Fair Housing Act's protections against discrimination based on sex include a bar against discrimination based on sexual orientation and gender identity.

Despite the existence of the Equal Access Rule and positive rulings in the courts, housing discrimination against LGBTQ people is pervasive. In 2015, approximately one in four transgender people in the U.S. experienced some form of housing discrimination because of their gender identity.ⁱⁱ Research conducted by the Department of Housing and Urban Development itself indicates that same-sex couples are treated less favorably than heterosexual couples in the online rental housing market.ⁱⁱⁱ Year after year, in study after study, findings indicate that discrimination against LGBTQ people in housing is a consistent and ubiquitous issue. Recent studies have shown:

- In states that prohibit discrimination against LGBTQ people in housing, discrimination complaints are filed by LGBTQ people at a rate similar to race discrimination complaints filed by people of color^{iv}
- In a recent paired testing study conducted by the Urban Institute, gay men and transgender people experienced discrimination in the early stages of the rental process^v
- 48% of older LGB testers experienced adverse, differential treatment in recent matched-pair testing conducted by the Equal Rights Center^{vi}
- 40% of young people experiencing homelessness identify as LGBTQ

Of course, people living at the intersections of multiple marginalized identities, like LGBTQ people of color and LGBTQ people with disabilities, are even more likely to face discrimination in access to housing, and to have an increased need to access public housing supports:

- 49% of Black transgender and gender non-binary respondents to a recent survey experienced housing discrimination in the preceding year; 13% of Black transgender women were denied access to a homeless shelter.^{vii}

- 17.6% of LGBTQ survey respondents with disabilities reported receipt of public housing benefits, compared to 2.5% of non-disabled, non-LGBTQ respondents.^{viii}

In the context of pervasive housing discrimination, it is particularly important to examine the treatment of LGBTQ people in programs designed to support people experiencing homelessness and housing instability. Unfortunately, research indicates that transgender people experiencing homelessness frequently face barriers to accessing safe shelter. In the 2011 National Transgender Discrimination Survey, nearly one in three (29 percent) transgender people who attempted to access a shelter reported being turned away due to their transgender status, and 22 percent of those who stayed at a shelter reported experiencing sexual assault by staff or other residents.^{ix} Forty-two percent of transgender shelter-seekers report having been forced to live as the wrong gender as a condition of access to a shelter.^x Overall, nearly half of transgender shelter-seekers said they ultimately left a shelter due to mistreatment.^{xi}

A more recent study by the Center for American Progress and the Equal Rights Center found that only 30 percent of shelters were willing to house transgender women with non-transgender women.^{xii} The study, which used test callers to inquire into the practices of 100 shelters across four states (Connecticut, Washington, Tennessee and Virginia), found that shelters:

- Refused services outright;
- Misgendered callers;
- Cited genitalia or surgery requirements as prerequisites to placement consistent with gender identity; and
- Cited the discomfort of other shelter residents as a basis for refusing placements consistent with gender identity.

The willingness of a shelter to house transgender women in accordance with their gender identity varied depending on state laws and shelter type. Shelters in states with LGBT protections were twice as likely to be willing to provide appropriate shelter to test callers. Since many states lack explicit gender identity protections in housing, HUD's Equal Access Rule and subsequent guidance is meant to help ensure equal access to shelters for transgender and gender nonconforming individuals. As HUD recognizes in the preamble to the proposed rule and as it has found through its own consultations with service providers, these discriminatory practices are pervasive and deny not only the dignity of transgender shelter-seekers but their basic access to safe shelter.^{xiii}

Alaicia (22), a man of trans experience from Oakland, CA, shared his experience of seeking shelter in a youth shelter and being automatically placed based on his sex assigned at birth:

“They just assumed and I went with it because I didn’t want to cause problems. It tore me up inside and was degrading. If they had asked me about my experience and pronouns when I walked in and placed me based on my gender identity I would have felt respected and validated. While I was in the shelter I had a lot of problems and one particular confrontation with my roommate who was upset that I had male items (soap, deodorant, clothes etc.).

“I didn’t feel safe coming out in the shelter, to the staff or the residents because of some of the severe harassment and bullying my gay friends had faced based on their sexual orientation, I felt so uncomfortable. There was one staff member that I was very close with who I felt safe coming out to and they were super supportive, I’m still in contact with them to this day. I think there needs to be staff training around LGBT issues and that they need to ask questions about pronouns and names during intake, this would have made me feel safer in the shelter.”

D’Angelo (23), a gay man from Richmond, VA, shared how discriminatory policies often result in people avoiding shelters for their own safety:

“My sexual orientation played a huge role in why I did not seek emergency shelter services. The one shelter I had seen before was like everyone in one room with very little staff members, if any at all, I don’t remember seeing any staff members while I was there. I’m not too comfortable in crowds and so I just didn’t think this was an option for me. I was also scared about what would happen if they found out I was gay, maybe the other residents would judge me or harass me. I ended up staying in an abandoned building with friends because it seemed easier and safer.”

Ben (20), a man of trans experience from Montana, explained how safety is situationally specific, and what would make him feel more safe:

“When someone is homeless and seeking emergency shelter I feel like their main priority is getting a bed for the night. If the intake worker says we are going to place you with the women and I identify as a man, I’m just thankful to have a bed. My level of safety would depend on a number of different factors: (a) What does the boarding situation look like? Before hormones I would have preferred to be housed with the women, because I could pass as a woman. (b) It also depends on the boarding situation whether I would be housed with a bunch of folks or just like 1 or 2 people. (c) It also depends on who has to know? Are the other residents being informed that I’m trans, other staff members? What is the policy around that? This is especially important for folks who pass a little more.

“It also depends on how the trans person identifies, every person’s identity lies somewhere on the spectrum and that is also true from trans folks as well. I think something that could make things safer for folks in emergency shelter situations

would be a check in policy both before and after folks are housed to assess comfort and safety and also allow for reporting any incidents that might have happened. I say this while also knowing that folks aren't always willing to report incidents because they might be afraid to lose whatever housing they have in that situation. I think it is also important for trans folks to be placed where they feel most comfortable (this may not align with gender identity but rather with sex assigned at birth), I would rather be safe than stealth."

Service providers expressed hearing similar concerns from shelter guests, talked about how the Equal Access Rule has been implemented to date, and addressed their varied responses:

From a Nashville provider: "Within Launch Pad, we have an open floor plan so everyone is sleeping in the same room. The same goes with Oasis in the Drop In Center. No other shelters in Nashville abide by identity but rather biology – which is one of the reasons that our young people do not choose to go to the shelters....they feel more comfortable with being in space that coincides with their identity – especially the MTF young people."

From a Phoenix provider: "The youth in our Promise of a New Day Housing Program are all placed in single-occupancy rooms so we never have to deal with this issue."

From a Cincinnati provider: "A side note but I feel is important and something I take as a source of pride for our team. Over two years ago we had a client who by birth was female but he was living as a male. He came to our facility and at that time we had the traditional gender based wings in the shelter. The male wing was full but we had female beds. Under that former mindset he wasn't offered a bed as they were full. I happened to walk by and heard him say 'I'll dress as a female if I have to, I just need a bed.' This was the impetus for us to reconsider these traditional system processes. That day we did away with that philosophy. We put him in a bed under the gender he identified with."

Among transgender people who have had to seek emergency shelter, a disturbing 42% said that at some point they had been forced to be housed with the wrong gender in order to obtain shelter.^{xiv} In many cases these respondents were transgender women who because of this discriminatory treatment found themselves the only woman in a men's shelter. Unsurprisingly, among those who stayed in a shelter, 25% reported being physically assaulted in a shelter, and nearly as many (22%) reported being sexually assaulted by either another resident or a shelter staff member.^{xv} Nearly half (47%) of all transgender respondents who accessed shelters left because of the treatment they experienced there—choosing the street over the danger, abuse, and indignity of the way they were treated in the shelter.^{xvi}

The denial of equal access to housing consistent with one's gender identity constitutes a form of prohibited discrimination based on gender identity, and therefore also on the basis of sex. Such

practices therefore legally violate both the Fair Housing Act and HUD's Equal Access Rule. This discrimination is not only unlawful—it also leaves transgender shelter-seekers, particularly transgender women, effectively excluded from shelter and vulnerable to mistreatment and violence.

We know – from these stories and thousands of others like them – that LGBTQ people face discrimination in housing, in access to credit, and in access to shelter services. Yet the Fair Housing Act still does not explicitly name sexual orientation and gender identity as protected classes. That means that access to the protections of the FHA is inconsistent, and enforcement is reliant on prioritization by the Department of Housing and Urban Development. Passing legislation like the Equality Act, which would codify protections for LGBTQ people in housing is one way to make the law and its application more consistent for LGBTQ people.

Source of Income Protections

Millions of low-income people and families receive rent subsidies to help defray the high cost of housing. Landlords frequently discriminate against low-income families by refusing to accept these subsidies. Laws that prohibit discrimination against voucher holders, like source of income non-discrimination laws, have a significant impact on the number of landlords that engage in voucher discrimination, and even help to dismantle the legacy of redlining that has kept our communities segregated decades after Fair Housing laws were enacted.

LGBTQ people are significantly more likely to receive public housing assistance than the general population. According to a recent survey fielded by the Center for American Progress, **LGBTQ people are 2.5 times more likely to rely on public housing benefits than their non-LGBTQ counterparts.** While all people in the LGBTQ community receive public housing assistance more than the general population, the rates are particularly high for transgender people, LGBTQ people with disabilities, and LGBTQ people of color.

We encourage members of this committee to explore the impacts of legislation that would codify a ban on discrimination on the basis of a person's source of income.

ⁱ Mindy Mitchell, *LGBT Discrimination is Real*, Department of Housing and Urban Development, 2015, <http://www.endhomelessness.org/blog/entry/lgbt-housing-discrimination-is-real#.WB4Ij0rLIV>.

ⁱⁱ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, 2016, 13, <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

ⁱⁱⁱ Department of Housing and Urban Development, Office of Policy Development and Research, *An Estimate of Housing Discrimination against Same-Sex Couples: An Executive Summary*, 2013, 1.

https://www.huduser.gov/portal/Publications/pdf/Hsg_Disc_against_SameSexCpls_exec_summ_v2.pdf.

^{iv} Mallory and Sears, “Evidence of Housing Discrimination Based on Sexual Orientation and Gender Identity” (Feb. 2016), available at: <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Housing-Discrimination-Complaints-2008-2014.pdf>.

^v Urban Institute, “A Paired-Testing Pilot Study of Housing Discrimination against Same-Sex Couples and Transgender Individuals” (2017), available at https://www.urban.org/sites/default/files/publication/91486/2017.06.27_hds_lgt_final_report_report_finalized_0.pdf.

^{vi} Types of adverse treatment included being given fewer options, being quoted higher fees or rental prices, being shown only 2-bedroom options when seeking a 1-bedroom apartment. Equal Rights Center, “Opening Doors: An Investigation of Barriers to Senior Housing for Same-Sex Couples” (2014), available at https://equalrightscenter.org/wp-content/uploads/senior_housing_report.pdf.

^{vii} James, Herman, Rankin, Keisling, Mottet, and Anafi, “The Report of the 2015 U.S. Transgender Survey” (Washington, DC, 2016), available at: <https://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

^{viii} Rooney, Whittington, and Durso, Protecting Basic Living Standards for LGBTQ People, August 2018, available at: <https://www.americanprogress.org/issues/lgbt/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>

^{ix} Nat’l LGBTQ Task Force & Nat’l Ctr. for Transgender Equality, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 116-18 (2011), http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf.

^x *Id.* at 118.

^{xi} *Id.* at 116.

^{xii} Ctr. for Am. Progress and the Equal Rights Ctr., *Discrimination Against Transgender Women Seeking Access to Homeless Shelters* (2016), <https://www.americanprogress.org/issues/lgbt/report/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/>.

^{xiii} Equal Access in Accordance with an Individual’s Gender Identity in Community Planning and Development Programs, Proposed Rule, 80 Fed. Reg. 72542, 72644 (Nov. 20, 2015).

^{xiv} J.M. Grant, L.A. Mottet, J. Tanis, J. Harrison, J.L. Herman, M. Keisling, “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey,” 118 (2011).

^{xv} *Id.* at 117-18.

^{xvi} *Id.* at 116.



**Written Testimony of Dr. Skylar Olsen
Director of Economic Research**

U.S. House Committee on Financial Services

**Hearing on “The Fair Housing Act: Reviewing Efforts
to Eliminate Discrimination and Promote Opportunity
in Housing”**

Tuesday, April 2, 2019

Introduction

Chairwoman Waters, Ranking Member McHenry and distinguished Members of the Committee, it is an honor to appear before you today to help inform this important discussion. My name is Dr. Skylar Olsen. I am the Director of Economic Research at Zillow, which is part of Zillow Group.

Zillow Group is dedicated to empowering consumers with data, inspiration and knowledge around the place they call home. Our company was founded with the mission to improve transparency in the housing market, and that remains a key driver of all we do. We are proud that our data and research helps consumers, industry professionals, policymakers, nonprofits and others make more informed decisions.

Zillow Group operates economic research teams at [Zillow](#), [Trulia](#), [StreetEasy](#) and [HotPads](#) which leverage available data to produce timely and relevant economic research. In addition to evaluating the health of the market and predicting changes in housing costs, our research teams examine broader issues of national interest, including the impact of declining housing affordability and understanding the relationship between rents and homelessness. Zillow makes much of our aggregated data freely available and downloadable,¹ providing academic and government agencies our public record dataset² to support their own research. We see our role as using our data to help ground important conversations with facts.

In recent years, Zillow Group has published a growing body of research addressing existing disparities in the housing market. Our work demonstrates that housing inequities persist nationwide. These findings are reflected in government-reported data, the amenities available to different communities and in consumers' experiences in their search for housing.

Homeownership and Mortgage Credit

Homeownership is a key tool for building wealth, and more than half the overall wealth held by American households is represented by their primary residence. But access to homeownership is not shared equally. The divide between black and white Americans has proven stubbornly persistent since the early 1900s.³ In 1900, the gap between the black and white homeownership rate was 27.6 percentage points. Today, it is 30.3 percentage points.

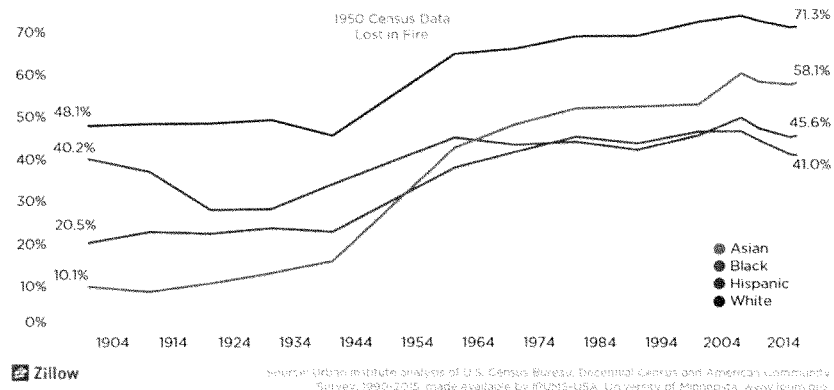
¹ Zillow Group, "Data," Zillow Research, (2019)

² Zillow Group, "Zillow's Assessor and Rental Estate Database (ZTRAX)," Zillow Research, (2019)

³ Skylar Olsen, "Black and White Homeownership Rate Gap Has Widened Since 1900," Zillow Research, (April 10, 2018)

The Gap Between Black and White Homeownership Rates Has Widened Since 1900

Homeownership rate by race



Additionally, data from the federal Home Mortgage Disclosure Act shows that black borrowers are denied for conventional home loans 2.5 times more often than white borrowers.⁴ Moreover, this data shows that even though black and Hispanic communities represent a sizable and growing portion of the population, they represent a comparatively tiny share of all mortgage loan applications.

While disparities in income today explain some of these trends, it is well established that historical discrimination also plays a role. Recently, Zillow examined more than 20 years of home value appreciation data in formerly redlined areas and found that areas formerly deemed "best" for lenders are now worth 2.3 times those previously marked as "hazardous" for lending. And, of the 151 areas we evaluated, we found only a single instance in which homes in formerly redlined areas are now worth more than those in areas once rated "best." These historic redlining practices did more than restrict communities' access to mortgage credit. Homeowners in neighborhoods labeled "hazardous" were also put on a growth trajectory that fell far short of those labeled "best."⁵ These trends likely had lasting implications for the wealth people of color could pass down to future generations.

These kinds of intergenerational wealth transfers remain extremely important. Today, 30 percent of home buyers rely on gifts, and 26 percent rely on loans from family members to help fund their down payment on a home, according to the Zillow Group Consumer Housing Trends Report, an annual survey of consumer sentiment. For first-time home

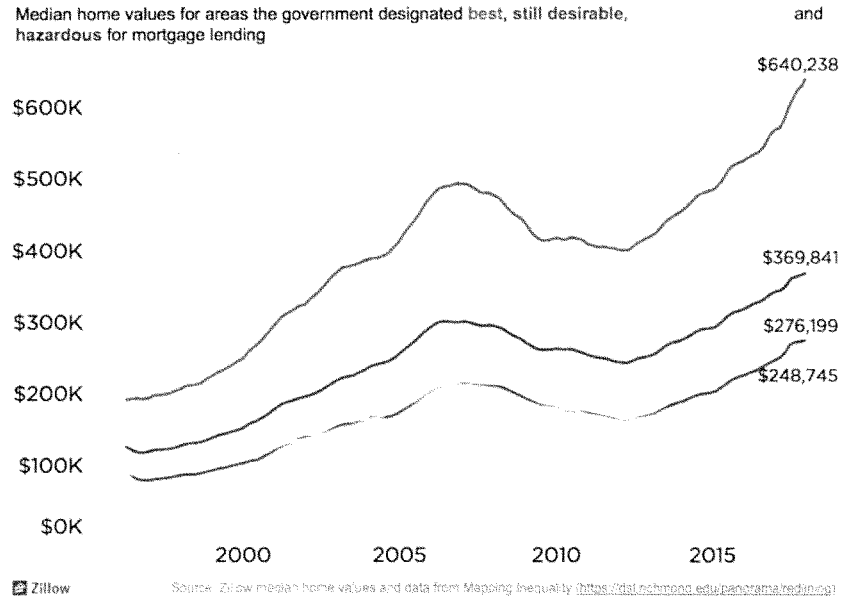
⁴ Sarah Mikhitarian, "Black Mortgage Applicants Denied at More Than Twice the Rate of Whites," Zillow Research, (April 19, 2018)

⁵ Sarah Mikhitarian, "Home Values Remain Low in Vast Majority of Formerly Redlined Neighborhoods," (April 25, 2018)

buyers, the share relying on their community for down payment assistance jumps to over half. Greater wealth eases the path to homeownership, and the relationship becomes self-reinforcing: Homeowners have greater access to financial wealth that, in turn, makes it easier to remain homeowners and ultimately pass on that wealth.

Home Values in Redlined Neighborhoods Remain Low

Median home values for areas the government designated best, still desirable, and hazardous for mortgage lending



Local Amenities

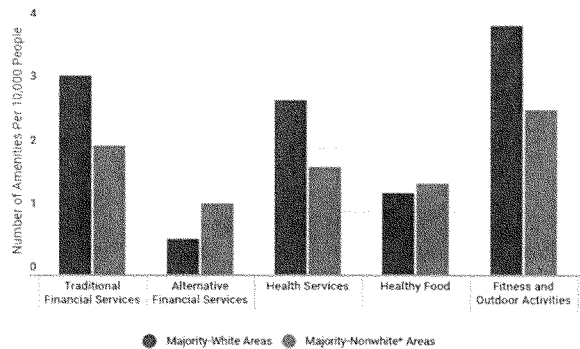
Disparities are also visible in the amenities present in local communities. A recent analysis by Trulia, with input from the National Fair Housing Alliance and the Kirwan Institute for the Study of Race and Ethnicity at Ohio State University, found that in four major metro areas — Atlanta, Detroit, Houston and Oakland, Calif. — local establishments and amenities including banks, health institutions and recreational facilities are less prevalent in communities of color than white communities.⁶

In particular, on a per-person basis, predominantly non-white census tracts had 35.1 percent fewer traditional banking establishments, 38.4 percent fewer healthcare service establishments, and 33.9 percent fewer active or healthy lifestyle amenities, including

⁶ Cheryl Young and Felipe Chacón, "50 Years After the Fair Housing Act- Inequality Lingers," Trulia Research, (April 19, 2018)

parks, playgrounds and recreation centers, compared to tracts that were predominantly white. At the same time, predominantly non-white census tracts had twice as many alternative banking establishments, including payday and installment lenders — which offer expensive, lower-quality credit.

Majority-White Areas Have More Amenities



Note: Health Services are reported on a per 100,000 person basis.
 * Nonwhite areas are defined as areas where more than 50% of the population is made up of any combination of people of color, including Hispanics of any race.
 Source: Yelp and U.S. Census 2016 5-Year American Community Survey



Housing Search Frustrations

Asian, black or Hispanic home shoppers encounter more frustrations in their home search. According to the Zillow Group Consumer Housing Trends Report, home buyers of color were less likely than white buyers to say they were satisfied with all aspects of their home-buying experience.⁷ Forty-three percent of white buyers reported full satisfaction, compared with 27 percent of black, 24 percent of Hispanic and 23 percent of Asian respondents. Additionally, roughly one in five black buyers (21 percent) said finding the right agent or broker for them was difficult or very difficult, compared to just one in twenty white buyers (6 percent).

The survey also found it takes more time for black and Hispanic home shoppers' rental applications or offers to be accepted. On average, Hispanic renters submit 5.5 rental applications and black and Asian renters submit 3.6 applications before finding a home, compared with 2.5 for white applicants. Similarly, black and Hispanic home buyers make an average of 2.6 and 2.4 offers on homes, respectively, before buying, compared to 1.7 for white and 1.4 for Asian buyers.

⁷ Zillow Research, "Zillow Group Consumer Housing Trends Report 2018", (September 27, 2018)

Perception of Discrimination

Finally, Zillow Group found that the perception of housing discrimination is strong among U.S. adults. In a large survey conducted last fall, 27 percent of respondents said they believe they have been treated differently in their search for housing because of their status in a protected group.⁸ Applied to the U.S. population, this would mean that about 68 million American adults believe they have experienced housing discrimination. Among all survey participants, race (10 percent) was the most common protected class that respondents felt caused them to be treated differently during their search for housing, followed by skin color (8 percent), gender (7 percent) and disability status (5 percent).

In the same survey, more than a quarter of black respondents believed they had been treated differently because of race, and nearly a third said they considered discrimination to be a barrier to owning a home.

Conclusion

Zillow Group believes that all Americans deserve to find a home free from discrimination. Yet, these data points help illustrate the breadth of inequities and frustrations that many Americans experience in their home search and their communities. We appreciate the opportunity to share this research with the Committee and hope it will help inform the Committee's discussions on these important issues.

⁸ Zillow Research, "What Modern-Day Housing Discrimination Looks Like: A Conversation With the National Fair Housing Alliance", (February 4, 2019)

1. In his testimony, Dr. Furth stated that HUD's 2015 AFFH regulation was strictly focused on outcomes and did not result in policy changes by the jurisdictions that conducted Assessments of Fair Housing.
 - a. Is this an accurate assessment of the rule's impact? If not, why not?

In his written testimony, Dr. Furth gives a loose and somewhat disparaging description of the fair housing planning process set out in HUD's 2015 AFFH regulation and explains what he sees as its shortcomings. According to his depiction, the process is one in which jurisdictions produce a document (i.e., their fair housing plan, also known as Assessments of Fair Housing, or AFH) which he describes as "contain[ing] analysis of any segregation and demographics as well as some plans to improve policy." He goes on to say the he is, "unaware of a single local policy that was changed as a consequence of the rule." (See Furth testimony at p. 2.) He suggests that, in order to be in "good standing" with HUD and eligible to receive funding, "jurisdictions should be able to point to market outcomes or enacted policies that are consistent with inclusion and strong property rights." (See Furth testimony at p. 3.)

Setting aside the issue of property rights, which may raise their own set of fair housing issues, and his incomplete and dismissive description of the fair housing planning process, the concept espoused by Dr. Furth is, in fact, how the 2015 AFFH rule was intended to function. The AFHs were required to set out specific goals for each priority fair housing issue or barrier that the jurisdiction identified, with accompanying metrics and milestones for measuring progress toward achieving the goal. Had HUD continued with its implementation of the rule, jurisdictions would have incorporated those goals into their Consolidated Plans, which detail how they intend to use their housing and community development resources – including but not limited to funds received from HUD – over the following 3-5 years. In each of those years, each jurisdiction would have reported to HUD on its progress in reaching those metrics and milestones, enabling HUD to assess whether it was making reasonable progress or not. In the event that a jurisdiction failed to make meaningful progress, HUD could employ a range of enforcement tools, up to and including withholding CDBG or other funds from that jurisdiction.

The rule's focus on outcomes was entirely appropriate for two reasons. One is that the affirmatively furthering fair housing provisions of the Fair Housing Act require HUD and its grantees to take *affirmative* steps to address the lingering problems caused by segregation, which the federal government had a major hand in creating. Plans that are not linked to actions – like those created under the old Analysis of Impediments

requirements to which HUD has now returned – do not meet this standard. The second reason is that HUD's failure to implement these provisions in any meaningful way over the past 50 years has created an urgent need for action in order to comply with this statutory mandate and begin to redress the problems it was intended to resolve.

The rule was in effect for a period of time that was so short as to make it difficult to enact policy changes or achieve measurable outcome. Nonetheless, there are a number of concrete outcomes that we can point to, both in terms of policy and programmatic changes.

For example, in New Orleans, the City Council passed an inclusionary zoning policy to leverage private development to increase the supply of affordable housing. In addition, the Housing Authority implemented exception payment standards to enable renters with Housing Choice Vouchers to afford units in higher opportunity neighborhoods. Further, the City is taking active steps to use land that it owns to spur the development of housing that is affordable to low- and moderate-income people.

Denver is currently undergoing fair housing planning, and in that process, community residents have highlighted the problems that low-income renters with Housing Choice Vouchers face in trying to rent apartments using their vouchers. In response – and even before finalizing its fair housing plan – the City passed an ordinance prohibiting housing discrimination based on source of income.

In Philadelphia, a different problem facing renters emerged during that city's fair housing planning process. In neighborhoods undergoing revitalization, which is spurring rent increases, tenants reported that landlords were evicting tenants without cause in order to be able to raise the rent on their units. A disproportionate number of these tenants facing unjust evictions have been people of color. To stem this tide and provide greater housing stability to these tenants, the City established and funded a program to provide legal representation for tenants in landlord-tenant court.

These are but a few of the policy and program changes of the type that Dr. Furth seems to expect that resulted from the fair housing planning process set out in the 2015 AFFH rule. Typically, the plans also contain a number of other specific goals for the development of rental housing affordable to low- and moderate-income households in neighborhoods that provide their residents with access to high performing schools, dependable and affordable transportation, access to jobs and similar characteristics. Many plans also contain goals for increasing homeownership among members of protected classes, connecting housing and transportation, addressing exposure to environmental hazards and other aspects of access to opportunity.

It should be noted that the need for zoning changes, including the types of changes that Dr. Furth advocates, are also addressed in a number of AFHs. However, the AFH itself is not the vehicle for making changes to a zoning ordinance. In most jurisdictions, there are specific procedures necessary to make such changes and they are administered by a different agency than that creating the AFH. Nonetheless, the structure of the 2015 rule, with its requirement for reporting annually through the jurisdiction's Annual Action Plan and Consolidated Annual Performance and Evaluation Report (CAPER), on progress made toward each priority fair housing goal provides a mechanism through which HUD could hold the jurisdiction accountable for taking the actions it deemed necessary in its AFH.

2. Dr. Furth suggested that, in contrast to the 2015 AFFH rule promulgated by HUD, a better approach would be to eliminate that rule and focus on ensuring that CDBG entitlement jurisdictions eliminate provisions in their zoning ordinances that have the effect of excluding the development of multi-family housing, something that he stated the 2015 rule did not do.

- a. Do you agree with his suggestion? If not, why not?

Neither my organization, the National Fair Housing Alliance, nor I personally would agree with the suggestion that a sole focus on eliminating exclusionary zoning provisions from local zoning laws would be sufficient to fulfill the statutory mandate to affirmatively further fair housing (AFFH). The suggestion appears to stem, at least in part, from a lack of clarity about what it means to affirmatively further fair housing, confusion about the difference between fair housing and affordable housing, and a belief that the private market, left to its own devices, will solve the problems of housing discrimination, segregation and housing affordability.

In his written testimony, Dr. Furth offers this "layman's" explanation of AFFH, stating, "I take this to mean that HUD has to abide by the spirit of the law, not just the letter of the law." (See Furth testimony at p. 2) However, the AFFH mandate requires much more than that, as evidenced by the legislative history and judicial findings that HUD cited in its preamble to the 2015 rule.

As HUD explains, Sec. 3608(d) of the Fair Housing Act, which spells out HUD's AFFH obligation, is, "not only a mandate to refrain from discrimination but a mandate to take the type of actions that undo historic patterns of segregation and other types of discrimination and afford access to opportunity that has long been denied." (80 FR 42274)

HUD notes that Congress has reinforced this mandate in several other statutes, including the Housing and Community Development Act of 1974, the Cranston-Gonzalez National Affordable Housing Act, and the Quality Housing and Work Responsibility Act of 1998, each of which require HUD's grantees to certify that they are affirmatively further fair housing as a condition of receiving funds.

HUD explains that courts, examining the relevant statutes and legislative history, have found that, "the purpose of the affirmatively furthering fair housing mandate is to ensure that recipients of Federal housing and urban development funds and other Federal funds do more than simply not discriminate: Recipients also must take actions to address segregation and related barriers for groups with characteristics protected by the Act, as often reflected in racially or ethnically concentrated areas of poverty." (Ibid.)

HUD goes on to cite legal decisions in several specific court cases that address the AFFH mandate, including the Supreme Court, in *Trafficante v. Metro. Life Insurance*. (409 U.S. 205, 211 (1972)) That decision quoted Senator Walter F. Mondale, one of the original co-sponsors of the Fair Housing Act, who stated that "The reach of the proposed law was to replace the ghettos by 'truly integrated and balanced living patterns.' As the court stated, "The Act recognized that "where a family lives, where it is allowed to live, is inextricably bound up with better education, better jobs, economic motivation, and good living conditions." (Op. cit.)

HUD also cites the decision in *NAACP, Boston Chapter v. HUD* (817 F.2d at 154) in which the First Circuit explained that with this section of the Fair Housing Act, "Congress intended HUD to do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." (op. cit.)

Finally, HUD cites the Second Circuit decision in *Otero v. New York City Housing Authority* (484 F.2d at 1134) which found that Sec. 3608(d) of the Fair Housing Act requires that "[a]ction must be taken to fulfill, as much as possible, the goal of open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunity the Act was designed to combat."

As this legislative history and these judicial findings make clear, the AFFH mandate goes much further than merely requiring HUD to comply with the spirit of the law as well as its letter. It requires HUD, and its grantees, to take deliberate steps to overcome patterns of segregation and the harms that they cause, and to ensure that members of protected classes have equitable access to the opportunities, such as quality education,

good jobs and good living conditions, that are inextricably linked to the neighborhood in which a person lives.

The achievement of this goal may be hindered by local zoning ordinances that are exclusionary and prohibit the construction of various forms of housing that may help in changing our segregated residential patterns. It is entirely appropriate for a jurisdiction, as part of its fair housing planning process, to review its zoning code and make any changes that may be necessary, although it is worth noting that Congress has explicitly barred HUD from requiring such changes as part of its enforcement of the AFFH regulation.

However, it would be a mistake to rely entirely, or even to any significant degree, on changes to local zoning ordinances as a strategy for implementing the Fair Housing Act's AFFH provisions. For this purpose, zoning is a very blunt instrument. It may eliminate a barrier to the construction of new housing, which might increase the supply of housing and ease the pressure on rents and home prices, but it does not ensure that new construction will take place, that it will be affordable to low- and moderate-income people or members of protected classes, or that new construction will provide the types of housing needed in the locations where it is lacking.

For example, zoning changes alone will not result in housing that is affordable to low- and moderate-income people. In most places, that requires subsidies to bring the costs down to a level that is affordable. However, the funds available at the federal level for housing subsidies – both to construct new units and to preserve the ones we have – have been cut repeatedly and fall far short of the need. For example, the Center on Budget and Policy Priorities reports that funding for public housing repairs fell 35 percent between 2000 and 2018. (See Bell, Alison and Douglas Rice, “Congress Prioritizes Housing Programs in 2018 Funding Bill, Rejects Trump Administration Proposals,” July 19, 2018, available at <https://www.cbpp.org/research/housing/congress-prioritizes-housing-programs-in-2018-funding-bill-rejects-trump>.) The Center also reports that, due to funding limitations, only one in four households that is eligible for housing assistance actually receives that assistance. (See Fischer, Will and Barbara Sard, “Chart Book: Federal Housing Spending is Poorly Matched to Need,” March 8, 2017, available at <https://www.cbpp.org/research/housing/chart-book-federal-housing-spending-is-poorly-matched-to-need>.) The nation's largest affordable housing construction and preservation program is the Low-Income Housing Tax Credit, which has produced or preserved some 2.3 million units of affordable housing for low-income households since 1987, according to research from the Urban Institute. (See Scally, Corianne Payton, Amanda Gold and Nicole DuBois, “How the Tax Cuts and Jobs Act puts affordable housing production at risk,” July 12, 2018, available at <https://www.urban.org/urban->

wire/how-tax-cuts-and-jobs-act-puts-affordable-housing-production-risk.) However, the impact of that program may be undermined has by the significant cuts to taxes made in the 2017 Tax Cuts and Jobs Act. Investors purchase tax credits to offset their tax liabilities. When tax liability goes down, so does the demand for tax credits. Neither of these problems can be solved by zoning changes.

Further, zoning changes are not an effective mechanism for ensuring that new affordable housing is constructed in locations that offer their residents equitable access to community resources. If it did, in a city like Houston, which has no zoning, one would expect to see affordable housing built throughout a wide range of neighborhoods. But the opposite is true. Publicly supported housing in that city is so concentrated in poor neighborhoods of color that in 2017 a HUD investigation determined that the City had violated Title VI as a result of the procedures it used to decide where affordable housing could be located. Clearly, the lack of exclusionary – or any – zoning was not enough to ensure housing equity.

In addition, zoning changes will not eliminate discriminatory practices in the real estate, insurance or lending industries, and thus cannot ensure that segregation is not being perpetuated. These barriers often face members of protected classes at all income levels and are not a function of housing affordability. A case in point is the way high rates at which African American and Hispanic homeowners received subprime and option-ARM loans between 2004 and 2008 – the run up to the foreclosure crisis. According to research from the Center for Responsible Lending, African American and Hispanic borrowers with credit scores above 660 received these loans three times as often as white borrowers with similar scores. Those were toxic loans designed to fail and caused high foreclosure rates in communities of color and a severe loss of wealth for the families affected. CRL's research indicates that 10 percent of African American and 15 percent of Hispanics in higher-income brackets who took out mortgages during that period went *through* foreclosure, compared to 4.6 percent of whites with the same levels of income. (See Prior, Jon, "CRL: Good-credit minorities received 3 times more subprime loans than whites, HousingWire, November 17, 2011.) The result was a tremendous loss of wealth in communities of color. Research from the Pew Charitable Trusts found that between 2005 and 2009, African American households lost 53 percent of their wealth and Hispanic households lost 66 percent of their wealth, compared to only a loss of 16 percent among white households. (See Heimlich, Russell, *Recession Takes it Toll on Household Wealth*, September 21, 2011, available at <https://www.pewresearch.org/fact-tank/2011/09/21/recession-takes-its-toll-on-household-wealth/>.) None of this was a function of zoning and eliminating exclusionary zoning would do nothing to address it.

Finally, zoning changes are not an effective vehicle for bringing about strategic and targeted investments that will provide long-neglected communities of color the resources their residents need and deserve. Such investments are a critical component of AFFH efforts and a necessary prerequisite for creating equitable access to opportunity, as the court's decision in the Otero case reminds us is what the AFFH mandate was intended to achieve.

For all these reasons, while we would encourage jurisdictions to review their zoning ordinances as part of their efforts to affirmatively further fair housing and make changes as appropriate, we cannot agree with Dr. Furst's suggestion that eliminating exclusionary zoning would be a more effective way than the 2015 regulation for HUD to carry out its AFFH mandate.

3. During the hearing, Congressman Barr stated that HUD's 2013 disparate impact regulation was in conflict with the standards set out in the Supreme Court's 2015 decision in the *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* case and was therefore unconstitutional and must be rewritten.

- a. Do you agree with this statement? If not, why not?

This statement is erroneous at best. The U.S. Supreme Court implicitly adopted the current Disparate Impact Rule in the *Inclusive Communities* decision. The decision—holding that disparate impact is cognizable under the federal Fair Housing Act—adopts the construction of the Fair Housing Act that underlies the Discriminatory Effects Rule, including statutory interpretation and four decades of jurisprudence in the lower federal courts. Nothing in the *Inclusive Communities* decision—in its holding or dicta—necessitates any reconsideration of the current Disparate Impact Rule.

Since the *Inclusive Communities Project* decision, several courts have both implicitly and explicitly upheld that HUD's Discriminatory Effects standard rule is consistent with the Supreme Court's decision. The Second Circuit held in *MHANY Mgmt., Inc. v. Cty. of Nassau* that in *Inclusive Communities* “[t]he Supreme Court] implicitly adopted HUD's approach.”¹ The Northern District of Illinois issued a decision analyzing the relationship between the Rule and the Supreme Court decision and concluded that, “[i]n short, the Supreme Court in *Inclusive Communities* expressly approved of disparate-impact liability under the Fair Housing Act and did not identify any aspect of

¹ *MHANY Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581, 618 (2d Cir. 2016).

HUD's burden-shifting approach that requires correction."² The Massachusetts Supreme Judicial Court also found that Inclusive Communities adopted the Rule's burden-shifting framework.³ Further, on remand from the Supreme Court and the Fifth Circuit, the district court noted that the Supreme Court had affirmed "the Fifth Circuit's decision adopting the HUD regulations."⁴ With the exception of a single case out of the Fifth Circuit,⁵ federal courts have recognized that nothing in the Inclusive Communities decision—in its holding or dicta—necessitates any reconsideration of the current Disparate Impact Rule.

When defending the Disparate Impact Rule in a challenge by an insurance trade group subsequent to Inclusive Communities in August 2016, HUD itself argued that the Supreme Court's decision is "fully consistent with the standard that HUD promulgated" relying on existing jurisprudence.⁶ Again in March 2017, in response to the insurance trade group's motion to file an amended complaint against the Rule, HUD stated that the Rule is wholly in line with the Inclusive Communities decision:

"[T]he Supreme Court's holding in Inclusive Communities is entirely consistent with the Rule's reaffirmation of HUD's longstanding interpretation that the FHA authorizes disparate impact claims. 135 S. Ct. at 2516-22. And the portions of the Court's opinion cited by [PCIA]—which discuss limitations on the application of disparate impact liability that have long been part of the standard—do not give rise to new causes of action, nor do they conflict with the Rule. See *id.* at 2522-25 ("[D]isparate-impact liability has always been properly limited in key respects . . ."). Indeed, nothing in Inclusive Communities casts any doubt on the validity of the Rule. To the contrary, the Court cited the Rule twice in support of its analysis. See 135 S. Ct. at 2522-23."

Leading fair housing scholars echo the consensus that Inclusive Communities is consistent with the current Disparate Impact Rule. Tulane University Law School

² *Prop. Cas. Insurers Ass'n of Am. v. Carson*, 2017 WL 2653069 at *8 (N.D. Ill. June 20, 2017).

³ *Burbank Apartments Tenant Ass'n v. Kargman*, 474 Mass. 107, 126–27 (D. Mass. 2016).

⁴ *Inclusive Communities Project, Inc. v. Texas Dep't of Hous. & Cmty. Affairs*, 2015 WL 5916220 at *3 (N.D. Tex. October 8, 2015).

⁵ See *Inclusive Communities Project v. Lincoln Properties Co., et al.* which found the Supreme Court's decision in the *Inclusive Communities Project v. Texas Department of Housing and Community Affairs* was more rigorous than HUD's Discriminatory Effects Rule.

⁶ Defendants' Memorandum in Support of Their Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, ECF No. 65, at 33, *AIA v. Dep't of Hous. & Urb. Dev.*, No. 1:13-cv-00966-RJL (D.D.C.).

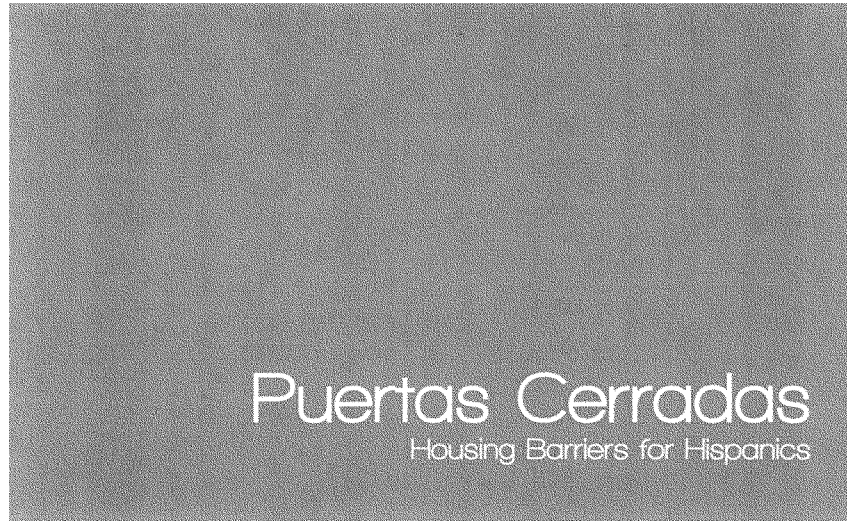
⁷ Defendants' Opposition to Plaintiff's Motion for Leave to Amend Complaint, ECF. No. 122, at 9, *PCIA v. Carson*, No. 1:13-cv-08564 (N.D. Ill.).

Professor Stacy Seicshnaydre, whose scholarship on the subject was cited by Judge Kennedy in the *Inclusive Communities* decision,⁸ looking to both the language of the opinion and its overarching message about the integration imperative of the Fair Housing Act, writes that the decision is in concert with the HUD rule.⁹ Additionally, University of Kentucky School of Law Professor Robert Schwemm summarized, “the fact that HUD described [the Disparate Impact Rule] as analogous to the Title VII-Griggs standard suggests that it is consistent with the Court’s views in *Inclusive Communities*.”¹⁰

⁸ Stacy Seicshnaydre, *Disparate Impact and the Limits of Local Discretion after Inclusive Communities*, 24 Geo. Mason L. Rev. 663 (2017).

⁹ Robert Schwemm, *Fair Housing Litigation After Inclusive Communities: What’s New and What’s Not*, 115 Colum. L. Rev. Sidebar 106 [now: CLR Online] (2015).

¹⁰ *Id.*



NCLR

NATIONAL COUNCIL OF LA RAZA

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations, NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC, serving all Hispanic subgroups in all regions of the country. It has state and regional offices in Chicago, Los Angeles, Miami, New York, Phoenix, and San Antonio.

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ERC

EQUAL RIGHTS CENTER
ADVANCING CIVIL RIGHTS FOR ALL

Originally formed in 1983, the Equal Rights Center is a national non-profit civil rights organization dedicated to promoting equal opportunity in housing, employment, public accommodations, and government services. Based in Washington, D.C., with more than 6,000 members located in all 50 states, Puerto Rico, and the District of Columbia, the ERC works to identify, address, and remedy both individual instances of discrimination, as well as large-scale, systematic discrimination nationwide. The ERC's 30 years of service as a fair housing advocate has opened housing opportunities for tens of thousands of individuals.

At the core of the ERC's success in promoting civil rights is its three decades of experience in civil rights testing. Through a variety of innovative testing techniques, the ERC is a national leader in identifying and documenting differences in the quality, quantity, and content of information and services provided to individuals based on individual factors and characteristics. Through this testing process, the nature and extent of illegal discrimination can be ascertained. The ERC conducts hundreds of civil rights tests each year to educate the public and government officials about the discrimination still faced by many individuals across America.

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Acknowledgments

This report is a collaboration between the Equal Rights Center (ERC) and the Wealth-Building Policy Project in the Office of Research, Advocacy, and Legislation at the National Council of La Raza (NCLR). Lindsay Daniels, Deputy Director of Housing and Wealth-Building Initiatives, NCLR, Melissa Rothstein, Deputy Director, ERC, and Stephanie Gonzalez, Immigrant Rights Program Manager, ERC, were the paper's primary authors, along with review and feedback from the following ERC staff: Don Kahl, Executive Director; Melat Menweyelet, Immigrant Rights Program Coordinator; and Chip Underwood, Testing Program Manager. Bethany Reddinger, NCLR Consultant, provided editorial support, and Grant Beck, Communications Associate, ERC, designed the report.

Testing was conducted by Chip Underwood; Snehee Khandeshi, Fair Housing Program Coordinator, ERC; and Valentine Khaminwa, Testing Program Coordinator, ERC. We extend sincere gratitude to the NCLR San Antonio office and to NCLR Affiliates Dalton-Whitfield Community Development Corporation in Dalton, Georgia, and Hispanic Interest Coalition of Alabama in Birmingham, Alabama, for their assistance in recruiting testers.

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In the past few years, the Latino community in the United States has grown dramatically, all the while being subjected to ever-increasing hostility. With the federal government's continuing failure to pass comprehensive immigration reform, states and localities have played a more prominent role in immigration regulation. Various state and local lawmakers have pursued misguided solutions with piecemeal state-level immigration reform, exploiting the public's ambivalence toward immigrants.¹ By purportedly targeting undocumented immigrants, states are inviting discrimination against anyone perceived as being from another country or appearing different or "other." Given that 53% of foreign-born immigrants are Hispanic,² this approach has created a dangerous anti-Latino sentiment which contributes to a hostile environment that affects all aspects of community life, particularly the opportunity for equal housing.

The ability to obtain adequate and safe housing of one's choosing dramatically shapes an individual's or family's way of life, affecting all aspects including employment and educational opportunities, proximity to friends and family, access to public transportation, and commercial and government services. As a result, housing discrimination can have a wide-ranging negative and potentially devastating effect on communities that are subject to adverse and differential treatment. Knowing the historic role that institutional racial discrimination has played in segregating U.S. housing markets, new waves of national origin discrimination and intimidation against Hispanic families only serve to perpetuate the country's divisive past. Addressing the housing needs of Latinos will require attention to demographics and the impact that discrimination has on housing choices.

To assess the extent to which Latinos are subject to differential and adverse treatment when trying to secure housing in several Southern cities, National Council of La Raza (NCLR) and the Equal Rights Center (ERC) initiated a testing investigation in Birmingham, Alabama; Atlanta, Georgia; and San Antonio, Texas. A "matched paired" methodology was

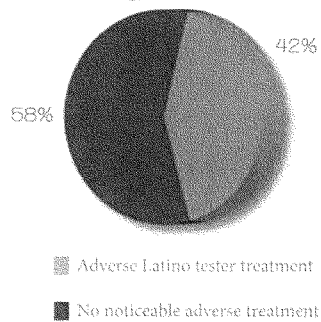


used, in which an Hispanic and a White tester with nearly identical profiles in all meaningful respects, aside from their national origin, inquired about the same housing. A full description of the methodology is provided in the Appendix. In both San Antonio and Atlanta, the ERC conducted 50 phone tests and 25 in-person tests, in which trained ERC testers contacted real estate agents about buying a home that had an online listing. In Birmingham, the ERC conducted 75 in-person tests, in which ERC testers contacted housing providers about an apartment listed for rent.

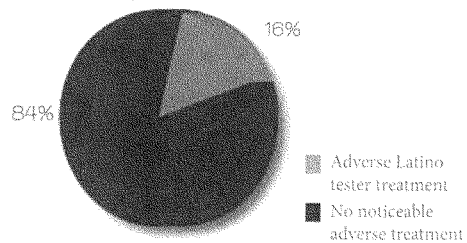
In total, Latino testers experienced at least one type of adverse, differential treatment 42% of the time (95 of the 225 tests conducted), and two or more types of adverse treatment 16% of the time (35 tests) when compared to their White counterparts. Testers in the three cities experienced the following types of adverse, differential treatment:

- Housing agents were less willing or receptive to schedule an appointment with Hispanic testers than they were with their matched White testers.
- Agents provided Hispanic testers with fewer options than their matched White testers in terms of other homes for sale or number of units available for rent.
- In sales tests, agents provided White testers with lender recommendations or other advantageous financing information that was not provided to their matched Hispanic testers.
- In rental tests, agents quoted higher fees, costs, and/or more extensive application requirements to Hispanic testers than to their matched White testers.
- Agents more frequently provided follow-up contact via phone or email to the White testers but not to their matched Hispanic testers.

Percentage of Latino testers who experienced at least 1 type of adverse treatment



Percentage of Latino testers who experienced 2 or more types of adverse treatment





The majority of growth in the U.S. population over the last fifteen years is attributable to racial and ethnic minority groups, including large Latino³ migration to “new gateway states,” such as those in the South and Midwest, and a significant growth in the native-born Hispanic population.³ The growing presence of Latinos in these states has not only transformed them demographically and economically, but has also brought increased anti-immigrant sentiment, as reflected by the fact that several of the states with the fastest growing Hispanic populations have pursued the harshest anti-immigrant laws—South Carolina, Georgia, and Alabama.

As the debate over immigration reform intensifies, hostility toward Latinos in general has also increased. This hostility manifests itself in many ways, such as a dramatic rise in hate crimes targeting Latinos⁴ and sensationalistic campaigns to promulgate anti-immigrant state and local legislation purportedly intended to target undocumented immigrants. Yet anti-immigrant laws affect more than just undocumented immigrants—attacks aimed at immigrants have been laden with racial overtones, and the consequences are felt well beyond those who are foreign-born. This hostility has led to the scapegoating and intimidation of immigrants, affecting many aspects of life—not just equal housing opportunities—and results in discrimination or differential treatment disparately affecting Latinos.

³ The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout this document to refer to people of Mexican, Puerto Rican, Cuban, Central American, South American, Dominican, Spanish and other Hispanic descent; they may be of any race. Further, unless otherwise noted, estimates in this document do not include the 3.7 million residents of Puerto Rico.



The Rise in Anti-Immigrant Laws

With Congress' inability to enact immigration reform at the federal level, states and localities have taken matters into their own hands, passing misguided anti-immigrant laws that have led to threats and attacks against Latinos, regardless of their immigration status, and have undermined Latinos' trust of law enforcement and government.⁵ For many Hispanics, discrimination based on national origin has become a common and accepted reality, which negatively impacts the social, cultural, political, and economic aspects of life in the U.S.

In 2006, the towns of Hazelton, Pennsylvania, and Riverside, New Jersey, ignited a trend of anti-immigrant local ordinances that made it illegal to rent to undocumented immigrants. In the five years that followed, more than 100 similar local ordinances sprang up throughout the country.⁶ On a state level, Arizona has the unfortunate distinction of being the catalyst for the most recent wave of anti-immigrant state legislation. Arizona's S.B. 1070 introduced the policy of "attrition through enforcement,"⁷ seeking to establish conditions where immigrants would feel so unwelcome that they would "self-deport" or otherwise leave the state. While the Supreme Court struck down some of S.B. 1070's harshest provisions in 2012,⁸ it upheld the "show me your papers" portion, which authorizes law enforcement to demand papers proving immigration status or citizenship from anyone they stop and suspect of being in the U.S. unlawfully. Although this provision has only recently gone into effect, the practice essentially sanctions racial profiling against Latinos presumed to be "foreign" based on their physical appearance or accent.⁹

Arizona's S.B. 1070 was "not a grassroots effort but a coordinated campaign involving several national organizations and figures in the anti-immigrant movement."¹⁰ After passage in 2010, S.B. 1070 changed the dialogue within many state legislatures, where a number of other states' elected officials promised that they would introduce copycat legislation. Five states passed sweeping copycat laws in 2011,¹¹ while many others considered or enacted specific state/local anti-immigrant provisions. Alabama, which saw a 145% increase in its Hispanic population from 2000 to 2010,¹¹ passed what was arguably a more draconian law than S.B. 1070, and Georgia's state legislation copied Arizona's "show me your papers" provision, effectively sanctioning racial profiling.

Federal Fair Housing Act Protections

Counterbalancing the wave of state anti-immigrant measures are the well-established federal, state, and local civil rights laws that protect against discrimination based on national origin. The federal Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings based on race, color, national origin, religion, sex, familial status, or disability—and these statutory rights are available to all regardless of citizenship.¹² Housing

⁵ Those states include Alabama, Georgia, Indiana, South Carolina, and Utah. In addition to the Arizona case that went before the Supreme Court, the U.S. Department of Justice has challenged the Alabama, Georgia, South Carolina, and Utah laws.

discrimination can range from denying housing outright, to offering different terms or conditions when renting or buying a home, or to providing information that would amount to decreased availability or different terms or conditions. Adverse and differential treatment amounts to national origin discrimination when it is based on someone's actual or perceived birthplace, ancestry, culture, or linguistic characteristics identified as common to a particular group. In some instances, individuals are subject to discrimination based on a combination of categories protected by the Fair Housing Act, such as national origin, race, and color.¹³

All states, including the three tested in this report, have fair housing laws that provide, at a minimum, the same protections as the federal Fair Housing Act.¹⁴ Nonetheless, housing discrimination persists on both individual and systemic levels. In 2012 alone, 28,519 housing discrimination complaints were filed with government agencies or a private fair housing organization, nearly 1,500 more than the number of complaints filed in 2011.¹⁵ This number represents just the tip of the iceberg, as housing discrimination is vastly underreported due to a lack of awareness about fair housing rights and/or distrust in the system. In any given year, an estimated four million fair housing violations occur.¹⁶

Discrimination against Latinos comprises a significant portion of complaints reported and is believed to encompass a large number of unreported incidents. An investigation initiated by the ERC across the Commonwealth of Virginia found that Hispanic applicants seeking rental housing received more adverse treatment in at least one respect than their White counterparts 55% of the time.¹⁷ This adverse treatment included being quoted higher rents or higher fees than White testers, offered later availability dates or fewer available units than those offered to White testers, told about additional application requirements (such as credit checks and/or providing a social security card) which were not told to White testers, and not being offered incentives and specials that were offered to White testers seeking the same housing, often when working with the same agent.¹⁸ A prior ERC investigation in Frederick County, Maryland, found similar results, with 79% of Latino testers experiencing some type of disparate, adverse treatment when they sought rental housing.¹⁹

Background on the Testing Locations

Based on this existing evidence of housing discrimination and anecdotal evidence from its network of affiliated community-based organizations, NCLR sought to learn more about the experience of Latino families when they look for housing in three Southern cities. With respect to the sales testing, NCLR was concerned that real estate agents could be steering Latino clients away from certain types of home financing and therefore sought more robust data on this issue by exploring the differences between a city with an established Hispanic population (San Antonio, Texas) and one with a newer Latino immigrant community (Atlanta, Georgia). NCLR selected Birmingham, Alabama, in part, to explore the impact of the state's notably harsh anti-immigrant law, H.B. 56, on the ability of Latino individu-

* Some states provide additional protections, such as prohibiting discrimination based on sexual orientation, gender identity, or source of income.



als and families to secure housing. Due to the concern that the language within H.B. 56 explicitly discourages contracts with people who may be perceived as undocumented and would have a negative impact on rental transactions, Birmingham testing focused on rental housing rather than on sale properties.

The fair housing laws for all three states provide the same protections as the federal Fair Housing Act, with no additional protected classes aside from a local ordinance in San Antonio prohibiting housing discrimination based on age.¹⁹ While having some minimal contact with NCLR Affiliates to assist with tester recruitment in the three cities, the ERC conducted the testing without any preconceived expectations regarding these locations.

Atlanta, Georgia

The Atlanta-Sandy Springs-Marietta metropolitan statistical area (MSA)^{*} is the ninth-largest MSA in the U.S. While the city of Atlanta is a “majority minority” with African Americans constituting 54% of the population, the MSA in focus is 55% White. According to U.S. Census data, Hispanics comprised 5% of the city of Atlanta²⁰ and 10% of the MSA population in 2010.²¹ While still a minority, there has been a notable increase in the percentage of Latinos in the region. Between 2005 and 2010, the Hispanic population in the Atlanta MSA grew 29%,²² while the total population over the same five year period grew by only 7%. By comparison, the African American population grew by 12% and the White population^{**} decreased by nearly 7%.²³

Atlanta’s growing Latino population is consistent with statewide demographic changes. The Hispanic population in Georgia is the 10th largest in the nation, with 1.7% of all Latinos in the U.S. (approximately 856,000 individuals).²⁴ During a 10-year period, the Latino population in Georgia almost doubled, from just over 5% in 2000 to 8.8% in 2010.²⁵ In 2011, Georgia was the first state to follow in Arizona’s footsteps by enacting copycat legislation, H.B. 87. In addition to adopting similar provisions as found in S.B. 1070, Georgia’s H.B. 87 imposed new hiring requirements for employers, increased penalties for workers convicted of using false identification to obtain work, and mandated criminal penalties for people who transport or harbor immigrants without legal status.²⁶

San Antonio, Texas

The San Antonio MSA is the third largest MSA in Texas, with a total population of 2.1 million according to the 2010 U.S. Census. San Antonio is also a “majority minority” city, with individuals of Latino or Hispanic origin comprising 54% (1.2 million) of the area’s residents.²⁷ Between 2005 and 2010, the Hispanic population grew 17%, while the overall

* Metropolitan Statistical Area (MSA) is a designation by the U.S. Census Bureau to characterize an urban area with adjacent communities having a high degree of social and economic integration with that core. For example, the Atlanta-Sandy Springs-Marietta MSA consists of 28 counties, with Fulton County (where Atlanta is located) at its center.

** In these statistics, the U.S. Census Bureau recognized that people of Hispanic origin may be of any race. As a result, the White population data includes White Hispanics as well as White non-Hispanics.

population grew 13.4% and the White population shrank by 4.4%.²⁸

Latinos have deep historic ties not just to San Antonio but to the entire state of Texas. While Texas has not passed any broad anti-immigrant legislation, the legislature considered an S.B. 1070 copycat as well as other anti-immigrant measures that exacerbate harassment, intimidation, and hostility toward Hispanic residents. At the local level, specific cities have actively pursued anti-immigrant measures, such as Farmers Branch, Texas, where a 2008 measure (which is currently being challenged in federal court) would require the city's building inspector to check the immigration status of any noncitizen seeking to rent an apartment, bar undocumented immigrants from rental housing, and revoke the rental licenses of landlords who knowingly allow undocumented immigrants to rent from them.²⁹ Hostility toward Latinos, particularly anyone who may be perceived as an undocumented immigrant, also resonates in political and socioeconomic arenas. This past June, an 11-year-old U.S. citizen of Mexican descent was invited by the San Antonio Spurs to sing the national anthem at a home game during the NBA finals. The boy, in homage to his heritage, dressed in a mariachi suit and immediately became the target of a racist barrage on Twitter.³⁰ Various tweets expressed negative opinions toward Latinos in the U.S., including comments such as, "How you singing the national anthem looking like an illegal immigrant?," "Why is a foreigner singing the national anthem. I realize that's San Antonio but that still ain't Mexico," and, "Who let this illegal alien sing our national anthem?"³¹

Birmingham, Alabama

Birmingham is the largest city in Alabama. In 2012, the Birmingham-Hoover MSA had 1.1 million residents, 4% (49,000) of whom were of Hispanic or Latino origin.³² While still a small percentage of the population, the Hispanic population grew by 75% (from 28,000 to 49,000) between 2005 and 2010, while the overall population grew by only 3.5%, the African American population grew by 3%, and the White population decreased by 1%.³³

In June 2011, Alabama passed what is arguably the strictest anti-immigrant state law, H.B. 56.³⁴ Alabama's H.B. 56 includes provisions affecting law enforcement, transportation, employment, housing, and education. In addition to requiring police to make a reasonable attempt to determine the legal status of anyone they have "reasonable suspicion" to believe is unlawfully present in the U.S. during any legal stop, detention, or arrest, H.B. 56 makes it a misdemeanor for undocumented immigrants to fail to carry immigration documents and criminalizes business transactions with undocumented immigrants. The law also prohibits undocumented immigrants from receiving state or local public benefits, enrolling in or attending a public college, and seeking or performing work as an employee or independent contractor. Going further than Arizona's S.B. 1070, the law also prohibits landlords from renting property to undocumented immigrants; contracts in which one party is an undocumented immigrant and the other party has direct knowledge of this are deemed null and void in Alabama state court.³⁵ This last provision is extremely troublesome because it isolates undocumented immigrants from the protection of the state, making them even more vulnerable to exploitation, particularly when seeking employment and housing.

* San Antonio's small African American population grew 15% this time period, but went from 6.5% to 6% of the MSAs total population.



Testing Investigaton Results

In matched-pair testing conducted by the ERC in Birmingham, Atlanta, and San Antonio, Latino testers experienced at least one type of adverse, differential treatment in 95 of the 225 tests (42%) that occurred in the three cities.¹ In both San Antonio and Atlanta, the ERC conducted 50 phone tests and 25 in-person tests, in which trained ERC testers contacted real estate agents about buying a home that had an online listing. In Birmingham, the ERC conducted 75 in-person tests, in which trained ERC testers contacted housing providers about an apartment listed for rent. Testers in the three cities experienced one or more of the following types of adverse, differential treatment:

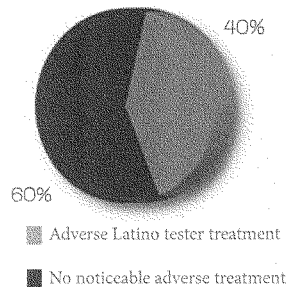
- Housing agents were less willing or receptive to schedule an appointment with a Latino tester than they were with the matched White tester.
- Agents provided Latino testers with fewer options than the matched White tester in terms of other homes for sale or number of units available for rent.
- In sales tests, agents provided the White tester with lender recommendations or other advantageous financing information that was not provided to the Latino tester.
- In rental tests, agents quoted higher fees, costs, and/or more extensive application requirements to the Latino tester than to the matched White tester.
- Agents provided follow-up contact via phone or email to the White tester but not to the Latino tester.

Birmingham, AL, Rental Tests Results

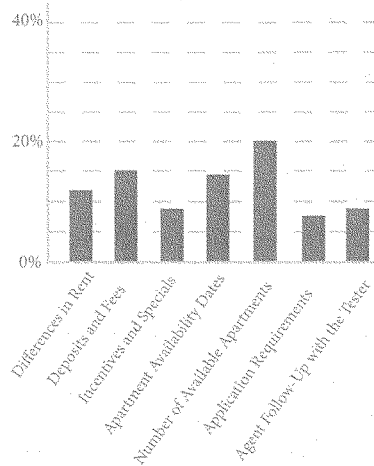
In 30 of the 75 in-person rental tests (40%) conducted in Birmingham, the Latino tester was treated less favorably than the matched White tester. This disparate treatment included being informed of higher rents, additional fees, fewer available apartments, later apartment availability, and additional application requirements. In 18 tests (24%), the Latino tester experienced two or more forms of less favorable treatment, such as being told of fewer available apartments while also being told that the apartments were available at a later date.

¹ In matched-pair testing, the testing methodology was designed to portray the Latino (protected) testers as slightly more favorable potential buyers or tenants than their White (control) counterparts. For example, while trying to keep both testers in the same general financial position, Latino testers were always provided with slightly more favorable financial profiles than their matched White testers. As a result, there were some tests in which the Latino tester did in fact receive more favorable treatment than the matched White tester. For purposes of this report, instances of more favorable treatment of Latino testers were treated the same as instances of equal treatment.

Percentage of Latino testers who experienced at least 1 type of adverse treatment (Birmingham)



Percentage of adverse treatment experienced by type (Birmingham rental tests only)



A. Differences in Rent

For the majority of prospective tenants, cost is the most decisive factor in determining whether to rent a unit. In nine tests (12%), rental agents quoted a rental amount at least \$10 lower to the White tester than was provided to the matched Latino tester.* In five of these tests, the lower price was the result of an additional unit being offered to the White tester. In the other three tests, both testers were informed about the same number of units, but at least one was less expensive for the White tester.

B. Deposits and Fees

Like rent rates, deposits and fees impact the affordability of a unit, and therefore the availability and desirability of the unit to a prospective tenant. In eleven tests (15%), the Latino tester was either told about a deposit or fee that was not required of the matched White tester, or was provided with a higher dollar amount for these costs.** In one of these tests, the Latino tester was quoted a higher security deposit amount. In two tests, the Latino tester was not provided with the option of a cheaper security deposit, which was an option for the matched White tester. In four of these tests, the Latino tester was quoted a higher amount for an application or water fee than was the matched White tester. In the remaining four tests, the Latino tester was told about an application fee or a water fee that was not mentioned to the matched White tester.

C. Incentives and Specials

Specials and incentives, such as offering a period of free or reduced rent, or waiving otherwise required fees, are often used by housing providers to induce a potential renter to make an immediate decision to

* Rental cost differences of less than \$10 were not included as they may reflect a practice of daily fluctuating prices, and/or the failure of agents to recall each day's new rental price.

** This calculation does not include tests where only the Latino tester was told about a deposit or fee, but where the matched White tester received written materials confirming the same price for that fee.

rent. In six tests (8%), White testers were informed of rental incentives and special offers that were not offered to the matched Latino testers. These specifically included offers of reductions in rent, waivers or discounts on fees, and shorter lease options.

D. Apartment Availability Dates

Ensuring that a unit will be available when a prospective tenant needs to move is also a determining factor for applicants. Housing providers are able to subtly dissuade prospective tenants by suggesting that no units will be available in the timeframe requested, thereby encouraging the applicant to look elsewhere. In seven tests (14%), rental agents provided Latino testers with later availability dates than were offered to the matched White testers.

E. Number of Available Apartments

Equal housing opportunity requires providing each similarly situated prospective tenant with the same number and range of options available for housing. However, in some instances, prospective tenants are only told about certain available units, as a means of "steering" them toward, or away from, certain sections of a building or property or keeping their options within a particular price range. In 15 tests (20%), the White tester was advised of more available units than were mentioned to the matched Latino tester.* In three of these tests, the additional available units available were available sooner than the units shown or mentioned to the matched Latino tester. In four tests (including one of the three with a unit available earlier), at least one additional available unit mentioned to the White tester had a lower rent cost than the units discussed with the matched Latino tester. In one test, while both testers were told that there were no one-bedroom apartments at that property, only the matched White tester was informed of an available one-bedroom unit at a sister property.

F. Application Requirements

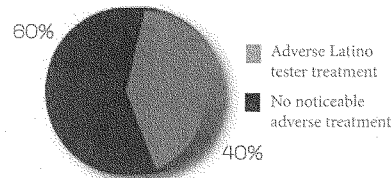
The imposition of additional application requirements, such as a credit check or payment only by money order (rather than personal check), can be a strong deterrent to renting a particular unit and can act as a barrier to equal housing opportunity. In five tests (7%), the Latino testers were subject to an additional application requirement not required of the matched White tester. In four of these tests, the agent told the Latino tester, but not the matched White tester, that a credit check was required. In one of these tests, only the Latino tester was also told that valid identification was required. In another test, the Latino tester was provided with an additional handout discussing requirements related to citizenship or immigration status information, but this handout was not provided to the matched White tester.

G. Agent Follow Up with the Tester

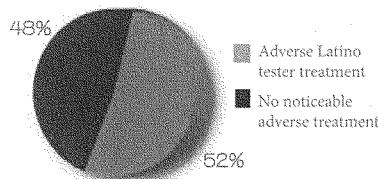
While not universal, some rental agents follow up with prospective tenants after the initial meeting to further encourage them to rent at their property. In six tests (8%), the same

* Tests conducted with a gap in time of more than one day between the visits by the Latino and White testers were excluded from this category in that such a gap could account for the difference in number of units available.

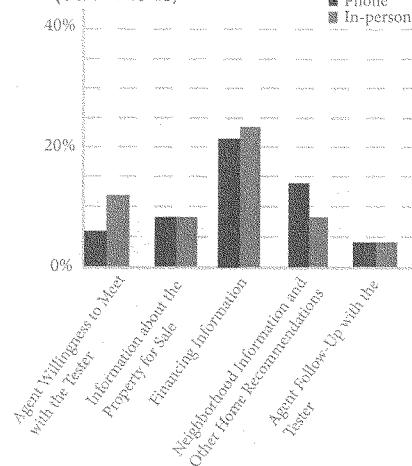
Percentage of Latino phone testers who experienced at least 1 type of adverse treatment (San Antonio)



Percentage of Latino in-person testers who experienced at least 1 type of adverse treatment (San Antonio)



Percentage of adverse treatment experienced by type (San Antonio)



agent followed up with the White tester after their meeting but did not do the same with the matched Latino tester.*

San Antonio, TX, Sales Tests Results

The ERC conducted 50 phone and 25 in-person matched-pair tests in San Antonio. In 20 of the phone tests (40%) and 13 of the in-person tests (52%), the Latino tester was treated less favorably than their matched White tester in at least one aspect. In three phone tests (6%) and four in-person tests (16%), the Latino tester experienced two or more forms of less favorable treatment than the matched White tester, such as being told of fewer available homes and being asked to provide more financial information.

A. Agent Willingness to Meet with the Tester

In three phone tests (6%) and three in-person tests (12%), the Latino tester was subject to adverse, disparate treatment from the moment they sought connection with the agent. In two phone tests and three in-person tests, the Latino tester was referred to a Spanish-speaking agent, who seemed less familiar with the property and unable to provide the level of detailed information (such as the length of time the house had been on the market) provided to the matched White tester who spoke directly with the agent identified with the property. In another phone test, the rental agent offered to meet with the White tester but not the Latino tester, despite being told by both testers that they would "be in town the following week."

* This category excludes any test in which the two matched testers met with different rental agents.

B. Information about the Property for Sale

Providing more information about a home, particularly its history on the market and pricing trends, can be very helpful for a prospective buyer in evaluating the property and encouraging them to make a bid. In four phone tests (8%) and two in-person tests (8%), the same rental agent provided only the White tester with advantageous information for placing a bid on the home.^{*} In two of the phone tests and in one in-person test, the White tester was told that the price of the home had been reduced to an amount lower than what was listed in the ad that both testers reviewed. This price reduction, however, was not provided to the matched Latino tester. In the remaining three tests, the agent provided the White tester with much more detailed information—the home was about to go into foreclosure, the agent was the owner of the home, and homes a few blocks away were priced substantially lower—which was not provided to the matched Latino tester.

C. Financing Information

For many homebuyers, especially first-time homebuyers (the profile used in all testing here), financing is a critical factor in determining whether the prospective buyer can afford a specific home. In the San Antonio testing, financing was the most common source of adverse, differential treatment, occurring in 11 phone tests (22%) and six in-person tests (24%). Adverse, differential treatment with respect to financing was observed in the San Antonio testing in two different ways:

- When both testers requested financing information, the White tester received more information and recommendations about the lending process than the matched Latino tester; and
- The agent affirmatively asked the Latino tester more questions about his or her qualifications to purchase the home than were asked of the matched White tester.

In five phone tests (10%) and three in-person tests (12%), the agent provided the White tester with at least one recommended lender but did not provide any recommendations to the matched Latino tester, even when requested.^{**} In two of these phone tests and two in-person tests, the agent told the White tester, but not the matched Latino tester, that the recommended lender (often someone in-house) could help save on closing costs or fees. In another of these phone tests, in addition to providing only the White tester with a recom-

^{*} In several additional tests, the White tester was provided with additional advantageous information that could be attributable to either the testers meeting with different agents, or the possibility that an intervening price reduction took place between the two test parts. These tests were not included as adverse, disparate treatment, despite being advantageous to the White tester.

^{**} Instances where matched testers dealt with different agents who provided different recommended lenders were not included as adverse treatment here, with two exceptions. In two instances, matched testers spoke with different agents. While the White tester was told that an in-house lender was available, another agent from the same agency did not provide that information to the matched Latino tester even when it was requested.

mended lender, the same agent insisted that the Latino tester get pre-approved for a loan before viewing any homes, something not required of the matched White tester. In one in-person test, both testers disclosed that they would make a 20% down payment, but only the White tester was told about avoiding mortgage insurance with this level of down payment.

In four phone tests (8%) and two in-person tests (8%), the agent asked the Latino testers, but not the matched White testers, if they were “pre-qualified” or “pre-approved” for financing. In two phone tests (4%), the agent asked both testers about pre-approval but further questioned the Latino tester about their pre-approval or credit history, without any such inquiry or scrutiny of the matched White tester.

D. Neighborhood Information and Other Home Recommendations

Equal housing opportunity requires providing similarly situated prospective buyers with the same available options to meet their preferences and finances. However, in some instances, prospective buyers are only told about certain available homes as a means of “steering” them toward, or away from, certain homes or neighborhoods, or to limit their options to a particular price range; as a result, accessibility to services and community resources is affected.

In three phone tests (14%) and four in-person tests (8%), the same agent provided the Latino tester with less information about a neighborhood or offered different neighborhood recommendations than was provided to the matched White tester, or asked the White tester for information about neighborhood preferences without seeking this information from the matched Latino tester.^{*}

In one phone test (2%) and four in-person tests (16%), the same agent followed up with both of the matched testers after their initial contact. However, the agent provided information based on different search parameters, resulting in the Latino tester being provided with either fewer potential properties to review or alternately located properties compared to those provided to the matched White tester. In one phone test (2%), the agent gave unsolicited neighborhood recommendations to the White tester without any such suggestions for the matched Latino tester. In one phone test (2%), the same agent asked the White tester for their neighborhood preferences but did not seek that information from the matched Latino tester.

E. Agent Follow-Up with the Tester

In order to foster a relationship with a potential new client, real estate agents sometimes follow-up after an initial meeting by phone or email. In two phone tests (4%) and two

^{*} Because of variances in neighborhood recommendations that may come from different agents, irrespective of a potential buyer's national origin, no tests in which the testers ultimately spoke with different agents were included here.



in-person tests (4%), the same agent provided greater follow-up to the White tester than the matched Latino tester.^{*} In one phone test and one in-person test, the White tester received email follow-up from the agent, but the matched Latino tester did not. In one phone test, the agent provided the White tester with follow-up that included additional property listings while emailing the matched Latino tester advising that it was “important to get prequalified” before they met. In one in-person test, although both testers met with the same agent, the Latino tester received follow-up from a different (Spanish-speaking) agent, while the matched White tester received follow-up from the agent originally met.

Atlanta, GA, Sales Tests Results

The ERC conducted 50 phone and 25 in-person matched pair tests in Atlanta. In 21 of the phone tests (42%) and 11 of the in-person tests (44%), the Latino tester was treated less favorably than the matched White tester in at least one respect. In six phone tests (12%) and four in-person tests (16%), the Latino tester experienced two or more forms of less favorable treatment, such as being told of fewer available homes and being asked to provide more financial information.

A. Agent Willingness to Meet with the Tester

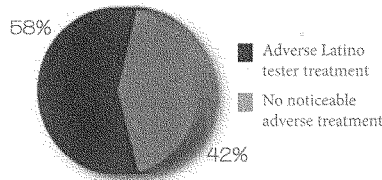
Unlike in San Antonio, Latino testers in Atlanta were not typically referred to Spanish speaking agents. However, in three in-person tests (12%), the initial agent referred the Latino tester to a different agent for the appointment, despite being available to meet with the matched White tester during the same time period. In two of these tests, the agent who subsequently met with the Latino tester only showed the listed property, while the matched White tester was shown additional properties, resulting in appointments that lasted two to three times longer.

B. Information about the Property for Sale

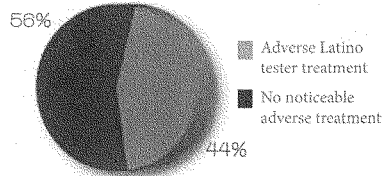
Availability, price, and related costs for a home are arguably the most critical factors weighed by a prospective buyer. In two phone tests (4%) and one in-person test (2%), the White tester was given information about the property availability and costs that was not provided to the matched Latino tester. In one phone test, the White tester was told that the price of the home had been reduced, while the same agent did not provide this information to the matched Latino tester. In another phone test, the agent told the Latino tester that the home was under contract, while a colleague of the first agent confirmed to the matched White tester the following day that the home was still available. In one in-person test, both testers met with the same agent who told the White tester about a homeowners association (HOA) and associated HOA fees, but did not provide this information to the matched Latino tester.

^{*} In addition to excluding all tests where no follow-up was provided to either tester, only tests in which both testers saw the same real estate agent were included in this category.

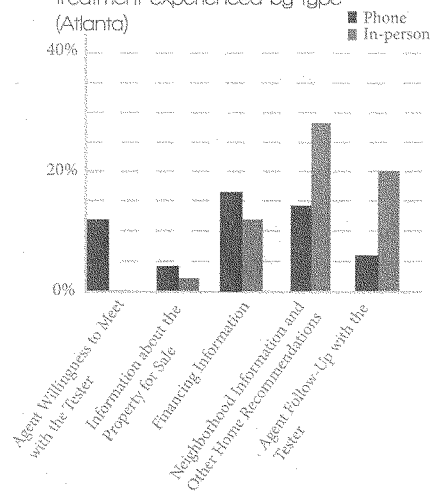
Percentage of Latino phone testers who experienced at least 1 type of adverse treatment (Atlanta)



Percentage of Latino in-person testers who experienced at least 1 type of adverse treatment (Atlanta)



Percentage of adverse treatment experienced by type (Atlanta)



C. Financing Information

In Atlanta, Latino testers were treated with more skepticism or were subject to greater inquiry with respect to pre-qualification or approval in eight phone tests (16%) and three in-person tests (12%). In four of these phone tests and one of the in-person tests, the Latino tester, but not the matched White tester, was asked if they were "pre-qualified," "pre-approved," or had already spoken with a lender. In one phone test, the same agent told the Latino tester that pre-approval was required to see the home, a restriction not placed on the matched White tester. In three phone tests and two in-person tests, the agent inquired of the Latino tester about their credit and/or employment history but did not make such inquiries of the matched White tester. In two phone tests and one in-person test, the agent asked the Latino tester if he/she intended to pay for the home "in cash," or would be seeking financing. Such inquiries were not made by the same agent of the matched White tester.

Separate from any inquiry by the agent about the testers' pre-qualification or pre-approval status, the testers did request lending recommendations; the agent provided more information of this type to the White tester than the matched Latino tester in seven phone tests (14%) and four in-person tests (16%). In three of these phone tests and two of the in-person tests, the same agent provided the White tester, but not the matched Latino tester, with a recommended lender, even though both testers asked about the lending process. In one phone test, the agent referred the Latino tester to a lender with a Spanish surname, while the matched White tester was given a different lender contact. In two phone tests and two in-person tests, the agent gave the White tester advice about the lending process, such as when to have his credit score run, what to include with the application, the value of comparing multiple lenders, and alternative financing options. This information was not provided to the matched Latino tester. In one phone test, the Latino tester was told "you are going to be asked to submit your papers and your income and the more honest you are the more chance you will

have to get a loan, you know because sometimes people [are] not completely honest and they do not make what they say the[y] make in terms of money." This type of admonition was not given to the matched White tester.

D. Neighborhood Information and Other Home Recommendations

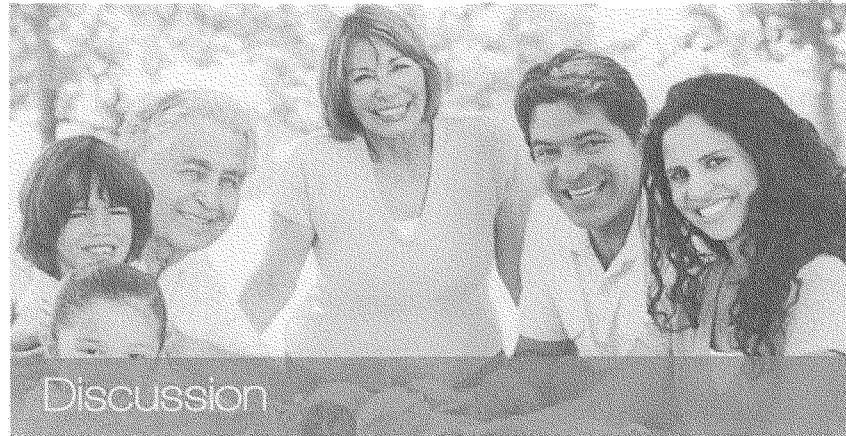
In seven phone tests (14%) and seven in-person tests (28%), the same real estate agent provided more information or otherwise further engaged the White tester on neighborhood and home recommendations than the matched Latino tester. In two of these phone tests and three of the in-person tests, the same agent recommended searching other neighborhoods for a home to the White tester, but did not do so with the matched Latino tester. In five phone tests and in one in-person test, the same agent met with both testers, but only asked the White tester for any neighborhood and/or school district preferences. In three in-person tests, the agent gave the White tester useful information about the neighborhood, information that was not shared with the matched Latino tester.

E. Agent Follow Up with the Tester

In three phone tests (6%) and five in-person tests (20%), both testers met with the same agent but only the White tester received email follow-up.* In two of the phone tests and three in-person tests, the White tester received email follow-up with additional home recommendations, but the matched Hispanic tester was not provided with this information. In one phone test and two in-person tests, only the White tester received email follow-up that included recommendations for lenders.

* While both testers initially tried to make appointments with the same agent, this category does not include any follow-up from tests where the testers ultimately met with different agents.





Whether trying to rent, buy, lease, sell, or finance a home, Hispanics and other ethnic groups often face obstacles and roadblocks to equal housing. The findings from this testing investigation reinforce much of the existing research on the disparate treatment of Latinos in the rental and sales markets. Because discrimination does not always present itself so maliciously or obviously as it does in the case of restrictive ordinances and state laws, "secret shopper" testing is an important tool to understand if certain protected classes are being subjected to disparate treatment. The ERC's testing results reveal important trends regarding Latinos' experience when trying to secure housing in Birmingham, Atlanta, and San Antonio. This section reviews key issues found during the investigation.

- *Florida's Hispanic homebuyers continue to experience discrimination when buying a home.* Experts predict that by 2020, nearly half of first time home-buyers will be Latino.³⁶ According to the U.S. Department of Housing and Urban Development (HUD), an estimated one in four Hispanic renters, and one in five Hispanic homebuyers, is likely to face some type of discrimination in the home search.³⁷ Our Atlanta and San Antonio testing confirmed that Latino testers were more likely than similarly-situated White testers to experience disparate treatment when trying to buy a home. In many of the tests Hispanic testers did not receive information that could have made their home search easier and more accessible, such as advantageous financing information and information about other potential homes. For example, in the San Antonio sales tests, the Latino tester experienced differential treatment.
- *A condominium building market has led to a dramatic rental housing increase.* Similar to a 2009 investigation by the Southern Poverty Law Center in which a survey of 500 Latinos in five southern states indicated that 70%

reported experiencing racism when looking for housing,⁴⁸ our testing revealed a high rate of disparate treatment in the rental tests. In nearly a quarter (24%) of the rental tests conducted in Birmingham, the Hispanic tester experienced two or more forms of disparate treatment when attempting to secure rental housing. A June 2013 HUD study found that in 8,000 tests, Latino renters learned about 12.5% fewer available properties, and were shown 7.5% fewer housing units than White renters.⁴⁹ Given that Latino families comprise 42% of the rental market⁵⁰—a number that has grown dramatically during the foreclosure crisis—the rental market needs to adapt to ensure that Hispanics are not receiving disparate treatment, particularly around availability and desirability of a unit.

- **Longstanding Latino presence in a community is not a certain predictor of equal treatment.** NCLR hypothesized that in an established Hispanic community, disparate treatment by national origin would not be as prevalent. However, this was not the case in San Antonio. Specifically in the in-person tests, Hispanic testers experienced discrimination than in the other two cities—during 52% of the in-person tests in San Antonio, as compared to 41% in Atlanta and 40% in Birmingham. Although Texas has not experienced the same level of statewide anti-immigrant attacks, this disparate treatment suggests that the anti-immigrant environment felt elsewhere is affecting Latino families nationwide.
- **Piecemeal state immigration legislation creates conflict with federal immigration law as well as federal Fair Housing laws.** The Supreme Court ruling in *Arizona v. United States* found that much of S.B. 1070 was pre-empted by federal immigration law. The same is likely true of the rental restrictions in Alabama's H.B. 56, which are superseded by the national origin discrimination protections in the Fair Housing Act. Landlords are ill-equipped to determine the immigration status of their tenants, and they may simply turn away minority individuals to avoid renting to anyone they believe to be an immigrant and risk being subject to penalties—virtually guaranteeing wholesale discrimination based on national origin.
- **As Congress debates immigration reform, the possibility of national origin housing discrimination is likely to increase.** With the passage of any type of immigration reform, immigrant families will be in transition, and there is likely to be widespread confusion about how to best integrate immigrants and prevent housing and other types of discrimination. Particular attention and scrutiny should be paid to cities and states that have previously launched anti-immigrant initiatives, including those with anti-immigrant rental laws and those that have been hotbeds of hate crimes. These places have already demonstrated anti-immigrant sentiment and may not be prepared to integrate new Americans into their communities, particularly if new federal immigration law is in conflict with existing state laws or local rental ordinances.

Recommendations

It is critical to protect the rights of all residents under the Fair Housing Act and local fair housing laws, particularly in the wake of changing demographics and while Congress considers significant changes to our federal immigration laws. Our nation requires a just housing system that acknowledges and supports each individual's right to live where he or she chooses and provides for effective enforcement on behalf of victims of discrimination. When Latinos have fair and equitable access to housing choices, they are able to create wealth and give back to their communities. Despite this truth, there has not been a coordinated fair housing response to the attack on immigrant—and by extension Hispanic—households. An effective response requires contributions from nonprofit organizations at the local, state, and national levels, from the federal government and the various funding streams under its control, and from local government agencies. In particular, the nation's changing demographics pose new challenges that will require HUD to adapt its fair housing outreach and enforcement models. To foster this change, NCLR and ERC make the following recommendations:

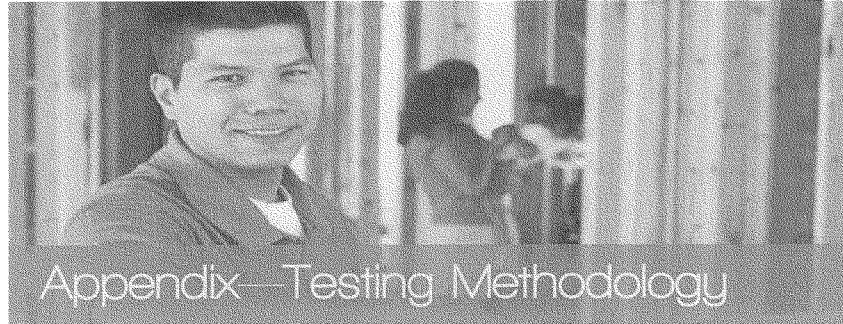
- Increase funding for public awareness campaigns and immigrant-specific outreach on fair housing issues. Estimates put the number of fair housing violations at four million annually, yet in 2012, HUD received only 8,803 reported housing discrimination grievances.⁴¹ Members of NCLR's affiliated community-based network report that many of their clients encounter housing bias but do not recognize it as discrimination and thus are reluctant to report it. As such, fostering a well-informed community is a critical aspect of the broader strategy to defend housing rights. More funding is needed to help Latino-serving organizations develop outreach and awareness campaigns to educate the public about the protections afforded by the Fair Housing Act, information on how to report fair housing violations, and the impact of housing discrimination on communities, particularly those that have experienced anti-immigrant local ordinances or state legislation. In addition, more funding is needed to enable agencies with fair housing expertise to broaden their scope and incorporate immigrant-specific outreach efforts with bilingual and culturally competent staff.
- Increased partnering with local Latino service-providers that can gather real-time evidence for enforcement in specific high-impact localities. Hispanic community-based organizations are trusted sources of information that have the cultural competency to reach their community, and HUD should adjust its grant-making approach to be more inclusive of these community-based resources. Based on NCLR's analysis of fair housing grants made between 2006 and 2010, only 13% of HUD's enforcement budget is disbursed to organizations that clearly state Latinos or immigrants as a target audience under their grant.⁴² In addition, funding directed at Hispanic-serving organizations

through HUD's Fair Housing Initiatives Program remains disproportionately small, with most of that funding earmarked for outreach and education. HUD should ensure that funding for, and partnerships with, local Hispanic-serving organizations covers not only fair housing outreach but also enforcement activities.

- Enforce penalties when fair housing discrimination occurs. Several U.S. government agencies, including HUD and the U.S. Department of Justice (DOJ), have a variety of tools in their arsenals to combat restrictive ordinances that impact Latino families. HUD Secretary-initiated actions are a particularly important tool in this context, especially since effective outreach activities could be undermined by a lack of enforcement. Absent a robust enforcement system, those that violate fair housing laws have little incentive to put fair renting and sales practices in place. A stronger enforcement system would ensure support for rigorous testing initiatives, as well as a national scorecard on the nation's largest real estate firms, lenders, broker houses, and insurance agencies.
- Proactively promote fair housing choice. Under its oversight of federally funded jurisdictions to "affirmatively further fair housing," HUD should increase targeted outreach to municipalities that pass discriminatory, anti-immigrant ordinances, and assess the extent to which they are in fact "affirmatively furthering fair housing," including the extent to which they are meeting their obligation to improve language access for Limited English Proficient (LEP) individuals.^{*} Further, actually withdrawing Community Development Block Grant (CDBG) funds in the appropriate circumstances would highlight the importance of the issue and HUD's commitment to compliance.
- Build coalitions that include both immigration and fair housing advocates. The fair housing and immigrant rights movements tended to develop as separate forces. Fair housing organizations have not necessarily done enough to address the needs of immigrants, and immigration advocates have been similarly slow to incorporate fair housing as a tool to fight back against the anti-immigrant movement. By joining forces, we can overcome the discriminatory rhetoric that generally creates a hostile environment for immigrants, and in particular, constructs roadblocks to equal housing opportunities.

^{*} The Fair Housing Act (42 U.S.C. 3608 (d)) requires executive departments and agencies to "administer their programs and activities relating to housing and urban development (including any federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of [the Fair Housing Act]."

^{**} State and localities that receive federal grants are subject to this requirement, according to Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000).



In collaboration with NCLR, the ERC designed and conducted two types of civil rights testing to examine how housing providers and their agents treated Latino home-seekers as compared to their White counterparts. In Birmingham, Alabama, testing focused on the rental housing market; in Atlanta, Georgia, and San Antonio, Texas, testing focused on the home sales market.

In both these types of testing, “matched-pairs” of Latino and White testers were given similar, but not identical, personal and financial profiles including occupation, income, and rental and credit history. All testers were assigned a telephone number and an email address to provide as their contact information to housing providers and real estate agents. To the extent that the testers’ profiles varied (except with respect to national origin), the Latino tester was given more attractive attributes than the White tester, such as a slightly higher annual income, better credit score, or higher rental price range. This was done to maximally reduce the number of potential reasons (actual or perceived), other than national origin, why Latino testers might receive more adverse treatment than their White counterparts.

For all testing, testers were primarily recruited from the tested region, and underwent extensive training in both the classroom and the field. Test pairs were either male or female, with gender consistent within matched pairs; for example, the Latino tester and White tester were both male or were both female within a given test. Each profile was designed to be appropriate for the house listed (tester income met sales requirements).

All testers used in the ERC’s testing—both Latino and White—were lawfully present in the United States at the time of testing. If the immigration status of the Latino tester was questioned during a test, the tester was instructed to confirm his status as a documented resident and/or U.S. citizen.

Rental Testing Methodology (Birmingham, Alabama)

In order to examine whether housing providers and rental agents in the Birmingham, Alabama, metropolitan area provide equal treatment and information to Latino applicants and their White counterparts, the ERC conducted 75 matched-pair, in-person civil rights tests of multi-family properties that had at least one unit advertised for rent.

Shortly before each rental property was tested, an “advance caller” contacted the property to inquire about the actual availability of apartments for rent, rental prices, and the application process. Testers were each provided with a unique telephone number and email address to provide to agents on their tests. Once availability was confirmed, testers posed as prospective renters using their assigned profiles. The matched-pair testers visited each test site at reasonably spaced intervals to seek information about housing options, cost, terms, and conditions. Testers were instructed to request the agent’s business card and rental application and to retain any promotional materials and handouts provided by the agent.

Testers recorded their experiences on individual report forms immediately after the completion of each test. These forms elicited information about housing availability, cost, application requirements, and specific terms and conditions discussed by the agent and tester. Testers also completed a written narrative of their test experience, which captured information about the test in a chronological fashion and included qualitative details not captured in the test report form. In addition to the report form and a narrative, all handouts provided to testers were also submitted and analyzed by the ERC. The ERC also monitored the testers’ assigned email and voicemail accounts for a minimum of two weeks after each test was completed in order to compare the amount of follow-up a tester received after the initial visit to the property.

Sales Testing Methodology (Atlanta, Georgia and San Antonio, Texas)

In both Atlanta, Georgia, and San Antonio, Texas, the ERC conducted 25 in-person matched-pair sales tests and 50 telephone tests to investigate the treatment of Latino individuals as they looked to purchase single-family homes in these metropolitan areas. In each city, the ERC conducted demographic research to identify the dominant real estate companies operating in each market, and selected for-sale properties listed by these companies.

A. In Person Testing Methodology

In-person tests relied on a “quasi-relocation” methodology. Testers posed as current renters who had relocated to the area from outside the state within the past year and were looking to purchase their first home.^{*} In all profiles used for sales tests, the tester was married, and in any given test pair, both testers had the same number of children of approximately the same ages.

Testers contacted listing agents who had advertised properties for sale, then attempted to schedule an appointment to view the listed home. Testers presented themselves as willing to reside in any part of the community, and both testers were instructed to state that they worked primarily from home should an agent ask the tester if he or she needed to seek

^{*} A quasi-relocation methodology allowed for testers to use their actual neighborhood as the current address while still gathering detailed information from real estate agents about the communities in which they seek a home, including recommendations for other neighborhoods.

housing close to work.

During each test, testers sought information about housing availability, cost, terms, and conditions. Testers were instructed to request the agent's business card and to retain listing and promotional materials for each viewed property, as well as any property the agent suggested. In accordance with the test profile, if asked about loan "prequalification" or "pre-approval," testers were instructed to say that they were prequalified by a bank designated in their profile, but to ask the agent for other lender recommendations. Before each test concluded, if the agent did not volunteer to show the tester additional houses or to email the tester a list of additional houses, testers were instructed to ask if the agent would email a list of homes similar to the advertised property.

At the conclusion of each test, testers recorded their experiences on individual report forms that elicited information regarding housing options, cost, financing, and other home or neighborhood recommendations. As in the rental testing, the report form was supplemented by a written narrative that documented the test in a chronological fashion and allowed the tester to include qualitative details that may not have been captured in the report form. All promotional materials given to testers were also submitted and analyzed by the ERC. ERC staff monitored testers' email and voicemail accounts for at least two weeks after each test to measure the level of follow-up provided by the real estate agent after the initial appointment.

B. Telephone Testing Methodology

Telephone testing in Atlanta and San Antonio also relied on a relocation methodology. Testers posed as renters from outside the metro area being tested, who were moving into the area and looking to purchase their first home. This relocation methodology allowed testers to gather information on the telephone that would generally be provided in person. It also enabled testers to gather more detailed information from real estate agents about the communities where they were seeking a home, allowing the ERC to better assess whether testers were being "steered" into or away from certain properties or neighborhoods.

As in the in-person testing, telephone testers contacted the listing agent for homes advertised for sale through an online site. In addition to inquiring about the availability of the advertised home, telephone testers asked for recommendations of other homes in their stated price range and also for possible lenders. Testers did not express a preference for any neighborhood or area. Testers concluded the call by asking the realtor about next steps to be taken; if an appointment was scheduled, the tester canceled the appointment several days later.

After each telephone call, testers completed a report form and a narrative that included information such as houses suggested by the realtor/listing agent, alternative financing suggested, and a brief account of the tester's experience. The ERC monitored testers' email and voicemail accounts for at least two weeks to track follow-up communication from the agent.

Endnotes

- ¹ Sarah Treuhart, Angela Glover Blackwell, and Manuel Pastor *America's Tomorrow: Equity is the Superior Growth Model* (Los Angeles: PolicyLink, 2011), http://www.policylink.org/at/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/SUMMIT_FRAME-ING_WEB.PDF (accessed June 24, 2013); and America's Voice, "Public Opinion and the Arizona Immigration Law: What Do Voters Support and Why?" (presentation, July 7, 2010), http://americasvoiceonline.org/index.php/polling/entry/public_opinion_and_the_arizona_immigration_law (accessed June 24, 2013).
- ² U.S. Census Bureau, "The Foreign-Born Population in the United States: 2010," *Current Population Survey*, Washington, DC, 2012, Table 2.
- ³ Patricia Foxen and Sara Benítez, "Latinos and the 2010 Census: Let's Put Those Numbers to Use," (presentation, 2011), <http://www.ncfr.org/images/uploads/pages/2010CensusPowerPoint.pdf> (accessed June 25, 2013).
- ⁴ Leah Nelson, Evelyn Schlatter, and Heidi Beirich, *When Mr. Kobach Comes to Town: Nativist Laws & the Communities They Damage* (Montgomery, AL: Southern Poverty Law Center, 2011), http://cdna.splcenter.org/sites/default/files/downloads/publication/Kobach_Comes_to_Town.pdf; and Jessica Agarwal et al., *Confronting the New Faces of Hate: Hate Crimes in America* (Washington, DC: Leadership Conference on Civil and Human Rights Education Fund, 2009), http://www.protectcivilrights.org/pdf/reports/hate-crimes/lccref_hate_crimes_report.pdf.
- ⁵ *When Mr. Kobach Comes to Town*.
- ⁶ American Immigration Lawyers Association, *Navigating the Immigration Debate: A Guide for State & Local Policymakers and Advocates* (Washington, DC: American Immigration Lawyers Association, 2009), <http://www.aiala.org/content/fileviewer.aspx?docid=24681&linkid=172618> (accessed July 20, 2013).
- ⁷ *Support Our Law Enforcement and Safe Neighborhoods Act*, S.B. 1070, 49th Leg., 2nd sess., Arizona (April 23, 2010).
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Questions for the Record

Rep. Katie Porter

4/2/2019

“The Fair Housing Act: Reviewing Efforts to Eliminate Discrimination and Promote Opportunity in Housing” hearing

For Cashauna Hill:

- Too little is known about the types and extent of discrimination that families with children face in the rental market. According to a 2016 HUD report, local fair housing groups and HUD regularly receive complaints about housing discrimination against families with children. That same report presented the results of a study of housing discrimination against families with children versus those without. In the study, a family with children and a family without both inquired about the same size unit. The study demonstrated that families with children were shown fewer units and were shown units that were larger and thus more expensive.
 - You spoke about housing discrimination against women experiencing domestic violence. Have you observed differential treatment of families with children versus those without?
 - Thank you for the question and yes, family status is consistently in the top three of protected classes that we receive complaints on, the other two being race and disability. We noticed an uptick in these calls after Hurricane Katrina, when the rental market was particularly tight. As such, we caution other areas recovering from natural disasters to be particularly vigilant.
- I’m lucky to have survived an abusive relationship, and my 3 children and I were able to move forward with our lives, staying in our community and home. My children are 7, 10 and 13 years old now, and my two boys are especially rowdy. In the book Evicted, the author writes about parents kicked out of their rental units because their children were too disruptive.
 - Have any of your clients experienced the same? The Fair Housing Act technically prohibits this form of discrimination but the book I mentioned—Evicted—indicates that the FHA is routinely ignored. What could we do legislatively to increase adherence to the anti-discriminatory tenets of the FHA?
 - We have absolutely had clients who have been asked to leave, or have had landlords change the terms and conditions of the tenancy because of the presence of their children, and we know that takes place across the country. One of the most important things Congress can do to increase adherence to the FHA is to provide adequate funding for HUD’s office of Fair Housing and Equal Opportunity and the Fair Housing Initiatives Program. It’s only this program and the staff at HUD that allow us to test, investigate, and ultimately root out this discrimination.

- Surveys indicate that consumers don't know their rights to be free from family composition discrimination.
 - Does your organization articulate the consumer protections afforded to home-seekers?
 - We do. The previously mentioned FHIP program supports a number of staffers at our office whose full time job is to educate the public about their rights and to educate housing providers about their obligations. We reach roughly 1,000 people each year with trainings, outreach, and other education programing that includes classes for prospective first time homebuyers, renters, and landlords. In response to the uptick in family status discrimination that we saw after Hurricane Katrina, GNOFHAC also took the innovative step of writing a children's book about housing discrimination, titled The Fair Housing Five and the Haunted House. We've built a curriculum around the book and a number of schools, school systems, and school libraries use it to educate young people and their caregivers about civil rights and systemic injustice. You can find more about the Fair Housing Five here: <http://fairhousingfive.org/>.

4/10/2019

Few blacks get mortgages for homes in Detroit, data show

Few black people get home mortgages in Detroit, data show

John Gallagher, Detroit Free Press Published 6:25 a.m. ET March 21, 2019 | Updated 8:35 p.m. ET March 22, 2019

White people make up just 10 percent of Detroit's population but got nearly half of the home mortgage loans made in 2017 for which the race of the applicant was known.

That data point and several more show that the mortgage market in Detroit, while improving in recent years, remains anemic at best and, at worst, nonexistent in many parts of the city.

Data collected under the federal Home Mortgage Disclosure Act show:

► **White borrowers got almost the same number of mortgages as black borrowers despite being a much smaller percentage of the city population.** Of 1,072 mortgage loans made in Detroit in 2017, the most recent year for which full data are available, 442 went to white borrowers, 461 to black borrowers, and in the remainder the race of the applicant was not known, or, in a few cases, went to Asians or those of other ethnic groups.

► **The mortgage market doesn't exist or barely exists in more than half the city.** Of 297 Census tracts in Detroit, each tract measuring several square blocks, 139 tracts saw no mortgages at all in 2017, and another 91 saw just one to five mortgages.

► **Only nine Census tracts out of the nearly 300 saw 20 or more mortgage loans made in 2017.** Tracts where mortgages were more readily available were in the city's more upscale districts, including the east riverfront, the Palmer Woods area, and a handful of others. In those areas, poverty rates are well below the city's average and income levels are higher.

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► **In part because mortgages are less readily available in the city, black home buyers may be more likely to buy in the suburbs than in the city.** In 2017, just two suburbs, Southfield and Redford Township, accounted for more mortgage loans to black home buyers (747) than the mortgage loans made to black buyers in Detroit itself (461) when the race of the applicant was known.

► **A lack of mortgage loans does not mean there are no home sales in the city.** Finance experts estimate there may be 4,000 to 5,000 home sales in Detroit each year but **up to 80 percent of those transactions were cash or some variation, like a land contract, lenders and civic leaders estimate.**

► **Black borrowers more often got government-backed mortgages under either FHA or VA programs, an indication that lenders found those clients less credit worthy or of a higher risk.** White home buyers, on the other hand, tended to get conventional mortgages, made to those with good credit in stable neighborhoods.

► **In a vivid illustration of that last point, just three of a total of 635 homes sold by the Detroit Land Bank Authority from November through February involved a traditional mortgage loan,** said Reginald Scott, director of dispositions for the Land Bank.

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4/10/2019

Few blacks get mortgages for homes in Detroit, data show



Jonica Miller stands in front of her house she recently purchased on Detroit's northwest side on Tuesday, March 12, 2018. (Photo: Ryan Garza, Detroit Free Press)

What the mortgage numbers mean

This lack of a robust mortgage market in Detroit creates a substantial drag on efforts to improve the financial life of residents. For generations, getting a mortgage has been a ticket to a middle-class life and a brighter future. The lack of mortgages for thousands of home buyers in Detroit each year holds back Detroit's full recovery.

"There are large parts of the city — probably over half — that do not have a functioning real estate market," said Alan Mallach, a New Jersey-based planner and author of the book "The Divided City," who has worked frequently in Detroit.

"However, weak as the numbers are, they are an improvement," he added. "In 2012, only 200 mortgages were made in the city, and the numbers have been steadily going up — albeit slowly — since then. So the trend is positive, but is affecting only a relatively small part of the city."

Without overcoming the problems holding back its mortgage market, Detroit will face a much slower recovery, said Jay Farmer, CEO of Quicken Loans, which is the largest mortgage lender in the city.

"It's critical," he said. Mortgages are "the vehicle that allows the buying and selling of properties easily. It empowers people who are just starting their lives, having their families, to buy a property they couldn't buy" without a mortgage.

MAP: Click an area above to see how many mortgages are made in each Census tract in Detroit. The purple areas represent tracts with few or no mortgages. The gray pins show more mortgages and the lightest areas represent with the most mortgages.

The data are subject to a few qualifications. About 15 percent of mortgage loans reported in the HMDA data did not identify the buyer by race. Mortgage lenders who made less than 25 mortgage loans in a community were not required to report their data.

Also, since the Free Press analysis looked at loans for home buying, refinancing of existing mortgages was not included. And a handful of borrowers identified as white were also identified as Hispanic or Latino, although not a significant number.

But those qualifications aside, this remains clear: Traditional mortgage loans for home buyers remain far from readily available in Detroit.

Why so few mortgages?

Several years ago, lenders and civic leaders initially thought the problem limiting mortgages was a lack of capital available in the city, a legacy of the days when banks denied credit to city residents, a process known as redlining.

But as JPMorgan Chase, Quicken Loans and other lenders began to funnel new money into mortgage programs in recent years, it became clear that the problems went much deeper. Among the issues: Detroit's supply of move-in-ready houses was limited; appraised values were often too low to support a conventional mortgage, and many buyers had blemished credit histories that made them, by conventional lending metrics, unqualified for a traditional mortgage.

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Few blacks get mortgages for homes in Detroit, data show

The more lenders dug into the problems, the more pitfalls opened up. Some potential buyers had insufficient incomes either because the city lacked public transit to get them to a job, or they may have had a brush with the criminal justice system. Everything from child care obligations to Wayne County's tax foreclosure process made buying or keeping a house more difficult, which, in turn, made mortgages harder to get.

"As we've been sleeves rolled up, working in the community, we're learning over and over how multifaceted the challenge is. It's not just a supply of mortgage capital or a matter of producing enough credit-worthy borrowers. It's much more complex," said Janis Bowdler, president, JPMorgan Chase Foundation.

Credit problems persist

Credit histories are one major obstacle for many Detroiters.

The experience of Tracee Anderson, 54, who rents an apartment in southwest Detroit but hopes to buy a house in the city, typifies what many potential home buyers go through.

A social worker, Anderson lost her previous house after a divorce, got laid off from her job at a local hospital, got sick and ran up medical bills. "I paid half of them and then I just couldn't do it anymore," she said. "I couldn't manage it anymore. So I said I'll file for bankruptcy."

Her credit rating tanked. Talking with mortgage lenders showed her how difficult it is to buy a house with bad credit. Having referred clients to various social agencies, she referred herself to Southwest Solutions, where counselors helped her improve her credit rating over the past year and got her ready to look once again for a house.

But it's difficult.

"It's taking a long time," she said. "You know how you go between being hopeful and being discouraged."

"The biggest thing I'm finding right now is where's the help at? I know there are programs but how do you even get in contact with them? I think there's a gap between people who are willing and able and working and all this blight, and what's in that gap and how do you fill it?"

Stories like Anderson's are all too common in Detroit.

"With the buyers we're working with, they're often living paycheck to paycheck, maybe able to save a little bit," said Libby Palackdharry, senior director of financial stability programs for Southwest Solutions. "Student debt, medical debt, credit card debt, it's a big problem."

But weak credit is only part of the challenge.

Problems with appraisals

Lenders see low appraised values of Detroit homes as a major limitation on mortgage lending.

A bank or mortgage company typically will make a loan only when a professional appraiser finds that recent sales in the neighborhood — the comparables or "comps" — show that the sale price is fair. But home prices remained so depressed in Detroit until just recently that "comps" often did not justify a mortgage for a home sale.

If, say, a seller set a sale price of \$50,000, an appraiser may find that earlier sales nearby translated into a value much lower, say \$30,000.

So if, traditionally, a buyer in a robust market puts down 20 percent of the sale price, the loan-to-value ratio is 80 percent. Because appraised values in many parts of Detroit remained so low, lenders were faced with making loans with a 200 percent loan-to-value ratio — far more than any lender could justify.

That means that most house sales are done with cash or land contracts.

The problem with cash sales

Buying a home for all cash has drawbacks. It limits a buyer to however much cash he or she has on hand, often no more than a few thousand dollars. But a mortgage would allow them to put the same amount down and borrow more to buy a home worth several times the amount of the down payment.

And among other problems, buying for cash will not establish a credit history for a buyer like a mortgage will.

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Since mortgages are out of reach and cash often inadequate, many Detroiters buy houses using a land contract. In a land contract, a seller agrees to accept a fixed sum each month from the buyer until the debt is paid off.

Although common in Detroit, buying on a land contract presents significant dangers. Land contracts may work out OK "if you know what you're doing and had an attorney review it, but by and large it's opens that buyer up to predatory practices, for sure," said Hector Hernandez, executive director of Southwest Economic Solutions, an arm of Southwest Solutions.

With a traditional mortgage, a buyer who falls behind may be able to negotiate a payment plan or otherwise not lose everything. "With a land contract, they can just pull you right out of that home. Even if you had paid off 90 percent of it, you fall behind one payment, that's it," Palackdhar said.

And oftentimes those transactions take place without a title insurance policy in place. So a buyer may never know if she has a clear title to the property. That can lead to nasty surprises down the line.

So a traditional mortgage offers more protections, establishes a credit history and a clear title.

And, crucially, a mortgage helps create a record of market-rate sales so an appraiser can find "comps" or comparable sales that enable lenders to justify future mortgage loans to other buyers.

"By getting those property values supported in a concentrated area, you start to get financing going, create more comps, you get that flywheel spinning," said Farmer of Quicken Loans. "So you get some momentum in pockets like that and very quickly you've established a good comp base."

A success story

The story of Detroit Jomica Miller, 43, is fairly typical. A cashier working at 36th District Court, she had hoped to buy her parents' home after her father died but found it had been sold out from under them at the annual Wayne County tax foreclosure auction. She also found her past credit history presented a problem for lenders. She had student loans she was slowly paying off and a past bankruptcy on her record.

"I actually started my process in 2017," she said. "Nobody wanted to work with me because my credit was so bad. I didn't know where to start."

Through credit counseling and perseverance for more than a year, she eventually was able to buy a house in the Marygrove district on the city's northwest side with an FHA-backed mortgage. The house is one of four that were part of the Fitz Forward project that have gotten mortgages closed in the Fitzgerald neighborhood. Fitz Forward is the initiative led by Century Partners and The Platform to rehab houses in the district.

"I almost gave up, but I had some great people in my corner," she said. "Don't give up."

Rehabbed & Ready

Aware of the many obstacles holding back borrowers like Miller, lenders and civic leaders have come to their aid in many ways.

Southwest Solutions, the nonprofit, offers new home buyer classes and credit counseling. Then, too, the Michigan State Housing Development Authority offers down payment assistance to qualified buyers.

The Detroit Land Bank Authority has made more houses affordable through its programs, including auctions and others efforts. JPMorgan Chase has committed more than \$5 million to help fund mortgage and rehabilitation loans through Liberty Bank, a New Orleans-based institution working in Detroit.

There are many such efforts, and more new ones are in the works. Collectively, they are one reason why the number of mortgage loans in the city, while still small, has risen in the past few years, from no more than about 200 mortgages several years ago to more than 1,000 a year today.

"Legacy Detroiters can climb that economic ladder if given the opportunity and the tools," said Hernandez of Southwest Solutions.

One such effort, a partnership of the Detroit Land Bank Authority and Quicken Loans, is called Rehabbed & Ready. It is aimed at overcoming the problem of the large renovation costs that many Detroit houses require to come up to code.

Quicken Loans funded the program with several million dollars that allows the Land Bank to fix up blighted houses in its inventory before a sale, rather than after. The renovated houses then sell for something closer to a fair market value.

So far, about 60 homes have been completed under the program and another 40 or so are in the pipeline. In the Bagley neighborhood on the northwest side, Rehabbed & Ready has resulted in 13 home sales so far. The first of those sales averaged \$35,000, but today it's closer to \$90,000 — an indication that priming the pump with an initial investment works.

<https://www.freep.com/story/money/business/john-gallagher/2019/03/21/black-mortgages-detroit-real-estate-michigan/3165381002/>

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But if these programs have moved the needle, they have done so slowly.

More changes ahead?

If Detroit's mortgage market remains weak, the good news is that the problem is getting lots of attention. Millions of dollars have been devoted to improving the market and a lot of smart people are working on solutions.

And, over time, credit counseling and down payment assistance and programs like Rehabbed & Ready should continue to show progress. And as new job training programs graduate skilled workers, more Detroiters should be able to earn the incomes that will help them qualify for a mortgage loan.

But no one should say the mortgage market in Detroit has normalized just because the number of mortgages has increased in the past few years. Far from it. As with so much of Detroit's highly touted recovery, the hard work of innovation and improvement is just beginning.

Contact John Gallagher: 313-222-5173 or gallagher@freepress.com. Follow him on Twitter @jgallagherfreep. Read more on business and sign up for our [business newsletter](#).

4/10/2019

For Low-Income Victims, Nuisance Laws Force Ultimatum: Silence Or Eviction : NPR

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PAM FESSLER



Lakisha Briggs, at her house in Norristown, Pa. Briggs, who was being abused by her boyfriend, lodged a legal challenge against her eviction for having the police called too many times to her former residence.

Pam Fessler/NPR<https://www.npr.org/2016/06/29/482615176/for-low-income-victims-nuisance-laws-force-ultimatum-silence-or-eviction>

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4/10/2019

For Low-Income Victims, Nuisance Laws Force Ultimatum: Silence Or Eviction : NPR

Local communities are increasingly passing laws to control crime and nuisances on rental properties. They do so mostly by limiting the number of times police can be called to a residence. But it turns out that crime victims — especially victims of domestic abuse — are often the ones who end up being penalized.

Lakisha Briggs of Norristown, Pa., was one of those victims. When her boyfriend started abusing her several years ago, her grown daughter called the police. Before leaving, one of the officers warned Briggs that this was her first strike. She couldn't believe what she was hearing.

"He just was like, we just gonna make sure your landlord evict you. And I'm like, my landlord evict me? For what? Like, I didn't even do anything," she recalls.

But Norristown had what's known as a nuisance property ordinance. Her landlord could be fined and have his rental license suspended if police were called to the property more than three times in four months for "disorderly behavior." Unless, that is, he evicted his tenant.

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After that first warning, Briggs — who also had a 3-year-old daughter — was reluctant to call the police when her boyfriend beat her up. But one night, when they got into a fight, he slit her neck open with a broken ashtray. When she woke up in a pool of blood, her first thought was not to dial 911.

"The first thing in my mind is let me get out of this house before somebody call," she says. "I'd rather them find me on the street than find me at my house like this, because I'm going to get put out if the cops come here."

But the police did come, when someone saw her bleeding outside. Briggs was airlifted to the hospital. When she returned home several days later, her landlord told her that she had to leave. He said he didn't want to throw her out, but if he didn't, he'd be fined \$1,000 a day.

"I think it's almost hard for people to believe that the law would be used in this way," says Sandra Park, a senior attorney with the ACLU Women's Rights Project. Park says she doesn't think most lawmakers intend for the laws to target victims.

"But unfortunately, we've seen in community after community with these laws, domestic violence victims and other crime victims do get punished, and I think we just need to be aware that this is the reality of what people are experiencing on the ground," she says.

In the Briggs case, the ACLU sued, the federal government filed a fair housing complaint, and the Norristown law was eventually repealed. The state of Pennsylvania also passed a law to protect crime victims.

But Park says similar measures keep popping up — in New York, Arizona, Wisconsin and elsewhere — as local communities try to get a handle on crime and safety. There are likely hundreds of such laws, although no one knows for sure.

Amanda Grieder oversees compliance with a nuisance ordinance in Cedar Rapids, Iowa, and says that one problem the city has is that police officers end up being called to the same properties over and over again.

"In addition to making sure that citizens in our city have the ability to live in neighborhoods free of nuisance activity, we also felt the need to recoup some of the costs of taxpayer-funded services," she says.

STAYING OFF EVICTIION

Under the Cedar Rapids ordinance, landlords can be fined hundreds, if not thousands, of dollars for

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Tenants On The
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Renters
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Subpar Housing



**STAVING OFF
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Safe Housing Is
Hard To Come
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repeated police calls, unless they come up with a plan to abate the problem. Grieder says the city recently revised its statute and is working with social service agencies to make sure crime victims are not penalized in the process.

"No matter what the circumstance, the No. 1 priority is we want you to call police, we want you to report crime," she says. The state of Iowa also has a new law to make sure crime victims are not discouraged from calling for help.

But Park and others say, even with such exceptions, the ordinances can have a chilling effect on tenants, especially those who are low-income with nowhere else to go. Some abusers even use the threat of eviction against their victims, which is what happened to Briggs.

"After he found out that I was on my last and final strike, he kind of just like moved into my house," she says. "It's like, you know, a really messed up situation because it's, OK, at this point, what do I

do?"

She definitely did not want to call the police.

Since the Briggs case was settled two years ago, Norristown has taken a new approach to addressing nuisance properties. Municipal administrator Crandall Jones says police and other local agencies now work more closely with residents to try to address the underlying problems that lead to excessive police calls — such as drug trafficking, domestic abuse or mental illness. He says crime has dropped as a result.

"That nuisance issue is really symptomatic and not the issue," says Jones. "When you're dealing with the symptoms and not the real issue, the symptoms are going to

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continue to reoccur and reoccur."

For her part, Briggs no longer worries about eviction. She now owns her own home.

domestic abuse

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